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Withdrawn Sections–sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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

In Addition

TAC Titles Affected

TAC Titles Affected–October

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Part I. Texas Department of Agriculture

4 TAC §§17.51-17.56—5301

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Part I. State Finance Commission

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43 TAC §§1.100-1.111—5350

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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-1097(RQ-1692). Request from Dale Hanna, Johnson County Attorney, Cleburne, concerning whether Johnson County has the option of creating a county industrial commission instead of a board of development.

Summary of Opinion. In order to create a county level agency and to appropriate county funds to promote development in Johnson County, the county may operate under the Local Government Code, §381.001 or §381.002. Any appropriation under either section may not exceed the ceiling established by §381.002(a). If operating under §381.002, any appropriation must be approved in advance by a majority vote of the county electorate.

TRD-8909162

♦ ♦ ♦

JM-1098(RQ-1752). Request from Charles D. Penick, Criminal District Attorney, Bastrop County, Bastrop, concerning authority of a commissioners court to promulgate regulations regarding smoking in the county jail, and related questions.

Summary of Opinion. The sheriff as keeper of the county jail has the discretion to make reasonable regulations relative to the supervision of prisoners and operation of the jail, including the authority to determine whether smoking should be allowed in the jail. The county commissioners court may prohibit smoking by inmates in the county jail if it falls within its responsibility to provide a safe and suitable jail under the Local Government Code, §351.001.

TRD-8909161

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JM-1099(RQ-1548). Request from Brenda Milligan, Montague County Auditor, Montague, concerning whether a county auditor may require elected officials and department heads to provide details about employees' hours worked and leave taken.

Summary of Opinion. The county auditor in a county with a population of less than 190,000 may require county officials and department heads to submit information on forms designed or adopted by the county auditor and showing the number of hours worked by county employees during a particular pay period; the amount of vacation or sick leave taken, the number of hours credited or charged as overtime, compensatory time, or holidays; and the number of hours charged against an employee's pay, if any, provided such requirement is not inconsistent with a rule or form prescribed by the comptroller of public accounts pursuant to the Local Government Code, §112.003.

TRD-8909160

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JM-1100(RQ-1664). Request from Pamela K. McKay, County Attorney, County of Kendall, Boerne, concerning under what circumstances the Local Government Code, §232.001, requires a tract owner to prepare a plat.

Summary of Opinion. Under the Local Government Code, §232.001(a), a division of a tract of land outside the limits of a municipality into two or more parts, whether the division be to lay out a subdivision, addition, or suburban or building lots, is subject to the platting requirements of the subsection only if the division is also to lay out streets, alleys, squares, parks, or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent thereto, as provided in the subsection.

TRD-8909159

♦ ♦ ♦

JM-1101(RQ-1708). Request from John T. Montford, Chairman, State Affairs Committee, Texas State Senate, Austin, concerning whether a farm-to-market road is a state highway for purposes of right-of-way acquisition under Texas Civil Statutes, Article 6702-1, §4.301(c).

Summary of Opinion. Farm-to-market roads are not state highways for purposes of Texas Civil Statutes, Article 6702-1, §4.301(c), which requires the State Department of Highways and Public Transportation to pay 90 percent of the cost of rights-of-way acquired by counties and cities for highways designated by the State Highway and Public Transportation Commission as United States or state highways.

TRD-8909158

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Request for Opinions

(RQ-1817). Request from John Paul Batiste, Executive Director, Texas Commission on the Arts, Austin, concerning whether the Peer Advisory Review Panel of the Texas Commission on the Arts is subject to the Open Meetings Act, Texas Civil Statutes, Article 6252-17.

(RQ-1818). Request from James M. Kuboviak, Brazos County Attorney, Brazos County Courthouse, Bryan concerning whether newly imposed limitations on a district judge's salary affect his compensation for service on a county juvenile board.

(RQ-1819). Request from William M. Hale, Executive Director, Texas Commission on Human Rights, Austin, concerning validity of a rule of the Texas Commission on Human Rights which construes the term prevailing party.

(RQ-1820). Request from J. Frank Long, District Attorney, 8th Judicial District, Sulphur Springs, concerning eligibility of a state senator to be a candidate for another office under various circumstances.

(RQ-1821). Request from Fred Toler, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, Austin, concerning effect of House Bill 1947, 1989 Acts, 71st Legislature, Chapter 469, at 1641, which exempts special rangers from the requirement of training in the recognition of cases involving child abuse or neglect.

(RQ-1822). Request from Ralph R. Wallace, III, Chairman, House Cultural and Historical, Austin, concerning validity of an ordinance of the City of Houston which required garbage customers to use plastic bags.

TRD-8909163

♦ ♦ ♦

(RQ-1823). Request from Christine Delmas, Legal Counsel, Texas Commission on Alcohol and Drug Abuse, Austin, concerning whether the licensing file, held by the Texas Commission on Alcohol and

Drug Abuse, of a drug treatment center is protected by the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a, §3(a)(1), in conjunction with Texas Civil Statutes, Article 5561cc, §13(e), and related questions.

(RQ-1824). Request from David M. Douglas, General Counsel, Texas Department of Public Safety, Austin, concerning whether the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a, §3(a)(1) and §3(a)(8) protect a log kept by the Department of Public Safety of criminal history searches.

(RQ-1825). Request from Robert Bernstein, M.D., F.A.C.P., Commissioner of Health, Texas Department of Health, Austin, concerning whether quarterly reports filed by the Texas Abortion Facility Reporting and Licensing Act, Texas Civil Statutes, Article 4512.8, are protected by the Texas Open Records Act, Article 6252-17a, §13(a)(1).

TRD-8909164

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Emergency Sections

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

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

TITLE 16. ECONOMIC REGULATION

Part IV. Texas Department of Licensing and Regulation

Chapter 65. Boiler Division

• 16 TAC §§65.1, 65.10, 65.20, 65.30, 65.50, 65.60, 65.70, 65.80, 65.90, 65.100

The Texas Department of Licensing and Regulation is renewing the effectiveness of the emergency adoption of new §§65.1, 65.10, 65.20, 65.30, 65. 50, 65.60, 65.70, 65.80, 65.90, 65.100, for a 60-day period effective September 29, 1989. The text of new §§ 65.1, 65.10, 65.20, 65.30, 65.50, 65.60, 65.70, 65.80, 65.90, 65.100 was originally published in the June 9, 1989, issue of the *Texas Register* (14 TexReg 2721).

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TRD-8909056 Paula Hamje
Acting General Counsel
Texas Department of Licensing and Regulation

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Expiration date: November 28, 1989

For further information, please call: (512) 463-3127

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Administration

• 16 TAC §§65.12-65.18, 65.20-65.34

The Texas Department of Licensing and Regulation is renewing the effectiveness of the emergency adoption of repealed §§65.12-65.18, 65.20-65.34 for a 60-day period effective September 29, 1989. The text of repealed §§65. 12-65.18, 65.20-65.34, was originally published in the June 9, 1989, issue of the *Texas Register* (14 TexReg 2736).

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For further information, please call: (512) 463-3127

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General Requirements

• 16 TAC §§65.41-65.52

The Texas Department of Licensing and Regulation is renewing the effectiveness of the emergency adoption of repealed §§65.41-65.52, for a 60-day period effective September 29, 1989. The text of repealed §§65.41-65.52, was originally published in the June 9, 1989, issue of the *Texas Register* (14 TexReg 2736).

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Power Boilers

• 16 TAC §§65.61-65.70

The Texas Department of Licensing and Regulation is renewing the effectiveness of the emergency adoption of repealed §§65.61-65.70, for a 60-day period effective September 29, 1989. The text of repealed §§65.61-65.70 was originally published in the June 9, 1989, issue of the *Texas Register* (14 TexReg 2736).

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Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-3127

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Heating Boilers

• 16 TAC §§65.81-65.93

The Texas Department of Licensing and Regulation is renewing the effectiveness of the emergency adoption of repealed §§65.81-65.93, for a 60-day period effective September 29, 1989. The text of repealed §§65.81-65.93 was originally published in the June 9, 1989, issue of the *Texas Register* (14 TexReg 2737).

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TRD-8909061 Paula Hamje
Acting General Counsel
Texas Department of Licensing and Regulation

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Inspection

• 16 TAC §§65.101-65.108

The Texas Department of Licensing and Regulation is renewing the effectiveness of the emergency adoption of repealed §§65.101-65.108, for a 60-day period effective September 29, 1989. The text of repealed §§65.101-65. 108 was originally published in the June 9, 1989, issue of the *Texas Register* (14 TexReg 2737).

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Repairs and Alterations

• 16 TAC §§65.121-65.124

The Texas Department of Licensing and Regulation is renewing the effectiveness of the emergency adoption of repealed §§65.121-65.124, for a 60-day period effective September 29, 1989. The text of repealed §§65.121-65. 124 was originally published in the June 9, 1989, issue of the *Texas Register* (14 TexReg 2737).

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Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-3127

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter X. Pari-mutuel Wagering Racing Revenue

• 34 TAC §3.641

The Comptroller of Public Accounts adopts on an emergency basis new §3. 641, concerning pari-mutuel wagering. The new emergency section details the responsibilities of horse and greyhound racing associations licensed by the Texas Racing Commission with regard to collection, deposit, reporting, and accounting for the state portion of pari-mutuel wagering revenues and related funds; minimum standards for pari-mutuel wagering equipment used to compute the state share of pari-mutuel wagering revenues; comptroller audits of licensed horse and greyhound race associations; administrative appeals by licensed horse and greyhound race associations from comptroller audit findings; and sanctions for violation of this section.

The Texas Racing Act created a new tax on pari-mutuel racing thereby creating the need for additional staff in the areas of enforcement, audit, revenue accounting, computer services, and automated collections.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 179e, §4.03, which provide the comptroller with the authority to adopt rules for the enforcement of his powers and duties under the Texas Racing Act.

§3.641. Pari-Mutuel Wagering.

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

(1) Association–A horse or greyhound association licensed by the commission to conduct races with pari-mutuel wagering or the authorized agent of such an association.

(A) Class 1 association–An association licensed by the commission as a Class 1 association for the purpose of conducting horse races with pari-mutuel wagering.

(B) Class 2 association–An association licensed by the commission as a Class 2 association for the purpose of conducting horse races with pari-mutuel wagering.

(C) Class 3 association–An association licensed by the commission as a Class 3 association for the purpose of conducting horse races with pari-mutuel wagering.

(D) Greyhound association–An association licensed by the the purpose of conducting greyhound races with pari-mutuel wagering.

(2) Commission–The Texas Racing Commission or an authorized agent of the Texas Racing Commission.

(3) Comptroller–The Comptroller of Public Accounts or an authorized agent of the Comptroller of Public Accounts.

(4) State approved depository–A bank approved as a depository of state funds by the state depository board.

(5) Totalisator company–A company selling, leasing, servicing, maintaining, or operating automated electronic computer hardware and software to calculate, record, display, and store pari-mutuel wagering information.

(b) Collection/deposit of state portion of pari-mutuel wagering revenues; reports to the comptroller.

(1) In each locality with licensed Class 1, Class 2, or greyhound associations, the state treasurer has agreed to open an interest-bearing account in a local state-approved depository to be used for deposit of the state share of pari-mutuel wagering proceeds.

(2) After each racing day, a representative of a Class 1, Class 2, or greyhound association shall deposit to the state account by 10 a.m. of the next banking day the state total share of the pari-mutuel pool for all races conducted since the last deposit.

(3) All deposits to the state account must be in cash or by check drawn on an association account in the state-approved depository bank or by telephone transfer from an association account in the state-approved depository bank.

(A) Upon making the deposit, Class 1, Class 2, and greyhound associations shall report by telephone to a data collection center designated by the state treasurer, the information shown on a pari-mutuel wagering deposit report form promulgated by the comptroller. They shall also transmit a copy of the completed form to the comptroller by telephone line and high-resolution facsimile equipment.

(B) Class 3 associations must transmit a check covering the amount of the state's share to the comptroller by 10 a.m. of the next banking day after the performance by overnight or express mail for one-day delivery. The check must be attached to the performance pari-mutuel summary report.

(4) After each racing performance, information must be reported to the comptroller.

(A) At the close of each racing performance, the association shall complete the performance pari-mutuel summary report. This report shall be filed for each racing date authorized by the commission even if no races are held.

(B) Class 1, Class 2, and greyhound associations shall transmit a copy of the completed performance pari-mutuel summary report to the comptroller by facsimile equipment no later than 10 a.m. of the next banking day following a performance. Class 3 associations must transmit a completed performance pari-mutuel summary report to the comptroller along with the payment of the state's share by 10 a.m. of the next day by overnight or express mail.

(5) If problems exist in telephone transmission or other breakdown in the facsimile equipment and copies of the reports cannot be transmitted by telephone transmission and facsimile equipment because of these problems, then associations shall send such reports to the comptroller by overnight mail or overnight private delivery service.

(6) Originals of the reports of which copies have been transmitted to the comptroller by facsimile equipment shall be preserved in chronological order with other association records for Class 1, Class 2, or greyhound associations. Class 3 tracks shall preserve copies of the reports that have been mailed to the comptroller, in chronological order, at association offices located at the track or at such other location as may be agreed to in writing by the comptroller. These reports shall be available for audit inspection. Anytime the information on the reports does not reconcile with the amount deposited, the comptroller will take prompt action to protect the state's interest.

(c) Associations with pari-mutuel wagering to post bond or other security.

(1) Associations will be responsible for the state share of the pari-mutuel pool from the time a ticket is sold and the money is collected until the money is deposited to the state account.

(2) All associations shall be bonded or otherwise secured in an amount estimated by the comptroller to be five times the highest daily state share of the pari-mutuel pool for the period covered by the bond. The bond will cover the state share of the pari-mutuel pool.

(3) In order for the comptroller to establish an appropriate amount for the

bond or other security to be posted, associations shall provide the information that the comptroller requests.

(4) The bond or other security shall be approved by and filed with the comptroller.

(A) The comptroller may require the posting of new or additional bond or security if:

(i) the comptroller determines the amount of bond or other security deposited to be inadequate; or

(ii) the comptroller determines that an association is delinquent in payment of an amount due; or

(iii) if a surety gives the comptroller written notice of its intent to withdraw as surety.

(B) If the amount of security posted is determined to be in excess of requirements, the comptroller will allow as much of the bond or security as is determined to be in excess of requirements to be cancelled or withdrawn.

(C) Should the comptroller decide either that the security posted is inadequate or that it is in excess of requirements, the association shall receive written notice.

(D) If new or additional bond or other security is required, the association shall furnish it within the time specified by the notice.

(5) The comptroller will accept as security: cash, cashiers checks, surety bonds, irrevocable bank letters of credit, United States Treasury bonds that are readily convertible to cash, and irrevocable assignments (on forms approved by the comptroller) of federally insured accounts in banks, savings and loan institutions, and credit unions. The comptroller will not accept corporate stocks and bonds or personal guarantees as security.

(6) All surety bonds posted must be executed and issued by a surety company authorized to do business in the State of Texas on a form approved by the comptroller. The surety bond must be signed by an attorney-in-fact appointed by the surety, and a notarized copy of the appointment shall be attached.

(7) A bond or other security must be in effect at all times while an association is conducting pari-mutuel wagering. The comptroller will release the bond or other security upon determination that:

(A) there is no payment, penalty, or interest due and payable to the State of Texas;

(B) the association has ceased to conduct pari-mutuel wagering; and

(C) its license has been revoked or relinquished and will not be renewed.

(d) Equipment required; responsibilities of companies contracting to provide equipment.

(1) Each association licensed for pari-mutuel wagering shall use totalisator company equipment and software, that satisfies the record-keeping and reporting requirements of the comptroller.

(A) The minimum electrical specifications for the race association's computer room must include a dedicated electrical outlet for each processor. The outlet should be three-wire, with a good earth ground, with no more than five volts AC between neutral and ground.

(B) An association shall provide two devices to stop betting before the start of each race, including:

(i) a stop betting device located in the racing judges' or stewards' area; and

(ii) a manual emergency stop betting device located in the tote room for use independently from the device in the judges' or stewards' area.

(C) The totalisator system must restrict cancelling of wagers to the last four tickets issued by a machine (to be cancelled by that machine). If the ticket is not in the last four it must be cashed through designated cash/sell terminals only with the appropriate approvals. All manually cashed wagers, cancelled wagers, and refunds issued, must be recorded by the totalisator system for each cash/sell terminal. A detailed printed report of these transactions must be generated upon request of the comptroller, including a summary of each transaction type.

(D) The totalisator system must record all transactions of each sell/cash terminal by terminal. A printed copy of these transactions for each sell/cash terminal must be generated if requested by the comptroller.

(E) The totalisator system must restrict access to sell/cash terminals through assigned user passwords to facilitate cashier accountability.

(F) All tickets that were either manually refunded or cancelled must be preserved for audit inspection with information identifying the number of the window or machine where it was paid, the teller that cashed it, and whether it was cashed by the totalisator system or by manual override of the totalisator system. If these tickets are not present and this information is not provided during the audit, the association will be responsible for reimbursing the state for any money it would have received had the ticket not been cashed.

(G) A waiver may be granted from these requirements for totalisator systems temporarily installed at Class 3 tracks upon a showing to the comptroller's satisfaction that unnecessary expense would be incurred in complying with the requirements, and that the system can be made to function properly without meeting these requirements.

(2) A totalisator company is subject to inspection and regulation by the comptroller to insure the integrity of the information obtained by use of its software and equipment. The association shall be held accountable for any loss of state money due to totalisator company error.

(3) The comptroller must be notified 30 days in advance of any change, enhancement, or upgrade in the computer hardware or software, that affects the calculation of the pari-mutuel tax or information referenced in paragraph (8) of this subsection. The totalisator company shall furnish such information as the comptroller may request, regarding such changes.

(4) The comptroller may, at any time, inspect or have inspected totalisator company equipment and software which is or which has been on location at a Texas association. The association and the totalisator company shall permit such inspection without prior notice.

(5) Totalisator equipment must be installed on-site and a series of system checkout programs designated by the comptroller must be executed by the totalisator company. At Class 1, Class 2, and greyhound tracks this shall occur at least 48 hours before the start of each racing meeting. No changes shall be made in the programming after the tests are completed without the permission of the comptroller.

(6) Any malfunction of equipment hardware or software which results in loss or delay of required report data and any processor down time, regardless of whether it results in loss or delay of required report data, shall immediately be reported to the comptroller when the performance pari-mutuel summary report form is filed.

(7) In addition, a separate written report shall be filed with the comptroller within seven days after the malfunction occurs, containing a full and complete sworn statement from an authorized association official which identifies the cause of mal-

function and the data, if any, lost as a result.

(8) A totalisator system must be able to produce and provide to the comptroller upon request:

(A) in a format prescribed by the comptroller, a copy of the data necessary to recreate the wagering activity of any race performance that the comptroller may wish to review;

(B) a copy of the system log in a format prescribed by the comptroller;

(C) a copy of the compiled version of all system programs (object coding) in a format prescribed by the comptroller; and

(D) other computer files as specified by the comptroller.

(e) Audit; appeal of audit findings.

(1) Within 150 days after the close of each meet, each Class 1, Class 2, or greyhound association, shall have a full financial audit performed at its expense by an independent certified public accountant licensed by the State of Texas, and a copy shall be kept on file at the association and furnished to the comptroller on request.

(2) The comptroller may audit to verify information reported by the association using any commonly accepted auditing method, including, but not limited to, any auditing method used by the comptroller to verify information and reports filed pursuant to the Tax Code.

(3) All computer tapes, computer programs, and books and records used to record, display, calculate, or report funds due the state maintained by the association or the totalisator company, shall be stored in chronological order in a disaster-proof environment to insure the integrity of the data and made available for inspection in a format compatible with the comptroller's equipment at any time without advance notice. Class 1, Class 2, and greyhound associations shall maintain their records at an association office at the track. Class 3 tracks shall preserve the originals of these records at association offices located at the track or at such other location as may be agreed to in writing by the comptroller.

(4) The said records shall be kept at least four years unless the comptroller gives written authority for earlier disposal. Any record relating to a comptroller audit that is still open or which has been challenged by the association shall be kept until the audit is final and all disputed issues are finally resolved.

(5) An association may dispute any audit findings of the comptroller through the same procedures available to dispute audit findings under the Tax Code. Such procedures are hereby adopted by reference in this section.

(f) Sanctions.

(1) The comptroller will immediately certify to the commission the violation by the association or its agents of a section promulgated by the comptroller; the failure or refusal of an association to pay all or any part of funds due the state or to file reports when due; the failure or refusal of an association to allow inspection of reports, records, or computer equipment or software, or the failure or refusal of an association to post bond in the amount required; or the failure or refusal of an association to keep and retain the records required by the comptroller.

(2) If any payment to the state is due, the comptroller will also notify the association and its sureties by a written demand for payment. If payment is demanded and is not made by the date specified in the demand notice, the comptroller will forfeit as much of the bond or security then in effect as may be necessary to pay the proper amount due.

(3) Concurrently, the comptroller will pursue the additional remedies authorized by law.

Issued in Austin, Texas, on September 28, 1989.

TRD-8909067 Bob Bullock
Comptroller of Public Accounts

Effective date: September 28, 1989

Expiration Date: January 26, 1990

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

Proposed Sections

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

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

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 17. Marketing Division

TAP Promotional Emblem

• 4 TAC §§17.51-17.56

The Texas Department of Agriculture proposes amendments to §§17.51-17.56, concerning TDA promotional emblems. The amendments are made in order to add the Texas Grown Emblem to the regulations now existing for other promotional marketing emblems and to add a procedure for annual registration and payment of fees. The definition of Texas Grown Emblem is added to §17.51. The amendment to §17.55, establishes a procedure for annual registration for use of promotional emblems, and sets fees for participation in the promotional emblem programs.

Paulette Schwartz, director, promotional marketing program, has determined that for the first five-year period the sections are in effect there will be fiscal implications for state or local government as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections will be in effect will be an estimated additional cost of $1,000 in the years 1990-1994. The estimated increase in revenue would be $7,500 in 1990; $8,750 in 1991; $10,000 in 1992:, $11,250 in 1993; and $12,500 in 1994.

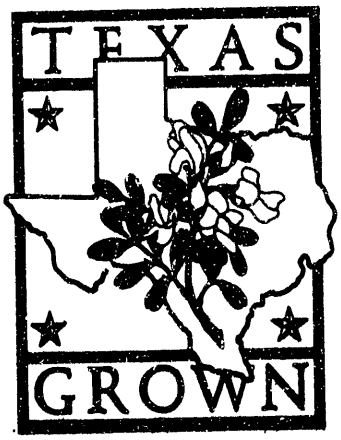
Ms. Schwartz, also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be cost savings in implementing the promotional marketing emblem programs. The anticipated economic cost to individuals who are required to comply with the sections as proposed will be a $25 application fee for individuals wishing to use a promotional emblem.

Comments on the proposal may be submitted to Dolores Alvarado Hibbs, Director of Hearings, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

The amendments are proposed under the Texas Agriculture Code, §12.002, which provides the Texas Department of Agriculture with the authority to encourage the proper development of agriculture, horticulture, and related industries; and §12.0175, which authorizes the department to charge a fee not to exceed $50 for participation in a program to promote products grown in Texas, or products made from ingredients grown in Texas.

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

Texas Grown emblem–The emblem is vertical and rectangular and features a native Texas Mountain Laurel branch in bloom over an outline of the state of Texas with the word "Texas" at the top and the word "Grown" at the bottom of the rectangle.



§17.52. Application for Permission to Use the TAP, [or] Taste of Texas or Texas Grown Promotional Emblem.

(a) No person shall use, employ, adopt, or utilize the TAP, [or] Taste of Texas or Texas Grown promotional emblem in the selling, advertising, marketing, packaging, or other commercial handling of food, [and] fiber, or nursery and floral products, unless prior application has been made to the commissioner for permission to make such use, employment, adoption, or utilization, and approval has been granted.

(b) Applications submitted under this section shall be made in writing on a form prescribed by the commissioner and shall contain:

(1)-(4) (No change.)

(5) a statement of the primary source of supply of the product and the commodity or commodities from which it is made, stated in a manner which explains how the applicant intends to employ the TAP, [or] Taste of Texas, or Texas Grown promotional emblem only on products produced in Texas;

(6)-(10) (No change.)

(11) a statement of how the TAP, [or] Taste of Texas, or Texas Grown promotional emblem is to be employed, including a sample of the proposed usage; [and]

(12) a statement of fees which will be charged for usage of the TAP, Taste of Texas, or Texas Grown emblems; and

(13)[(12)] the signature and title of applicant or applicants agent submitting the application.

(c) A separate application shall be submitted for each produce and/or brand name for which permission to use the TAP, [or] Taste of Texas, or Texas Grown promotional emblem is sought.

(d) (No change.)

§17.53. Action on Application.

(a) The director, marketing division, Texas Department of Agriculture, within 15 days of receipt of an application for permission to use the TAP, [or] Taste of Texas, or Texas Grown promotional emblem, shall make an initial determination of whether such permission shall be granted or denied, and forthwide notify the applicant in writing of his decision setting forth in detail the reasons for such grant or denial.

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

§17.54. Use of the TAP, [or] Taste of Texas, or Texas Grown Promotional Emblem. An application for permission to use the TAP, [or] Taste of Texas, or Texas Grown promotional emblem may be denied if:

(1) application is not made pursuant to §17.52 of this title (relating to Application for Permission To Use the TAP, [or] Taste of Texas, or Texas Grown Promotional Emblem);

(2)-(3) (No change.)

(4) the applicant has abused the TAP, [or] Taste of Texas, or Texas Grown promotional emblem prior to the date of application; or

(5) (No change.)

§17.55. Registration of Those Entitled To use the TAP, [or] Taste of Texas, or Texas Grown Promotional Emblem.

(a) The director, Marketing Division, Texas Department of Agriculture, shall enroll in a register the names of all applicants granted permission under these sections to use the TAP, [or] Taste of Texas, or Texas Grown promotional emblem in selling, advertising, marketing, packaging, or other commercial handling of food, [and] fiber, and nursery and floral products. The register shall be available for public inspection during normal business hours in offices of the Texas Department of Agriculture in Austin.

(b) Procedure for annual registration of persons authorized to use the TAP, Taste of Texas, or Texas Grown promotional emblem.

(1) Between January 1, and January 31, annually, the director, Marketing Division, Texas Department of Agriculture, shall mail each person previously authorized to use the TAP, Taste of Texas, or Texas Grown promotional emblem a statement setting forth the amount due as an annual registration fee.

(2) All payments are due within 30 days of the receipt of the billing.

(3) Persons who were not registered during the previous year shall register in the following manner.

(A) Each such person must file with the department an application to register. An applicant will be provided by the department.

(B) The applicant shall remit the required registration fee within 30 days of notification of approval.

(C) The fee in subparagraph (B) shall be prorated to the next renewal date.

(D) The department shall mail a certificate of registration after receipt of payment of the established fee.

(4) Within 30 days of receipt of the required registration fee, the department will mail to the registrant a certificate of registration, which shall be good for a period of one year or until the next expiration date, whichever comes first.

(5) A late payment in an amount equal to the annual registration fee may be assessed to any registrant who fails to remit the annual registration fee within 60 days of the due date.

(c) Fees for registration for use of the TAP, Taste of Texas, or Texas Grown promotional emblem shall be paid to the department in accordance with the following schedule:

(1) TAP promotional emblem--$25;

(2) Taste of Texas promotional emblem--$25;

(3) Texas Grown promotional emblem--$25.

§17.56. Termination of Permission to Use the TAP, [or] Taste of Texas, or Texas Grown Promotional Emblem.

(a) Permission granted by the commissioner for use of the TAP, [or] Taste of Texas, or Texas Grown promotional emblem may be revoked at any time if the use for which such permission was granted is abused.

(b) A person abuses the TAP, [or] Taste of Texas, or Texas Grown promotional emblem if:

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

(3) the emblem is used in a manner violating any rule promulgated by the commissioner regulating the use of such emblem; [or]

(4) the emblem is used in a manner which, in the determination of the commissioner, is injurious to the promotion of Texas agricultural commodities; or [.]

(5) the emblem is used by a person after permission has been revoked for non-payment of annual registration fees.

(c) Proceedings for the revocation of permission to use the TAP, [or] Taste of Texas, or Texas Grown promotional emblem shall be conducted in the manner provided for contested cases by the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and Chapter 1 of this title (relating to General Practice and Procedure).

(d) A proceeding revocation of permission to use the TAP, [or] Taste of Texas, or Texas Grown promotional emblem shall not preclude the commissioner from pursuing, where applicable, the penal and injunctive remedies provided in the Act, §2 and §3.

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

Issued in Austin, Texas, on September 29, 1989.

TRD-8909128 Dolores Alvarado Hibbs
Director of Hearings
Texas Department of Agriculture

Earliest possible date of adoption: November 6, 1989

For further information, please call: (512) 463-7583

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TITLE 7. BANKING AND SECURITIES

Part I. State Finance Commission

Chapter 3. Banking Section

Subchapter E. Banking House and Other Facilities

• 7 TAC §3.91

The State Finance Commission proposes an amendment to 7 TAC §3.91, concerning establishment of branch banks by state chartered banks. The amendment is being proposed to provide for administrative hearings on all branch applications and to provide for appeals directly to district court in Travis County.

Carlo J. Contreras, III, assistant general counsel, has determined that for the first five-year period the section is in effect there will be fiscal implications as a result of enforcing or administering the section.

The effect on state government for the first five-year period the section will be in effect, will be additional expenses to the Banking Department as a result of hearings required to be held. At this time it is impossible to estimate the costs because of an inability to estimate the number of branch applications. There will be no effect on local government or small business as a result of enforcing or administering the section.

Mr. Contreras 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 as proposed will be an opportunity for an administrative hearing on all branch applications. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed. There will be no impact on local employment.

Comments on the proposal may be submitted to Ann Graham, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

The amendment is proposed under the Texas Constitution, Article 16, §16(c), and Texas Civil Statutes, Article 342-113, which provide the State Finance Commission with the authority to promulgate rules not inconsistent with the constitution and statutes of this state.

§3.91. Establishment of Branch Banks (Including Automated or Unmanned Teller Machines) and Drive-in Facilities.

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

(d) Branch bank applications filed pursuant to Article 342-903. Application forms **for branch bank applications filed pursuant to Article 342-903 must be filed with** [and instructions may be obtained from] the Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705. **The procedure for establishing a branch is contained in subsection (f) of this section.** The commissioner, as the primary regulator of state-chartered banks, shall approve applications for branch bank or drive-in facilities filed pursuant to Article 342-903 if **he shall have affirmatively found from the data furnished with the application, the evidence adduced at the hearing (if held), and any information obtained as a result of an investigation and his official records that:**

(1) [in the opinion of the commissioner,] there are no significant supervisory problems with respect to the applicant which would affect its ability to properly operate such branch bank or drive-in facility; and

(2) (No change.)

(e) Branch bank applications filed in accordance with applicable laws of this state other than pursuant to Article 342-903. The Texas Constitution provides that state banks have the same rights and privileges that are or may be granted to national banks. In recognition of the fact that national banks and, therefore, state banks are now permitted under applicable case law to branch beyond the limits set forth in Texas Civil Statutes, Article 342-903, the following branch application procedures adhere to the principle of competitive equality. In determining whether to approve an application to establish and operate a branch or a drive-in facility filed in accordance with applicable laws of this state other than pursuant to Article 342-903, the commissioner is guided by the following principles: The Texas Department of Banking and the commissioner are responsible for maintaining a sound banking system; the Texas Department of Banking and the commissioner are responsible for encouraging a bank to help meet the credit needs of its entire community, as delineated in its Community Reinvestment Act statement; the marketplace normally is the best regulator of economic activity; and competition promotes a sound and more efficient banking system that serves customers well. Accordingly:

(1) (No change.)

(2) The commissioner may deny applications or grant approval subject to fulfillment of certain conditions, if in the opinion of the commissioner:

(A)-(C) (No change.)

(D) The character, responsibility, and general fitness of the current directors and officers of the bank do not warrant the conclusion that the branch will conduct business in a safe and authorized manner.

(E) There is no public need for the proposed branch, and the volume of business in the community in which the proposed branch office will conduct its business is not adequate, to indicate a profitable operation within a reasonable period of time.

(3) (No change.)

(f) Branch Bank application procedures [procedure to establish a branch under authority other than Article 342-903]. Application forms and instructions **for all branch applications** may be obtained from the Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705. **Each application for a branch office shall be set for hearing, unless no protest to the application and request for a hearing is filed and the hearing is waived by the applicant, and a decision shall be made in accordance with the requirements of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a. In the event that no protest to the application is filed within 14 days after notice by publication as required herein, the applicant may waive the right to a hearing and the commissioner shall base his decision on written submissions including, but not limited to, the data furnished with the application, any information obtained as a result of an investigation and his official records.**

(1) (No change.)

(2) Written comments on applications. Within 30 days after notice by publication as required herein, any person or entity may submit to the commissioner written comments and data on the application. **In addition, any significantly affected state or national bank or state or federal savings association may submit to the commissioner a notice of protest of the application and request for a hearing within 14 days after notice by publication. Failure to file such protest and request for hearing within the time frame specified herein will constitute a waiver of the right to protest.** [The commissioner may extend this 30-day comment period if, in his judgment, the applicant has failed to file all required supporting data in time to permit review by interested persons or entities or if other extenuating circumstances exist.]

(3) [Requests for] Hearing. **In the event that a notice of protest and request for a hearing on the application is filed, a hearing will be scheduled not**

more than 90 days after the notice by publication. If the protestant(s) withdraws its protest, the hearing may be canceled by the commissioner. Notwithstanding any of the information of this subsection, the commissioner may require that a hearing be held. [Within 30 days after notice by publication required herein, or within the extended comment period described in paragraph (2) of this subsection, any interested person or entity may submit to the commissioner a written request for a hearing on an application.]

(A) The notice of protest and request for hearing shall state the nature of the issues or facts [to be] presented and the reasons why the application should not be granted. [and the reasons why written submissions would be insufficient to make an adequate presentation to the commissioner. If the reasons are related to factual disputes, the disputes shall be described.] At least 30 days before the hearing, the protestant(s) and applicant shall each file briefs with the commissioner, with a copy to each party, fully supporting its position. The commissioner may also require that reply briefs be filed prior to the hearing. The commissioner shall determine the scope of the hearing and may limit the hearing to issues considered material by the commissioner. The commissioner may require testimony in the form of written statements and shall allow cross examination of such statements at the hearing.

[(B) Written requests for hearing in accordance with this subsection and requests for waiver of hearing-related costs in accordance with subparagraph of this paragraph shall be evaluated by the commissioner, who may grant or deny such request in whole or in part. A hearing request shall generally be granted only if the commissioner determines that written submissions would be inadequate or that a hearing would otherwise be beneficial to the decision-making process. A hearing shall be limited to issues considered material by the commissioner.]

(B)[(C)] The hearing [When a hearing is granted, it] shall be conducted during normal business hours at the Texas Department of Banking office in Austin. The commissioner may designate a hearing officer to conduct the hearing or may joint a hearing officer to assist him in ruling on evidentiary and other matters.

(C)[(D)] A transcript of each hearing is arranged by the Texas Department of Banking. The cost of [one copy of the transcript for use by the person or entity requesting the hearing and] two copies of the transcript for use by the Texas Department of Banking are [generally] borne equally by the parties to the hearing. The cost of copies of the transcript for each party shall be borne by the respective parties. [by the person or entity requesting and being granted the hearing. If a person or entity requesting a hearing desires a waiver of these costs, the written request for the hearing shall state the reasons such waiver is necessary or appropriate and must include a showing of financial need. When a waiver is granted, the cost of two transcripts for the Texas Department of Banking and one transcript for use by the person or entity requesting the waiver may be borne by the Texas Department of Banking.]

[(4) Action on requests for hearings. If a request for hearing has been made and denied, the commissioner shall notify the applicant and all persons or entities who have filed written submissions with the commissioner, relating to the application, and shall state the reasons for the denial. Within 14 days after the date of the notice of denial, the commissioner will accept additional written comments or data on the application. Copies of such written submissions or data shall simultaneously be sent to the applicant by the person or entity making the submission. The applicant shall be provided an additional seven days, after the 14-day additional written comment deadline has expired, within which to respond to any comments submitted within the 14-day additional written comment period. The commissioner may waive this seven-day response period if so requested by the applicant. A copy of any response submitted by the applicant shall also be mailed simultaneously by the applicant to all persons or entities who have filed written submissions with the commissioner relating to the application.]

[(5) Hearing. When a request for hearing made in accordance with this section is granted, or when a hearing is ordered because the commissioner believes that it is in the public interest, the Texas Department of Banking shall issue a notice of hearing and conduct a hearing in accordance with the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.]

(4)[(6)] Confidential information. A public file shall be established by the Texas Department of Banking in the case of each application. That file shall consist of the application with supporting data and supplementary information, except for material deemed by the commissioner in accordance with applicable law, to be confidential, such as trade secrets normally not available through commercial publication or other information made confidential under the Texas Open Records Act or The Texas Banking Code. In addition, the public file shall contain all data and information submitted by interested persons or entities in favor of or in opposition to such application, excluding any material deemed by the commissioner in accordance with applicable law, to be confidential. Information may be deemed confidential and withheld from the public file only upon request of the person or entity submitting the information. All factual information submitted to or obtained by the Texas Department of Banking staff shall also be made part of the public file, unless deemed confidential by the commissioner. In no event shall information required by statute or regulation to be treated as confidential, be made a part of a public file.

(5)[(7)] Investigation, examination and required information. The commissioner may conduct an investigation or examination into the facts of an application and the character, management ability and good faith of the persons or entities filing an application to the extent necessary to reach an informed decision. Additionally, the commissioner may require any person or entity submitting an application or any affiliated person or entity to submit such information, data, opinion of counsel, or other materials as may be specified by the commissioner. Failure to comply with such demand of the commissioner may be treated as abandonment of the filing to which the information, data, opinion of counsel, or other material relates. Fees may be assessed for these investigations or examinations based on the actual cost to the Texas Department of Banking.

(g) (No change.)

(h) Appeal of commissioner's decision. Any decision of the commissioner to grant or deny an application for a branch bank, a drive-in-facility, or an ATM branch shall become [be] final and appealable in accordance with the provisions of the Administrative Procedure and Texas Register Act, Article 6252-13a to the District Court of Travis County [to the Banking Section of the Finance Commission of Texas] by any [interested person or entity (] applicant or protestant [)] who is adversely affected by the commissioner's decision and who participated [or attempted to participate] in the application proceeding. [Said appeal shall be filed in accordance with the Department of Banking Rules and Regulations, Chapter 13, codified at 7 TAC Chapter 13.]

(i) (No change.)

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

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

TRD-8909027

Ann Graham
General Counsel
Texas Department of Banking

Earliest possible date of adoption: November 6, 1989.

For further information, please call: (512) 479-1200.

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TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 3. Oil and Gas Division

Conservation Rules and Regulations

• 16 TAC §3.57

The Railroad Commission of Texas proposes the repeal of §3.57, (Statewide Rule 57), concerning regulation of crude oil reclamation plants, and a new §3. 57, replacing the one proposed for repeal. The new §3.57, reduces the paperwork requirements involved in cleaning oil tanks, simplifies the permit issuance procedure, and modifies the rule to make it consistent with §3.8 (Statewide Rule 8).

Rita E. Percival, systems analyst for the oil and gas division has determined that for the first five-year period the new section and the repeal is in effect there will be fiscal implications for state or local government as a result of enforcing or administering the sections. The effect on state government for the first five-year period the revision to §3.57, will be in effect is an estimated decrease of cost of $2,000 for the fiscal year 1990, and a decrease of cost of $3,500 annually for each fiscal year from 1991-1994. There will be no fiscal implications for local governments. The cost of compliance for small businesses as a result of enforcing or administering the revision of §3.57, will be an estimated $116,600 per year.

Phillip Danks, hearing examiner, legal division, has determined that for each year of the first five years that the new sections and repeals as proposed are in effect the public benefit anticipated as a result of enforcing the repeal as proposed will be the prevention of waste, a reduction in paperwork, and the prevention of pollution. No economic costs are anticipated for individuals.

The new section and repeal allows administrative approval of uncontested reclamation permits, which will eliminate the delay and expense involved in a hearing. The new section and repeal also deletes the annual renewal requirement. This will reduce papaerwork for the affected permittees.

Commission Forms T-5 and P-9 will be replaced by the use of the manifest system set out in 16 TAC §3.72 (Statewide Rule 85). This will also reduce paperwork for the permittees.

The new section and repeal requires that wastes generated by reclaiming operations be handled in accordance with 16 TAC §§3.8, 3.9, and 3.46 (Statewide Rules 8, 9, and 46). This should help prevent pollution caused by runoff of wastes applied to lease roads.

Comments on the repeal and proposal may be submitted to Phillip Danks, Hearing Examiner, Oil and Gas Section, Legal Division, P.O. Drawer 12967, Austin, Texas 78711-2967. Written comments will be received for 30 days from the date of publication of the proposed repeal and adoption.

(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 Railroad Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Natural Resources Code, §§81.051, 85. 042, 85.051, 85.059-85.062, 85.201, 85.202, 85.203, 86.042, 91.109, and 91. 141, which provides the Railroad Commission of Texas with the authority to adopt rules that are necessary to administer and regulate reclamation of crude oil.

§3.57. Reclaiming Tank Bottoms Regulated.

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

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

TRD-8909037 Cril Payne
Assistant Director-General
Law, Legal Division
Railroad Commission of
Texas

Earliest possible date of adoption: November 6, 1989

For further information, please call: (512) 463-7187

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The new section is proposed under the Texas Natural Resources Code, §§81.051, 85.042, 85.051, 85.059-62, 85.201, 85.202, 85.203, 86.042, 91.109, and 91.141, which provides the Railroad Commission of Texas with the authority to adopt rules that are necessary to administer and regulate reclamation of crude oil.

§3.57. Reclaiming Tank Bottoms, Other Hydrocarbon Wastes, and Other Waste Materials.

(a) Applicability. This rule is applicable to reclamation of tank bottoms and other hydrocarbon wastes generated through activities associated with the exploration, development, and production (including transportation) of crude oil, and other waste materials containing oil that are destined for reclaiming at a reclamation plant permitted by the Railroad Commission of Texas. The provisions of this rule shall not apply where tank bottoms or other hydrocarbon-bearing materials are recycled or processed onsite by the owner/custodian and are returned to a tank or vessel at the same lease or facility. This rule is not applicable to the practice of recycling or reusing drilling mud, except as to those hydrocarbons recovered from such mud recycling and sent to a permitted reclamation plant.

(b) Definitions. The following words and terms, when used in this section, shall have the following meaning unless the context clearly indicates otherwise.

(1) Tank bottoms–A mixture of crude oil or lease condense, water, and other substances that is concentrated at the bottom of oil producing lease tanks and pipeline storage tanks (commonly referred to as basic sediment and water or BS&W.

(2) Other hydrocarbon wastes–Oily materials, other than tank bottoms, which have been generated in connection with activities associated with the exploration, development, and production of oil or gas or geothermal resources, as those activities are defined in subsection (a)(30) of §3.8 (Statewide Rule 8) of this title (relating to Water Protection). The term "other hydrocarbon wastes" includes, but is not limited to, pit hydrocarbons, skim oil, spillage, and leakage of crude oil or condensate from producing lease or pipeline storage tanks, and crude oil or condensate associated with pipeline ruptures and other spills.

(3) Authorized person–A tank bottoms cleaner and transporter that is under contract for disposition of untreated tank bottoms or other hydrocarbon wastes to a person who has obtained a permit to operate a reclamation plant.

(4) Affected person–A person, including surface owners of adjoining property who, as a result of the activity sought to be permitted, has suffered or may suffer actual injury or economic damage other than as a member of the general public.

(5) Director–The director of the Oil and Gas Division or a staff delegate designated in writing by the director of the Oil and Gas Division or the commission.

(c) Permitting process.

(1) Removal of tank bottoms or other hydrocarbon wastes from any oil producing lease tank, pipeline storage tank, or other production facility, for reclaiming by any person, is prohibited unless such person has either obtained a permit to operate a reclamation plant, or is an authorized person. Applicants for a reclamation plant operating permit shall file the appropriate form with the commission in Austin.

(2) The applicant shall give notice by mailing or delivering a copy of the application to the county clerk of the county where the reclamation plant is to be located, and to the city clerk or other appropriate city official of any city where the reclamation plant is located within the corporate limits of the city, on or before the date the application is mailed to or filed with the commission.

(3) In order to give notice to other local governments and interested or affected persons, notice of the application shall be published once by the applicant in a newspaper of general circulation for the county where the reclamation plant is to be located, in a form approved by the commission. The applicant shall file with the commission in Austin proof of publication prior to the hearing or administrative approval.

(4) If a protest from an affected person or local government is made to the commission within 15 days of receipt of the application or of publication, or if the commission determines that a hearing is in the public interest, then a hearing will be held on the application after the commission provides notice of hearing to all affected persons, local governments, or other persons, who express an interest in writing in the application.

(5) If no protest from an affected person or local government is received by the commission within the allotted time, the director may administratively approve the application. If the director denies administrative approval, the applicant shall have a right to a hearing upon request. After hearing, the examiner hall recommend a final action by the commission.

(6) Applicants must demonstrate they are familiar with commission rules and have the proper facilities to comply with the rules.

(7) It shall be a permit condition that a reclamation plant operator maintain financial responsibility and resources to operate and close the reclamation site in accordance with state law, commission rules, and the permit. The operator shall show evidence of financial responsibility by submitting a bond or letter of credit in the amount of $250,000 in a form prescribed by the commission. The bond or letter of credit may be in a lesser amount provided the operator show that the lesser amount will be sufficient to operate and close the reclamation site in accordance with state law, commission rules, and the permit. The bond or letter of credit shall be renewed and continued in effect until its conditions have been met or release is authorized by the commission.

(8) Except as provided below, a permit to operate a reclamation plant shall remain in effect until cancelled at the request of the operator. Upon request by the operator, existing permits subject to annual renewal may be renewed so as to remain in effect until canceled. A reclamation plant permit may be canceled by the commission after notice and opportunity for hearing, if:

(A) the permitted facility has been inactive for 12 months; or

(B) there has been a violation, or a violation is threatened, of any provision of the permit, the conservation laws of the state, rules, or orders of the commission.

(9) If the operator objects to the cancellation, the operator must file, within 15 days of the date shown on the notice, a written objection and request for a show cause hearing to determine any and all reasons why the subject permit should not be cancelled. If such written request is timely filed, the cancellation will be suspended until a final order is issued pursuant to the show cause hearing. If such request is not received within the required time period, the permit will be cancelled. In the event of an emergency which presents an imminent pollution, waste, or public safety threat, the commission may suspend the permit until an order is issued pursuant to the show cause hearing.

(10) A permit to operate a reclamation plant is not transferable. A new permit must be obtained by the new operator.

(d) Operation of a reclamation plant.

(1) The following provisions apply to any removal of tank bottoms or other hydrocarbon wastes from any oil producing lease tank, pipeline storage tank, or other production facility.

(A) Notwithstanding the provisions of §3.72(a)(8) of this title (relating to Manifest to Accompany Each Transport of Liquid Hydrocarbons by Vehicle), an operator of a reclamation plant or an authorized person shall execute a manifest in accordance with §3.72 of this title (relating to Manifest to Accompany Each Transport of Liquid Hydrocarbons by Vehicle) (Statewide Rule 85), upon each removal of tank bottoms or other hydrocarbon wastes from any oil producing lease tank, pipeline storage tank, or other production facility. In addition to the information required pursuant to §3.72 of this title (relating to Manifest to Accompany Each Transport of Liquid Hydrocarbons by Vehicle), the operator of the reclamation plant or other authorized person shall also include on the manifest:

(i) the commission identification number of the lease or facility from which the material is removed; and

(ii) the gross and net volume of the material as determined by the required shakeout test.

(B) The operator of the reclamation plant or other authorized person shall fill out the manifest before leaving the lease or facility from which the liquid hydrocarbons are removed, and shall retain a copy on file for two years.

(C) The operator of the reclamation plant or other authorized person shall leave a copy of the manifest in the vehicle transporting the material.

(2) The operator of a reclamation plant or other authorized person shall conduct a shakeout (centrifuge) test on all tank bottoms or other hydrocarbon wastes upon removal from any oil producing lease tank, pipeline storage tank, or other production facility, to determine the crude oil content thereof.

(3) The shakeout test shall be conducted in accordance with the most current American Petroleum Institute (A.P.I) or American Society for Testing Materials (A.S.T.M.) method.

(e) Reporting of reclaimed crude oil on commission required report.

(1) For wastes taken to a reclamation plant the following provisions shall apply.

(A) The net crude oil content from a producing lease's tank bottom as indicated by the shakeout test shall be used to calculate the amount of oil to be reported as a disposition on the monthly production report. The net amount of crude oil from tank bottoms taken from a pipeline facility shall be reported as a delivery on the monthly transporter report.

(B) For other hydrocarbon wastes, the net crude oil content of the wastes removed from a tank, treater, firewall, pit, or other container at an active facility, including a pipeline facility, shall also be reported as a disposition or delivery from the facility.

(2) For wastes not taken to a reclamation plant, the net crude oil content of any tank bottoms or other hydrocarbon wastes removed from an active facility, including a pipeline facility, and delivered to a facility other than a reclamation plant shall also be reported as a delivery or disposition from the facility. All such disposal shall be in accordance with §§3.8, 3.9, and 3.46 of this title (relating to Water Protection, Disposal Wells, and Fluid Injection into Productive Reservoirs) (Statewide Rules 8, 9 and 46).

(f) General provisions applicable to materials taken to a reclamation plant.

(1) The removal of tank bottoms or other hydrocarbon wastes from any facility for which monthly reports are not filed with the commission must be authorized in writing by the commission prior to such removal. A written request for such authorization must be sent to the commission office in Austin, and must detail the location, description, estimated volume, and specific origin of the material to be removed, as well as the name of the reclaimer and intended destination of the material. If the

authorization is denied, the applicant may request a hearing.

(2) The receipt of any tank bottoms or other hydrocarbon wastes from outside the State of Texas must be authorized in writing by the commission prior to such receipt. However, written approval is not required if another entity will indicate, in the appropriate monthly report a corresponding delivery of the same material. If the request is denied, the applicant may request a hearing.

(3) The receipt of any waste materials other than tank bottoms or other hydrocarbon wastes must be authorized in writing by the commission prior to such receipt. The commission may require the reclamation plant operator to submit an analysis of such waste materials prior to a determination of whether to authorize such receipt. If the request is denied, the applicant may request a hearing.

(4) The operator of a reclamation plant shall file a report on the appropriate commission form for each reclamation plant facility by the 15th-day of each calendar month, covering the facility's activities for the previous month. The operator of a reclamation plant shall file a copy of the monthly report in the district office of any district in which the operator made receipts or deliveries for the month covered by the report.

(5) All wastes generated by reclaiming operations shall be disposed of in accordance with §§3.8, 3.9, and 3.46 of this title (relating to Water Protection: Disposal Wells; and Fluid Injection into Productive Reservoirs).

(g) Commission review of administrative actions. Administrative actions performed by the director or commission staff pursuant to this rule are subject to review by the commissioners.

(h) Policy. The provisions of this rule shall be administered so as to prevent waste and protect correlative rights.

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

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

TRD-8909021 Cril Payne
Assistant Director-General
Law, Legal Division
Railroad Commission of
Texas

Earliest possible date of adoption: November 6, 1989

For further information, please call: (512) 463-7187

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Part IV. Texas Department of Licensing and Regulation

Chapter 61. Boxing

• 16 TAC §§61.1, 61.10, 61.20-61.22, 61.40, 61.50, 61.60, 61.70-61.73, 61.80, 61.90-61.94, 61.100-61.109

The Texas Department of Licensing and Regulation proposes new §§61.1, 61. 10, 61.20-61.22, 61.40, 61.50, 61.60, 61.70, 61.71-61.73, 61.80, 61.90, 61.91-61. 94, 61.100-61.109 concerning licensing and other regulatory requirements for the boxing industry, responsibilities of both the department and licensees, fees and sanctions. The new sections are proposed in order to reorganize and renumber the existing rules, make changes pursuant to the passage of House Bill 863 passed by the 71st Legislature, and make further clarifications to previously proposed new rules based upon public comments received by the department.

Joseph L. Huertas, director, Program Management Division has determined that for the first five-year period the sections are in effect there will be fiscal implications for state or local government as a result of enforcing or administering the sections. The cost of compliance with the section for small business will be an estimated cost of $250 per year for professional boxers and $950 per professional boxing event for professional boxing promoters.

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 more easily understood administrative rules and more effective and efficient regulation of professional boxing. 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, Director, Program Management Division, Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711.

The new sections are proposed under Texas Civil Statutes, Article 8501-1, §4, which provide the department with the authority to promulgate rules and regulations necessary for the enforcement of the provisions of the Administrative Procedure and Texas Register Act.

§61.1. Authority. These rules are promulgated under the authority of the Texas Boxing and Wrestling Act (Texas Civil Statutes, Article 8501-1).

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

Boxing promoter–A person to be licensed by the commissioner who arranges, advertises, or conducts a boxing contest, match, or exhibition.

Commissioner–The commissioner of licensing and regulation or his designated representative.

Contest–A boxing bout, contest, match, or exhibition.

Department–The Texas Department of Licensing and Regulation.

Exhibition–A demonstration of boxing skills.

He–Gender neutral pronoun which shall be used to mean he or she.

Judge–A person to be licensed by the commissioner who is at ringside during a boxing contest and who has the responsibility of scoring the performance of contest participants.

Manager–A person to be licensed by the commissioner who, directly or indirectly, controls or administers the boxing affairs of any boxer.

Matchmaker–A person to be licensed by the commissioner who brings together professional boxers or arranges matches for professional boxers.

Passport–A license issued by the department permitting a person to perform as a boxer and in which is recorded the results of each contest in which the boxer participates, including any injuries sustained, medical treatment received or required, and suspensions ordered.

Person–An individual, association, partnership, or corporation.

Professional boxer–A person to be licensed by the commissioner who competes for a money prize, purse, or compensation in a boxing contest held in Texas.

Referee–A person to be licensed by the commissioner who has the general supervision of a boxing contest and is present inside the ring during that contest.

Second–A person to be licensed by the commissioner who is present at any boxing contest to provide assistance or advice to a boxer during the contest.

Timekeeper–A person to be licensed by the commissioner who is the official timer of the length of rounds and the intervals between same.

§61.20. Licensing Requirements–General.

(a) License required. Before a person may perform at a contest as a boxer, kickboxer, boxing promoter, manager, referee, second, judge, timekeeper, or matchmaker, he must be licensed by the commissioner.

(b) License/passport in possession. All licensees, except promoters, shall keep their licenses/passports in their possession. They shall present their license/passport, upon request, to promoters and department representatives The license/passport shall be evidence of eligibility to act or perform in their respective capacities in connection with boxing contests. Any licensee who does not meet this requirement may be subject to fine by the department.

(c) Managers. A licensed manager may act as a second without a second's license.

(d) Matchmaker. Any person who is not a promoter and arranges matches for a contest must be licensed as a matchmaker. No matchmaker shall hold any other type

boxing-related license or manage a boxer, either directly or indirectly.

(e) Referees and judges. Referees and judges must take an annual written examination and physical examination. Referees must hold an active CPR card. An individual may not act as a referee or judge for an event in which a boxer in whom the referee or judge has a direct or indirect financial interest is participating.

(f) Application requirements. All boxer applicants must submit two recent passport-sized photographs along with an application form and license fee.

(g) Participation in a contest. All license requirements must be met before an applicant may participate in a contest.

(a) Minors. The department will not issue a license to anyone under age 17. Minors age 17 but not yet 18 or over applying for a boxer's license must submit written consent from parent or guardian.

(b) Over age 35. The department will not issue a license to any boxer over age 35 without a hearing. Before issuing and license to a boxer over age 35, the department shall require physical testing including, but not limited to, neurological examination, ophthalmologic examination, EEG, EKG, and stress tests.

(c) Physical training. Anyone applying for a boxer's license without significant professional or amateur boxing experience must show proof of proper training and must appear physically competent as boxer. Physical competence may include, but is not limited to, competence in the elements of offense, defense, clean hitting, ring generalship, and physical capability of boxing at least four three-minute rounds. A boxer without previous ring experience must be required to furnish the department written certification from his manager or trainer outlining his training routine for four weeks prior to fight date.

(d) Required reports. Boxer applicants must submit all required medical reports, as well as any other reports required by the department, to the department's offices in Austin. A boxer's manager will also be responsible for the boxer's medical and boxing records.

§61.22. Licensing Requirements–Promoters.

(a) Other licenses. A licensed promoter may not act as, and cannot be licensed as, a manager, second, boxer, referee, or judge. If he is so licensed, he must submit any other licenses for cancellation.

(b) Application. Each promoter applicant must submit:

(1) a completed application form;

(2) financial statement, evidencing $10,000 in liquid net worth, prepared by a certified public accountant or a $10,000 performance bond;

(3) a surety bond completed in the appropriate manner by a surety company on a department form;

(4) his manager's license, or other licensed listed in subsection (a) of this section, for cancellation, if applicable; and

(6) the required fee.

(c) Interview. Any person applying for a promoter's license for the first time must appear in person in the department's office in Austin. Renewal applicants are not required to appear in person in Austin.

§61.40. Bond Requirements.

(a) Surety Bond. Each promoter applicant must submit a $5,000 surety bond, written by a bonding company authorized to do business in the State of Texas, which must remain in effect for four years after the effective cancellation date.

(b) Performance bond. Promoters must show financial ability to pay taxes, purses, arena rental, personnel, advertising, and other expenses. Financial responsibility may be shown by submitting a financial statement, prepared by a certified public accountant, indicating liquid working capital of $10,000 or more, or a $10,000 performance bond guaranteeing payment of all obligations relating to the promotional activity.

§61.50. Reporting Requirements.

(a) Unfit for competition. If a boxer's physical examination shows him unfit for competition because of any weakness or disability, the boxer may not participate in a contest. An immediate report of the facts must be made to the promoter and the department.

(b) Illness or injury. Whenever a boxer, because of injuries or illness, is unable to take part in a contest for which he is under contract, he or his manager must immediately report the fact to the promoter and the department.

(c) Physical disqualification. If a boxer is disqualified during a pre-fight physical examination, the physician shall notify the department immediately.

(d) Boxing show cancellation notice. Notice of any change in announced or advertised locations or times or cancellations, must be submitted to the department at least three working days before the scheduled contest. Notices announcing changes or substitutions must also be conspicuously posted at the box office and announced from the ring before the opening contest.

(e) Show reports. A promoter shall submit the tax report and the 3.0% gross receipts tax payment for a show within 72 hours after holding the show.

§61.60. Responsibilities of the Department–Safety.

(a) Medical consultants. The department shall appoint qualified medical doctors as medical consultants. The department should at all times have a neurologist and an ophthalmologist as consultants. The commissioner may appoint any additional personnel as necessary. All medical consultants serve at the pleasure of the commissioner.

(1) The medical consultants shall be paid actual traveling and per diem expenses incurred while performing official duties.

(2) The medical consultants' duties are to:

(A) act as medical consultants to the department;

(B) attend and participate in department-approved boxing seminars;

(C) recruit and train ringside physicians;

(D) update and write safety policies;

(E) attend hearings if needed;

(F) develop safety bulletins for the department; and

(G) obtain specialty consultation for the department when needed.

(b) Ringside physicians. The commissioner, in consultation with the medical consultants, shall approve qualified physicians throughout the state to serve as ringside physicians. When performing ringside physician duties, the physician shall be acting as an authorized department representative. The ringside physicians' duties are to:

(1) serve as ringside physicians in their area;

(2) perform comprehensive medical examinations;

(3) participate in the solutions to boxing-related medical problems in their area;

(4) recruit other physicians;

(5) participate in seminars around the state; and

(6) attend periodic training offered by the department.

§61.61. Responsibilities of the Department–Instruction.

(a) Seminars. The department shall hold annual seminars for referees, judges, ringside physicians, and other persons licensed by the commissioner and shall require attendance at these seminars as a prerequisite to issuing or renewing a license.

(b) Rules meetings. The referee shall conduct a rules meeting before each contest. All boxers, managers, seconds, and referees must attend the rules meeting.

§61.70. Responsibilities of Licensees–Approval of Contests.

(a) Advertising. Department approval of any boxing show must be obtained prior to advertising or beginning ticket sales, announcing or advertising any show, show date, contestant or match.

(b) Written notice. The department must receive written notice of all proposed boxing contest dates at least 21 days prior to the proposed contest date.

(c) Card approval. Requests for boxing card approval must be received in writing by the department at least 10 working days prior to the contest date. The request must contain the full legal name and address, date of birth, social security number, ring name, weight, previous record, and number of rounds to be fought for each contestant, as well as the name of the manager or agent of each of the contestants. The department may require submission of certified boxing records issued by foreign boxing, athletic or similar commissions where, in the department's judgment, such records are necessary to adequately verify a boxer's fight history. In addition, the department may require submission of a certified birth certificate.

(d) Change in card. Notice of any change in the card must be received by the department at least two working days before the scheduled contest. Only department-approved substitutes shall be permitted. Notices announcing change or substitutions in the card must also be conspicuously posted at the box office and announced from the ring before the opening contest.

(e) Contracts with contestants. The promoter shall not publicize any contest before he has in his possession a written commitment with the boxers. This written commitment must be made available to the department upon request. A copy of all contracts between contestants and the promoter must be mailed to the department no later than five days prior to the contest.

§61.71. Responsibilities of Licensees–Conduct of Promotion.

(a) Providing a physician. The promoter shall provide and compensate a department-approved ringside physician.

(b) Contests between sexes. No promoter, matchmaker or any other person shall arrange, match or advertise any boxing contest between persons of the opposite sex.

(c) Drinks. No promoter shall promote in any area where concessionaires dispense beverages in containers other than plastic or paper cups.

(d) Ring name. A boxer shall not perform under any name which does not appear in departmental records.

(e) Matchmakers.

(1) Only a licensed promoter or licensed matchmaker shall arrange matches.

(2) Promoters shall file the following information with the department relating to his matchmakers:

(A) the matchmaker's name, address, telephone number and license number, and

(B) notice of any change in his arrangement with any matchmaker.

(3) If a matchmaker is employed by a licensed promoter, the matchmaker and the promoter shall be jointly responsible to the department for matches made and for the timely submission of contracts, license applications, license fees and taxes to the department.

(f) Compensating ring officials. The promoter shall compensate the department-assigned timekeepers, judges, and referees, including travel expenses and overnight lodging if required.

§61.72. Responsibilities of Licensees–Conduct of Contest.

(a) Dressing rooms.

(1) The promoter should provide a private dressing room for officials and must provide two private dressing rooms of adequate size for the boxers and their managers, trainers and seconds.

(2) The promoter must provide female boxers with adequate separate dressing rooms.

(3) The only people allowed in the boxer's dressing room are the boxer, manager, second, press, ringside physician, and department representatives.

(4) No alcoholic beverages, drugs, or other illegal substances are, allowed in the dressing rooms.

(b) Managers.

(1) Managers must carry their boxer-manager contract identification card.

(2) Managers shall be responsible for their boxers' conduct and shall ensure they comply with all applicable laws and rules.

(c) Boxers.

(1) Weigh-in. For all contests, contestants shall weigh in, stripped or wearing only briefs, in the presence of a department representative. The weigh-in shall take place at a time approved by the department. In no event shall the weigh-in be held later than four hours before the scheduled first contest.

(A) The promoter shall provide a private area for the ringside physician to perform weigh-in examinations.

(B) No contestants shall engage in a boxing contest where the weigh-in weight difference exceeds the allowance shown in the following schedule.

WEIGHT	ALLOWANCE
112 lbs or under	3 lbs.
112-118 lbs.	4 lbs.
119-126 lbs.	5 lbs.
127-135 lbs.	6 lbs.
136-147 lbs.	8 lbs.
148-160 lbs.	10 lbs.
161-175 lbs.	12 lbs.
176-190 lbs.	15 lbs.
190 lbs. or over	No limit

(2) Time requirements. All contestants must be in the dressing room at least 45 minutes before the show is scheduled to begin. The contestants must be ready to enter the ring immediately after the preceding contest is finished.

(3) Ring attire. Boxers shall box in proper ring costume including protection cup, which shall be firmly adjusted prior to entering the ring. The trunks' waistband shall extend above the waistline and the hem may not extend below the knee. Department-approved mouthpieces shall be worn at the beginning of each round. Shoes shall be of soft material and shall not be fitted with spikes, cleats, hard or leather soles, or hard heels.

(4) Profanity. Use of profanity by a boxer, his manager or his second is prohibited and, if used after a warning by the referee or department representative, the offender may be disqualified and the contest given to the opposing boxer. The offender may also be subject to further disciplinary action.

(d) Female boxers.

(1) A negative pregnancy test must be obtained the day prior to or the day of the fight. Results shall be submitted to the department.

(2) Evidence of fibrocystic disease, nipple discharge, or other evidence of breast disease may result in disqualification. Mammography may be requested by the examining physician.

(3) The examining physician may request a buccal smear if there is any doubt regarding the contestant's sex.

(4) A pelvic exam will be required, and any evidence of ovarian disease will result in disqualification.

(5) If the female boxers are a main event, or billed as such, they must be examined 7 days prior to the fight because of higher risk for disqualification.

(6) Contestants must wear a mouthpiece, breast protection, and 10-ounces gloves.

(e) Seconds.

(1) Each boxer must have two or three seconds unless the department permits otherwise. Each contestant shall have one chief second. The seconds should dress neatly.

(2) Only one second is allowed inside the ring between rounds, and he shall leave the ring enclosure at the sound of the timekeeper's whistle. All seconds shall leave the ring platform promptly when the gong sounds for the beginning of each round, removing all obstructions including stools, buckets, and equipment.

(3) The referee may eject any second who violates department rules and disqualify the seconds' contestant. A second shall:

(A) remain seated in the chairs provided during the rounds;

(B) not excessively coach a boxer during a round and shall remain silent when instructed to do so by a department representative;

(C) not throw water on his contestant or assist him in any way other than during rest periods. Excessive use of water by a corner on a fighter will result in one warning by the referee or department. Disciplinary action against the seconds and/or manager may result if there are further violations. The corners will be kept clean, dry, and free from objects;

(D) not toss a towel or any other object into the ring in token surrender of his boxer. He may get on the ring apron as a sign of surrender;

(E) not use any unapproved solution during the contest; and

(F) not swing a towel instead of using a fan during rest periods between rounds.

(f) Referees and judges.

(1) The department shall assign referees and judges to officiate at boxing contests. If three judges are not available, the referee may act as a judge. The referee is the chief contest official and has general supervision over the contest. A majority vote of the judging officials will determine the outcome of the contest. No manager, promoter, matchmaker, second, or boxer shall officiate at any contest.

(2) If an assigned official is unable to officiate, he shall notify the department at least five hours before the contest, unless it is a true emergency situation.

§61.73. Responsibilities of Licensees–Safety.

(a) Illness or injury. If a boxer becomes ill or is injured and cannot take part in a contest for which he is under contract, he or his manager must contact the promoter and the department immediately.

(b) Head injury. The ringside physician shall immediately examine a boxer who suffers a knockout, concussion, or other serious head injury and report to the department on the severity.

(c) Cardiopulmonary resuscitation. All managers shall complete and pass a CPR course and carry a current CPR card. All seconds should complete and pass a CPR course and carry a current CPR card.

(d) Promoter's safety responsibility. It shall be the promoter's responsibility to ensure the safety of the boxers, officials, and spectators.

(1) The promoter shall provide all ringside emergency equipment required by these rules.

(2) There must be a pre-fight plan and route to remove an injured fighter from the ring and arena. Upon request, the promoter shall inform the department of these plans. The plan shall include the name and location of a local hospital emergency room.

(3) Security shall be sufficient to maintain order.

(4) The promoter shall provide insurance to cover medical, surgical, and hospital care with a minimum limit of $10,000 for injuries sustained while participating in a boxing contest and $10,000 to a boxer's estate if he dies from injuries received while participating in a contest. The insurance premium may be deducted from the boxer's purse if the boxer agrees in writing within his contract with the promoter. The promoter shall provide certificate of insurance showing proper coverage at the same time he provides the department his contracts with those participating in the contest.

§61.80. Fees.

(a) Promoter's license fee. The promoter's license fee shall be $500.

(b) Fees for All Other Licensees. Each licensee application shall be accompanied by the annual license fee as follows:

(1) boxer–$15;

(2) manager–75;

(3) matchmaker–75;

(4) judge–15;

(5) referee–25;

(6) second–10; and

(7) timekeeper–10.

§61.90. Sanctions–Administrative Sanctions.

(a) Sanctions available. If a person violates the Act, or a rule or order adopted or issued by the commissioner relating to the Act, the commissioner may:

(1) issue a written reprimand to the person that specifies the violation;

(2) revoke or suspend the person's license;

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

(b) Probated suspension. If a suspension is probated, the commissioner may require the person to:

(1) report regularly to the commissioner on matters that are the basis of the probation; or

(2) limit practice to the areas prescribed by the commissioner.

(c) Report of recommended sanctions. If, after investigation of a possible violation and the facts surrounding that possible violation, the department determines that a violation has occurred, the department may issue a preliminary report stating the facts on which the conclusion that violation occurred is based, recommending that an administrative sanction be imposed on the person charged, and recommending the precise nature and conditions, if any, of that proposed sanction. The department shall base the recommended sanction, and any accompanying conditions, on the following factors:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

(d) Notice to person charged. Not later than the 14th day after the day on which the preliminary report is issued, the department shall give written notice of the violation to the person charged. The notice shall include:

(1) a brief summary of the charges;

(2) a statement of the proposed sanction, and any accompanying conditions: and

(3) a statement of the right of the person charged to a hearing on the occurrence of the violation and the sanction and any terms thereof.

(e) Request for hearing. Not later than the 20th day after the date on which the notice is received, the person charged may accept the determination of the department made under this rule, including the recommended sanction and all accompanying conditions, or make a written request for a hearing on that determination.

(f) Administrative order. If the person charged with the violation accepts the determination of the department, the commissioner shall issue an order, approving the determination and ordering that the recommended sanction and accompanying conditions be imposed upon that person.

(g) Failure to respond to notice. If the person charged fails to respond in a timely manner to the notice, or if the person requests a hearing, the commissioner shall set a hearing, give written notice of the hearing to the person, and designate a hearings examiner to conduct the hearing.

(h) Judicial review. If an administrative hearing is held, and the person wishes to dispute the administrative sanction imposed, not later than the 30th day after the date on which the decision is final, as provided by Administrative Procedure and the Texas Register Act, §16(d), (Texas Civil Statutes, Article 6252-13a), the person charged shall file a petition for judicial review, contesting the fact of the violation and/or the administrative sanction. Judicial review is subject to the substantial evidence rule and shall be instituted by filing a Petition with a Travis County district court as provided by the Administrative Procedure and Texas Register Act, (Texas Civil Statutes, Article 6252-13a,).

§61.91. Sanctions–Administrative Penalty/Fine.

(a) Administrative penalty/fine amounts. If a person violates the Act, or a rule or order adopted or issued by the commissioner relating to the Act, the commission may, in addition to or in lieu of a sanction imposed under §80.90 of this title (relating to sanctions--Administrative Sanctions), assess an administrative penalty in an amount not to exceed $1,000 for each violation.

(b) Disposition of penalty. A penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

(c) Report of recommended penalty/fine. If, after investigation of a possible violation and the facts surrounding that possible violation, the commissioner determines that a violation has occurred, the commissioner may issue a preliminary report stating the facts on which the conclusion that a violation occurred is based, recommending that an administrative penalty not to exceed $1,000 for each violation, be imposed on the person charged, and recommending the amount of that proposed penalty. The commissioner shall base the recommended amount of the proposed penalty on the following factors:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

(d) Notice to person charged. Not later than the 14th day after the day on which the preliminary report is issued, the department shall give written notice of the violation to the person charged. The notice shall include:

(1) a brief summary of the charges;

(2) a statement of the amount of the penalty recommended; and

(3) a statement of the right of the person charged to a hearing on the occurrence of the violation and the amount of the penalty.

(e) Request for hearing. Not later than the 20th day after the date on which the notice is received, the person charged may accept the determination of the commissioner made under this rule, including the recommended penalty, or make a written request for a hearing on that determination.

(f) Administrative order. If the person charged with the violation accepts the determination of the commissioner, the commission shall issue an order approving the determination and ordering that the person pay the recommended penalty.

(g) Failure to respond to notice. If the person charged fails to respond in a timely manner to the notice, or if the person requests a hearing, the commissioner shall set a hearing, give written notice of the hearing to the person, and designate a hearings examiner to conduct the hearing.

(h) Payment of penalty; judicial review. If an administrative hearing is held, not later than the 30th day after the date on which the decision is final as provided by the Administrative Procedure and Texas Register Act §16(d) (Texas Civil Statutes, Article 6252-13a), the person charged shall:

(1) pay the penalty in full; or

(2) file a petition for judicial review contesting the fact of the violation and/or the administrative penalty/fine. Judicial review is subject to the substantial evidence rule and shall be instituted by filing a petition with a Travis County district court as provided by the Administrative Procedure and Texas Register Act §19 (Texas Civil Statues, Article 6252-13a). If this petition for judicial review is filed, the person must forward the amount of the administrative penalty/fine to the department for deposit in an escrow account, or post a supersedes bond with the department in the amount of the penalty/fine, until judicial review is final.

(i) Inability to pay penalty. A person charged with a Penalty who is financially unable to comply with subsection (h)(2) of this section, is entitled to judicial review if the person files with the court, as part of the person's petition for judicial review, a sworn statement that the person is unable to meet the requirements of that rule.

(j) Waiver of right to judicial review. Except as provided by subsection (i) of this section, failure to forward the amount assessed or post the bond with the department, in the manner and within the period prescribed by the department, results in a waiver of legal rights to judicial review. If the person charged fails to forward the amount assessed or post the bond, the department or the attorney general may bring an action for the collection of the penalty.

§61.92. Sanctions–Injunctive Relief and Civil Penalty. Injunctive relief and civil penalty. If it appears that a person is in violation of, or is threatening to violate, the Act or a rule or order of the commissioner related to the Act, the attorney general or the commissioner may institute an action for injunctive relief to restrain the person from continuing the violation and for civil penalties not exceeding $1,000 for each violation and not exceeding $250,000 in the aggregate.

§61.93. Sanctions–Criminal Penalty. Offense defined. A person who violates a provision of the Act or any rule or regulation promulgated thereunder, commits a Class A misdemeanor.

§61.94. Sanctions–Revocation or Suspension Because of a Criminal Conviction.

(a) Grounds for denial, suspension, revocation. Pursuant to Texas civil statutes, Article 6252-13c, the department, after a hearing, may suspend or revoke an existing license, or disqualify a person from receiving a license, because that person has a felony or misdemeanor conviction that directly relates to the duties and responsibilities involved in the area in which the applicant will be licensed. The department may also, after hearing, suspend, revoke, or deny a license because of a person's felony probation revocation, parole revocation or revocation, of mandatory supervision.

(b) Assessment of conviction. In determining whether criminal conviction directly relates to the area in which the applicant is or would be licensed, the department shall consider:

(1) the nature and seriousness of the crime:

(2) the relationship of the crime to the activities in which the licensee or potential licensee would be involved;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type, as that in which the person was previously involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities included in the area in which the licensee or potential licensee would be involved.

(c) Determining fitness of person convicted. In determining the present fitness of a person who has been convicted of a crime, the department shall also consider:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person at the time of the commission of the crime;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person prior to, and following, the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

(6) other evidence of the person's present fitness, including letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsible or responsibility for the person, the sheriff and chief of police in the community where the person resides, and any other persons in contact with the convicted person.

(d) Recommendations regarding applicant. It shall be the responsibility of the applicant, to the extent possible, to secure and provide the department the recommendations of the prosecution, law enforcement and correctional authorities as required.

(e) Proof required of applicant. The applicant shall also furnish proof, in such form as may be required by the department, that he or she has maintained a record of steady employment, has supported his or her dependents per court order, has otherwise maintained a record of good conduct, and has paid all outstanding court costs, supervision fees, fines and restitution as may have been ordered in all criminal cases in which he or she has been convicted.

§61.100. Technical Requirements–Contracts.

(a) Contract for financial interest in a boxer. No one licensed as a promoter, matchmaker, referee, or judge shall have a financial interest in a boxer.

(b) contract between promoter and boxer.

(1) Promoters shall have written agreements or contracts with boxers, executed in triplicate on department forms, showing the amount of guarantee or percentage promised, the number and time limit of rounds, when and where the boxers are scheduled to appear, weight, and all other details governing contracts and agreements.

(2) The promoter shall furnish one executed copy of the contract to the boxer or his manager, retain one executed copy, and forward one executed copy to the department within the timeframe specified in §61.70(e) of this title (relating to Responsibilities of Licensees–Approval of Contest).

(3) All required information must be typed or legibly printed, and any changes or addenda must be initialed by the boxer and promoter.

(c) Boxer responsibilities. Boxers must fulfill the terms of their contracts. When a contestant fails to appear in accordance with his contract, he must satisfactorily prove he was sick, had a valid reason for not appearing, or was otherwise prevented from carrying out the agreement. A doctor's certificate shall be required in case of illness. Affidavits are required to support other circumstances.

§61.101. Technical Requirements–Tickets.

(a) Printing tickets.

(1) All advance sale tickets shall have the price, name of the promoter, and date of the contest printed plainly on each half.

(2) Roll tickets with consecutive numbers may be sold only at the box office on the day of the show.

(3) Tickets of different prices must be printed on different colored ticket stock.

(4) Complimentary tickets shall be clearly marked so the stubs can be identified.

(5) If a promoter is using a computerized and bonded ticket service, the department may waive paragraphs (2) and (4) of this subsection.

(b) Ticket inventory. When he receives tickets, including roll tickets from the printer, the promoter shall submit a sworn inventory to the department of all tickets delivered to any outlet. This inventory shall account for any known overprints, changes, complimentary tickets, or extras.

(c) Seating capacity. Tickets shall not be sold for more than the actual capacity of the place where the contest is being held.

(d) Ticket prices. Licensed promoters shall not sell tickets for any price other than the price printed on them, change the ticket price at any time after tickets have been placed on sale, or sell any ticket at any time during the show at a lesser price than tickets for the same seats were sold or offered before the show. Requests for changes in ticket prices or dates of shows must be submitted in writing for department approval.

(e) Ticket taking. All tickets must be torn in half and one half returned to the ticket holder at the entrance gate. The other half shall be immediately deposited in a sealed or locked container, where it shall remain until the opening of the container is witnessed by a department representative. No one shall pass through the gate without having their ticket torn or shall occupy a seat, unless holding a ticket half or having been issued a working pass.

(f) Exchanges. A purchaser may present his ticket half to the promoter for a refund at face value if the advertised main event or special added attraction is postponed or does not take place as advertised. No tickets shall be refunded after the show has taken place. Tickets in the hands of ticket services must be returned to the promoter not later than when the box office at the boxing contest site has closed.

(g) Accounting for tickets.

(1) Department representatives will check the number of ticket containers at gates and their locations. They will also check the containers for seals or padlocks. Tickets shall accounted for after the show, and a department representative may review the accounting.

(2) Promoters must hold tickets of every description used for any boxing contest for at least 30 days after the contest The tickets must be kept in separate packages for each show so the department can perform an audit. The tickets may be destroyed after 30 days.

(h) When computing gross receipts, the face value of all tickets, except deadwood, shall be included whether the tickets were sold for cash or services provided.

§61.102. Technical Requirements–Ring and Equipment.

(a) Ring. The ring must be a square with sides not less than 16 feet nor more than 24 feet inside the ropes. The ring floor must extend at least 24 inches beyond the ropes on all sides. The ring floor shall be of at least 3/4-inch material, shall be adequately supported, and shall be padded with ensolite or similar closed-cell foam that is at least one-inch thick. The padding shall extend over the edge of the ring platform and have a top covering of canvas, duck, or similar material approved by the department. The covering must be clean and be tightly stretched and laced to the ring platform end may not have tears, holes or overlapping seams. The ring platform shall have at least three sets of steps into the ring during a contest: one set for each boxer's corner; and one set in the neutral corner on the department side. These steps will be used for the ringside physician and the department. The ring corners must be protected inside the ring with a urethane pad at least six inches wide. It must be covered with material similar to the ring floor covering, and the covering must be long enough to cover all the rope joints. Ring posts shall be made of some strong material, preferably steel, and shall be at least three inches in diameter. The posts must be secured under the ring to prevent spreading and extend from the building floor to a height of at least six inches above the top rope.

(b) Ring ropes. There shall be four ring ropes that are at least one inch in diameter. The ropes shall be evenly spaced, one foot apart center to center of the rope, with the lower rope 18 inches above the ring floor's canvas covering. The ropes shall be reinforced by a nonabrasive rope on each side in the center of the ropes. The ropes shall attach to the ring posts with turnbuckles and shall be tight and firm during all contests. The bottom rope shall be padded with at least 1/2 inch of soft material.

(c) Gong. The gong shall be approved by the department. It must be large enough to make a sound the contestants and the referee can hear.

(d) Ring equipment. The prompter shall furnish two funnels with a hose and bucket attached to each. The second or manager must ensure that the contestants use these funnels when washing out their mouths. The promoter must provide enough water buckets for the contestants to use. Each bucket shall be clean before being used. Promoters shall also provide resin, stools, and other articles required to conduct the contests. The ring must be set up at least two hours before fight time. The promoter shall provide three chairs in each contestant's corner. These chairs are to be labeled "seconds" and are to be used only by the contestant's official seconds.

(e) Scales The promoter shall furnish scales to be used for weighing in boxers. The department may require that the scales be certified.

(f) Bandages. Contestants may use six inches of one-inch wide, department provided, medical diachylon tape across the back of each hand before bandaging the hands. This tape may not touch the contestant's knuckles. Contestants shall use department-provided soft surgical bandage not more than 10 yards long or two inches wide, that is held in place by not more than two yards of department-provided one-inch medical diachylon tape or each hand. These bandages shall be applied in the dressing room, under the examination of a department representative, no sooner than 45 minutes before fight time. Hands shall be wrapped dry, and no liquid may be applied

to any bandage or tape. If any other material or substance is used on the boxer's hands other than that mentioned in this paragraph, the boxer and manager shall face disciplinary action by the department.

(g) Gloves. Gloves for all main events shall be new and made to fit the hands of any contestant whose hands may be an unusual size. If gloves used in preliminary contests have been used before, they shall be whole, clean, in sanitary condition, and subject to inspection by the referee or department representative. Any gloves found unfit shall be discarded immediately and replaced with acceptable gloves. There shall be an extra set of eight-ounce Boxing and an extra set of 10-ounce gloves on hand to be used in case gloves are broken or in any way damaged during a contest. Contestants in all weight categories up to, and including welterweights shall use eight-ounce gloves. In heavier classes, they may wear eight-ounce or 10-ounce gloves.

(h) Ring apron. The ring apron shall be kept clear at all times of all objects This includes articles such as cameras, microphones, advertisements, television cameramen, and photographers. No seats may be sold at the ring apron.

(i) Barrier, free area, and spectator seats. There shall be a barrier and free area between the ringside and the first row of seats. There must be at least eight feet between the edge of the ringside table farthest from the ring and the first row of seats.

(j) Ringside physicians. There shall be a physician at ringside at all times.

(k) Emergency equipment. The promoter shall ensure that there is a resuscitator, oxygen, and a stretcher at ringside. The promoter shall also provide a certified ambulance with an emergency medical technician on site for all contests where the nearest available public ambulance service is more than five minutes away.

(l) Judges' and physicians' seats. The judges' chairs shall be high enough that their shoulders shall be no lower than the ring floor. The method of elevating the chairs must be practical and safe.

(m) Ringside tables. The promoter must have at least one, but may have no more than three, authorized representative(s) at ringside at all times. Only the promoter's representative(s), department officials, the press, physicians, and judges shall sit at the ringside tables. No alcoholic beverages are permitted at ringside.

§61.103. Technical Requirements–Safety.

(a) Medical examinations.

(1) Comprehensive medical examination. All boxers applying for a new or renewal license must pass a comprehensive medical examination before they can be licensed. The examination has two parts, medical and boxing history, and physical examination. This examination will be given only by department-approved physicians. The physician shall report the examination results on a department-approved form. The department will provide a list of physicians. Out-of-state boxers may get the department comprehensive medical examination form and have it completed by a department-approved out-of-state physician. The examining physician may require tests such as CAT scans, EEGs, and EKGs. The boxer and manager are jointly responsible for ensuring this examination is completed.

(2) Eye examination. All boxers applying for a new or renewal license must undergo a complete medical eye exam by an ophthalmologist and submit the results on a department-approved form.

(3) Weigh-in physical examination. The pre-fight medical examinations will be administered on the day of the contest at the weigh-in. The department will provide forms for recording the results of these examinations.

(A) The manager or his authorized agent shall accompany the boxer to the weigh-in. No Texas boxer shall be weighed in unless he presents a Texas boxing passport. All boxers coming from states or foreign countries which issue a boxing passport shall present their passports at the weigh-in.

(B) If a boxer is late to weigh-in, the boxer and manager are subject to departmental disciplinary action.

(C) If a boxer's body weight at weigh-in is 5.0% or more over his contracted weight, he will be disqualified for the contest, and he and his manager are subject to departmental disciplinary action.

(D) Only the boxer and his manager are allowed in the examination room during the physical.

(E) If, in an attempt to make weight, the boxer shows evidence of dehydration, having taken diuretics, or other drugs, or having used any other harsh modality, the examining physician shall disqualify him and recommend disciplinary action.

(F) The boxer and manager will furnish all information required by the department and conduct themselves professionally at all times.

(4) Post-contest medical examination. The ringside physician will perform this examination at the end of a contest. The physician's recommendations, including rest periods, medical disqualifications, and any other exam results, will be reported on the department inspector's report. The required rest period and any required medical tests/recommendations will be recorded by a department representative in the boxer's passport. It is the boxer's and manager's joint responsibility to comply with all recommendations, including rest periods and medical suspensions, before the boxer competes again. A boxer will automatically receive medical suspensions/rest periods for the following:

(A) cut–Medical suspension time based on physician's recommendation;

(B) technical knockout–Minimum of a 30 day medical suspension;

(C) knockout–60-day minimum medical suspension for the first knockout. If a boxer has had two knockouts within 12 months, he will receive a 120-day medical suspension. If he has had three knockouts within 12 months, he will be medically disqualified from further competition. In addition to these suspensions, the physician may require neurological testing and consultation at any time;

(D) a minimum mandatory rest period of three days for each round or portion of a round fought in any contest. The ringside physician may recommend longer rest periods. In no event will the rest period be less than seven days; and

(E) if a boxer disagrees with disqualification, medical suspension, or rest period set at the discretion of a department ringside physician or medical consultant, he may request a hearing to show proof of fitness. The hearing shall be provided within 14 days after the department receives a written request from the boxer or his manager.

(5) Medical disqualifications.

(A) General. Medical disqualification of a boxer is for his own safety and may be made at the discretion of the department after a hearing. The department may, with the assistance of its medical consultants, develop a list of conditions which would result in medical disqualification.

(B) Event. Medical disqualification may be made at the discretion of the examining physician on the date of the contest without a hearing.

(b) Unfit for competition. If a physician's examination shows the boxer unfit for competition, he may not participate in a contest. The examination results must be reported immediately to the promoter and the department.

(c) Contests in other states. The department shall recognize and honor other states' medical suspensions. Any Texas boxer who boxes outside the State of Texas

and receives a medical suspension shall report the fight results and medical suspension to the department within 72 hours of returning to the state.

(d) Drugs. The administration or use of any drugs or alcohol either prior to or during a contest is prohibited. Medication administered by a physician may be allowed. The department may order a drug screen at any time. If a drug screen is performed, the boxer or his manager must pay for it.

(e) Between-round care.

(1) Only one second will be allowed in the ring with the boxer between rounds. Two seconds will be allowed on the apron.

(2) Only ice, water, cotton swabs, gauze pads, clean towels, Adrenalin 1:1000, avitene, thrombin, vaseline, or other surgical lubricant, medical diachylon tape and enswell are allowed in the corner. All containers shall be properly labeled with manufacturers' label and not contaminated by any foreign substance. The use of unapproved substances will result in disciplinary action.

(3) Excessive use of lubricant on the boxer's body, arms or face is prohibited.

(4) Only water will be permitted for dehydration of a boxer between rounds. Honey, glucose, or sugar, or any other substance may not be mixed with the water. Electrolyte solutions are prohibited.

(5) When the ringside physician enters a boxer's corner, the second in the ring will yield immediately to the physician's examination. The department may disqualify a boxer, manager, and/or trainer for unprofessional conduct in failing to cooperate with the ringside physician.

(f) Termination of contests. The referee or ringside physician may terminate any contest where there is any reason to believe that continuing it might result in serious injury to either boxer. The ringside physician, notwithstanding anything to the contrary herein, may enter the ring during the progress of a contest, or between rounds, and terminate any boxing contest to prevent serious injury to either contestant.

§61.104. Technical Requirements–Conduct of Promotion.

(a) Rounds scheduled. Licensed promoters shall schedule no less than 25 and no more than 60 rounds of boxing on one program. All professional boxing contests shall have three-minute rounds with one-minute rest periods between rounds. No boxing or sparring contest shall exceed 10 rounds, except a championship contest, which shall not exceed 12 rounds.

(b) Special added attractions. The term "special attraction" shall mean the appearance of any person or persons in any capacity at any boxing contest whose reputation or ability is calculated to increase attendance.

(c) Purses. Purses shall be paid immediately after the payments of percentages contracts shall be made as soon the amount can be determined. If there is no boxer-manager contract filed with the department, the purse shall be paid in full to the contestant. Payments shall be made in the presence of an authorized department representative.

§61.105. Technical Requirements–Championship Contests.

(a) National international. Only championship contests sanctioned by department-recognized sanctioning organizations will be approved by the department as championship contests. Before championship contests can be advertised, the contestants' contracts must be on file with, and approved by, the department.

(b) Rules. In a championship contest held in Texas, the department may approve changes in the rules governing conduct of contests to conform with international rules. A request for such changes must be submitted to the department in writing at least 48 hours prior to the scheduled date of the contest.

§61.106. Technical Requirements–Amateur Contests.

(a) Amateur status. Any club seeking nonprofit amateur tax-exempt status under this law, shall complete a department information form concerning ownership, affiliation, and other relevant information.

(b) Conduct of contests. All amateur contest where an admission fee is charged shall be conducted under the conditions contained in the Texas Boxing and Wrestling Act, §7(c).

(c) Rules. All amateur contests shall be conducted under the rules of the amateur associations, as approved by the department.

(a) Timekeepers.

(1) The department shall assign two timekeepers for each show, one to keep time and one to count for the knockdowns.

(2) The timekeeper shall blow his whistle 10 seconds prior to the end of each one-minute rest period. The timekeeper shall sound the gong at the beginning and at the end of each round, but not during the round.

(3) When a boxer is down, the timekeeper shall rise and start his count, continuing until he reaches the count of 10 seconds.

(4) If the referee is absent from the ring or temporarily incapacitated, the timekeeper shall immediately sound the gong to temporarily discontinue the contest.

(b) Referees and judges.

(1) Before each contest, the referee shall call the contestants and their chief seconds together for final instructions. The referee shall hold the chief second responsible for his contestant's conduct during the contest. Referees must instruct contestants that wrestling and rough tactics will not be tolerated and to protect themselves at all times. The contestants, after receiving final instructions, shall shake hands and retire to their corners. They shall not shake hands again until the beginning of the last round.

(2) The referee may stop a fight during or between rounds because of an injury or a contestant's poor physical condition. He may also stop a fight and make a decision to disqualify both contestants if he feels they are not boxing in earnest.

(3) When a low blow incapacitates a contestant, the referee shall give him three minutes to recover. The referee may confer with the ringside physician. No contestant may be awarded a contest on a low-blow foul claim. If a contestant falls to the ring floor or otherwise indicates an unwillingness to continue because of a low-blow claim, he shall be declared the loser by a technical knockout.

(4) When a punch knocks a contestant down, the referee shall order the opponent to go to the ring's farthest neutral corner, pointing to the corner, and immediately pick up the timekeeper's count. He shall audibly announce the passing of the seconds, accompanying the count with upward motions of his arm for each second and indicating the count with visual finger counts at the end of each second. The referee may stop counting if the opponent does not remain in the neutral corner until the count is complete. No contestant who is knocked down shall be allowed to resume boxing until the referee has finished counting to eight. If a contestant who is down rises before the count of eight and goes down again without being struck, the referee shall resume the count where he stopped. When a round, other than the last round, ends before a contestant who was knocked down rises, the bell shall not ring, and the count shall continue. If he rises before the count of eight, the bell shall ring and end the round. The referee's count is the official one.

(5) If a contestant leaves the ring during the one minute period between rounds and is not in the ring to resume boxing when the gong rings, the referee shall count that contestant out as if he were down.

(6) If a contestant who has been knocked out of the ring or has fallen out of the ring during the contest, fails to return immediately, the referee may count him out as if he were down. Seconds shall not assist contestants back into the ring.

(b) Scoring.

(1) A contestant shall be deemed down when:

(A) any part of his body other than his feet is on the ring floor;

(B) he is hanging over the ropes in a defenseless manner; or

(C) he is rising from a down position.

(2) Fouls are defined as:

(A) hitting below the belt;

(B) holding an opponent with one hand and hitting him with the other;

(C) hitting an opponent who is down or is getting up after being down;

(D) holding an opponent or deliberately maintaining a clinch;

(E) butting with the head or shoulder or using the knee;

(F) hitting with the inside or butt of the hand, the wrist or the elbow;

(G) hitting or flicking with open gloves;

(H) wrestling or roughing at the ropes;

(I) purposely going down without being hit;

(J) striking deliberately at the area of the body around the kidneys;

(K) jabbing an opponent's eyes with the thumb of a glove;

(L) using abusive or profane language;

(M) hitting at the back of the head or neck (rabbit punches);

(N) failing to obey the referee; and

(O) engaging in any physical other than sportsmanlike boxing, which may injure another contestant.

(3) In scoring a contest, the elements of offense, defense, clean hitting, ring generalship, and sportsmanship will be carefully considered. Scoring shall be by the 10-point must system. The winner of any round is marked 10; the loser is marked nine or less. When a round is even, each contestant will receive 10 points. A clean knockdown should be scored heavily. The referee shall call time and then advise the judges of a foul as soon as it occurs and the number of points they should deduct. Referees and judges shall clearly write their decision and sign them individually.

(4) When a boxer is knocked down three times in any one round, the contest will be automatically terminated. The boxer scoring the knockdowns shall be the winner by a technical knockout. The referee may stop a contest at any time if the boxer cannot defend himself.

(5) If a boxer is accidentally butted in a fight but can continue, the referee shall stop the contest, inform the judges and acknowledge the butt. If an accidental butt injury worsens as a result of legal blows in later rounds, and the referee or ringside physician stops the contest, the referee shall declare the boxer who has the most points the winner in a technical decision. If a boxer is accidentally butted and cannot continue, the referee shall stop the contest end declare the boxer who has the most points the winner in a technical decision. All completed rounds, and the round during which the referee or ringside physician stops the contest, will be considered in scoring. If a contest is stopped before the end of the third round because of an accidental butt, the contest shall be declared a technical draw.

(6) If the contestant who is knocked down does not rise before the count of 10, the referee shall declare him the loser by a knockout.

(7) When a contestant cannot answer the bell signifying the start of a round, the referee will declare him the loser by a technical knockout.

§61.108. Technical Requirements–Post-Contest Procedures.

(a) Leaving the ring. When the referee's or judges' decision has been announced, both contestants and their seconds shall leave the ring immediately.

(b) Decision. The announcer will announce the decision at the end of the fight. A draw will be called if each of the officials votes differently or any two vote a draw. In main events, semi-main events and championship contests, the total points the referee and judges give each contestant will be announced.

(c) Change in decision. A decision rendered at the end of any boxing contest shall not be changed unless the department, after a hearing, determines that:

(1) there was collusion or fraud affecting the contest's result;

(2) the compilation of the referee's and judges' scorecards shows a clerical or mathematical error which caused the decision to be given to the wrong boxer; or

(3) there was a clear violation of the Texas Boxing and Wrestling Act or the department's rules which affected the contest results.

§61.109. Technical Requirements–General. If any section, paragraph, sentence, clause, or word of these rules is held to be invalid, the invalidity does not affect other provisions of these rules which can be given effect without the invalid portion.

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

Issued in Austin, Texas on September 28, 1989.

TRD-8909111 Joseph L. Huertas
Director, Program Management Division
Texas Department of Licensing and Regulation

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Chapter 64. Practice and Procedure

- **16 TAC §§64.1-64.7, 64.31-64.38, 64.51-64.59, 64.71-64.75, 64. 91-64.98, 64.111-64.116**

The Texas Department of Licensing and Regulation proposes new §§64.1-64.7, 64.31-64.38, 64.51-64.59, 64.71-64.75, 64.91-64.98, 64.111-64.116, concerning internal rules and administrative legal practice and procedure. The new sections will allow the department to facilitate the administration of the laws of the state within its jurisdiction.

Joseph L. Huertas, director, program management division, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

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 a clear outline of the procedure by which the department handles administrative sanctions and hearings. There is no anticipated economic cost to individuals or small businesses who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Joseph L. Huertas, Director, Program Management Division, Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711.

The new sections are proposed under Texas Civil Statutes, Article 9100, §14, which provide the commissioner of the Texas Depart-

ment of Licensing and Regulation with the authority to adopt rules as necessary to implement laws establishing programs regulated by the department.

§64.1. Purpose and Scope.

(a) The purpose of these rules is to provide an orderly and efficient system of procedure before the Texas Department of Licensing and Regulation, thereby facilitating the administration of the laws of the state within its jurisdiction. These rules shall be given a liberal construction to attain this objective.

(b) These rules shall govern the procedure for the institution, conduct, and determination of all causes and proceedings before the Texas Department of Licensing and Regulation where notice and hearing is required. They shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the commission or the substantive rights of any person.

(c) The basic procedural requirements for hearings before the department are as set forth in Texas Civil Statutes, Article 9100, §17 and in the Administrative Procedure and Texas Register Act (APTRA), Texas Civil Statutes, Article 6252-13a.

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

Applicant–Any person seeking a license, certificate of authority, or registration from the department.

APTRA–The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

Commission–The six member commission of the Texas Department of Licensing and Regulation.

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

Complainant–Any person who has filed a complaint with the department against any person whose activities are subject to the jurisdiction of the department.

Contested case or proceeding–A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the department after an opportunity for adjudicative hearing.

Department–The Texas Department of Licensing and Regulation.

Hearing examiner or examiner–A person appointed by the commissioner to conduct hearings in contested cases.

Justiciable interest–A right entitlement or legal share capable of being decided by legal principles or by the administrative hearings examiner.

License–The whole or part of any departmental registration, license, commission, certificate of authority, approval, permit, endorsement, or similar form of permission required or permitted by law.

Party–The department or a person who has appeared in a contested case or has filed timely notice of interest to appear, and who has not been dismissed or excluded by the hearing examiner.

Person–any individual, partnership, corporation, or other legal entity, including a state agency or governmental subdivision.

Pleading– A written petition, answer, motion, or other written instrument filed with the department in a contested case.

Register–The Texas Register, as established by APTRA.

Respondent–A person against whom any complaint has been filed.

Rule–Any departmental statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the department and is filed with the Register.

T.R.C.P.–Texas Rules of Civil Procedure.

Uncontested proceeding or case–All proceedings other than contested proceedings.

U.S.P.S.–United States Postal service.

§64.3. Filing, Computation of Time, and Notice.

(a) All documents relating to any proceeding pending or to be instituted before the department, shall be filed by the United States Postal Service (U.S.P. S.) mail to the Office of the Commissioner, P.O. Box 12157, Austin, Texas 78711 or by personal delivery to the Office of the Commissioner, Ernest O. Thompson State Office Building, 920 Colorado Street, 11th Floor, Austin. These pleadings and other documents shall be deemed filed only when actually received by the office of the commissioner.

(b) In computing any period of time prescribed or allowed by these rules, the date of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal state holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal state holiday.

(c) A notice of hearing, order, or other document related to a contested case which is mailed to a party or his representative is prima facie evidence of receipt if i is mailed to the complete, correct address of record. This presumption is rebuttable.

(d) The date for computing or determining when a time period begins to run, concerning pleadings or other documents mailed via U.S.P.S. by or on behalf of parties, shall be the date of the postmark. If shipped by a common carrier or commercial delivery service, the date delivered to the common carrier or commercial delivery service controls.

(e) Any document received by the department in the mail with an envelope bearing no legible postmark shall be deemed to have been posted three business days prior to actual receipt or, if the document is dated less than three dates prior to the date of receipt, the date of the document. This rule also applies where the envelope is subsequently lost be the department.

§64.4. Agreements to be in Writing. No stipulation or agreement between the parties, their attorneys, or representatives, with regard to any matter involved in any contested case shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives, or unless it shall have been dictated into the record by them during the course of a hearing, or incorporate in an order bearing or incorporating their written approval.

§64.5. Hearing Examiner.

(a) Every hearing before the department shall be conducted a hearing examiner. The hearing examiner shall have the authority to do the following:

(1) reset hearing dates;

(2) order pre-hearing conferences;

(3) convene hearings;

(4) establish the jurisdiction of the department;

(5) rule on pleadings;

(6) admit and classify parties, and establish the order for presentation of evidence;

(7) administer oaths;

(s) rule on the admissibility of evidence;

(9) examine witnesses;

(10) issue subpoenas to compel the attendance of witnesses, or the production of papers and documents relating to the hearing;

(11) commission and require the taking of depositions for good cause;

(12) conduct hearings in an orderly manner in accordance with the statutes and the applicable substantive departmental rules being enforced;

(13) recess hearings from time to time and from place to place;

(14) make proposed findings of fact and conclusions of law; and

(15) any and all other things necessary to provide a fair, just, and proper hearing.

(b) If for any reason a hearing examiner cannot continue on a contested case, another hearing examiner shall be appointed by the commissioner. The succeeding hearing examiner shall become familiar with the record and perform any functions remaining to be performed without the necessity of repeating any previous proceedings in the case.

§64.6. Conduct and Decorum.

(a) Every party, witness, attorney, or other representative shall conduct himself in all proceedings with dignity, courtesy, and respect for the department, the hearings examiner, and all other parties and participants. Attorneys shall observe and practice the standards of ethical behavior prescribed for the profession by the "Code of Professional Responsibility" end "Canons of Judicial Ethics" or, after January 1, 1990, the "Texas Rules of Professional Conduct."

(b) Upon violation of subsection (a) of this section, one party, witness, attorney, or other representative may be excluded by the hearing examiner from any hearing for such period and upon such conditions as are just, and may be subject to such other just, reasonable, and lawful disciplinary action as the commission may be prescribe.

§64.7. Ex Parte Consultations. Unless required for the disposition of ex parte matters authorized by law, neither the hearing examiner, the commission, or the commissioner may communicate, directly or indirectly, in connection with any issue of fact or law in a contested case with any party to that case or his representative, except on notice and opportunity for all parties to participate. The hearing examiner, the commission, and the commissioner may communicate ex parte with other members of the department who have not participated in any hearing in the case for the purpose of utilizing the special skills or knowledge of the department's staff in evaluating the evidence.

§64.31. Parties.

(a) All parties must have a justifiable interest in the proceedings in order to be designate as parties. All appearances are subject to a motion to strike upon a showing that the person has no justiciable interest in the proceedings.

(b) Regardless of errors as to designations in their pleadings, parties shall be treated by the hearing examiner according to their true status in the proceeding.

§64.32. Representative Appearances. Any person may appear in any proceeding pro se or by authorized representative.

§64.33. Form and Content of Pleadings.

(a) Pleadings and briefs shall be typewritten or printed on paper not to exceed 8 1/2 inches by 11 inches with an inside margin at least one inch wide and annexed exhibits shall be folded to the same size. Text shall be on one side of the paper only and shall be double-spaced, except that footnotes and quotations in excess of two lines shall be single-spaced. Reproductions may be by any process, provided all copies are clear and permanently legible.

(b) All pleadings shall contain the following:

(1) the name, address, and phone number of the party filing the pleading, or of his representative; if the representative is a member of the Texas Bar, he shall include his state bar number;

(2) a concise statement of the facts relied upon;

(3) a prayer stating the type of relief, action, or order desired;

(4) the signature of the party or his representative;

(5) any other matter required by statute;

(6) a certificate of service on all pleadings other than the initial complaint.

§64.34. Motions. All motions, except those made during a hearing, shall be considered to be pleadings and shall follow the rules set forth herein as relating to pleadings. If based upon matters which do not appear in the record, the motion shall be supported by affidavits and/or certified copies of documents. Any motion made after the hearing examiner has filed a proposal for decision shall be filed with the hearing examiner, who shall act upon the motion at the earliest practicable time.

§64.35. Service of Pleadings. Except with respect to the initial complaint, a copy of all pleadings filed by any party in any proceeding shall be mailed or delivered by the party filing it to every other party of record. If any party is being represented by an attorney or other representative authorized under these rules to make appearances, service shall be made upon that attorney or representative. The willful failure of any party to make this service may be grounds for the entry of an order striking the pleading from the record.

§64.36. Examination and Correction of Pleadings. Any pleading Which does not comply substantially with applicable statutes and these rules is subject to being stricken upon motion of a party or upon the hearing examiners's own motion. The party filing the pleading shall have the right to file a corrected pleading, provided that the filing of the corrected pleading shall not be permitted to delay any hearing unless the party seeing to file the corrected pleadings establishes that the delay is necessary in order to prevent injustice or to protect the public interest and welfare.

§64.37. Amended Pleadings. Any pleading may be amended at any time, provided that it does not act as a surprise to the opposite party. Any amended pleading which operates as a surprise to the opposite party, upon written motion, may be granted upon a showing that no harm will result.

§64.38. Prepared Testimony and Exhibits. The hearing examiner may require and designate the date that prepared testimony and exhibits be filed and served on all other parties of record prior to the day set for hearing.

§64.51. Notice and Service. The department shall send written notice to all parties of a contested case as provided for in the Administrative Procedure and Texas Register Act, §13.

§64.52. Dismissal Without Hearing. The hearing examiner may entertain motions for dismissal without a hearing for any of the following reasons:

(1) failure to prosecute;

(2) unnecessary duplication of proceedings, or res adjudicata, collateral estoppel, or estoppel by judgment;

(3) withdrawal;

(4) moot questions or obsolete petitions;

(5) lack of jurisdiction.

(6) any other reason which bars the proceeding.

§64.53. Disposition by Agreement.

(a) Disposition by agreement of any contested case may be made by stipulation, agreed settlement, or consent order, unless precluded by law. Such dispositions may be entered into by the parties any time prior to the entry of a final, appealable order.

(b) Parties agreeing to such informal disposition shall prepare a proposal for decision, containing proposed findings of fact and conclusions of law, which shall be signed by all the parties and their designated representatives. The proposal for decision shall be filed with the hearing examiner.

(c) The examiner shall promptly make his recommendation to the commissioner and/or the commission on the proposal for decision.

(d) Upon receipt of the proposal for decision and the examiner's recommendation, the commissioner and/or the commission may:

(1) adopt the proposal as the final order;

(2) reject the proposal and remand the contested case for a hearing before the examiner;

(3) reject the proposal and order further investigation by the department; or

(4) take such other action as the commissioner and/or the commission find just.

§64.54. Disposition by Consent Order to Administrative Penalty.

(a) If, after investigation of a possible violation and the facts surrounding that possible violation, the commissioner determines that a violation has occurred, the commissioner shall issue a preliminary report stating the facts on which the conclusion that a violation occurred is based, recommending that an administrative penalty not to exceed $1,000 for each violation be imposed on the person charged, and recommending the amount of that proposed penalty. The commissioner shall base the recommended amount of the proposed penalty on the following factors:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

(b) Not later than the 14th date after the date on which the preliminary report is issued, the commissioner shall give written notice by certified/return receipt requested mail, of the violation to the person charged. The notice shall include:

(1) a brief summary of the charges;

(2) a statement of the amount of the penalty recommended; and

(3) a statement of the right of the person charged to a hearing on the occurrence of the violation and the amount of the penalty.

(c) Not later than the 20th day after the date on which the notice is received, the person charged may accept the determination of the commissioner made under this section, including the recommended penalty, or make a written request for a hearing on that determination.

(d) If the person charged with the violation accepts the determination of the commissioner, the commission shall issue an order approving the determination and ordering that the person pay the recommended penalty.

(e) If the person charged fails to respond in a timely manner to the notice or if the person requests a hearing, the commissioner shall set a hearing, give written notice of the hearing to the person, and designate a hearings examiner to conduct the hearing.

§64.56. Prehearing Conference.

(a) The hearing examiner, upon his own motion or upon motion by any party, may direct the parties or their designated representative to appear at a specified time and place for a conference prior to the hearing for the purpose of formulating issues and considering any of the following:

(1) the simplification of issues;

(2) the possibility of making admissions of certain allegations of fact or stipulations concerning the use by any of the parties of matters of public record, such as annual reports and the like, in order to avoid the unnecessary introduction of proof;

(3) the procedure at a hearing;

(4) the limitation, where possible, of the number of witnesses;

(5) any other matters which may aid in the simplification of the proceedings, and the disposition of the matters in controversy, including settlement of issues in dispute.

(b) Action taken at the conference shall be recorded by the examiner, unless the parties enter into a written agreement as to such matters as permitted in §64.4 of this title (relating to Agreements to be in Writing).

§64.57. Postponement, Continuance, Withdrawal, or Dismissal.

(a) Motions for postponement, continuance, withdrawal, or dismissal of any contested case which has been set for hearing shall be served on all parties not less than five days prior to the hearing date.

(b) Those motions shall make reference to all prior motions of the same nature filed in the same proceedings.

(c) Failure to comply with the requirements of this section, except for good cause shown, shall be sufficient grounds for the hearing examiner to deny that motion.

(d) After the commencement of a hearing, the examiner shall not grant a postponement in or continuance of the hearing without the consent of all parties unless the examiner finds that a failure to grant the requested postponement or continuance would be unjust, inequitable, or not in the public interest.

(e) The hearing examiner may entertain motions for dismissal of a proceeding during a hearing for the same reasons set forth in §64.52 of this title (relating to Dismissal without Hearing).

§64.58. Consolidation. The hearing examiner upon his own motion, or upon motion by any party, may consolidate for hearing two or more proceedings which involve substantially the same parties or issues. Proceedings shall not be consolidated without the consent of all of the parties, unless the examiner finds that the two or more proceedings involve common questions of law or fact, and shall further find that separate hearings would result in unwarranted expense, delay, or substantial injustice.

§64.59. Discovery.

(a) Except as set forth as follows, all matters regarding discovery shall be governed by the Administrative Procedure and Texas Register Act, §14 and §14a.

(b) Any party may serve upon any other party written interrogatories to be answered by the party served, or, if the party served is a public or private corporation or a partnership or association, or governmental agency, by an officer or agency who shall furnish such information as is available to the party. Interrogetories may, without leave of the hearing examiner, be served upon the complainant after commencement of the action and upon any other party that has filed a notice of intent to appear.

(1) When a party is represented by an attorney, service of interrogatories and answers to interrogatories shall be made on the attorney unless service upon the party himself is ordered by the hearing examiner.

(2) Interrogatories may relate to any matters which can be inquired into under Texas Rules of Civil Procedure (T.R.C.P.), Rule 166b, but the answers, subject to any objections as to admissibility, may be used only against the party answering the interrogatories. Where the answer to an interrogatory may be derived or ascertained from:

(A) public records; or

(B) the business records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such business records, or from a compilation, abstract, or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served; it is sufficient answer to such interrogatory to specify the records from which the answer maY be derived or ascertained and, if applicable, to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries. The specification of records provided shall include sufficient detail to permit the interrogating party to locate and to identify as readily as can the party served, the records

from which the answers may be ascertained.

(3) Interrogatories may be served after a deposition has been taken, and a deposition may be sought after interrogatories have been answered, but the hearing examiner, on motion of the deponent or the party interrogated, may make such protective order as justice requires.

(4) The party upon whom the interrogatories have been served shall serve answers on the party submitting the interrogatories within the time specified by the party serving the interrogatories, which specified time shall not be less than 30 days after the service of the interrogatories, except that, if the request accompanies the notice of alleged violation, a respondent may serve answers within 50 days after service of the notice upon that respondent. The hearings examiner, on motion and notice for good cause shown, may enlarge or shorten the time for serving answers of objections.

(5) The number of questions including subsections in a set of interrogatories shall be limited so as not to require more than 30 answers. No more than two sets of interrogatories may be served by a party to any other party, except by agreement or as may be permitted by the hearings examiner after hearing upon a showing of good cause. The hearings examiner, after hearing, reduces or enlarges the number of interrogatories or sets of interrogatories if justice so requires. The provisions of the T.R.C.P., Rule 166b, are applicable for the protection of the party from whom answers to interrogatories are sought under this section.

(6) The interrogatories shall be answered separately and fully in writing under oath. Answers to interrogatories shall be preceded by the question or interrogatory to which the answer pertains. True copies of the interrogatories, and answers and objections thereto, shall be served on all parties or their attorneys, and copies thereof shall be provided to any additional parties upon request. The answers shall be signed and verified by the person making them.

(7) on or prior to the date on which answers are to be served, a party may serve written objections to specific interrogatories or portions thereof. Objections served after the date on which answers are to be served are waived unless an extension of time has been obtained by agreement or order of the hearing examiner or good cause is shown for the failure to object within such period. Answers only to those interrogatories or portions thereof, to which objection is made, shall be deferred until the objections are ruled upon and for such additional time thereafter as the hearings examiner may direct. Either party may request a hearing as to such objections at the earliest possible time.

(c) At any time after the respondent has made appearance in the cause, or time therefor has elapsed, a party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of the T.R.C.P., Rule 166b, set forth in the request that relates to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request.

(1) Copies of the documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying.

(2) Whenever a party is represented by an attorney of record, service of a request for admissions shall be made on his attorney unless service on the party himself is ordered by the hearings examiner.

(3) A true copy of a request for admission or of a written answer or objection, together with proof of the service thereof as provided in the T.R.C.P. , Rule 21a, shall be filed promptly in the hearing examiners office by the party making it.

(4) Each matter of which an admission is requested shall be separately set forth.

(5) The matter is admitted without necessity of an order of the hearings examiner unless, within 30 days after service of the request, or within such time as the hearing examiner may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney, but, unless the hearings examiner shortens the time, a respondent shall not be required to serve answers or objections before the expiration of 45 days after service of the citation and petition upon him.

(6) If objection is made, the reason therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons that the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or easily obtainable by him is insufficient to enable him to admit or deny.

(7) A party who considers that a matter of which an admission is requested presents a genuine issue for a hearing may not, on that ground alone, object to the request; he may, subject to the provisions of the T.R.C.P., Rule 215 (3), deny the matter or set forth reasons why he cannot admit or deny it.

(8) Any matter admitted under this section is conclusively established as to the party making the admission unless the hearings examiner on motion permits withdrawal or amendment of the admission. Subject to the provision of the T.R.C. P., Rule 166, governing amendment of a pretrial order, and the T.R.C.P., Rule 166b-6, governing duty to supplement discovery responses, the hearings examiner may permit withdrawal or amendment if the hearings examiner finds that the parties relying upon the responses and deemed admissions will not be unduly prejudiced and that the presentation of the merits of the action will be subserved thereby. Any admission made by a party under this section is for the purpose of the pending action only and neither constitutes an admission by him for any other purpose nor may be used against him in any other proceeding.

§64.71. Place and Nature of Hearings. All hearings conducted in any proceeding covered by this chapter shall be open to the public. All hearings shall be held in Austin, unless for good cause the commissioner designates another place within the state.

§64.72. Order or Procedure.

(a) The hearing examiner shall open the hearing and make a concise statement of its scope and purposes.

(b) Once the hearing has begun, parties or their representatives may be off the record only when the examiner permits. If a discussion off the record is pertinent, the examiner will summarize such discussion for the record.

(c) Appearances are to be entered on the record by all parties, their attorneys, or representatives. Thereafter, parties may make motions or opening statements.

(d) All persons who may testify will be placed under oath and "the rule" may be invoked by any party. If the rule is invoked against the department's witnesses or those of a corporation, general partnership, or limited partnership, such party shall designate one witness to review with its attorneys in the hearing as a non-attorney representative of the party.

(e) Following the opening statements of all parties, the party with the burden shall be allowed to proceed with its direct case, after which opposing parties shall be allowed cross-examination. All other parties will then present their cases and their witnesses will be subject to cross-examination.

(f) After all parties have completed the presentation of their evidence, and have been afforded the opportunity to cross examine the opposition witnesses, closing statements shall be allowed. The party with the burden of proof shall be entitled to open and close.

(g) The examiner may also call upon any party or the staff of the department for further material or relevant evidence upon any issue before the issuance of a report and proposal for decision; however, no such evidence shall be allowed into the record without an opportunity for inspection and rebuttal by all parties.

§64.73. Briefs.

(a) Briefs shall conform, where practicable, to the requirements for form of pleadings set out in these rules. The points involved shall be concisely stated, the evidence in support of each point shall be summarized, and the argument and authorities shall be organized and directed to each point in a concise and logical manner.

(b) Briefs may be requested by the examiner at any time, on any question.

§64.74. Reporters and Transcripts.

(a) In all proceedings for which any party or the staff requests a reporter, an official reporter shall make and transcribe a stenographic record of the hearing and the reporter shall provide as many copies of the transcript as may be required for the purposes of the department. In all other proceedings, a tape recording shall be made. No copies of the transcript will be furnished to the parties by the department, but copies may be purchased from thee official reporter upon payment of appropriate charges. The commissioner shall approve rates to be charged by its reporters on transcripts that are sold. The rates shall not exceed rates authorized by law to be paid the district court reporter. If no reporter was requested prior to a proceeding but a transcript is requested after the proceeding has closed, the department may assess costs to any party requesting that a transcript be made from the tape of the proceeding.

(b) Errors claimed to be in a transcription of a hearing shall be noted in writing and suggested corrections may be offered within 10 days after the transcript is filed with the examiner, unless the examiner shall permit suggested corrections to be offered thereafter. Suggested corrections shall be served in writing upon each party of record, the official reporter, and the examiner. If not objected to within 12 days after being offered, the examiner will direct the suggested corrections be made and the manner of making. In the event that parties disagree on suggested corrections, the examiner, with the aid of argument and testimony from the parties, shall then determine the manner in which the record shall be changed, if at all.

§64.75. The Record. The content of the record in a contested case is set forth in the Administrative Procedure and Texas Register Act, §(f).

§64.91. Witnesses to be Sworn. Witnesses shall be sworn by the hearing examiner, and their testimony taken under oath.

§64.92. Rules of Evidence. The rules of evidence in hearings conducted under this chapter are those set forth in the Administrative Procedure and Texas Register Act, §14. All questions or issues regarding or relating to the admission or exclusion of evidence shall be decided with reference to that section.

§64.93. Official Notice. Official notice of facts may be taken as provided in the Administrative Procedure and Texas Register Act, §14(q).

§64.94. Documentary Evidence.

(a) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. On request, however, parties shall be given an opportunity to compare the copy with the original.

(b) When a large number of similar documents are offered, the examiner may limit those admitted to a number which are typical and representative, and may, in his discretion, require the abstracting of the relevant data from the documents and the presentation of the abstracts in the form of an exhibit; however, before making this requirement, the examiner shall see that all parties of record or their representatives are given an opportunity to examine the documents from which the abstracts are to be made.

§64.95. Admissibility of Prepared Testimony and Exhibits. Upon the agreement of all parties, any part of the evidence may be received in written form. Affidavits may be allowed when, in the hearing examiner's opinion, they are necessary to ascertain facts not reasonably susceptible to proof otherwise and are of a type commonly relied upon by prudent men in the conduct of their affairs. Upon the agreement of all parties, evidence may be received by telephone or other electronic transmission.

§64.96. Introduction of Exhibits.

(a) Exhibits of documentary character shall be of a size which will not unduly encumber the files and records of the commission, and whenever practicable shall conform to the requirements of §64.33 of this title (relating to Form and Content of Pleadings). Exhibits shall be limited to facts which are material and relevant to the issues involved in the proceeding.

(b) The original of each exhibit offered shall be tendered to the examiner for identification. One copy shall be furnished to the examiner, and one copy to each party of record or his representative. Written or printed documents and maps received in evidence may not be withdrawn except with the approval of the examiner.

(c) In the event an exhibit has been identified, objected to, and excluded, the examiner shall determine whether or not the party offering the exhibit has withdrawn the offer, and if so, permit the return of the exhibit to him. If the excluded exhibit is not withdrawn, it shall be given an exhibit number for identification, shall be endorsed be the examiner with his ruling, and shall be included in the record for the purpose only of preserving the exception.

(d) The examiner may keep the record open or reopen it to receive late exhibits.

§64.97. Offer of Proof. When testimony on direct examination is excluded by a ruling of the hearing examiner, the party offering the excluded evidence shall be permitted to make an offer of proof by dictating or submitting in writing the substance of the proposed testimony prior to the conclusion of the hearing, and such offer of proof shall be sufficient to preserve the point for review by the commission and/or commissioner. The hearing examiner may ask such questions of the witness as he deems necessary to satisfy himself that the witness would testify as represented in the offer of proof. An alleged error in sustaining an objection to questions asked on cross examination may be preserved without making an offer of proof.

§64.98. Witnesses Limited. The examiner shall have the right in any proceeding to limit the number of witnesses whose testimony is merely cumulative.

§64.111. Proposals for Decision.

(a) After closing the hearing for receipt of evidence, the hearing examiner shall prepare a written proposal for decision of the hearing for the commissioner and/or commission. The proposal for decision shall contain a summary of the evidence, findings of fact and conclusions of law, a proposed decision, and the reasons for his proposed decision and each finding and conclusion. A copy of the proposal for decision shall be served by the examiner on each party. The examiner's proposal for decision may be amended in response to exceptions or briefs submitted by the parties or their representatives without again being served on the parties.

(b) Proposed decisions involving administrative sanctions only shall be brought before the commissioner.

(c) Proposed decisions involving administrative penalties only shall be brought before the commission.

(d) Proposed decisions involving both administrative sanctions and administrative penalties shall be brought before the commissioner and the commission for decision under their respective authorities.

§64.112. Filing of Exceptions and Replies. Any party may file exceptions to the hearing examiner's proposal or decision within 14 days after the date of service of the proposal for decision. Replies to those exceptions may be filed be any other party within 14 days after the date the exceptions are filed. A request for an extension of time for filing exceptions or replies shall be filed with the examiner, and a copy of the request shall be served on all other parties of record by the party making the request. The examiner shall allow additional time only in extraordinary circumstances as required by the interests of justice. The examiner shall promptly notify all the parties of his action upon the request for extension of time.

§64.113. Form of Exceptions and Replies. Exceptions and replies to a proposal for decision shall conform as nearly as possible to the requirements of this chapter for pleadings. The specific exceptions shall be concisely stated. The evidence relied upon shall be pointed out with particularity, and that evidence and the argument shall be grouped under the exceptions to which they relate.

§64.114. Oral Argument. Any party may request oral argument before the commissioner and/or the commission before the final determination of any proceeding, but oral argument shall be allowed only at the discretion of the commissioner and/or the commission. A request for oral argument may be incorporated in the exceptions, reply to exceptions, petition for reconsideration, or in a separate pleading. If oral argument is granted, notice of the time, date, and place of argument will be sent by the commissioner to all parties.

§64.115. Final Orders, Motions for Rehearing, and Emergency Orders.

(a) In ordering an administrative sanction, the commissioner may:

(1) issue a written reprimand to the person that specifies the violation;

(2) revoke or suspend the person's license, registration, certificate, or permit;

(3) place on probation a person whose license, registration, certificate, or permit has been suspended;

(4) if the suspension of a license registration, certificate, or permit is probated, require the person to:

(A) report regularly to the commissioner on matters that are the basis of the probation;

(B) limit practice to the areas prescribed by the commissioner; or

(C) continue or renew professional education until the person attains a degree top skill satisfactory to the commissioner in those areas that are the basis for the probation.

(b) In ordering an administrative penalty the commission shall consider:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

(c) The commissioner shall give notice of his and/or the commission's order to all parties. The notice must include:

(1) separate statements of the findings of fact and conclusions of law;

(2) the amount of any penalty assessed;

(3) whether or not a motion for rehearing is required as a prerequisite for appeal;

(4) the motion for rehearing time table (see subsection (d), of this section)

(d) Except where there is a finding of imminent peril requiring immediate effect of the order and a statement that no motion for rehearing is necessary, a motion for rehearing is a prerequisite for appeal. A motion for rehearing must be filed within 20 dates after the date of rendition of a final ordered. Replies to a motion for rehearing must be filed within 30 days after the date of rendition of the final decision or order, and action on the motion must be taken within 45 days after the date of rendition of the final order. If action is not taken within the 45-day period, the motion for rehearing is overruled by operation of law 45 days after the date of rendition of the final order. The commissioner and/or commission may by written order extend the period of time for filing the motions and replies and taking agency action, except that an extension may not extend the period for action beyond 90 days after the date of rendition of the final order. In the event of an extension, the motion for rehearing is overruled be operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date of the final order.

(e) An order is final, in the absence of a timely motion for rehearing, on the expiration of the period for filing a motion for rehearing and is final and appealable on the date of rendition of the order overruling the motion for rehearing, or on the date the motion is overruled by operation of law.

(f) If an administrative penalty is included in the order, the person charged shall, no later than the 30th day after the date the order is final and appealable, do the following.

(1) The person shall pay the penalty in full.

(2) If the person files a petition for judicial review contesting the fact of the violation, he or she shall pay the amount of the penalty, or both the fact of the violation and the amount of the penalty:

(A) forward the amount assessed to the department for deposit in an escrow account; or

(B) in lieu of payment into escrow, post with the department a supercedeas bond for the amount of the penalty, in a form approved by the commissioner and effective until judicial review of the decision is final.

(3) A person charged with a penalty who is financially unable to comply with paragraph (2) of this subsection is entitled to judicial review if the person files with the court, as part of the person's petition for judicial review, a sworn statement that the person is unable to meet the requirements of that subsection.

(4) Except as provided by paragraph (3) of this section, failure to forward the amount assessed or post the bond with the department in the manner and within the period prescribed by these rules, results in a waiver of legal rights to judicial review. If the person charged fails to timely forward the amount assessed or post the bond, the department or the attorney general may bring an action for the collection of the penalty.

(5) Judicial review of the order of the commission assessing the penalty is subject to the substantial evidence rule and shall be instituted by filing a petition with Travis County District Court, as provided by the Administrative Procedure and Texas Register Act, §19.

(g) If no administrative penalty is included in the order, a petition for judicial review must be filed in a district court of Travis County within 30 days after the order is final and appealable, as provided by the Administrative Procedure and Texas Register Act, §19.

§64.116. Remittur of Administrative Penalty. If, after judicial review, the administrative penalty is reduced or not assessed, the commissioner shall remit to the person charged the appropriate amount, plus accrued interest if the penalty has been paid,

or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amount remitted by the commissioner shall be paid at a rate equal to the rate charged on loans to depository institutions by the Dallas Federal Reserve Bank, and shall be paid for the period beginning on the date that the assessed penalty was paid to the commissioner and ending on the date the penalty is remitted.

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

Issued in Austin, Texas, on September 28, 1989.

TRD-8909106 Joseph L. Huertas
Director, Program Management Division
Department of Licensing and Regulation

Earliest possible date of adoption: November 6, 1989

For further information, please call: (512) 463-2906

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Chapter 78. Talent Agencies

• 16 TAC §§78.1, 78.10, 78.20, 78.30, 78.40, 78.60, 78.70-78.74, 78.80-78.82, 78.90-78.94, 78.100

The Texas Department of Licensing and Regulation proposes new §§78.1, 78. 10, 78.20, 78.30, 78.40, 78 60, 78.70-78.74, 78.80-78.82, 78.90-78.94, and 78. 100, concerning authority, definitions, registration requirements, exemptions, bond requirements, department and registrant responsibilities, fees, sanctions and technical requirements as they relate to talent agencies. The new sections are necessary to administer the Texas Talent Agency Act passed by the 71st Legislature. This proposal also reflects changes to previously proposed new rules based upon comments received by the department from the industry.

Joseph L. Huertas, director, program management division, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. The cost of compliance with the sections for small businesses will be a registration fee and cost of obtaining a bond. The cost of compliance between small and large businesses will be the same regardless of the size.

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 disclosure as to the true nature and substance of the services offered by a talent agency and disclosure of rights to consumers transacting business with a talent agency. 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, Director, Program Management Division, Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711.

The new sections are proposed under Texas Civil Statutes, Article 5221a-9, which provide the department with the authority to adopt rules as necessary to implement the Act.

§78.1. Authority. These rules are promulgated under the authority of the Texas Talent Agency Act (Texas Civil Statutes, Article 5221a-9).

§78.10. 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 Texas Talent Agency Act, Texas Civil Statutes, Article 5221a-9, relating to talent agencies.

Artist–Includes an actor who performs or seeks to perform in a motion picture, theatrical, radio, television, or other entertainment production; a musician or musical director; a director of a motion picture, theatrical, radio, television, or other entertainment production; a writer; a cinematographer; a composer, lyricist, or arranger of musical compositions; a model; or any other individual who renders analogous professional services in a motion picture, theatrical, radio, television, or other entertainment production.

Commission–The Texas commission of Licensing and Regulation.

Commissioner–The Commissioner of licensing and regulation.

Department–The Texas Department of Licensing and Regulation.

Fee–Includes any of the following:

(A) any money or other valuable consideration paid or promised to be paid for services rendered by any person conducting the business of a talent agency;

(B) any money received by a talent agency in excess of the amount paid by the talent agency for transportation, transfer of baggage, or board and lodging for any applicant for employment;

(C) the difference between the amount of compensation received by a talent agency that furnishes, or causes to be furnished, an artist for an entertainment production, exhibition, or performance and the amount paid by the talent agency to the artist;

(D) anything of value, including money or other valuable consideration or services, or the promise of any of the foregoing, received by a talent agency from or on behalf of any person seeking employment or employees, in payment for any service rendered, either direct or indirect.

Model–An individual who renders or seeks to render professional services as a fashion model, as a model for commercial photography or demonstration of products for advertising purposes, or as a host for convention or other special event.

Person–An individual, corporation, organization, business trust, estate, trust, partnership, association or any other private legal entity.

Talent agency–A person that engages in the business of directly or indirectly obtaining or attempting to obtain employment for artists. This term includes an entity that counsels or directs an artist in the development of the artist's professional career. This term does not include a person who, without assessing fee, operates a talent agency, in conjunction with the person's own business or as the authorized representative for a bona fide employer, for the exclusive purpose of employing artists for use in or for that business or by that employer.

§78.20. Registration Requirements.

(a) Unless otherwise exempted by a provision herein, all talent agencies that have a place of business in Texas or, advertise in Texas and obtain or attempt to obtain employment from artists in Texas, must ,obtain a certificate of registration in order to operate a talent agency.

(b) To obtain an initial certificate of registration, a talent agency must complete a registration statement on a form provided by the department. This statement shall contain:

(1) the name under which the talent agency is operated;

(2) the talent agency's street address, including the county in which it is located;

(3) the talent agency's mailing address if different from its street address;

(4) the talent agency's telephone number;

(5) the address of each location at which the applicant for registration proposes to operate a talent agency;

(6) the names of all persons owning 10 or more percent of the talent agency. If the talent agency is a partnership, the names of all partners must be included. If the talent agency is limited partnership, the names of all general and limited partners must be included. If the talent agency is a corporation, the names of the, corporate president, vice president, secretary and treasurer must be included. The percent ownership interest must be indicated in all cases;

(7) each owner's social security number;

(8) each listed owner's address, including county;

(9) each owner's telephone number;

(10) names of any talent agency owners who have a financial interest in any

company involved in the casting, production and/or distribution of motion pictures or television motion pictures, independent video production companies, recording studios, photography studios, or any other companies or firms which would hire artists from time to time. This disclosure shall include the company or companies in which he or she has a financial interest, and the percent of ownership in each company listed. Such an interest shall not, in and of itself, be grounds for registration denial, suspension or revocation;

(11) names of any talent agency owners who have a financial interest in any school or course of instruction which is primarily intended for the professional study of acting and/or modeling. This disclosure shall include the school or course name and the percent of ownership held. Any person owning and/or operating a modeling or acting school must comply with the provisions of the Texas proprietary School Act, Chapter 32, Texas Education Code and the State Board of Education Rules for proprietary schools as they appear in the Texas Administrative Code, Title 19, Chapter 69.

(12) a description of the type of services offered;

(13) full and complete disclosure of any litigation relating to the operation of a talent agency brought against the talent agency, or any owner, officer, or director, that was completed within three years before the date the application is mailed to the department or that is pending as of the date the application is mailed;

(14) a certification that the corporation is in good standing with the Secretary of State's office if the talent agency is a corporation;

(15) if the talent agency is operated under an assumed name, a certification from the clerk of the county in which the assumed name record is filed The certification shall state the exact assumed name and the date it was filed; and

(16) if the talent agency is corporation, the name and address of the registered agent.

(c) The registration statement shall be accompanied by a copy of the talent agency's schedule of commissions and fees, the required $10,000 surety bond (see §78.40 of this title (relating to Bond Requirements)) and the required registration fee (see §78.80 of this title (relating to Fees-Original Registration)).

(d) Each location of the talent agency must be registered

(e) Each certificate of registration issued under this Act shall be valid for one year from the issue date. If the talent agency continues to do business, the certificate must be renewed for subsequent one year periods.

(f) To obtain a renewal certificate of registration, a talent agency must submit the required renewal fee and a renewal application form provided by the department which contains:

(1) any changes to the information contained in the talent agency's registration statement; and

(2) a certification of continued good standing with the Secretary of State if the talent agency is a corporation.

(g) If a renewal application is not postmarked before midnight of the 30th day after a certificate of registration expires, the certificate may not be renewed. Immediate application may be made through the original application process, except as provided by this section. If a renewal application is postmarked before midnight of the 30th day after a certificate of registration expires, it will be processed.

(h) A person whose certificate of registration has been revoked may not apply for a new certificate of registration until one year after the date of the revocation.

§78.30 Exemptions.

(a) The term "talent agency" does not apply to a person obtaining or attempting to obtain employment for him/herself.

(b) The term "talent agency" does not apply to a person, including a union, obtaining or attempting to obtain employment for artists on a casual basis only. The term "casual" is defined as obtaining or attempting to obtain employment (booking) for artists wherein the total compensation, regardless of its form, received in any one month by those artists, does not exceed the compensation received in the same month by the person doing the booking. Further, the term "casual" is not applicable when the person doing the booking is advertising his/her services as a talent agency or booking agent in print or on radio or television.

(c) The term "talent agency" does not apply to a union or association that represents artists and whose efforts to obtain or attempt to obtain employment for its members is casual in nature only.

(d) The term "talent agency" does not apply to a person who, without assessing a fee, operates a talent agency in conjunction with the person's own business, or as the authorized representative for a bona fide employer, for the exclusive purpose of employing artists for use in or for that business, or by that employer.

(e) The term "talent agency" does not apply to attorneys licensed to practice in the state of Texas who represent artists.

(f) The term "talent agency" applies only to persons who, for a fee, obtain or attempt to obtain employment for an actor who performs in a motion picture, theatrical, radio, television, or other entertainment production; and/or a model, as that term is defined herein. Based upon a review of the specific language throughout the entire statute, it is the department's interpretation that the legislation was intended to apply only to talent agencies dealing with those types of artists as described and above. While there is a reference to other types of artists in the statute, the department finds application of the statute to those other artists in conflict with the apparent legislative intent as it is expressed in specific provisions throughout the statute. In the alternative, and without waiving the position stated above, there is insufficient legislative guidance to promulgate administrative rules regarding those other types of artists. Therefore, talent agencies representing such artists are not required to comply with the requirements of the Act.

§78.40. Bond Requirements.

(a) Each application for registration as a talent agency must be accompanied by a surety bond in the amount of $10,000, payable to the State of Texas an conditioned on faithful compliance with the Act.

(b) The bond shall be continuous and shall provide for the issuing company to give the department 30 days written notice of cancellation.

(c) The registrant shall maintain the bond until the expiration of two years after the date on which the registrant ceases to operate as a talent agency in this state.

(d) The surety bond shall be issued by a company authorized to do business in the State of Texas, conform to the Texas Insurance Code, and be on a form provided by the department.

§78.60. Responsibilities of the Department-Notification of Pending Expiration. The department shall notify each registrant in writing of the pending expiration of its certificate of registration not later than the 30th-day before the date on which the certificate of registration expires.

§78.70. Responsibilities of the Registrant Schedule of Commissions and Fees.

(a) Every talent agency shall file with the department a schedule of all commissions and/or fees they charge and collect from artists and/or clients employing those artists.

(b) If any information on the schedule changes, the talent agency must forward a new schedule to the department within five working days of the change. In no event may a change in fees or commissions be effective until it has been forwarded as required.

(c) Every talent agency shall keep a current copy of its fee and commission schedule available in its place of business. The talent agency shall allow an artist who

uses the services of the talent agency, or is considering using the services of the talent agency, to inspect the fee and commission schedule on request. The talent agency shall also make the schedule available to the department on request from the department.

(d) In addition to subsection (c) a talent agency must disclose in writing to the artist the existence and terms of all other agreements, if any, between the agency and the client involved and which relate to the services to be provided by the artist. Such disclosure shall take place within 48 hours of the talent agency entering into such agreement. It is the intent of this subsection to require disclosure of agents' fees received in connection with the employment of an artist.

§78.71. Responsibilities of Registrant–Treatment Monies.

(a) A talent agency which receives any payment of monies on behalf of an artist shall, within five banking days, deposit that amount in an account maintained by the talent agency in a federally insured financial institution. This subsection does not prohibit the practice of "check swapping" as that term is commonly used in the talent agency industry.

(b) Unless a written contract to the contrary exists, all monies received on behalf of an artist must be disbursed to that artist no later than 10 banking days after receipt by the talent agency.

(c) The talent agency shall maintain records of all funds received. These records shall include the date of receipt, the remitter's name, on whose behalf the funds are received, dates when funds were disbursed and names of all persons, including the talent agency itself, to whom those funds were disbursed.

§78.72. Responsibilities of the Registrant–Financial Recordkeeping. Every talent agency shall adopt either an artist-based or a client-based financial recordkeeping system. A talent agency may not use an artist-based financial recordkeeping system for some files and a client-base financial recordkeeping system for others. A talent agency may, however, use both systems so long as all files are kept in both the artist-based system and the client based system.

(1) If a talent agency uses an artist-based financial recordkeeping system, it shall keep the following information on each of its artists:

(A) artist's name;

(B) artist's address;

(C) dates and amounts of all fees received on behalf of the artist, as well as from whom the funds were received;

(D) all amounts earned by the talent agency from the artist, including the dates each amount is earned and received;

(E) a copy of each contract and/or agreement between the talent agency and the artist; and

(F) the clients for whom the artist has worked while represented by the talent agency.

(2) If a talent agency uses a client-based financial recordkeeping system, it shall keep the following information on each of its clients:

(A) client's name;

(B) client's address;

(C) dates and amounts of all fees received and on whose behalf they are received;

(D) a copy of each contract and/or agreement between the artists Working for the client and the talent agency;

(E) the artists who have worked for the client wile represented by the talent agency; and

(F) all amounts earned by the talent agency from the client, including the dates each amount is earned and received.

(3) All records kept under this section shall be kept for a period of at least two years. Records required under this section must be kept at the business location for at least one year. Following that, they must be kept at a location providing the department with access to them within one working day of a request to be provided access thereto.

§78.73. Responsibilities of the Registrant–Inspection of Records. A talent agency must make its records available to the department during regular business hours if the department makes a request to inspect those records pursuant to receipt of a specific complaint against the talent agency which is not invalid on its face. The department may ask to inspect all records and documents whether paper or electronic, books, and other papers pertaining to the talent agency's operation.

§78.74. Responsibilities of the Registrant–Registration Statement.

(a) The talent agency shall update its registration statement whenever a change occurs in the information on file.

(b) The talent agency shall notify the Department if a legal action relating to the operation of the talent agency is brought against the talent agency or an owner, officer, or director. The talent agency shall notify the department in writing not later than the 10th day after the date on which the defendant talent agency receives notice of the action.

(c) Each talent agency shall maintain a copy of its registration statement in the records of the talent agency. The talent agency shall allow an artist who uses the services of the talent agency, or is considering using the services of the talent agency, to inspect the registration statement on request.

§78.80 Fees–Original Registration. The fee for an original talent agency certificate of registration is $100. This fee is not refundable.

§78.81. Fees–Renewal Registration.

(a) The annual renewal fee for a talent agency certificate of registration is $50. This fee is not refundable.

(b) A late fee of $25 will be charged for renewal applications postmarked between midnight of the day the current certificate of registration expires and midnight of the 30th day after the expiration. This fee is not refundable.

§78.82. Fees–Duplicate Registration. A $25 fee will be charged for issuing a duplicate certificate of registration. This fee is not refundable.

§78.90. Sanctions–Administrative Sanctions.

(a) The commission may deny, suspend, or revoke a talent agency certificate of registration if it is determined that:

(1) the talent agency, or a talent agency employee, engages in any act or omission in violation of the Texas Deceptive Trade Practices Act;

(2) the talent agency has published, or caused to be published, any false, fraudulent, or misleading information, notice, or advertisement;

(3) the talent agency has engaged in an false, fraudulent, or misleading activity;

(4) the talent agency has failed to meet any requirements set forth in the department's rules promulgated under the Act;

(5) the talent agency, or a talent agency employee, has violated the Act or any department rule promulgated under the Act;

(6) the talent agency, or a talent agency employee, as violated any statute

administered or rule promulgate by the department;

(7) the talent agency's place of business unduly endangers the health, safety or welfare of the artist;

(8) the talent agency supplied false or incomplete information on the registration statement;

(9) an owner, officer, or director of the talent agency has been convicted of a felony, or a misdemeanor for which the maximum punishment is confinement in jail or a fine exceeding $500, which directly relates to the operation of a talent agency.

(b) If a person violates the Act, or a rule or order adopted or issued by the commissioner relating to the Act, the commissioner may also:

(1) issue a written reprimand to the person that specifies the violation; or

(2) place on probation a person whose license has been suspended.

(c) If a suspension is probated, the commissioner may require the person to:

(1) report regularly to the commissioner on matters that are the basis of the probation; or

(2) limit practice to the areas prescribed by the commissioner.

(d) If, after investigation of a possible violation and the facts surrounding that possible violation, the department determines that a violation has occurred, the department may issue a preliminary report stating the facts on which the conclusion that a violation occurred is based, recommending that an administrative sanction be imposed on the person charged, and recommending the precise nature and conditions, if any, of that proposed sanction. The department shall base the recommended sanction, and any accompanying conditions, on the following factors:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

(e) Not later than the 14th day after the day on which the preliminary report is issued, the department shall give written notice of the violation to the person charged. The notice shall include:

(1) a brief summary of the charges;

(2) a statement of the proposed sanction, and any accompanying conditions; and

(3) a statement of the right of the person charged to a hearing on the occurrence of the violation and the sanction and any terms thereof.

(f) Not later than the 20th day after the date on which the notice is received, the person charged may accept the determination of the department made under this rule, including the recommended sanction and all accompanying conditions, or make a written request for a hearing on that determination.

(g) If the person charged with the violation accepts the determination of the department, the commissioner shall issue an order approving the determination and ordering that the recommended sanction and accompanying conditions be imposed upon that person.

(h) If the person charged fails to respond in a timely manner to the notice, or if the person requests a hearing, the commissioner shall set a hearing, give written notice of the hearing to the person, and designate a hearings examiner to conduct the hearing.

(i) If an administrative hearing is held, and the person wishes to dispute the administrative sanction imposed, not later than the 30th day after the date on which the decision is final as provided by the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a), §16(d), the person charged shall file a petition for judicial review contesting the fact of the violation and/or the administrative sanction. Judicial review is subject to the substantial evidence rule and shall be instituted by filing a petition with a Travis County district court as provided by the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a), §19.

§78.91. Sanctions-Administrative Penalty/Fine.

(a) If a person violates the Act, or a rule or order adopted or issued by the commissioner relating to the Act, the commission may in addition to or in lieu of a sanction imposed under §80.90 of this Chapter (relating to sanctions–Administrative sanctions), assess an administrative penalty in an amount not to exceed $1,000 for each violation.

(b) A penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

(c) If, after investigation of a possible violation and the facts surrounding that possible violation, the commissioner determines that a violation has occurred, the commissioner may issue a preliminary report stating the facts on which the conclusion that a violation occurred is based, recommending that an administrative penalty not to exceed $1,000 for each violation be imposed on the person charged, and recommending the amount of that proposed penalty. The commissioner shall base the recommended amount of the proposed penalty on the following factors:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) an other matters that justice may require.

(d) Not later than the 14th day after the day on which the preliminary report is issued, the department shall give written notice of the violation to the person charged. The notice shall include:

(1) a brief summary of the charges;

(2) a statement of the amount of the penalty recommended; and

(3) a statement of the right of the person charged to a hearing on the occurrence of the violation and the amount of the penalty.

(e) no later than the 20th day after the date on which the notice is received, the person charged may accept the determination of the commissioner made under this rule, including the recommended penalty, or make a written request for a hearing on that determination.

(f) If the person charged with the violation accepts the determination of the commissioner, the commission shall issue an order approving the determination and ordering that the person pay the recommended penalty.

(g) If the person charged fails to respond in a timely manner to the notice, or if the person requests a hearing, the commissioner shall set a hearing, give written notice of the hearing to the person, and designate a hearings examiner to conduct the hearing.

(h) If an administrative hearing is held, not later than the 30th day after the date on which the decision is final as provided by the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a), §16(d), the person charged shall:

(1) pay the penalty in full; or

(2) file a petition for judicial review contesting the fact of the violation and/or the administrative penalty/fine. Judicial review is subject to the substantial evidence rule and shall be instituted by filing a petition with a Travis County district court as provided by the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a). If this petition

for judicial review is filed, the person must forward the amount of the administrative penalty/fine to the department for deposit in an escrow account, or post a supersedeas bond with the department in the amount of the penalty/fine, until judicial review is final.

(i) A person charged with a penalty who is financially unable to comply with subsection (h)(2) of this section is entitled to judicial review if the person files with the court, as part of the person's petition for judicial review, a sworn statement that the person is unable to meet the requirements of that subsection.

(j) Except as provided by subsection (i) of this section, failure to forward the amount assessed or post the bond with the department, in the manner and within the period prescribed by the department, results in a waiver of legal rights to judicial review. If the person charged fails to forward the amount assessed or post the bond, the department or the attorney general may bring an action for the collection of the penalty.

§78.92. Sanctions-Injunctive Relief Civil Penalty. If it appears that a person is in violation of, or is threatening to violate, the Act or a rule or order of the commissioner related to the Act, the attorney general or the commissioner may institute an action for injunctive relief to restrain the person from continuing the violation and for civil penalties not exceeding $1,000 for each violation and not exceeding $250,000 in the aggregate.

§78.93. Sanctions-Criminal Penalty.

(a) A person commits an offense if the person knowingly or intentionally violates a provision of this Act or a rule adopted under this Act.

(b) An offense under this section is a Class A misdemeanor.

§78.94. Sanctions-Revocation or Suspension because of a Criminal Conviction.

(a) Pursuant to Texas Civil Statutes, Article 6252-13c, the department, after a hearing, may suspend or revoke an existing certificate of registration, or disqualify a person from receiving a certificate of registration, because that person has a felony or misdemeanor conviction that directly relates to the duties and responsibilities involved in operating a talent agency. The department may also, after hearing, suspend, revoke, or deny a certificate of registration because of a person's felony probation revocation, parole revocation, or revocation of mandatory supervision.

(b) In determining whether a criminal conviction directly relates to the operation of talent agency, the department shall consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the operation and insuring of a talent agency;

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

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of operating a talent agency.

(c) In determining the present fitness of a person who has been convicted of a crime, the department shall also consider:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person at the time of the commission of the crime;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person prior to and following the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

(6) other evidence of the person's present fitness, including letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff and chief of police in the community where the person resides; and any other persons in contact with the convicted person.

(d) It shall be the responsibility of the applicant, to the extent possible, to secure and provide the department the recommendations of the prosecution, law enforcement and correctional authorities as required.

(e) The applicant shall also furnish proof, in such form as may be require by the department, that he or she has maintained a record of state employment, has supported his or her dependents per court order, has otherwise maintained a record of good conduct, and has paid all outstanding court costs, supervision fees, fines and restitution as may have been ordered in all criminal cases in which he or she has been convicted.

§78.100. Technical Requirements.

(a) A talent agency may not charge, as a condition of registering any applicant or representing an artist, a registration or advance fee and may not require the applicant or artist to subscribe to or use the service of any specific publication, video or audio tape producer, post card service, advertisement service, resume service, photographer, or acting or modeling school or workshop.

(b) A talent agency may not split or share fees with any person who is required to be but is not registered under the Act as a talent agency.

(c) A talent agency may not, regardless of its refund policy, assess an artist any fee, or charges other than reimbursements, before the artist has accepted an offer of employment resulting from an employment referral made by the talent agency.

(d) An agency may require an artist to reimburse it for legitimate expenses owed to third parties and incurred as a result of efforts made on the behalf of the artist by the talent agency. However, if this practice is engaged in, the artist must receive, at the time he or she is billed for the expenses, an itemized statement detailing the nature of the charges and enclosing a copy of the invoice or receipt evidencing the expense the talent agency has incurred. In addition, the talent agency must permit the artist to make payment directly to the third party billing or invoicing the talent agency. Finally, the talent agency must obtain in writing the express permission of the artist to incur such expenses. It is not the intent of this section that expenses such as utility costs, local telephone service and other similar indirect costs be recovered hereunder.

(e) Every talent agency shall post the following notice in a conspicuous public place in the office where it conducts business. The notice must be printed on paper stock at least 5" by 7" with the word "notice" printed in letters at least 3/4" high.

NOTICE

This talent agency is registered with the Texas Department of Licensing and Regulation in accordance with the Texas Talent Agency Act. Registration with the Department does not imply approval or endorsement by the State of Texas of the competence of the talent agency or of the specific terms and/or conditions of its contract(s). You do however, have certain rights under that Act. If you have questions about this talent agency's registration, you may contact the Texas Department of Licensing and Regulation at P.O. Box 12157, Austin, Texas, 78711; telephone (512) 463-5522. If you wish to file a complaint or have questions as to your rights under the Act and its rules, you may contact the Department at the address given above or telephone 512-463-9940.

There are true and complete copies of the Texas Talent Agency Act and Department of Licensing and Regulation rules and this talent agency's registration statement and fee/commission schedule on the premises. This information is available for you to review on request.

(f) Each talent agency shall display its certificate of registration in a conspicuous public place in the office in which it conducts business.

(g) A certificate of registration, or an application for a certificate of registration, is not transferable.

(h) All talent agency publications (including but not limited to advertisements in circulars, newspapers, periodicals, brochures and receipts) shall be printed and contain the registered name, address and registration number of the talent agency. This rule, except for advertisements in circulars, newspapers and periodicals, becomes effective February 1, 1991. With respect to advertisements in circulars, newspapers and periodicals, this rule is effective February 1, 1990.

(i) Once services called for under a contract have been delivered by the talent agency, a contract may not be cancelled by an artist under the Act, §12. This does not in any way inhibit, restrict, reduce, or otherwise limit alternative civil remedies available to parties to a contract.

(j) If any section, paragraph, sentence, clause, or word of these rules is held to be invalid, the invalidity does not affect other provisions of these rules which can be given effect without the invalid portion.

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

Issued in Austin, Texas on September 28, 1989

TRD-8909113 Joseph L. Huertas
Director, Program Management Division
Texas Department of Licensing and Regulation

Earliest possible date of adoption: November 6, 1989

For further information, please call: (512) 463-2906

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Chapter 79. Vehicle Storage Facilities

- **16 TAC §§79.1, 79.10, 79.20, 79.30, 79.40, 79.70, 79.71, 79.72, 79.73, 79.80, 79.81, 79.82, 79.83, 79.90, 79.91, 79.92, 79.93, 79.94, 79.100, 79.101, 79.102**

The Texas Department of Licensing and Regulation proposes the repeal of §§79.1, 79.10, 79.20, 79.30, 79.40, 79.70, 79.71, 79.72, 79.73, 79.80, 79.81, 79.82, 79.83, 79.90, 79.91, 79.92, 79.93, 79.94, 79.100, 79.101, and 79.102 concerning requirements for operation of a vehicle storage facility. The new sections have been reorganized to conform with the 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. Additional clarification changes have been made to previously proposed new sections as a result of public comments received.

Joseph L. Huertas, director, program management division, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

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, Director, Program Management Division, Texas Department of Licensing and Regulation. P. O. Box 12157, Austin, Texas 78711.

The new sections are proposed under Texas Civil Statutes, Article 6687-9a, which provide the Department of Licensing and Regulation with 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–A calendar day.

Department–The Texas Department of Licensing and Regulation.

Fence–An enclosure of wood, chain link, iron, concrete, masonry, or other department-approved construction placed around a space used to store vehicles and designed to prevent intrusion and escape.

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.

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, §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 ten 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) A person must hold a current license issued by the commissioner 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 commissioner 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/manager of the vehicle storage facility if it is not operated/managed by one of the owners;

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

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

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

(9) a statement indicating whether or not the facility has an all weather surface as required by the administrative rules promulgated under the authority of the Texas Vehicle Storage Facility Act;

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

(11) a statement indicating whether or not the facility has the lighting required by the administrative rules promulgated under the authority of the Vehicle Storage Facility Act.

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

(f) Each license issued by the commissioner 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 administrative 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 a certificate of insurance evidencing the required garagekeeper's legal liability insurance for the vehicle storage facility.

(b) The insurance for 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 insurance policy shall be kept in full force and effect so long as the facility is operating.

§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, he shall inspect the vehicle and note as an addition on the wrecker slip or wrecker ticket and differences 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 noting the correct information.

(b) After accepting for storage a vehicle registered in Texas, the vehicle storage facility must notify the vehicle's last registered owner and all recorded lienholders by certified/registered mail within seven days, but in no event sooner than within 24 hours of receipt of the vehicle. If the certified/registered letter is returned unclaimed; refused; or moved, left no forwarding address; publication in a newspaper is not required. If the identity of the last registered owner cannot be determined, if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and address of all lienholders, notice in one publication in one newspaper of general circulation in the area where the vehicle was towed from is sufficient.

(c) After accepting for storage a foreign registered vehicle, the vehicle storage facility must notify the vehicle's last registered owner and all recorded lienholders by certified/registered mail within 14 days, but in no event sooner than within 24 hours of receipt of the vehicle. If the certified/registered letter is returned unclaimed; refused; or moved, left no forwarding address; publication in a newspaper is not required. If the identity of the last registered owner cannot be determined, if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and address of all lienholders, notice in one publication in one newspaper of general circulation in the area where the vehicle was towed from is sufficient.

(d) It shall be a defense to an action initiated by the department for violation of this section that the facility has attempted, in writing, but been unable to obtain information from the foreign registry department.

(e) The vehicle storage facility operator may not charge an owner more than $25 for this notification.

(f) Notification will be considered to have occurred when the United States Postal Service places its postmark upon the written notice.

(g) 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) if the operator will be transferring a vehicle to a second lot if it is not claimed within a certain time period, the date the vehicle will be moved from the vehicle storage facility and the address to which it will be moved;

(4) the date the vehicle was accepted for storage and from where, when, and by whom the vehicle was towed;

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

(6) a notice of the towed vehicle owner's right under Texas Civil Statutes, Article 6701g, to challenge the legality of the tow involved.

(h) 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 and issuing state, vehicle identification number and location from which it was towed. Facility records must indicate specifically to whom the stated information was reported and in what manner, as well as the time and date of the report.

§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. For purposes of this subsection, enclosed shall mean inside a building.

(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 only 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 dismantled or 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, such materials must be used to ensure the preservation of the stored vehicle.

(e) A vehicle accepted for storage may not be repaired, altered, or have parts removed or replaced without the vehicle owner's or his 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, and who authorized the tow;

(3) the name of the tow truck driver, the tow truck's regular 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, and the address of the location to which it was transferred along with the name of the towing company and tow truck 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, and 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 must 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, or a certified law enforcement officer within his jurisdiction, 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 at least two years from the date the vehicle was received.

(e) When a person demonstrates ownership or right to possession of a motor vehicle stored at a vehicle storage facility.

(1) The person or his/her authorized representative shall be entitled to inspect and obtain a copy of the wrecker slip or wrecker ticket for the motor vehicle and shall not be required to pay any fees or charges before doing so.

(2) The person, or his/her authorized representative, shall have access to, and be allowed to remove, any personal belongings in the vehicle, unless otherwise indicated be a certified law enforcement 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.

(3) The person or his/her authorized representative shall have access, during normal business hours, to the vehicle for the purposes of insurance and/or repair estimates.

§79.73. Responsibilities of the 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 registered 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) of this title (relating to Responsibilities of the Licensee–Accepting Vehicles for Storage), except that the notice must be sent no less than 72 hours prior to moving the vehicle.

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

(1) charge only those fees otherwise permitted by §79.101 of this title (relating to Technical Requirements–Storage Fees/Charges) 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 any one of the following:

(A) a notarized power-of-attorney;

(B) a department-approved affidavit of right of possession;

(C) a court order;

(D) a title;

(E) a tax collector's receipt;

(F) a license plate renewal card;

(G) notarized proof of loss 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; or

(H) positive name and address information corresponding to that contained in the files of the Motor Vehicle Division of the Texas Department; 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 is issued by State of Texas;

(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–Original License.

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

(b) This fee is nonrefundable.

§79.81. Fees–Renewal License.

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

(b) This fee is nonrefundable.

§79.82. Fees–Late Renewal.

(a) A late fee of $25 will be charged for renewal applications postmarked between midnight December 31 and midnight January 31.

(b) This fee is nonrefundable.

§79.83. Fees–Duplicate License.

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

(b) This fee is nonrefundable.

§79.90. Sanctions–Administrative 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 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; or

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

(b) If a suspension is probated, the commissioner may require the person to:

(1) report regularly to the commissioner on matters that are the basis of the probation; or

(2) limit practice to the areas prescribed by the commissioner.

(c) If, after investigation of a possi-

possible violation, the department determines that a violation has occurred, the department may issue a preliminary report stating the facts on which the conclusion that a violation occurred is based, recommending that an administrative sanction be imposed on the person charged, and recommending the precise nature and conditions, if any, of that proposed sanction. The department shall base the recommended sanction, and any accompanying conditions, on the following factors:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

(d) Not later than the 14th-day after the day on which the preliminary report is issued, the department shall give written notice of the violation to the person charged. The notice shall include:

(1) a brief summary of the charges;

(2) a statement of the proposed sanction, and any accompanying conditions; and

(3) a statement of the right of the person charged to a hearing on the occurrence of the violation and the sanction and any terms thereof.

(e) Not later than the 20th-day after the date on which the notice is received, the person charged may accept the determination of the department made under this rule, including the recommended sanction and all accompanying conditions, or make a written request for a hearing on that determination.

(f) If the person charged with the violation accepts the determination of the department, the commissioner shall issue an order approving the determination and ordering that the recommended sanction and accompanying conditions be imposed upon that person.

(g) If the person charged fails to respond in a timely manner to the notice, or if the person requests hearing, the commissioner shall set a hearing, give written notice of the hearing to the person, and designate a hearings examiner to conduct the hearing.

(h) If an administrative hearing is held, and the person wishes to dispute the administrative sanction imposed, not later than the 30th-day after the date on which the decision is final as provided by the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a) §16(d), the person charged shall file a petition for judicial review contesting the fact of the violation and/or the administrative sanction. Judicial review is subject to the substantial evidence rule and shall be instituted by filing a petition with a Travis County district court as provided by the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a) §19.

§79.91. Sanctions–Administrative Penalty/Fine.

(a) If a person violates the Act, or a rule or order adopted or issued by the commissioner relating to the Act, the commission may, in addition to or in lieu of a sanction imposed under §79.90 of this Chapter (relating to Sanctions–Administrative Sanctions), assess an administrative penalty in an amount not to exceed $1,000 for each violation.

(b) A penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

(c) If, after investigation of a possible violation and the facts surrounding that possible violation, the commissioner determines that a violation has occurred, the commissioner may issue a preliminary report stating the facts on which the conclusion that a violation occurred is based, recommending that an administrative penalty not to exceed $1,000 for each violation be imposed on the person charged, and recommending the amount of that proposed penalty. The commissioner shall base the recommended amount of the proposed penalty on the following factors:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

(d) Not later than the 14th-day after the day on which the preliminary report is issued, the department shall give written notice of the violation to the person charged. The notice shall include:

(1) a brief summary of the charges;

(2) a statement of the amount of the penalty recommended; and

(3) a statement of the right of the person charged to a hearing on the occurrence of the violation and the amount of the penalty.

(e) Not later than the 20th-day after the date on which the notice is received, the person charged may accept the determination of the commissioner made under this rule, including the recommended penalty, or make a written request for a hearing on that determination.

(f) If the person charged with the violation accepts the determination of the commissioner, the commission shall issue an order approving the determination and ordering that the person pay the recommended penalty.

(g) If the person charged fails to respond in a timely manner to the notice, or if the person requests a hearing, the commissioner shall set a hearing, give written notice of the hearing to the person, and designate a hearings examiner to conduct the hearing.

(h) If an administrative hearing is held, not later than the 30th-day after the date on which the decision is final as provided by the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a) §16(d), the person charged shall:

(1) pay the penalty in full; or

(2) file a petition for judicial review contesting the fact of the violation and/or the administrative penalty/fine. Judicial review is subject to the substantial evidence rule and shall be instituted by filing a petition with a Travis County district court as provided by the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a) §19. If this petition for judicial review is filed, the person must forward the amount of the administrative penalty/fine to the department for deposit in an escrow account, or post a supersedeas bond with the department in the amount of the penalty/fine, until judicial review is final.

(i) A person charged with a penalty who is financially unable to comply with subsection (h)(2) of this section is entitled to judicial review if the person files with the court, as part of the person's petition for judicial review, a sworn statement that the person is unable to meet the requirements of that subsection.

(j) Except as provided by subsection (i) of this section, failure to forward the amount assessed or post the bond with the department, in the manner and within the period prescribed by the department, results in a waiver of legal rights to judicial review. If the person charged fails to forward the amount assessed or post the bond, the department or the attorney general may bring an action for the collection of the penalty.

§79.92. Sanctions–Injunctive Relief and Civil Penalty.

(a) If it appears that a person in violation of, or is threatening to violate, the Act or a rule or order promulgated under the Act, the commissioner, or the attorney

the Act, the commissioner, or the attorney general at the commissioner's request, may institute an action for injunctive relief to restrain the person from continuing the violation and for civil penalties not to exceed $1,000 for each violation and not exceeding $250,000 in the aggregate.

(b) If the commissioner or the attorney general prevails in the an action under this subsection, the commissioner or the attorney general is entitled to recover reasonable attorney's fees and court costs.

§79.93. Sanctions–Criminal Penalty.

(a) A person commits an offense if the person operates a vehicle storage facility that does not have a valid license issued under the Act.

(b) An offense under this section is a Class C misdemeanor.

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

§79.94. Sanctions–Revocation or Suspension because of a Criminal Conviction.

(c) The commissioner may revoke, suspend, or deny 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.

(b) The department may also, after hearing, suspend, revoke, or deny a certificate of registration because of a person's felony probation revocation, parole revocation or revocation of mandatory supervision.

(c) In determining whether a criminal conviction directly relates to the operation of a vehicle storage facility, the department shall consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the operation and of a vehicle storage facility;

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

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of operating a vehicle storage facility.

(d) In determining the present fitness of a person who has been convicted of a crime, the department shall also consider:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person at the time of the commission of the crime;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person prior to and following the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

(6) other evidence of the person's present fitness, including letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff and chief of police in the community where the person resides; and any other persons in contact with the convicted person.

(e) It shall be the responsibility of the applicant, to the extent possible, to secure and provide the department the recommendations of the prosecution, law enforcement, and correctional authorities as required.

(f) The applicant shall also furnish proof, in such form as may be required by the department, that he or she has maintained a record of steady employment, has supported his or her dependents per court order, has otherwise maintained a record of good conduct, and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted.

§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 enables the safe and effective movement of stored vehicles upon all portions of the lot, both under their own power and under tow, at all times, regardless of prevailing 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, within one hour of which, vehicles will be released to vehicle owners, and the storage lot's state license number preceded by either the phrase "VSF License Number", "License Number", "State License Number" or "TDLR Number";

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

(5) if it does not accept vehicles 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. It is not the intent of this section to require release of vehicles after 12 midnight, and refusal to release after that time, even with notice after 11 p.m., is not a violation of this section;

(6) shall post on its sign a telephone 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, including administrative and preservation/pound fees. This sign shall be located so it is clearly visible to a vehicle owner prior to paying the fees;

(8) shall have a 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;

(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;

(10) shall not permit any tow truck which is not registered and displaying the required Texas Tow Truck license plate per the provisions of the Texas Tow Truck Act, Texas Civil Statutes, Article 6687-9b, and the administrative rules promulgated thereunder, to enter onto the grounds of the facility.

§79.101. Technical Requirements–Storage Fees/Charges.

(a) 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 Stor-

age).

(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.

§79.102. Technical Requirements-Other Statutes and Administrative Rules; City Ordinances. Each vehicle storage facility must meet the requirements of all other applicable statutes and administrative rules promulgated thereunder and all applicable city ordinances in addition to meeting the requirements of these rules. The following statutes and ordinances are at least some of the other laws which may impact your operation of a vehicle storage facility. You should contact the named agency for more information.

(1) Texas Litter Abatement Act, Texas Civil Statutes, Article 4477-9a. This act may limit the storage fees charged, depending upon when notice is provided to the vehicle's owner. This act also provides for the handling of abandoned cars. The act is administered by the Department of Highways and Public Transportation.

(2) Texas Tow Truck Act, Texas Civil Statutes, Article 6687-9b. This act regulates the operation of tow trucks in the state of Texas. This statute is administered by the Department of Licensing and Regulation.

(3) The Property Code, Texas Civil Statutes, §70.003 and §70.004. These sections relate to a lien on a motor vehicle, motorboat, vessel, or outboard motor for towing services.

(4) Any city ordinances relating to zoning. Contact city officials in the city in which your storage facility is located.

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

Issued in Austin, Texas on September 28, 1989.

TRD-8909109

Joseph L. Huertas
Director, Program Management Division
Texas Department of Licensing and Regulation

Earliest possible date of adoption: November 6, 1989

For further information, please call: (512) 463-2906

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Chapter 80. Tow Trucks

- **16 TAC §§80.1, 80.10, 80.20, 80.30, 80.40, 80.60, 80.70, 80. 80, 80.81, 80.82, 80.90, 80.91, 80.92, 80.93, 80.94, 80.100, 80.101, 80.102, 80. 103**

The Texas Department of Licensing and Regulation proposes new §§80.1, 80. 10, 80.20, 80.30, 80.40, 80.60, 80.70, 80.80, 80.81, 80.82, 80.90, 80.91, 80.92, 80.93, 80.94, 80.100, 80.101, 80.102, and 80.103, concerning administrative rules under the Texas Tow Truck Act pertaining to definitions, registration requirements, exemptions, insurance requirements, fees, sanctions, and technical requirements. The new sections involve numbering modifications, changes necessary as a result of the passage of House Bill 863 which changes the Department of Labor and Standards to the Texas Department of Licensing and Regulation and amends the Tow Truck Act, and clarification of changes made to previously proposed new rules in response to comments received at public hearings.

Joseph L. Huertas, program manager, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

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 not be applicable, as the public is relatively unaffected by the proposed sections. 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, P.O. Box 12157, Austin, Texas 78711.

The new sections are proposed under Texas Civil Statutes, Article 6687-9b, which provide the department with the authority to adopt rules regarding minimum safety and insurance standards for tow trucks.

§80.1. Authority. These rules are promulgated under the authority of the Texas Tow Truck Act (Texas Civil Statutes, Article 6687-9b).

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

The Act–Texas Civil Statutes, Article 6687-9b, relating to tow trucks.

Certificate of registration–The document issued by the department authorizing the operation of a specific tow truck.

Commission–The Texas Commission of Licensing and Regulation.

Commissioner–The commissioner of licensing and regulation.

Consent tow–Any tow conducted with the permission of, or at the direction of, the towed vehicle's legal or registered owner, or such owner's authorized representative. Except as set forth in the definition of "nonconsent tow", a tow will be considered a consent tow where the owner is able to give consent.

Department–The Texas Department of Licensing and Regulation.

Motor vehicle–A 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.

Nonconsent tow–Any tow conducted without the permission of, or not at the direction of, the towed vehicle's legal or registered owner, or such owner's authorized representative. Regardless of this definition, certified law enforcement officials may control the scene of an accident in the manner they deem appropriate.

Operate–Driving a tow truck on a public right of way.

Operator–Any person operating a tow truck, regardless of whether the person owns the truck.

Original application–The required written application form, proof of insurance, photographs and any and all applicable fees.

Registrant–A tow truck owner who has obtained a department certificate of registration for a tow truck.

Renewal application–The written application form, proof of insurance, and any and all applicable fees.

Tow truck–A motor vehicle or mechanical device adapted or used to tow, winch, or otherwise move disabled motor vehicles. Specifically, wheeled vehicles with a mechanical, electrical or hydraulic winch, hydraulic wheel lift, or mechanical wheel lift, that are adapted or used to tow, winch or otherwise move disabled vehicles are considered tow trucks. Rollbacks and flat bed trucks with slings, winches or wheel lifts are considered tow trucks. Minitwreckers are also considered tow trucks. This definition does not apply to an individual not using the motor vehicle or mechanical device as part of a business.

Tow truck owner–A person engaged in the business of using a tow truck to tow, winch, or otherwise move a motor vehicle.

§80.20. Registration Requirements.

(a) Each tow truck must have its own certificate of registration. A certificate of registration is not assignable or transferable.

(b) Each certificate or registration expires at midnight on the 31st day of January of each year.

(c) A certificate of registration allows a tow truck to be operated in the state of Texas, provided the tow truck complies with all other applicable state laws. In particular, the provisions of Texas Civil Statutes, the Texas Motor Carrier Act, Article 911b, must be complied with when towing from one incorporated city to another. This Act and its rules do not in any way reduce, diminish, or otherwise affect the jurisdiction of the Texas Railroad Commission.

(d) The certificate of registration, or an accurate copy thereof, shall be kept in the tow truck at all times and presented immediately to any department representative or certified law enforcement official who asks to see it.

(e) A person, corporation, partnership, or any other entity desiring to operate a tow truck shall file an appropriate written application with the department annually on a form provided by the department for that purpose. The written application form shall be accompanied by a certificate of insurance, required photographs and the required fees. The application must be signed by the tow truck's owner or the owner's authorized agent.

(f) The following information is required in the original application:

(1) year and make of the vehicle;

(2) vehicle identification number;

(3) vehicle certificate of title number;

(4) gross weight;

(5) current Texas license plate number;

(6) name, address, and telephone number of the tow truck's owner;

(7) sales tax identification number, if applicable;

(8) two photographs of the tow truck, one of each side, showing the name, address, and telephone number of the business operating the tow truck permanently inscribed or affixed on each side as required by §80. 100 of this chapter (relating to Technical Requirements); and

(9) a certification claiming exemption if an owner is claiming an exemption from cargo insurance coverage.

(g) A renewal application must contain:

(1) the address and phone number of the tow truck owner if different from that indicated on the original application;

(2) the vehicle's current Texas license plate number if it is different from the one indicated on the original application; and

(3) the vehicle's current department certificate of registration number.

(h) Both original and renewal applications shall include a certification that the truck complies with the safety and insurance requirements as set forth in §§80.40 and 80.100 of this title (relating to Insurance Requirements and Technical Requirements-All Tow Trucks).

(i) If the applicant is a corporation, the individual who signs the application form, by his or her signature, is certifying that the corporation is in good standing with the state comptroller's office.

(j) Annual renewal applications may be submitted between November 1 and January 31 of each year. All required fees must be submitted with the written renewal application. Regardless of when a renewal application is submitted, the renewal certificate of registration will be valid from February 1-January 31.

(k) If a tow truck owner fails to renew the certificate of registration before it expires, he may renew it on payment of the renewal fee and a $25 late fee. This renewal certificate of registration will be valid from February 1-January 31. If an application for renewal is not complete by the 31st day after the current certificate of registration expires, the certificate of registration may not be renewed. To reinstate the certificate of registration, the owner must comply with the requirements for an original certificate of registration.

(1) If a tow truck owner is retiring a truck and replacing it, or replacing a truck that is being put out or service due to fire, theft, or other irreparable damage, the owner may submit the required information for the new truck to the department, including a certificate of insurance demonstrating coverage of the new truck, along with a $25 duplicate registration fee, and a replacement certificate of registration will be issued that will remain valid for the replacement truck until the expiration date on the original certificate of registration for the truck being replaced.

§80.40. Insurance Requirements.

(a) A registrant shall procure, and keep in full force and effect at all times when the registration is in effect, all insurance required by this section. At the time of original registration, and upon renewal, the insurance carrier, or its authorized agent, must file a certificate of insurance with the department. The certificate must certify the type and amount of insurance coverage and provide for 30 days written notice to the department of cancellation of or material change in the policy.

(b) The policies and certificates shall be issued by a casualty insurance company which is authorized to do business in this state and shall comply with all applicable State Board of Insurance regulations.

(c) The coverage provisions insuring the public from loss or damage that may arise to any person or property by reason of the operation of a tow truck shall set minimum limits for each tow truck as follows.

(1) Each tow truck must have liability insurance coverage. It is the intent of this subsection to provide for insurance covering damage, except that to the towed vehicle, for which the tow truck owner is liable.

(A) Each tow truck with a gross vehicle weight of 26,000 pounds or less must carry $300, 000 combined single limit coverage.

(B) Each tow truck with a gross vehicle weight over 26,000 pounds must carry $500,000 combined single limit coverage.

(2) Each tow truck must have tow truck cargo, on-hook or similar type insurance. It is the intent of this subsection to require insurance covering damage to the towed vehicle while it is in the care, custody, or control of the tow truck owner and for which said owner is liable. The term "damage" shall include, but is not limited to, damage to the towed vehicle that is the direct or indirect result of an improper hookup or improper towing.

(A) Each tow truck with a gross vehicle weight of 26,000 pounds or less must carry cargo on-hook or similar type insurance in an amount not less than $10,000. In lieu of this coverage, each truck may have garagekeeper's legal liability insurance with direct primary coverage options in an amount not less than $10,000 to cover damage to the towed vehicle. This provision does not apply to an owner whose tow truck tows only property he owns. For this exemption to apply, the owner must certify, in his application for registration, that his truck is used to tow only property he owns. In addition, any owner claiming this exemption must permanently affix on each side of the truck, in letters at least two inches high, the phrase "Not For Hire".

(B) Each tow truck with a gross vehicle weight over 26,000 pounds and a tandem axle must have tow truck cargo or on-hook insurance for the coverage of a towed vehicle in an amount not less than $25,000. In lieu of this coverage, each truck may have garagekeeper's legal liability insurance with direct primary coverage options in an amount not less than $25,000 to cover damage to the towed vehicle. This provision does not apply to an owner whose tow truck tows only property he owns. For this exemption to apply, the owner must certify, in his application for registration, that his truck is used to tow only property he owns. In addition, any owner claiming this exemption must permanently affix on each side of the truck, in letters at least two inches high, the phrase "Not For Hire".

(d) The certificate of insurance shall also:

(1) specify that the policy covers the vehicle subject to the certificate of registration;

(2) list the Department of Licensing and Regulation tow truck registration number, unless the truck is being registered for the first time and does not yet have a registration number;

(3) identify the vehicle by make, model, and vehicle identification number; and

(4) indicate that the policy complies with the intent of and minimum coverage limits established by these rules.

(e) Each tow truck must be insured so as to meet the requirements of all other applicable statutes, including the Texas Motor Carrier Act, in addition to meeting the insurance requirements set forth in this chapter.

(f) A tow truck registration issued under the Act shall be suspended upon cancellation or expiration, for whatever reason, of any insurance required by this section.

(g) If the applicant's tow truck is insured under a fleet policy, the application must state this, and the policy number must be indicated on the application form.

§80.60. Responsibilities of the Department.

(a) The department shall conduct random inspections of registered tow trucks in order to ensure their compliance with the requirements of these rules.

(b) The department shall investigate alleged violations of these rules per the terms and procedures set forth in the department document entitled "Program Management Enforcement Policy/Strategy".

§80.70. Responsibilities of the Registrant.

(a) The registrant must allow the department, as part of an inspection or investigation, to enter his, her, or its business premises during reasonable business hours and examine and copy any records that relate directly or indirectly to the inspection or investigation being conducted, including but not limited to, the operation of the tow truck in question.

(b) The registrant must make the tow truck available for inspection upon reasonable notice given by the department. Reasonable notice shall be defined as not less than four hours.

(c) The registrant must ensure that new certificates of insurance are mailed to the department each time the registrant's insurance is renewed.

§80.80. Fees–Original Registration. The annual fee for an original certificate of registration is $125 for each truck. This fee is not refundable.

§80.81. Fees–Renewal Registration.

(a) The annual fee for a renewal certificate of registration is $50 for each truck. This fee is not refundable.

(b) A late fee of $25 will be charged if the completed renewal certificate of registration application is not postmarked by midnight, January 31 of each year. This fee is not refundable.

§80.82. Fees–Duplicate Registration. A $25 fee will be charged for issuance of a duplicate certificate of registration. This fee is not refundable.

§80.90. Sanctions–Administrative Sanctions.

(a) If a person violates the Act, or a rule or order adopted or issued by the commissioner relating to the Act, the commissioner may:

(1) issue written reprimand to the person that specifies the violation;

(2) revoke or suspend the person's license;

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

(b) If a suspension is probated, the commissioner may require the person to:

(1) report regularly to the commissioner on matters that are the basis of the probation; or

(2) limit practice to the areas prescribed by the commissioner.

(c) If, after investigation of a possible violation and the facts surrounding that possible violation, the department determines that a violation has occurred, the department may issue a preliminary report stating the facts on which the conclusion that a violation occurred is based, recommending that an administrative sanction be imposed on the person charged, and recommending the precise nature and conditions, if any, of that proposed sanction. The department shall base the recommended sanction, and any accompanying conditions, on the following factors:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

(d) Not later than the 14th day after the day on which the preliminary report is issued, the department shall give written notice of the violation to the person charged. The notice shall include:

(1) a brief summary of the charges;

(2) a statement of the proposed sanction, and any accompanying conditions; and

(3) a statement of the right of the person charged to a hearing on the occurrence of the violation and the sanction and any terms thereof.

(e) Not later than the 20th day after the date on which the notice is received, the person charged may accept the determination of the department made under this rule, including the recommended sanction and all accompanying conditions, or make a written request for a hearing on that determination.

(f) If the person charged with the violation accepts the determination of the department, the commissioner shall issue an order approving the determination and ordering that the recommended sanction and accompanying conditions be imposed upon that person.

(g) If the person charged fails to respond in a timely manner to the notice, or if the person requests a hearing, the commissioner shall set a hearing, give written notice of the hearing to the person, and designate a hearings examiner to conduct the hearing.

(h) If an administrative hearing is held, and the person wishes to dispute the administrative sanction imposed, not later than the 30th day after the date on which the decision is final as provided by the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a) §16(d), the person charged shall file a petition for judicial review contesting the fact of the violation and/or the administrative sanction. Judicial review is subject to the substantial evidence rule and shall be instituted by filing a petition with a Travis County district court as provided by the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a) §19.

§80.91. Sanctions–Administrative Penalty/Fine.

(a) If a person violates the Act, or a rule or order adopted or issued by the commissioner relating to the Act, the commission may, in addition to or in lieu of a sanction imposed under §80.90 of this Chapter (relating to sanctions–Administrative Sanctions), assess an administrative penalty in an amount not to exceed $1,000 for each violation.

(b) A penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

(c) If, after investigation of a possible violation and the facts surrounding that possible violation, the commissioner determines that a violation has occurred, the commissioner may issue a preliminary report stating the facts on which the conclusion that a violation occurred is based, recommending that an administrative penalty not to exceed $1,000 for each violation be imposed on the person charged, and recommending the amount of that proposed penalty. The commissioner shall base the recommended amount of the proposed penalty on the following factors:

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation; and

(5) any other matters that justice may require.

(d) Not later than the 14th day after the day on which preliminary report is issued, the department shall give written notice of the violation to the person charged. The notice shall include:

(1) a brief summary of the charges;

(2) a statement of the amount of the penalty recommended; and

(3) a statement of the right of the person charged to a hearing on the occurrence of the violation and the amount of the penalty.

(e) Not later than the 20th day after the date on which the notice is received, the person charged may accept the determination of the commissioner made under this rule, including the recommended penalty, or make a written request for a hearing on that determination.

(f) If the person charged with the violation accepts the determination of the commissioner, the commission shall issue an order approving the determination and ordering that the person pay the recommended penalty.

(g) If the person charged fails to respond in a timely manner to the notice, or if the person requests a hearing, the commissioner shall set a hearing, give written notice of the hearing to the person, and designate a hearings examiner to conduct the hearing.

(h) If an administrative hearing is held, not later than the 30th day after the date on which the decision is final as provided by the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a) §16(d), the person charged shall:

(1) pay the penalty in full; or

(2) file a petition for judicial review contesting the fact of the violation and/or the administrative penalty/fine. Judicial review is subject to the substantial evidence rule and shall be instituted by filing a petition with Travis County district court as provided by the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a) §19. If this petition for judicial review is filed, the person must forward the amount of the administrative penalty/fine to the department for deposit in an escrow account, or post a supersedes bond with the department in the amount of the penalty/fine, until judicial review is final.

(i) A person charged with a penalty who is financially unable to comply with subsection (h)(2) of this section is entitled to judicial review if the person files with the court, as part of the person's petition for judicial review, a sworn statement that the person is unable to meet the requirements of that subsection.

(j) Except as provided by subsection (i) of this section, failure to forward the amount assessed or post the bond with the department, in the manner and within the period prescribed by the department, results in a waiver of legal rights to judicial review. If the person charged fails to forward the amount assessed or post the bond, the department or the attorney general may bring an action for the collection of the penalty.

§80.92. Sanctions–Injunctive Relief and Civil Penalty. If it appears that a person is in violation of, or is threatening to violate, the Act or a rule or order of the commissioner related to the Act, the attorney general or the commissioner may institute an action for injunctive relief to restrain the person from continuing the violation and for civil penalties not exceeding $1,000 for each violation and not exceeding $250,000 in the aggregate.

§80.93. Sanctions–Criminal Penalty.

(a) A person commits an offense if the person operates a tow truck that does not have a valid certificate of registration issued under the Act.

(b) An offense under this section is a Class C misdemeanor.

§80.94. Sanctions–Revocation or Suspension Because of a Criminal Conviction.

(a) Pursuant to Texas Civil Statutes, Article 6252-13c, the department, after a hearing, may suspend or revoke an existing certificate of registration, or disqualify a person from receiving a certificate of registration, because that person has a felony or misdemeanor conviction that directly relates to the duties and responsibilities involved in operating a tow truck. The department may also, after hearing, suspend, revoke, or deny a certificate of registration because of person's felony probation revocation, parole revocation, or revocation of mandatory supervision.

(b) In determining whether a criminal conviction directly relates to the operation of a tow truck, the department shall consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the safe operation and insuring of a tow truck;

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

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties any discharge the responsibilities of operating a tow truck.

(c) In determining the present fitness of a person who has been convicted of a crime, the department shall also consider:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person at the time of the commission of the crime;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person prior to and following the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

(6) other evidence of the person's present fitness, including letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff and chief of police in the community where the person resides; and any other persons in contact with the convicted person.

(d) It shall be the responsibility of the applicant, to the extent possible, to secure and provide the department the recommendations of the prosecution, law enforcement, and correctional authorities as required.

(e) The applicant shall also furnish proof, in such form as may be required by the department, that he or she has maintained a record of steady employment, has supported his or her dependents per court order, has otherwise maintained a record of good conduct, and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted.

§80.100. Technical Requirements–All Tow Trucks.

(a) Each tow truck must display tow truck license plate issued by the department of motor vehicles under Texas Civil Statutes, Article 6675a-1. The plate must be permanently attached and must face toward the rear of the vehicle. Additionally, the plate should be placed as high up on the vehicle as possible.

(b) Each tow truck shall have the tow truck owner's business name, address, and telephone number permanently inscribed or affixed on each side of the truck in letters no less than two inches high. The lettering should be of a color sufficiently different from the color of the truck to make it clearly and readily visible. For purposes of this requirement, the address need not include the street address or post office box number but must include the city where the business is based. If the business is based in an unincorporated area, the county name must appear on the sides of the truck. If federal law prohibits identification of the name or nature of the business, substitute identification approved by the department will be allowed. In the event a self-contained non-self-propelled towing device, or some other form of auxiliary device, is used, that device need not meet this requirement; however, the vehicle to which that device is attached and which is providing the motive and/or braking forces, must meet this requirement.

(c) If the tow truck owner is claiming the cargo insurance exemption allowed by §80.40(2)(A) and (B) of this chapter (relating to Insurance Requirements), he must permanently affix on each side of the truck, in letters at least two inches high, the phrase "Not For Hire". The phrase "Not For Hire" does not exempt an operator from registering his/her/its tow truck.

(d) Each truck shall have brakes that meet reasonable braking performance requirements under all loading conditions. In the event that a self-contained non-propelled towing device, or some other form of auxiliary device, is used, that device need not meet this requirement; however, the vehicle to which that device is attached, and which is providing the braking force, must meet this requirement.

(e) No tow truck shall tow more than its actual weight unless it has a 35,000 pound winch capacity (single or dual line), a 5/8" cable or its equivalent, and air brakes. In the event that a self-contained non-self-propelled towing device, or some other form of auxiliary device, is used, the term "actual weight" as used in this subsection shall mean the actual weight of said device plus the actual weight of the vehicle to which that device is attached and which is providing the motive and/or braking forces. If a certified law enforcement officer at the scene of an accident determines that

the scene must be cleared immediately, and a heavy-duty tow truck is not available, the officer may waive this requirement at the scene.

(f) If a tow truck is pulling two or more vehicles, the tow truck must be able to tie into and operate the service brakes on the rearmost towed vehicle. This provision does not apply if the rearmost towed vehicle has only vacuum brakes. In the event that a self contained non-self-propelled towing device, or some other form of auxiliary device, is used, that device need not meet the requirement; however, the vehicle to which that device is attached, and which is providing the motive and braking forces, must meet this requirement.

(g) Each tow truck shall be equipped with a winch; a winch line and boom with a lifting capacity of not less than 8,000 pounds, single line capacity; or a hydraulic or mechanical wheel lift with a lifting capacity of not less than 2, 500 pounds. In the event that a self-contained non-self-propelled towing device, or some other form of auxiliary device, is used, that device must have a lifting capacity of not less than 5,000 pounds and a towing capacity of not less than 7, 000 pounds.

(h) Each tow truck shall carry the following as standard equipment:

(1) a tow sling, mechanical lift, or hydraulic lift which is sufficient to prevent the swinging of any equipment being transported. This subsection does not apply to vehicle carriers and rollbacks unless the wheels of a vehicle they are towing are in contact with the ground. In the event that a self-contained non-self-propelled towing device, or some, other form of auxiliary device, is used, the vehicle to which that device is attached, and which is providing the motive and braking forces, does not need to provide this equipment;

(2) 5/16-inch link steel safety chains for tow trucks with a gross vehicle weight of 10,000 pounds or less and 3/8-inch steel safety chains or their equivalent for tow trucks with a gross vehicle weight over 10,000 pounds. These link sizes are minimums. These chains are in addition to the normal J-hook-up chains;

(3) rope, wire, or straps suitable for securing doors, hoods, trunks, etc;

(4) outside rearview mirrors on both sides of the truck. In the event that a self-contained non-self-propelled towing device, or some other form of auxiliary device, is used, that device need not meet this requirement; however, the vehicle to which that device is attached, and which is providing the motive and/or braking forces, must meet this requirement.

(i) If a tow truck is pulling a vehicle and the towed vehicle, does not have functioning tail lights or turn signals, the tow truck operator must supply the towed vehicle with functioning tail lights and turn signals. The tail lights and turn signals must provide safe lighting of the towed vehicle.

(j) If a tow truck uses a winch, a safety wrap must performed.

(k) safety chains must be used on all tows, regardless of whether a sling style or wheel lift style apparatus is used.

(l) All tow trucks with a slip-in bed must have the bed properly secured to the frame of the truck by a minimum of eight one-half inch diameter bolts. At least four of these bolts must be at the front of the slip-in bed.

(m) No tow truck shall lift or tow more than its safe lifting and stopping capacities permit.

(n) All tow truck operators must have a valid driver's license of the proper class.

(o) All required safety mechanisms of the tow truck, including but not limited to all headlights, tail lights, turn signals, brakes, brake lights, hazard lights, flashing warning lights, windshield wipers, wiper blades, and tires, shall operate and be in good repair.

(p) All tow trucks shall operate within the applicable recommended towed vehicle manufacturer's safety policies and procedures regarding the hook-up and towing of the towed vehicle.

§80.101. Technical Requirements-Accident Scene Tow Trucks.

(a) Any tow truck towing from the scene of an accident must be equipped with the following. In the event that a self-contained non-propelled towing device, or some other form of auxiliary device, is used, that device need not meet this requirement; however, the vehicle to which that device is attached, and which is providing the motive and/or braking forces, must meet the following requirements:

(1) tow trucks with a gross vehicle weight of 26,000 pounds or less shall carry a five pound fire extinguisher. Tow trucks with a gross vehicle weight over 36,000 pounds shall carry one 10 pound fire extinguisher or two five pound fire extinguisher. The fire extinguisher or extinguisher shall be properly filled, operable, and located so they are readily accessible for use. All fire extinguishers shall meet no less than the requirements of the *National Fire Protection Handbook*, 14th edition (1976), and shall be so labeled by a national testing laboratory;

(2) one crowbar or wrecking bar;

(3) a broom;

(4) three portable red emergency reflectors, orange safety cones, or flares;

(5) a container to carry glass and debris cleaned from streets when picking up a damaged or disabled vehicle;

(6) a spotlight or flashlight; and

(7) flashing warning lights that comply with the Uniform Act Regulating Traffic on Highways (Texas Civil Statutes, Article 6701-d). That Act allows the use of red and/or amber lenses only. However, the red lenses may be used only under the direction of a law enforcement officer or while hooking up to a disabled vehicle in the roadway.

(b) A tow truck operator shall ensure that while he is lifting a vehicle in preparation for towing no one but he and certified law enforcement officers shall be within a safe distance of the tow truck and vehicle to be towed. A safe distance is at least twice the distance between the end of the boom and the point of hook-up on the vehicle being winched or twice the distance the car is being lifted, which ever is greater. If a hydraulic or mechanical lift is being used, a safe distance is twice the distance to which the lift arm is extended.

(c) The operator of each tow truck called to the scene of an accident shall remove from the roadway all resulting wreckage or debris, including all broken glass, unless otherwise directed by a certified law enforcement officer, or a representative of either the Texas Department of Highways, or in the case of hazardous materials, the Texas Water Commission. Resulting wreckage or debris does not include the towed vehicle's load or cargo.

(d) certified law enforcement officials may do whatever is necessary to control the scene of an accident when an emergency situation exists.

§80.102. Technical Requirements–Repossession/Recovery Tow Trucks.

(a) No repossession/recovery tow truck shall use a tow bar with towing pins or a tow blade to tow a vehicle more than eight blocks. After eight blocks, or sooner, the tow truck operator must drop the vehicle and rehook it following all safety procedures established by §80.100 of this chapter (relating to Safety Requirements–All Tow Trucks) and by the manufacturer of the vehicle being towed.

(b) The requirements for safety wraps and safety chains do not apply during the first eight blocks where the towing pins or tow blade are used. Thereafter, they must be utilized as set forth in §80.100(j) and (k) of this chapter (relating to Technical Requirements–All Tow Trucks).

§80.103. Technical Requirements–Other Statutes and Administrative Rules. Each tow truck must meet the requirements of all other applicable statutes and administrative rules promulgated thereunder in addition to meeting the requirements of these rules. The following statutes are at least some of the other laws which may impact your oper-

ation of a tow truck. You should contact the named agency for more information.

(1) Texas Motor Carrier Act, Texas Civil Statutes, Article 911b. This act may require Railroad Commission authority to pull from incorporated city to incorporated city.

(2) Texas Litter Abatement Act, Texas Civil Statutes, Article 4477-9a. This act may limit the storage fees charged, depending upon when notice is provided to the vehicle's owner. This act also provides for the handling of abandoned cars. This Act is administered by the Department of Highways and Public Transportation.

(3) Texas Vehicle Storage Facility Act, Texas Civil Statutes, Article 6568?-9a. This Act regulates the operation of facilities in which non-consent tows are stored. This statute is administered by the Department of Licensing and Regulation.

(4) Texas Uniform Act regulating Public Highways, Texas Civil Statutes, Article 6701-4. This Act is administered by the Department of Public Safety and relates in part to the use of emergency lights by tow trucks.

(5) The Property Code, Texas Civil Statutes, §70.003 and §70.004. These sections relate to a lien on a motor vehicle, motorboat, vessel, or outboard motor for towing services.

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

Issued in Austin, Texas, on September 28, 1989.

TRD-8909107 Joseph L. Huertas
Director, Program Management Division
Texas Department of Licensing and Regulation

Earliest possible date of adoption: November 6, 1989

For further information, please call: (512) 463-2906

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TITLE 22. EXAMINING BOARDS

Part XXII. Texas State Board of Public Accountancy

Chapter 503. Definitions.

• 22 TAC §503.1

The Texas State Board of Public Accountancy proposes an amendment to §503.1, concerning definitions. The amendment will change and add to the following definitions contained in the substantive rules of the board: board business, charitable organization, competitive bid, good standing, licensee, person, practice of public accountancy, and practice unit.

Bob E. Bradley, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bradley 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 section will be consistency between amendments to the rules of professional conduct and amendments to the Act. There is no anticipated economic cost to individuals or small businesses who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to definitions used in the rules of professional conduct.

§503.1. Definitions. The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

Charitable organization–An organization which has been granted tax exempt status under the Internal Revenue Code of 1986, §501(c), as amended.

Competitive bid–Any communication by a certificate or registration holder which is a proposal, other than an advertisement or a fee estimate, to a prospective client to perform professional services when:

(A) such proposal includes the amount to be charged or received, whether expressed as a lump sum, a maximum or minimum amount, or any form of unit price, including per diem or hourly rates with or without a maximum, minimum, or average sum; and

(B) the proposal is given with the knowledge that similar proposals are being sought concurrently from one or more other certificate or registration holders.

Good standing–Compliance by a certificate or registration holder with the licensing regulations of the board, including the mandatory continuing education requirements and payment of the annual license fee, and any penalties and other costs attached thereto. In the case of board-imposed disciplinary or administrative sanctions, the certificate or registration holder must have complied with all the provisions of the board order to be considered in good standing.

Holding out to the public as a certificate or registration holder–As that term is used in the definition of practice of (or practicing) public accountancy, any representation that a person holds a certificate or registration. Any such representation is presumed to invite the public to rely upon the professional skills implied by the certificate or registration. A representation includes oral or written communication stating that the person holds a certificate or registration. Written communication includes a letterhead, business card, office sign, or advertisement. Holding out to the public as a certificate or registration holder does not include:

(A) the display of the original of a valid certificate or registration unless a valid license also is displayed.,

(B) a representation made by a faculty member of an educational institution made only in connection with the duties of the person as a faculty member; or

(C) a representation made in a book, article, or other publication or in connection with the promotion of the publication. However, this exception does not apply to representations in a publication or in related promotional material either or both of which include an offer to perform a service or to sell a product other than the publication itself.

Licensee–The holder of a license by the board to a certificate or registration holder pursuant to the Act, or pursuant to provisions of a prior law or prior public accountancy act. [An individual, partnership, or corporation holding a license issued by the board pursuant to the Public Accountancy Act of 1979, as amended, Texas Civil Statutes, Article 41a-1, 1981. The term includes each firm of which a licensee is a partner, officer, or shareholder of a firm which is a licensee.]

Person–An individual, sole proprietorship, partnership, professional or other corporation, or other entity (such as a practice unit).

Practice of (or practicing) public accountancy–The offering to perform or the performance by a person holding himself out to the public as a certificate or registration holder, or the performance by a certificate or registration holder, for a client or potential client, of any person, any office of which is required to be registered under the Public Accountancy Act of 1979, §10, as amended, of a service involving the use of accounting or auditing skills. The phrase "service involving the use of accounting or auditing skills" includes:

(A) the issuance of reports on financial statements;

(B) the furnishing of management advisory or consulting services,

(C) the preparation of tax returns or the furnishing of advice on tax matters; and

(D) the provision of advice or recommendations in connection with the sale of products, when the advice or recommendations require or imply the possession of accounting or auditing skills or expert knowledge in auditing or accounting.

[Performing or offering to perform for a client, one or more types of services requiring accounting or auditing skills, including the use of such skills in preparing tax returns or providing advice on federal, state, and other tax matters, or performing or offering to perform management advisory or consulting services, or any other service performed by professional accountants for the public.]

Practice unit–Each office of a firm (partnership, corporation, or sole proprietorship) required to be registered with the board for the purpose of practicing public accountancy.

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

Issued in Austin, Texas on September 25, 1989.

TRD-8909142 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: November 6, 1989

For further information, please call: (512) 450-7066

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Chapter 511. Certification as CPA

Education Requirements

• 22 TAC §511.54

The Texas State Board of Public Accountancy proposes new §511.54, concerning education requirements for exam candidates. The new section sets out the qualifications to sit for the exam which apply to a candidate qualified under the 1945 Act.

Bob E. Bradley, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bradley 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 provision of a new section, addressing the requirements which apply to an individual who qualified under the 1945 Act. 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 Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The new section is proposed under Texas Civil Statutes, Article 41a-1, §6(a) which provide the Texas State Board of Public Accountancy with the authority to promulgate rules deemed necessary and advisable to effectuate the Public Accountancy Act of 1945.

§511.54. Qualifications Under the 1945 Act, as Amended. An applicant for the examination under the 1945 Act, as amended must meet one of the following requirements:

(1) initial applications filed between August 28, 1961, and August 27, 1964:

(A) completion of 60 semester hours of college credit, and four years of satisfactory work experience; or

(B) graduation from a junior college, and four years of satisfactory work experience;

(2) initial applications filed between August 28, 1964, and August 27, 1967:

(A) completion of 60 semester hours of college credit or graduation from a junior college, completion of 20 semester hours of accounting courses, completion of nine semester hours of related business subjects; and three years of satisfactory work experience; or

(B) graduation from high school, completion of 20 semester hours of accounting courses and nine semester hours of related business subjects taken at a college or university, and six years of satisfactory work experience under the supervision of a CPA.

(3) initial applications filed between August 28, 1967, and August 31, 1979:

(A) completion of a baccalaureate degree at a recognized college or university, completion of 20 semester hours of accounting courses and nine semester hours of related business subjects, and two years of satisfactory work experience; or

(B) graduation from high school, completion of 60 semester hours of college credit taken at a recognized college or university, and six years of satisfactory work experience under the supervision of a CPA; or

(C) completion of a masters degree at a recognized college or university, completion of 20 semester hours of accounting courses and nine semester hours of related business subjects, and one year of satisfactory work experience.

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

Issued in Austin, Texas, on September 25, 1989.

TRD-8909143 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: November 6, 1989

For further information, please call: (512) 450-7066

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• 22 TAC §511.61

The Texas State Board of Public Accountancy proposes new §511.61, concerning education requirements for exam candidates. The new section sets out the qualifications to sit for the exam which apply to applicants for the May 1998 exam.

Bob E. Bradley, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bradley 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 provision of a new section, addressing the requirements which apply to individuals who will apply for the exam in the future. There is no anticipated economic cost to individuals or small businesses who are required to comply with the sections as proposed

Comments on the proposal may be submitted to Cynthia Hairgrove, Attorney, 1033 LaPosada, Suite 340, Austin, Texas 78752-3892.

The new section is proposed under Texas Civil Statutes, Article 41a-1, §6a, which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to education requirements for exam candidates.

§511.61. Qualifications Under the 1979 Act, as Amended in 1989, Effective on September 1, 1997. An applicant for the examination under the 1979 Act as amended in 1989 must meet the following education requirements in order to qualify to write the examination (Effective September 1, 1997).

(1) An applicant who holds a baccalaureate degree, a graduate degree, or its equivalent from an accredited college or university recognized by the board, with not less than 30 semester hours or quarter-hour equivalents of accounting, of which at least 20 semester hours are in core accounting courses, as defined in §511.57 of this title (relating to the Definition of Accounting Courses), and 20 additional semester hours or quarter-hour equivalents of related

courses in other areas of business administration, is eligible to attempt the examination.

(2) An applicant who has an additional number of accounting and business semester hours or quarter-hour equivalents of study in a business degree program of a college or university recognized by the board, that when added to the classwork required for the baccalaureate degree equals 150 or more semester or quarter-hour equivalents, of which at least 42 hours are in accounting, is eligible to attempt the examination. A grade of at least a "C" must be obtained on each accounting hour applied toward satisfying these requirements. The requirements of this section must be met before a certificate will be issued.

(3) Two years of qualifying experience under the direct supervision of a CPA is required before a certificate will be issued.

(4) An applicant who is currently enrolled in a sufficient number of semester hours or quarter-hour equivalents to fulfill the educational requirements of this title, is eligible to attempt the examination. The results of the examination are valid only if the individual submits to the board, not later than 15 days before the date of the uniform grade release for the examination satisfactory evidence, in the form of an official transcript, that the applicant completed the requirements of paragraph (1) of this section. In the submission, the applicant must include documentation of all grades and credits earned. An applicant who takes the examination under this subsection and fails to submit the required evidence of completion before the deadline forfeits all examination fees.

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

Issued in Austin, Texas, on September 25, 1989.

TRD-8909144 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

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For further information, please call: (512) 450-7066

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Educational Requirements

• 22 TAC §511.62

The Texas State Board of Public Accountancy proposes §511.62, concerning educational requirements for exam candidates. The new section requires a candidate, who has passed the exam, to provide the board with a transcript indicating compliance with education requirements at least 15 days prior to release of grades, or forfeit fees paid and scores earned.

Bob E. Bradley, executive director has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bradley 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 ability of board to maintain records relating to a candidates educational qualifications. There is no anticipated economic cost to individuals or small businesses who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The new section is proposed under Texas Civil Statutes, Article 41a-1, §6(a) which provide the Texas state Board of Public Accountancy with the authority to promulgate rules relating to requirements for exam candidates.

§511.62. Educational Evaluation Prior to Grade Release.

(a) An applicant for the examination under §511.55(3) of this title (relating to Qualification Under the 1979 Act, as Amended in 1989), or §511. 61(4) of this title (relating to Qualifications Under the 1979 Act, As Amended in 1989, Effective on September 1, 1997), must meet the following requirements:

(1) provide documentation of the successful completion of the educational requirements of §511.55(1) or (2) of this title (relating to Qualification Under the 1979 Act, as Amended in 1989), or §511.61(1) of this title (relating to Qualifications Under the 1979 Act, as Amended in 1989, Effective September 1, 1997), not later than 15 days prior to the uniform grade release date for the examination; and

(2) provide an official transcript.

(b) If an applicant fails to comply with subsection (a)(1) and (2) of this section, all examination fees paid are forfeited. The board must:

(1) void the applicant's examination and scores without reporting them to the candidate; and

(2) notify the applicant of this action.

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

Issued in Austin, Texas, on September 25, 1989.

TRD-8909145 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: November 6, 1989

For further information, please call: (512) 450-7066

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CPA Examination

• 22 TAC §511.80

The Texas State Board of Public Accountancy proposes new §511.80, concerning the CPA examination. The new section permits the board to grant conditional credit to a candidate who passes part, but not all, of the examination.

Bob E. Bradley, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bradley 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 allowance of a candidate to take only the parts of the examination he or she needs to receive total examination credit. There is no anticipated economic cost to individuals or small businesses who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The new section is proposed under Texas Civil Statues, Article 41a-1, §6(a), which provide the Texas state Board of Public Accountancy with the;authority to promulgate rules concerning granting of conditional credit to candidates who pass parts, but not all of the CPA examination.

§511.80. Granting of Credit.

(a) The board shall grant conditioning credit to a candidate for the satisfactory completion of the written examination under the following conditions:

(1) the candidate earns a grade of 75 or higher on the accounting practice subject of the examination; or

(2) the candidate earns a grade of 75 or higher on the accounting practice subject of the examination; or

(3) the candidate is an attorney and has complied with §511.73 of this title (relating to Exemption for attorneys), and earns a grade of 75 or higher on any subject of the examination, except for the business law subject.

(b) The board shall grant credit after the establishment of conditioning credit to a candidate for the satisfactory completion of any subject, when the candidate earns a grade of 75 or higher on that subject.

(c) A candidate receiving and retaining credit for every subject on the examination, subject to the limitations imposed by the Act, shall be considered by the board to have completed the examination and may make application for certification as a certified public accountant.

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

Issued in Austin, Texas, on September 25, 1989.

TRD-8909139 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: November 6, 1989

For further information, please call: (512) 450-7066

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Experience Requirements

• 22 §511.123

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

The Texas State Board of Public Accountancy proposes the repeal of §511. 123, concerning experience requirements for CPA candidates. The repeal will be replaced by a new section which sets out work experience reporting requirements reporting timetables, and qualifying experience.

Bob E. Bradley, executive director, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Bradley also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be conformity with the provisions of the new Act. There is no anticipated economic cost to individuals or small businesses who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The new section is proposed under Texas Civil Statutes, Article 41a-1, §6(a) , which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to the experience requirements a candidate must meet prior to certification.

§511.123. Experience Requirements.

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

Issued in Austin, Texas, on September 25, 1989.

TRD-8909147 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: November 6, 1989

For further information, please call: (512) 450-7066

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The Texas State Board of Public Accountancy proposes new §511.123, concerning experience requirements for CPA candidates. The new section sets out the work experience reporting requirements, reporting timetable, and qualifying experience.

Bob E. Bradley, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bradley 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 clarification of materials to be submitted to the board to satisfy the work experience requirement. There is no anticipated economic cost to individuals or small businesses who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The new section is proposed under Texas Civil Statutes, Article 41a-1, §6(a) , which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to the experience requirements a candidate must meet prior to certification.

§511.123. Reporting Work Experience.

(a) Experience gained in public accounting may be reported in calendar or hourly time. A normal work year is defined as 2,080 hours. Experience not in public accounting must be reported in calendar time only.

(b) The board shall consider experience earned on a part-time basis, provided:

(1) at least 20 hours per week are worked; or

(2) at least three days per week are worked.

(c) All experience (not in public accounting) presented to the board for consideration must be accompanied by the following items:

(1) detailed job description;

(2) statement describing the nonroutine work performed and a description of important accounting matters, requiring independent thought and judgment from the supervising certified public accountant; and

(3) documentation of direct daily supervision if this area is questionable by the board.

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

Issued in Austin, Texas, on September 25, 1989.

TRD-8909146 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: November 6, 1989

For further information, please call: (512) 450-7066

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Certification

• 22 TAC §511.162

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

The Texas State Board of Public Accountancy proposes the repeal of §511. 162, concerning certificates issued by the board. The repeal will be replaced by a new section which will require all board members to sign each certificate.

Bob E. Bradley, executive director, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Bradley also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the enactment of a new §511.162, providing a logical sequence of the certification rules. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The repeal is propped under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding the format of CPA certificates.

§511.162. Application for Certification by Exam.

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

Issued in Austin, Texas, on September 25, 1989.

TRD-8909149 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: November 6, 1989

For further information, please call: (512) 450-7066

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The Texas State Board of Public Accountancy proposes new §511.162, concerning applications for a CPA certificate. The new section sets out the information which must be submitted to the board prior to issuance of a certificate.

Bob E. Bradley, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as

a result of enforcing or administering the section.

Mr. Bradley 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 of the procedure for certification application. 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 Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The new section is proposed under Texas Civil Statutes, Article 41a-1, §6(a) , which provide the Texas State Board of Public Accountancy with the authority to promulgate rules regarding the procedure for certification application.

§511.162. Application for Certification by Exam.

(a) Application for issuance of the CPA certificate must be made on forms prescribed by the board and shall be in compliance with board rules and with all applicable laws.

(b) The board will send an application for issuance of the CPA certificate to all candidates who successfully complete the Uniform CPA Examination, and thereafter as requested by the same candidates.

(c) Each applicant must submit with the issuance application, all the information required in §511.161 of this title (relating to Qualifications for Issuance of a Certificate).

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

Issued in Austin, Texas, on September 25, 1989.

TRD-8909148 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: November 6, 1989

For further information, please call: (512) 450-7066

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• 22 TAC §511.164

The Texas State Board of Public Accountancy proposes an amendment to §511. 164, concerning the name of a CPA certificate. The amendment will require a candidate's legal name to appear on the certificate.

Bob E. Bradley, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bradley 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 prevention of confusion and misidentification relating to individuals licensed by the board. 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 Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to names on certificates.

§511.164. Names on Certificates. The certificate of a certified public accountant [A licensee's certificate] shall be issued under the legal name of the candidate [his or her legal name,] as it appears on the birth certificate or as changed by court order, [or] marriage license[.], or divorce decree. At the candidate's [applicant's] option, words or abbreviations such as "Jr," or "III" do not have to appear on the certificate [an applicant's certificate] or the board's records, even though such words or abbreviations are part of the applicant's legal name.

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

Issued in Austin, Texas, on September 20, 1989.

TRD-8909150 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: November 6, 1989

For further information, please call: (512) 450-7066

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Certification

• 22 TAC §511.166

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

The Texas State Board of Public Accountancy proposes the repeal of §511. 166, concerning reinstatement of registration. The section is repealed because the language of this section is now contained in §511.169, concerning reinstatement of registration.

Bob E. Bradley, executive director, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Bradley also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the allowance for adopting a new section that will conform with recent amendments to the Act. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The repeal is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to reinstatement of registration.

§511.166. Reinstatement of Registration.

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

Issued in Austin, Texas, on September 25, 1989.

TRD-8909151 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: November 6, 1989

For further information, please call: (512) 450-7066

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The Texas State Board of Public Accountancy proposes new §511.166, concerning replacement certificates issued by the board. The new section will permit the board to replace certificates at cost and will prohibit possession of multiple certificates.

Bob E. Bradley, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bradley 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 allowance of the board to recover duplicitous costs and the prohibition of fraudulent possession of more than one certificate. 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 Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-2892.

The new section is proposed under Texas Civil Statutes, Article 41a-1, §6(a) , which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to replacement certificates.

§51.166. Replacement Certificates.

(a) Replacement certificates may be issued by the board in appropriate cases and upon payment by the certified public accountant or public accountant of the actual cost, as determined by the board, of the replacement certificate or registration as a public accountant. A registration or certificate holder is specifically prohibited from possession multiple Texas certificates as a certified public accountant or registration as a public accountant.

(b) When a replacement certificate is requested, the registration or certificate holder must return the certificate in his or her possession or submit a sworn affidavit describing the occurrence which necessitated the replacement certificate.

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

Issued in Austin, Texas, on September 25, 1989.

TRD-8909152 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: November 6, 1989

For further information, please call: (512) 450-7066

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• 22 TAC §511.168

The Texas State Board of Public Accountancy proposes new §511.168, concerning reinstatement of a certificate. This new section will list the requirements which must be satisfied prior to application for reinstatement of a certificate.

Bob E. Bradley, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bradley 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 conformity with recent amendments to the Act. 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 Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The new section is proposed under Texas Civil Statutes, Article 41a-1, §6(a) , which provide the Texas State Board of Public Accountancy with the authority to promulgate rules concerning reinstatement of a certificate.

§511.168. Reinstatement of a Certificate.

(a) An individual seeking reinstatement of a certificate as a certified public accountant must, unless otherwise provided by board order, show satisfactory evidence of completion of a minimum of 120 hours of qualifying continuing professional education course within the three most recent reporting periods.

(b) An individual relinquishing the certificate may not apply for reinstatement, but may apply for the issuance of a new certificate upon the completion of all requirements for the issuance of such certificate.

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

Issued in Austin, Texas, on September 25, 1989.

TRD-8909140 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: November 6, 1989

For further information, please call: (512) 450-7066

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• 22 TAC §511.170

The Texas State Board of Public Accountancy proposes new section §511.170, concerning investigations of CPA candidates. The new section will permit the board to obtain criminal history information on examination applicants; and to deny issuance of a certificate to any applicant who fails to provide a set of fingerprints upon request.

Bob E. Bradley, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bradley 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 conformity with recent amendments to the Act. 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 Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The new section is proposed under Texas Civil Statutes, Article 41a-1, §6(a) , which provide the Texas State Board of Public Accountancy with the authority to promulgate rules concerning investigations of CPA candidates.

§511.170. Investigations.

(a) The board shall obtain criminal history record information maintained by the following agencies, to be used in investigating the qualifications of a candidate for the issuance of a certificate:

(1) Texas Department of Public Safety;

(2) Federal Bureau of Investigation; and

(3) other law enforcement agencies.

(b) If a candidate does not provide a complete set of fingerprints necessary to obtain the criminal history record information, the board will deny the application for issuance of a certificate.

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

Issued in Austin, Texas, on September 25, 1989.

TRD-8909141 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: November 6, 1989

For further information, please call: (512) 450-7066

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TITLE 28. INSURNACE

Part II. Industrial Accident Board

Chapter 42. Medical Benefits

Subchapter B. Medical Cost Evaluation

• 28 TAC §42.137

The Industrial Accident Board proposes new §42.137, concerning medical utilization review. The proposed new section provides a procedure whereby the injured worker and the insurance carrier may agree to request the board to review and make an informal, nonbinding determination regarding the necessity of either proposed or already provided medical treatment. The proposed new section also establishes that the carrier will be liable for any costs incurred by the board in providing the review.

Richard Fulcher, acting executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Fulcher has determined that the proposed section will have no effect on local employment.

Mr. Fulcher 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 greater certainty about what constitutes compensable treatment for claimants, health care providers and carriers, resulting in improved access to health care, prompter payment of bills, and fewer disputes. There is no anticipated economic cost to individuals or small businesses who are required to comply with the section as proposed.

The board will hold a public hearing on October 10, 1989, for the purpose of taking public testimony on the proposed section, as well as proposed new §§53. 20, 53.47, 53.48, and 53.64 (published elsewhere in this issue). The hearing will commence at 9 a.m. in Room 255, Bevington Reed Building, 200 East Riverside, Austin. Comments on the proposal may be submitted to Richard Fulcher, Acting Executive Director, Industrial Accident Board, 200 East Riverside Drive, First Floor, Austin, Texas 78704-1287. Comments will be accepted in writing for 20 days after publication of this proposal in the *Texas Register*.

The new section is proposed under Texas Civil Statutes, Article 8307, §4(a), which provide the Industrial Accident Board with the authority to adopt rules necessary for the administration of the workers' compensation laws.

§42.137. Utilization Review.

(a) The claimant and the carrier may jointly request the board for an informal review and determination of the necessity of:

(1) proposed medical treatment; or

(2) rendered medical treatment.

(b) The application shall be accompanied by supporting documentation from one or more health care providers.

(c) The board's determination of necessity shall be informal, for the purpose of resolving disputes, and shall not be binding on either party.

(d) The carrier shall bear the cost of a review provided under this section.

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 October 2, 1989.

TRD-8909179 Richard Fulcher
Acting Executive Director
Industrial Accident Board

Earliest possible date of adoption: November 6, 1989

For further information, please call: (512) 448-7960

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Chapter 53. Carrier's Report of Initiation and Suspension of Compensation Payments.

• 28 TAC §53.20

The Industrial Accident Board proposes an amendment to §53.20, concerning carrier's notice of initiation of compensation and mode of payment. The amendment retitles the section, requires workers' compensation income benefits to be paid by negotiable instruments drawn only on financial institutions located in the 11th District of the Federal Reserve System, and also permits payment of income benefits by direct deposit into an account designated by the injured worker.

Richard Fulcher, acting executive director, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for the state, or local government, or small businesses in their capacity as insured employers as a result of enforcing or administering the section.

Regarding small businesses, the proposed section may have fiscal impact on those workers' compensation insurance companies presently using out-of-state financial institutions for payment of income benefits, by requiring that such benefits, if paid by negotiable instrument, be paid only through financial institutions located in the 11th district of the Federal Reserve System. It is not possible to accurately quantify this impact, since the section also provides for an alternative payment mode, electronic transfer of funds, which may be elected by a claimant. The fiscal impact for large carriers is estimated to be proportionately the same as that for the smallest carriers.

Mr. Fulcher has determined that the proposed section will have no effect on local employment.

Mr. Fulcher 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 expedited weekly benefits received by claimants and less difficulty and possible expense, in cashing them. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

The board will hold a public hearing on October 10, 1989, for the purpose of taking public testimony on the proposed section, as well as proposed new §§42. 137, 53.47, 53.48, and 53.64 (published elsewhere in this issue). The hearing will commence at 9 a.m. in Room 255, Bevington Reed Building, 200 East Riverside, Austin. Comments on the proposal may be submitted to Richard Fulcher, Acting Executive Director, Industrial Accident Board, 200 East Riverside Drive, First Floor, Austin, Texas, 78704-1287. Comments will be accepted in writing for 20 days after publication of this proposal in the *Texas Register*.

The new section is proposed under Texas Civil Statutes, Article 8307, §4(a), which provide the Industrial Accident Board with the authority to adopt rules necessary for the administration of the workers' compensation laws.

§53.20. Notice of Initiation of Compensation; Mode of Payment of Compensation.

(a) Every insurance carrier shall report to the Industrial Accident Board and to the claimant or the claimant's [his] attorney of Form A-1 the initial payment of compensation to the claimant [an injured employee or employee's beneficiary] within 10 days from the date of:

(1) issuance of a draft, check, or other evidence of payment; or

(2) transfer of funds electronically to the claimant's account.

(b) If such payment represents both initial and final payment, that fact shall be stated on the face of the Form A-1.

(c)[(1)] Except as otherwise provided, all [All] payments of compensation, whether [of] periodic payments, advances, A-2 lump sum payments, or settlement payments, [of compromise settlement agreements] shall be by United States legal tender, or checks[,] or negotiable drafts drawn on a financial institution located in the 11th district of the Federal Reserve System [Texas].

(d) The claimant and the carrier may agree to payment of income benefits by electronic transfer of funds from any financial institution in the United States directly into an account designated by the claimant.

(e) Whenever a payment of compensation is made through the use of a negotiable draft, the carrier shall accompany the draft with written advice to the claimant of the carrier's office location and phone number where the claimant may call, at carrier's expense, to obtain help if necessary in cashing the compensation draft.

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 October 2, 1989.

TRD-8909175 Richard Fulcher
Acting Executive Director
Industrial Accident Board

Earliest possible date of adoption: November 6, 1989

For further information, please call: (512) 448-7960

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• 28 TAC §53.47

The Industrial Accident Board proposes new §53.47, concerning payment of partial benefits for specific injuries. The proposed new section requires the treating doctor to establish a disability rating when the injured worker reaches maximum medical improvement; requires a workers' compensation insurance carrier to initiate payment of partial benefits based on the disability rating; establishes procedures for requesting a second opinion; provides for a prehearing conference for dispute resolution; and provides proceedings for noncompliance.

Richard Fulcher, acting executive director, 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 in their capacity as insured employers, since the proposed section merely articulates present practice.

Regarding small businesses, the proposed new section may have fiscal impact on lawyers and law firms. If the claimant agrees to accept periodic partial benefits and postpone or forego settlement, the lawyer's fee, which is calculated only on the claimant's lump sum recovery, will be reduced. It is not possible to project actual loss in revenue, since there is no way to estimate the number of claimants who will elect to accept periodic partial benefits instead of resolving the claim by lump sum settlement or award. The fiscal impact for large law firms is estimated to be proportionately the same as that for the smallest firms or individual practitioners.

Mr. Fulcher has determined that the proposed new section will have no effect on local employment.

Mr. Fulcher also has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be,

redounding to claimants who elect to receive periodic partial benefits. First, claimants will no longer be forced to resolve their claims by a lump-sum settlement as soon as they cease to be totally disabled. Thus they will recover more benefits as periodic payments, and pay less in attorney fees, which are calculated only on lump-sum recoveries. Second, claimants will no longer be forced to resolve their claims by award as soon as they cease to be totally disabled. Consequently, they will receive benefits promptly, with the carrier's actions overseen by the board, instead of appealing the award, having benefits terminated, and waiting months, and in some counties, years for a trial date. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

The board will hold a public hearing on October 10, 1989, for the purpose of taking public testimony on the proposed section, as well as proposed new §§42.137, 53.20, 53.48, and 53.64 (published elsewhere in this issue). The hearing will commence at 9 a.m. in Room 255, Bevington Reed Building, 200 East Riverside Drive, Austin. Comments on the proposal may be submitted to Richard Fulcher, Acting Executive Director, Industrial Accident Board, 200 East Riverside Drive, First Floor, Austin, Texas 78704-1287. Comments will be accepted in writing for 20 days after publication of this proposal in the *Texas Register*.

The new section is proposed under Texas Civil Statutes, Article 8307, §4(a), which provide the Industrial Accident Board with the authority to adopt rules necessary for the administration of the workers, compensation laws.

§53.47. Payment of Partial Benefits for specific Injuries.

(a) When a claimant who has incurred a specific injury reaches maximum medical improvement, as established by the claimant's treating physician, the treating physician shall file a disability rating in writing with the carrier, and send a copy to the board and to the claimant.

(b) No later than 10 days after receiving the treating physician's disability rating, the carrier shall:

(1) pay partial benefits based on the treating physician's disability rating, periodically or in a lump sum, filing the appropriate notice with the board; or

(2) request a second disability rating, either by medical examination order, pursuant to Chapter 65 of this title (relating to Unethical or Fraudulent Claims Practices), or by a board-selected health care provider.

(c) No later than 10 days after receiving the second disability rating, the carrier shall pay partial benefits based on the lower disability rating, periodically or in a lump sum, filing the appropriate notice with the board.

(d) If the carrier fails or refuses to comply with this section, the claim shall be set for a show-cause hearing on the board's next available formal hearing docket.

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 October 2, 1989.

TRD-8909176 Richard Fulcher
Acting Executive Director
Industrial Accident Board

Earliest possible date of adoption: November 6, 1989

For further information, please call: (512) 448-7960

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• 28 TAC §53.48

The Industrial Accident Board proposes new §53.48, concerning payment of partial benefits for general injuries. The proposed new section requires a workers' compensation insurance carrier to initiate payment of partial benefits when certain conditions arise, and to notify the board of such action. The proposed new section also provides for a hearing on the issue of non-compliance.

Richard Fulcher, acting executive director, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for the state or local government, or small businesses in their capacity as insured employers as a result of enforcing or administering the section. If an award is entered, the partial benefits paid will reduce the amount of the final settlement. However, the total amount of benefits paid to a claimant will not be affected by the proposed section.

Regarding small businesses, the proposed section may have fiscal impact on lawyers and law firms. If the claimant agrees to accept periodic partial benefits and postpone or forego settlement, the lawyer's fee, which is calculated only on the claimant's lump-sum recovery, will be reduced. It is not possible to project actual loss in revenue, however, since there is no way to estimate the number of claimants who will elect to accept partial benefits instead of revolving the claim by lump-sum settlement or award. The fiscal impact for large law firms is estimated to be proportionately the same as that for the smallest firms or individual practitioners.

Mr. Fulcher has determined that the proposed section will have no effect on local employment.

Mr. Fulcher also has determined that for each year of the first five-year the proposed sections are in effect the public benefit anticipated as a result of enforcing the section will be, redounding to claimants who elect to receive periodic partial benefits. First, claimants will no longer be forced to resolve their claims by a lump sum settlement as soon as they cease to be totally disabled. Thus they will recover more benefits as periodic payments, and pay less in attorney fees, which are calculated only on lump-sum recoveries. Second, claimants will no longer be forced to resolve their claims by award as soon as they cease to be totally disabled. Consequently, they will receive benefits promptly, with the carrier's actions overseen by the board, instead of appealing the award, having benefits terminated, and waiting months, and in some counties, years for a trial date. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

The board will hold a public hearing on October 10, 1989 for the purpose of taking public testimony on the proposed section, as well as proposed new §§42. 137, 53.20, 53.47, and 53.64 (published elsewhere in this issue). The hearing will commence at 9 a.m. in Room 255, Bevington Reed Building, 200 East Riverside, Austin. Comments on the proposal may be submitted to Richard Fulcher, Acting Executive Director, Industrial Accident Board, 200 East Riverside Drive, First Floor, Austin, Texas 78704-1287. Comments will be accepted in writing for 20 days after publication of this proposal in the *Texas Register*.

The new section is proposed under Texas Civil Statutes, Article 8307, §4(a), which provide the Industrial Accident Board with the authority to adopt rules necessary for the administration of the workers' compensation laws.

§53.48. Payment of Partial Benefits for General Injuries.

(a) When a carrier believes that a claimant is no longer entitled to temporary total benefits because the claimant has returned to work, or has been released to return to work without restrictions, the carrier shall:

(1) initiate payment of partial benefits based on a good faith determination of the claimant's lost wage earning capacity, either periodically or in a lump sum; and

(2) file the appropriate notice with the board.

(b) If the carrier fails or refuses to comply with this section, the claim shall be set for a show-cause hearing on the board's next available formal hearing docket.

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 October 2, 1989.

TRD-8909178 Richard Fulcher
Acting Executive Director
Industrial Accident Board

Earliest possible date of adoption: November 6, 1989

For further information, please call: (512) 448-7960

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• **28 TAC §53.64**

The Industrial Accident Board proposes new §53.64, concerning nonpayment of compensation benefits. The proposed section requires the injured worker's attorney or the workers' compensation insurance carrier to request a hearing when benefits are not paid on the grounds that another carrier is liable.

Richard Fulcher acting executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Fulcher has determined that the proposed section will have no effect on local employment.

Mr. Fulcher 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 accelerated resolution of liability disputes, resulting in prompt delivery of benefits to claimants. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

The board will hold a public hearing on October 10, 1989, for the purpose of taking public testimony on the proposed section, as well as proposed new §§42. 137, 53.20, 53.47. and 53.48, (published elsewhere in this issue). The hearing will commence at 9 a.m. in Room 255, Bevington Reed Building, 200 East Riverside, Austin. Comments on the proposal may be submitted to Richard Fulcher, Acting Executive Director, Industrial Accident Board, 200 East Riverside Drive, First Floor, Austin, Texas 78704-1287. Comments will be accepted in writing for 20 days after publication of this proposal in the *Texas Register*.

The new section is proposed under Texas Civil Statutes, Article 8307, §4(a), which provide the Industrial Accident Board with the authority to adopt rules necessary for the administration of the workers' compensation laws.

§53.64. Nonpayment of Compensation Based on Another Carrier's Liability.

(a) When the carrier fails or refuses to initiate, or suspends, payment of income or medical benefits based on evidence that another carrier is liable for the claimant's disability, the carrier or the claimant's attorney, if any, shall immediately request a formal hearing before the board.

(b) The claim will be set for a hearing on the board's next available formal hearing docket.

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 October 2, 1989.

TRD-8909177 Richard Fulcher
Acting Executive Director
Industrial Accident Board

Earliest possible date of adoption: November 6, 1989

For further information, please call: (512) 448-7960

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TITLE 40. SOCIAL SERVICES

Part I. Texas Department of Human Services

Chapter 79. Legal Services

Subchapter Q. Contract Appeals

• **40 TAC §§79.1608, 79.1610, 79.1611**

The Texas Department of Human Services (DHS) proposes amendments to §§79.1608, 79.1610, and 79.1611, concerning hearing guidelines, conduct of hearings, and prehearing procedure, in its legal services rules. The amendments clarify time computation, manner of filing documents, and motion practice before the administrative law judges.

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

Mr. Raiford 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 clearer policies concerning the hearings process. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Services Division-526, Texas Department of Human Services 222-E, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendments are proposed under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

§79.1608. Hearing Guidelines.

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

(e) All documents relating to any pending proceeding must be filed with the clerk of the hearings division with a copy to each party. The documents are considered filed only when received and date stamped by the clerk.

(f) The following procedure is to be used to compute any period of time governing hearings' procedures and which is allowed or prescribed by this subchapter or by order of the administrative law judge: the period begins on the day after the act or event in question and concludes on the last day of that computed period, unless the last day is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

§79.1610. Conduct of Hearings - General Requirements.

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

(d) If the party or his representative is notified of the hearing and neither is present at the hearing, all matters stated in evidence introduced at the hearing may be considered as uncontroverted by the party failing to appear. Court reporter fees may be assessed against the party failing to appear. [If a party does not appear for the hearing, a default decision may be entered against that party.]

(e) The administrative law judge may grant a postponement or continuance of the hearing for just cause. A motion for continuance of the hearing must be in writing and must be filed with the clerk of the hearings division at least seven days before the date set for the hearing. The party making the motion must do so under oath and must include the specific grounds for the action and refer to all prior motions for continuance filed in the same proceeding. A copy of the motion must be served to all parties under a certificate of service. Failure to comply with the provisions of this subsection, except for good cause shown, may be construed as lack of diligence by the party making the motion; and, at the discretion of the administrative law judge, is grounds for refusing the motion. Once an action has proceeded to a hearing, according to the notice issued concerning the hearing, no postponement or continuance may be granted without the consent of all parties involved.

(f)-(j) (No change.)

(k) Any motion relating to a pending proceeding, unless made during a hearing, must [should] be in writing and specify the desired relief and the specific reasons and basis for this relief. If based upon matters which do not appear of record, it must be supported by affidavit. Motions must be filed with the clerk of the hearings division [administrative law judge] and copies sent to all parties under certificate of service. Failure to comply with the provisions of this subsection, except for good cause shown, is grounds for the administrative law judge to refuse the motion.

(l)-(p) (No change.)

§79.1611. Prehearing Procedure.

(a) Prehearing conference.

(1) On the motion of the petitioner or the respondent or on his own motion, the administrative law judge may direct the parties and their attorneys or representatives to appear before him at a specified time and place for a conference before

the hearing for the purpose of formulating issues and considering:

(A)[(1)] the possibility of making admissions of certain averments of facts or stipulations to avoid the unnecessary introduction of proof;

(B)[(2)] the simplification of issues;

(C)[(3)] the procedure at the hearing;

(D)[(4)] the limitation, when possible, of the number of witnesses; and

(E) [(5)] such other matters as may aid in the simplification of the proceedings and the disposition of the matters in controversy, including settlement of such issues as are in dispute.

(2) The administrative law judge may direct that one or more of the following be transmitted by each party to all other parties or their representatives, and to the administrative law judge, by the date established by the administrative law judge:

(A) a list of witnesses the party desires to testify and a brief narrative summary of their expected testimony;

(B) a written statement of the disputed issues for consideration at the hearing;

(C) a copy of any written statements to be offered at the hearing;

(D) a copy of other written testimony or documentary evidence the party intends to use at the hearing.

(b)-(e) (No change.)

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

Issued in Austin, Texas, on September 28, 1989.

TRD-8909103 Ron Lindsey
Commissioner
Texas Department of Human Services

Proposed date of adoption: December 1, 1989.

For further information, please call: (512) 450-3765

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TITLE 43. TRANSPORTATION

Part I. State Department of Highways and Public Transportation

Chapter 1. Administration

Substance Abuse Program

• 43 TAC §§1.100-1.111

The State Department of Highways and Public Transportation proposes new §§1.100-1.111, concerning the department's substance abuse program. Section 1.100, concerning purpose, describes the department's intent in implementing a substance abuse program; §1.101, concerning definitions, defines terms to be used under this undesignated head; §1.102, concerning policy, describes the department's policy of prohibition, deterrence, detection, education, and rehabilitation; §1.103, concerning applicability, describes the classes of employees which will be subject to alcohol and drug testing; §1.104, concerning test categories and requirements, describes the types of alcohol and drug tests which will be administered and the test requirements, for pre-employment, reasonable cause, post accident, and random testing; §1.105, concerning test procedures, relates the procedures involved in specimen collection and analysis and the review of test results; §1.106, concerning personnel actions, describes the disciplinary actions which will be taken when the policy is violated; §1.107, concerning counseling and rehabilitation treatment, describes the process involved in the rehabilitation of employees who suffer from alcohol and drug abuse; §1.108, concerning retesting, relates the procedure required when an employee wishes to appeal the results of a positive drug test; §1.109, concerning challenge, describes the procedure involved when an employee challenges a department action relating to alcohol or drug testing; §1.110, concerning confidentiality, relates the assurances of maintaining the confidentiality of information related to an alcohol or drug test; §1.111, concerning records and retention, describes the requirements for program record retention.

The State Department of Highways and Public Transportation is subject to Public Law 100-690, Title V, Subtitle D, Drug-Free Workplace Act of 1988, regulations promulgated by the United States Department of Transportation, Coast Guard, 46 Code of Federal Regulations, Parts 4, 5, and 16, concerning programs for chemical drug and alcohol testing of commercial vessel personnel, and to the General Appropriation Bill, Article V, §10 (Senate Bill 222, 71st Legislature, Regular Session, 1989), which states that none of the moneys under the Act shall be used for the payment of salaries to any employee who uses alcoholic beverages while on active duty or for alcoholic beverages as a part of travel expenses. The State Highway and Public Transportation commission is committed to achieving an alcohol and drug-free workplace, which protects the health and safety of the department's most valuable resource, its employees, as well as the health and safety of the public. The commission desires to help the department's employees and not hurt them, provide information to all employees, assist those who need help, and equip supervisors with skills for administering the substance abuse program. The commission is committed to rehabilitating and restoring individuals impaired by alcohol or drug abuse, and desires to create a deterrent environment which discourages the use of alcohol and the illegal use, possession, transportation, and sale of drugs in the workplace. To achieve these purposes, the commission has determined that alcohol and drug awareness and testing programs are effective methods of identifying and deterring alcohol and drug abuse in the workplace.

Mr. Leslie A. Clark, director, human resources division, has determined that there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government for the first five-year period the section will be in effect will be an estimated additional cost of $492,537 for 1990; $540,912 for 1991; and $499,290 for 1992-1994. There will be no effect on local government or small businesses for the first five-year period the sections will be in effect.

Mr. Clark also has determined that for each of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections as proposed will be to provide a safe working environment for the department's employees and to enhance measures for protecting the safety of those members of the public who use the state highway system including bridges and ferry boat segments, and further to assure that the department as an agency of the state government fully complies with applicable federal and state laws and regulations concerning use or abuse of alcohol or drugs in the workplace. There is no anticipated economic cost to individuals who are required to comply with the proposed sections, and there will be no impact on local economies or employment as a result of enforcing the proposed sections.

Comments on the proposal may be submitted to Leslie A. Clark, Director, Human Resources Division, State Department of Highways and Public Transportation, Dewitt C. Greer Building, 125 East 11th Street, Austin, Texas 78701; but in any event, no later than November 10, 1989.

The State Department of Highways and Public Transportation will also conduct a public hearing, pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5, to receive data, comments, views, and/or testimony concerning the proposed new sections.

The public hearing will be held on Friday, October 20, 1989, at 10 a.m., in the first floor hearing room of the Dewitt C. Greer State Highway Building, 11th and Brazos, Austin. Any interested person may appear and offer comments or testimony, either orally or in writing, however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any person with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content.

The new sections are proposed under Texas Civil Statutes, Article 6666, which provides the State Highway and Public Transportation commission with the authority to promulgate rules for the conduct of the work of the State Department of Highways and Public Transportation.

§1.100. Purpose. The sections under this undesignated head set forth the State Highway and Public Transportation commission's policy and the procedures for its implementation, evidencing the department's commitment to achieving an alcohol and drug-free workplace, which protects the health and safety of its most valuable resource, its employees, as well as the health and safety of the public. In addition, these sections are intended to demonstrate the department's commitment to rehabilitating and restoring employees whose performance may be impaired by alcohol or drug abuse.

§1.101. Definitions. The following words and terms, when used in these sections shall have the following meanings, unless the context clearly indicates otherwise.

Alcohol test–A scientifically recognized chemical test which establishes an individual's blood alcohol level.

Aliquot–A portion of a specimen used for testing.

Chain of custody–Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen, utilizing an approved department chain of custody form from time of collection to receipt by the laboratory, and upon receipt of the laboratory, an appropriate laboratory chain of custody form(s) to account for the sample or sample aliquots within the laboratory. (Chain of custody forms, at a minimum, include an entry documenting date and purpose each time a specimen or aliquot is handled or transferred and identifying every individual in the chain of custody.)

Coast Guard guidelines–Programs for Chemical Drug and Alcohol Testing of Commercial Vessel Personnel, United States Coast Guard, Department of Transportation (53 Federal Register 47064; November 21, 1988) 46 Code of Federal Regulations Parts 4, 5, and 16.

Collection site–A place designated by the department where individuals present themselves for the purpose of providing a specimen of the urine to be analyzed for the presence of drugs.

Collection site person–A specially trained person who instructs and assists individuals at a collection site and who receives and makes an initial examination of the urine specimen provided by those individuals.

Confirmatory test–A second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy. (At this time gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, and phencyclidine.)

Covered employee–An employee in a crewmember or a safety sensitive position who is subject to alcohol and drug testing.

Crewmember–An individual who is on board a vessel acting under the authority of a license, certificate of registry, or merchant mariner's document whether or not the individual is a member of the vessel's crew; or engaged or employed on board a vessel owned in the United States that is required by law or regulation to engage, employ, or be operated by an individual holding a license, certificate of registry, or merchant mariner's document.

Dangerous drug–A narcotic drug, controlled substance, and marijuana as defined in the Comprehensive Drug Abuse Prevention and Control Act of 1970, §102, 21 United States Code 802.

Department–The State Department of Highways and Public Transportation.

DHHS guidelines–Mandatory Guidelines for Federal Drug Testing Programs of the United States Department of Health and Human Services (DHHS) (53 Federal Register 11970; April 11, 1988).

Directly involved–Involved in a serious accident or a serious marine accident, either on a department ferry or elsewhere, in which the involved employee's order, action, or failure to act is determined to be, or cannot be ruled out as, a causative factor in the events leading to or causing that accident.

District–One of 24 geographical areas, managed by a district engineer, in which the department conducts its primary work activities.

District engineer–The chief executive officer in charge of a district of the department.

Division–An operating division in the department's Austin headquarters.

Division head–The chief executive officer in charge of a division.

Drug test–A scientifically recognized chemical test administered in accordance with DHHS guidelines and which analyzes an individual's urine for evidence of marijuana, cocaine, opiates, phencyclidine (PCP); and amphetamines.

Employee–A person employed by the department in a full time, part time, or temporary position.

Employee Assistance Program (EAP)–A program designed to assist employees and their family members in dealing with emotional and personal problems, including alcohol and drug abuse, affecting or potentially affecting the employee's work performance and safety.

Final applicant–A person who is given a conditional offer of initial employment, or a department employee who is conditionally approved for a transfer or promotion.

Impaired performance–The inability to perform assigned duties or to perform those duties in a safe and effective manner.

Initial test (also known as screening test)–An immunoassay screen to eliminate negative urine specimens from further consideration.

Laboratory–A laboratory which is certified to meet the standards of the DHHS guidelines.

Medical review officer–A licensed physician retained by the department to evaluate laboratory results generated by the department's program who has knowledge of substance abuse disorders, and appropriate medical training to interpret and evaluate an individual's positive test result together with other relevant biomedical information.

Permanent record book–A permanently bound book in which identifying data on each specimen collected at a collection site are permanently recorded in the sequence of collection.

Program–The department's substance abuse program which implements the policy and procedures for prevention, deterrence, and rehabilitation aimed at eliminating the possession, use, distribution, sale, or consumption of dangerous drugs or alcohol in the workplace.

Safety sensitive position–A position involving duties which if performed with inattentiveness, errors in judgment, or diminished coordination, dexterity or composure could clearly result in mistakes that could present a real and imminent threat to the personal health and safety of the employee, co-workers, and/or the public, and which are performed with such independence that it cannot be reasonably assumed that those mistakes could be prevented by a supervisor or another employee.

Serious accident–Any accident which results in one or more deaths, or an injury to an employee, passenger, or other person which requires professional medical treatment beyond first aid and which renders the employee unfit to perform routine duties for more than three days.

Serious marine accident–Any reportable marine accident which results in one or more deaths; an injury to an employee, passenger, or other person which requires professional medical treatment beyond first aid and which renders the employee unfit to perform routine duties; damage to property in excess of $100,000; actual or constructive total loss of any ferry subject to Coast Guard inspection under 46 United States Code 3301, or not subject to Coast Guard inspection if of 100 gross tons or more; a discharge of oil of 10,000 gallons or more into navigable waters of the United States; or a discharge of a reportable quantity of a hazardous substance into navigable waters or the environment of the United States.

Substance control officer–An employee(s) appointed by a district engineer or division head to administer the Substance Abuse Program.

Workplace--All department offices, construction sites, temporary laboratory sites, maintenance sites, ferries, and any other location where an employee is performing assigned duties.

§1.102. Policy.

(a) The consumption of alcohol and the illegal use, possession, distribution, dispensation, transportation, sale, or manufacture of dangerous drugs is prohibited in the workplace. This prohibition includes any violation of state and federal controlled substances acts. Each employee, as a condition must comply with this section and must signify his or her acknowledgement by executing a form prescribed by the department.

(1) The legitimate use of drugs is not prohibited if performance is unimpaired.

(2) Each employee must notify his or her supervisor of a conviction on charges of criminal drug statute violations occurring in the workplace, no later than five days after such conviction. Pursuant to the Drug Free Workplace Act 1988, 41 United States Code §§701-707 (1989), the department will in turn notify the appropriate federal agency of such conviction within 10 days of receipt of the notice.

(b) An employee is also prohibited from performing official duties while under the influence of alcohol or illegally used drugs or, if performance is impaired, while under the influence of lawfully prescribed or over-the-counter substances.

(c) In an effort to enhance worker productivity and protect the health and safety of employees and the public, final applicants for crewmember and safety sensitive positions will be tested for drugs, crewmembers, and employees in safety sensitive positions will be subject to tests for alcohol and drugs.

(d) An employee who violates the policies and prohibitions of this section or who fails to pass or refuses to submit to an approved alcohol or drug test will be subject to consistently applied disciplins, up to and including termination.

(1) In addition to or in lieu of disciplinary action, an employee will be given an opportunity to successfully complete counseling or a rehabilitation treatment program.

(2) The department will provide employee assistance programs and encourage employees to voluntarily use the services of employee assistance programs, counseling, or rehabilitation treatment programs to deal with alcohol or drug abuse before it affects job performance. Successful completion of such programs may mitigate the need for discipline.

(e) All information related to the alcohol and drug testing of individuals will be held in strict confidence consistent with the provisions of applicable law.

(f) The department will conduct an alcohol and drug-free awareness program which will provide all employees and supervisors with initial and ongoing periodic training regarding the department's policy, the personnel actions that will be taken for violations of the policy, the specifics of the program, the dangers of alcohol and drug abuse in the workplace, and the available employee assistance, counseling, and rehabilitation treatment programs.

§1.103. Applicability.

(a) A crewmember, an employee in a safety sensitive position, and a final applicant for a crewmember or safety sensitive position, will be subject to alcohol and drug tests as provided in this section.

(1) A final applicant for a crewmember position on or after December 21, 1989, is subject to pre-employment testing as discussed in §1.104(a) of this title (relating to Test Categories and Requirements). An employee serving in a crewmember position on or after December 21, 1989, is subject to post accident, reasonable cause and random testing as discussed in §1.104(b), (c), and (d) of this title (relating to Test Categories and Requirements).

(2) A final applicant for or an employee engaged in a safety sensitive position which involves work in the maintenance of roadways, bridges, and/or right of way will be subject to the following categories of tests beginning on the dates indicated:

(A) pre-employment on June 1, 1990;

(B) post accident on June 1, 1990;

(C) reasonable cause on March 1, 1991; and

(D) random on June 1, 1991.

(3) A final applicant for or an employee engaged in a safety sensitive position which involves work other than maintenance of roadways, bridges, and/or right of way will be subject to the following categories of tests beginning on the dates indicated:

(A) pre-employment on December 1, 1990;

(B) post accident on December 1, 1990;

(C) reasonable cause on March 1, 1991; and

(D) random on June 1, 1991.

(b) Each department position will be evaluated under the direction of the human resources division to identify those positions which meet the definition of safety sensitive positions. A position will not be classified as safety sensitive unless so certified by the human resources division.

§1.104. Test Categories and Requirements.

(a) Pre-employment.

(1) Except as provided in paragraph (2) of this subsection, the department will not engage, employ or otherwise give a commitment of employment to a final applicant for a position as a crewmember or for a safety sensitive position unless that person passes a drug test.

(2) A final applicant will not be required to undergo a pre-employment drug test if the department is provided satisfactory evidence that he or she:

(A) passed a drug test within the previous six months; or

(B) was subject to a random drug test program meeting the criteria established by the United States Department of Transportation, Coast Guard in their regulations contained in 46 Code of Federal Regulations Part 16, §16.230, during the previous 12 months, and neither failed to pass a drug test, nor refused to participate in a required drug test.

(b) Post accident.

(1) An alcohol test and a drug test will be administered to:

(A) a crewmember who is directly involved in a serious marine accident; or

(B) an employee in a safety sensitive position who is directly involved in a serious accident, or in any accident in which the events and circumstances give rise to a reasonable suspicion that the employee is under the influence of alcohol or dangerous drugs at the time of the occurrence, established pursuant to subsection (c) of this section.

(c) Reasonable cause.

(1) A crewmember or an employee in a safety sensitive position who is reasonably suspected of using alcohol or dangerous drugs in the workplace or of performing official duties while under the influence of alcohol or dangerous drugs will be required to undergo an alcohol or drug test.

(2) The decision to test must be based on a reasonable and articulable belief by a supervisor who has been trained in the detection of alcohol and dangerous drug use

that the involved employee has used alcohol or dangerous drugs evidenced by direct observation of specific, contemporaneous physical, behavioral, or performance indicators of probable use.

(3) When a supervisor reasonably suspects an individual of using alcohol or dangerous drugs in the workplace or of performing official duties while under the influence of alcohol or dangerous drugs, he or she shall submit a written report of his or her observations to a substance control officer, in a form to be prescribed by the director, human resources division.

(4) The substance control officer will make an immediate inquiry into the circumstances and will confer or counsel with the affected employee, as may be appropriate. Based on the supervisor's report and the officer's independent analysis, the officer will document, in a form to be prescribed by the director, human resources division, whether testing is justified.

(5) When there is reasonable suspicion to believe that a crewmember or an employee in a safety sensitive position is under the influence of alcohol or drugs, and it is reasonable to conclude that the covered employee may be impaired to the extent that his or her continued performance of such duties pending a decision to test pursuant to this subsection, will constitute a real and present danger to personal safety or property, the covered employee will be immediately relieved of those duties, and if appropriate, reassigned.

(d) Random.

(1) Covered employees will be selected for testing on a random basis in a manner to ensure that each covered employee has a substantially equal chance of selection on a scientifically valid basis. The testing frequency and selection process will be such that an individual's chance of selection continues to exist throughout his or her employment as a crewmember or in a safety sensitive position.

(2) The department will ensure that crewmembers and employees in safety sensitive positions are tested on a random basis at an annual rate of not less than 50% of those respective employee categories in each payroll unit or equivalent work unit. The frequency of testing will also be at random, but will be sufficient to assure that 50% of all affected individuals are tested annually.

§1.105. Test Procedures.

(a) An individual who is required to undergo an alcohol or drug test, will be requested to sign a consent form to be prescribed by the director, human resources division, and to report to a medical review officer, or in the case of an alcohol breath test to report to a law enforcement office to be designated by the department.

(b) The medical review officer will administer drug tests according to Department of Health and Human Services (DHHS) guidelines and alcohol blood tests according to coast guard guidelines. DHHS guidelines are summarized as follows.

(1) Specimen collection procedure.

(A) A chain of custody for each specimen to be chemically tested will be established and maintained from the time of specimen collection through the testing of the specimen.

(i) If a specimen is not immediately prepared for shipment, it will be safeguarded during temporary storage.

(ii) Every effort will be made to minimize the number of persons handling specimens.

(B) Specimen collection and shipping will be conducted as follows.

(i) Procedures for collecting urine specimens will allow individual privacy unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided.

(ii) To deter the dilution of specimens at the collection site, toilet bluing agents will be placed in toilet tanks wherever possible, so the reservoir of water in the toilet bowl always remains blue. There will be no other source of water (e.g., no shower or sink) in the enclosure where urination occurs.

(iii) When an individual arrives at the collection site, the collection site person will request the individual to present photo identification.

(iv) The collection site person will ask the individual to remove any unnecessary outer garments such as a coat or jacket that might conceal items or substances that could be used to tamper with or adulterate the individual's urine specimen. The collection site person will ensure that all personal belongings such as a purse or briefcase remain with the outer garments. The individual may retain his or her wallet.

(v) The individual will be instructed to wash and dry his or her hands prior to urination.

(vi) After washing hands, the individual will remain in the presence of the collection site person and will not have access to any water fountain, faucet, soap dispenser, cleaning agent, or any other materials which could be used to adulterate the specimen.

(vii) The individual may provide his or her specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy.

(viii) The collection site person will note any unusual behavior or appearance in the permanent record book.

(ix) Whenever there is reason to believe that a particular individual may alter or substitute the specimen to be provided, a second specimen will be obtained as soon as possible under the direct observation of a same gender collection site person.

(x) Specimens will be shipped by an expeditious means to the laboratory.

(2) Laboratory analysis procedure.

(A) Each specimen will be analyzed in accordance with DHHS guidelines which requires testing for:

(i) marijuana;

(ii) cocaine;

(iii) opiates;

(iv) phencyclidine (PCP); and

(v) amphetamines.

(B) The initial test will use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution.

(C) All specimens identified as positive on the initial test will be confirmed by a confirmatory test using gas chromatography/mass spectrometry (GC/MS) techniques.

(D) A specimen which indicates the presence of a dangerous drug at a level equal to or exceeding the levels established in DHHS guidelines is reported to the medical review officer as positive.

(E) Quality assurance and quality control designed, implemented, and reviewed to monitor the conduct of each step of the process of testing for drugs will be in accordance with DHHS guidelines.

(3) Reporting and reviewing of drug test results.

(A) The laboratory will report all test results as required within an average of five days after receipt of a specimen by the laboratory.

(B) The laboratory will report as negative all specimens which are negative on the initial test or negative on the confirmatory test. Only specimens confirmed positive are reported positive to the medical review officer for a specific drug or drug metabolite.

(C) The medical review officer will review and interpret all test results prior to the transmission of results to the department. In carrying out this responsibility, the medical review officer will examine alternate medical explanations for any positive test result. This action could include conducting a medical interview with the individual, review of the individual's medical history, or review of any other relevant biomedical factors. The medical review officer will review all medical records made available by the tested individual when a confirmed positive test could have resulted from legally prescribed medication.

(D) Prior to making a final decision to verify a positive test result, the medical review officer will give the individual an opportunity to discuss the test result with him or her.

(E) If the medical review officer determines there is a legitimate medical explanation for the positive test result, he or she will determine that the result is consistent with legal drug use and take no further action.

§1.106. Personnel Actions.

(a) Consequences of failing an alcohol or drug test.

(1) Final applicants. Final applicants who fail a pre-employment drug test will be disqualified for consideration of employment in crewmember or safety sensitive positions. A final applicant found ineligible may reapply for a crewmember or safety sensitive position, as those positions become available, but will be subject to the same qualifying requirements for such positions.

(2) Covered employees. A covered employee who fails an alcohol or drug test will be terminated unless he or she meets each of the following criteria:

(A) is referred to the Employee Assistance Program (EAP) and successfully completes counseling or an alcohol or drug rehabilitation treatment program approved by the Texas Commission on Alcohol and Drug Abuse. (Successful completion of counseling or rehabilitation treatment program must be certified to the substance control officer in writing by the person or organization providing these services);

(B) passes an alcohol or drug test after successfully completing counseling or rehabilitation treatment;

(C) consents, in writing on a form to be prescribed by the director, human resources division, to increased unannounced testing for a period of up to 24 months; and

(D) if a crewmember, is found by the medical review officer to be drug-free and to pose a sufficiently low risk for subsequent illegal drug use to justify his or her return to work. (The medical review officer shall determine the length of time, up to 60 months, during which the crewmember will be subject to increased, unannounced testing.)

(3) Subsequent actions. Except as provided in subsection (i) of this section, when a covered employee has experienced work related problems as a result of alcohol or drug use and has been reinstated under paragraph (2) of this subsection, subsequent disciplinary action will not be taken for the previous work related problems provided the problems cease after reinstatement.

(b) Refusal to consent to testing. A covered employee who refuses to consent to an alcohol or drug test will be subject to discipline, up to and including termination.

(c) Voluntary admission of an alcohol or drug problem.

(1) An employee who voluntarily admits having a problem with alcohol or drug abuse will be referred to an EAP for counseling or rehabilitation treatment.

(2) Disciplinary action will not be taken against an employee who voluntarily admits having a problem with alcohol or drug abuse, provided however, that in the case of a covered employee, the admission occurs prior to a determination that the covered employee should be tested pursuant to §1.104 of this title (relating to Test Categories and Requirements). The referred employee must successfully complete counseling or a rehabilitation treatment program, and provide a letter certifying the success to the substance control officer.

(d) Impaired performance due to lawful use of drugs. When due to the use of lawfully prescribed or over-the-counter substances, the employee is unable to perform his or her assigned duties or perform any duty in a safe manner, the employee will be subject to temporary reassignment of duties or be required to take mandatory leave.

(e) Sale, distribution, transportation, or manufacture of drugs in the workplace. If an employee is reasonably suspected of selling, distributing, transporting, or manufacturing drugs in the workplace, due to direct observation of such acts, the following procedure shall be followed.

(1) The employee will be placed on immediate suspension with pay, administrative leave, pending appropriate investigation and confirmation, and if such acts are confirmed, shall be subject to immediate termination.

(2) The employee shall immediately be provided with a letter which:

(A) summarizes the observed circumstances and behavior;

(B) notifies the employee that selling, distributing, transporting, or manufacturing drugs in the workplace subjects the employee to termination;

(C) advises the employee that he or she will have a specified period of time in which to provide a reasonable explanation; and

(D) advises the employee that if his or her response is insufficient or not acceptable and if an investigation by law enforcement, the department, or other authorities confirms the suspicion, the employee will be terminated.

(3) The matter should be turned over to law enforcement authorities at the earliest possible time and a request made of such authorities to investigate.

(4) The employee shall be terminated if:

(A) the employee fails to respond within the specified period or to provide an acceptable explanation; and

(B) investigation by law enforcement or other authorities confirms the suspicion.

(f) Suspicious substance found. If a substance which appears to be a dangerous drug is found within an area under the effective control of an employee, actions contained in subsection (e) of this section shall be followed.

(g) Arrests. If an employee is arrested inside or outside of the workplace and is charged with selling, distributing, dispensing, transporting, or manufacturing drugs, actions contained in subsection (e)(1), (2), and (4) of this section shall be followed.

(h) Alcohol consumption or drug use in the workplace. If an employee is directly observed consuming an alcoholic beverage or taking a dangerous drug whether orally or by inhalation or injection in the workplace, the following procedure shall be followed:

(1) The employee will be placed on immediate suspension with pay (administrative leave), pending the employee's response and if such response is unacceptable shall be subject to immediate termination.

(2) The employee will be provided with a letter which:

(A) summarizes the observed circumstances and behavior;

(B) notifies the employee that the consumption of alcohol or use of dangerous drugs in the workplace subjects the employee to termination;

(C) advises the employee that he or she will have a specified period of time in which to provide a reasonable explanation; and

(D) advises the employee that if his or her response is insufficient or not acceptable, or if he or she refuses to successfully complete counseling or rehabilitation treatment, the employee will be terminated.

(3) The employee shall be terminated if he or she fails to respond within the specified period or to provide an acceptable explanation, or refuses to successfully complete counseling or rehabilitation treatment.

(i) Recurrence of substance abuse. Upon a third recurrence of the necessity to refer an employee to EAP, counseling or rehabilitation treatment under the department's substance abuse program, the employee will not be referred but will be terminated.

§1.107. Counseling and Rehabilitation Treatment.

(a) Assessment and referral. Except as provided in §1.106(i) of this title (relating to Personnel Actions), a covered employee who fails an alcohol or drug test or an employee who voluntarily admits to or is otherwise established to have an alcohol or drug problem shall be referred to the EAP for assessment and referral to counseling or a rehabilitation treatment program. An EAP counselor shall evaluate a referred employee to determine the extent of the dependence upon alcohol or drugs and as may be appropriate will refer the employee to:

(1) an outpatient counseling program which provides individual counseling, group therapy, and education services for varying lengths of time, normally up to 10 weeks. (Covered employees participating in a counseling program will normally be able to continue to work while participating in the program. In such cases, the covered employee will be conditionally reinstated, based on successful completion of the counseling program); or

(2) to an intensive inpatient rehabilitation treatment program. (Covered employees participating in a rehabilitation treatment program will not be able to work while enrolled in the program. After successful completion, he or she will be reinstated. Covered employees may be referred to an outpatient follow-up program lasting from several months to a year or more.)

§1.108. Retesting. A final applicant or covered employee may appeal the results of a positive drug test by requesting in writing that a portion of the original urine sample be provided to another Department of Health and Human Services (DHHS) approved laboratory, for re-testing, and by procuring the services of a licensed physician meeting the qualifications of the MRO to interpret the test result, all at the expense of the final applicant or covered employee.

§1.109. Challenge. Any challenge by an employee to a department action relating to drug or alcohol testing shall be in accordance with the following procedure.

(1) Initially the employee may discuss his or her challenge informally with those involved in making the decision to test.

(2) If the employee is dissatisfied with the results of the informal meeting, he or she, may elect to meet with the manager of his or her immediate supervisor in order to resolve his or her challenge.

(3) If the employee remains dissatisfied with determinations made at the informal meeting, he or she may submit a request in writing to the deputy director, support operations, for a formal hearing. Subject to the following exceptions, the hearing will be conducted in accordance with §§1.21-1.63 of this title (relating to Contested Case Procedure).

(A) The hearing shall not be open to the public unless requested by the employee.

(B) The hearing officer will be appointed by the deputy director, support operations.

(C) The hearing officer's decision shall constitute final agency action.

§1.110. Confidentiality.

(a) All information relating to a final applicant's or covered employee's alcohol or drug test including other medical or personal information contained in testing program records shall be treated as strictly confidential; provided however, that, unless otherwise confidential as a matter of law, such information may be disclosed:

(1) when a proceeding is initiated by the final applicant or covered employee and the information is relevant to the claim or defense in such proceeding;

(2) when required by applicable law;

(3) when requested by a person bearing the written consent of the final applicant or covered employee; or

(4) when required by an officer or employee of the department who has a need for the information in the performance of official duties.

(b) An employee who willfully discloses or releases information in violation of this section will be subject to disciplinary action up to and including immediate termination.

§1.111. Records and Retention. The substance control officer shall be responsible for retaining all confidential records relating to the substance abuse program which include training, testing, disciplinary actions, rehabilitation, appeals, and litigation. All documentation which contains information related to an employee's positive test result, such as documentation of disciplinary actions, should be maintained in a file separate and apart from that employee's standard personnel file. All records of individuals who pass a test will be retained for at least one year. Records of individuals who do not pass a test will be retained for at least five years. These records include all records related to each individual; i.e., training, testing, disciplinary action including termination, documentation of post-accident and reasonable cause determinations, consent forms, rehabilitation, appeals, and litigation.

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, September 29, 1989.

TRD-8909084

Diane L. Northam
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For further information, please call: (512) 463-8630

Withdrawn Sections

An agency may withdraw proposed action or the remaining effectiveness of emergency action on a section by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing. If a proposal is not adopted or withdrawn within six months after the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

TITLE 7. BANKING AND SECURITIES

Part III. Banking Department

Chapter 25. Prepaid Funeral Contracts

Subchapter B. Regulation of Licenses

• 7 TAC §25.15

Pursuant to Texas Civil Statutes, Article 6252-13, §5(b), and 1 TAC §91. 24(b), the proposed amendment to §25.15, submitted by the Banking Department has been automatically withdrawn, effective September 29, 1989. The amendment as proposed appeared in the March 28, 1989, issue of the *Texas Register* (14 TexReg 1573).

TRD-8909122

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TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 3. Oil and Gas Division

Conservation Rules and Regulations

• 16 TAC §3.57

The Railroad Commission of Texas has withdrawn from consideration for permanent adoption a proposed §3.57 which appeared in the June 6, 1989, issue of the *Texas Register* (14 TexReg 2647). The effective date of this withdrawal is October 17, 1989.

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

TRD-8909219 Cril Payne
Assistant Director, General Law, Legal Division
Railroad Commission of Texas

Effective date: October 17, 1989

For further information, please call: (512) 463-7187

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The Railroad Commission of Texas has withdrawn from consideration for permanent adoption a proposed §3.57 which appeared in the June 6, 1989, issue of the *Texas Register* (14 TexReg 2647). The effective date of this withdrawal is October 17, 1989.

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

TRD-8909038 Cril Payne
Assistant Director, General Law, Legal Division
Railroad Commission of Texas

Effective date: October 17, 1989

For further information, please call: (512) 463-7187

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Part IV. Texas Department of Licensing and Regulation

Chapter 61. Boxing

• 16 TAC §§61.1, 61.10, 61.20-61.22, 61.40, 61.50, 61.60, 61.61, 61.70-61.73, 61.80, 61.90, 61.100-61.109

The Texas Department of Licensing and Regulation has withdrawn from consideration for permanent adoption a proposed §§61.1, 61.10, 61.20-61.22, 61. 40, 61.50, 61.60, 61.61, 61.70-61.73, 61.80, 61.90, 61.100-61.109 which appeared in the August 22, 1989, issue of the *Texas Register* (14 TexReg 4196). The effective date of this withdrawal is September 29, 1989.

Issued in Austin, Texas, on September 29, 1989.

TRD-8909112 Joseph L. Huertas
Director, Program Management Division
Texas Department of Licensing and Regulation

Effective date: September 29, 1989

For further information, please call: (512) 463-2906

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Chapter 78. Talent Agencies

• 16 TAC §§78.1, 78.10,; 78.20, 78.30, 78.40, 78.60, 78.70-78. 74, 78.80-78.82, 78.90, 78.100

The Texas Department of Licensing and Regulation has withdrawn from consideration for permanent adoption a proposed §§78.1, 78.10, 78.20, 78.30, 78.40, 78.60, 78.70-78.74, 78.80-78.82, 78.90, 78.100 which appeared in the August 11, 1989, issue of the *Texas Register* (14 TexReg 3971). The effective date of this withdrawal is September 29, 1989.

Issued in Austin, Texas, on September 29, 1989.

TRD-8909114 Joseph L. Huertas
Director, Program Management Division
Texas Department of Licensing and Regulation

Effective date: September 29, 1989

For further information, please call: (512) 463-2906

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Chapter 79. Vehicle Storage Facilities

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

The Texas Department of Licensing and Regulation has withdrawn from consideration for permanent adoption a proposed §§79.1, 79.10, 79.20, 79.30, 79.40, 79.70-79.73, 79.80, 79.90, 79.100, 79.101 which appeared in the July 4, 1989, issue of the *Texas Register* (14 TexReg 3273). The effective date of this withdrawal is September 29, 1989.

Issued in Austin, Texas, on September 29, 1989.

TRD-8909110 Joseph L. Huertas
Director, Program Management Division
Texas Department of Licensing and Regulation

Effective date: September 29, 1989

For further information, please call: (512) 463-2906

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Part IV. Texas Department of Licensing and Regulation

Chapter 80. Tow Trucks

• 16 TAC §§80.1, 80.10, 80.20, 80.40, 80.70, 80.80-80.82, 80.90, 80.91, and 80.100

The Texas Department of Licensing and Regulation has withdrawn from consideration for permanent adoption proposed new §§80.1, 80.10, 80.20, 80.40, 80.70, 80.80-80.82, 80.90, 80.91, and 80.100 which appeared in the August 15, 1989, issue of the *Texas Register* (14 TexReg 4033). The effective date of this withdrawal is September 29, 1989.

Issued in Austin, Texas, on September 29, 1989.

TRD-8909108 Joseph L. Huertas
Director, Program Management Division
Texas Department of Licensing and Regulation

Effective date: September 29, 1989

For further information, please call: (512) 463-2906

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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 1. ADMINISTRATION

Part IV. Office of the Secretary of State

Chapter 78. Athlete Agents

• **1 TAC §78.31**

The Office of the Secretary of State adopts new §78.31, without changes to the proposed text as published in the April 14, 1989, issue of the *Texas Register* (14 TexReg 1815).

The new section provides the public with the assurance that those athlete agents who have registered with the secretary of state's office who do not post a $100,000 surety bond have not entered into any financial services contracts with any athlete as defined by Texas Civil Statutes, Article 8871, nor has the athlete agent provided financial services to any such athlete. Furthermore, the athlete agent will certify that financial services contracts will not be entered into nor financial services provided without first posting a $100,000 surety bond with the secretary of state.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 6252-13a, §4; and Texas Civil Statutes, Article 8871, §11, which provides the Office of the Secretary of State with the authority to adopt rules necessary to carry out the Athlete Agent Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-8909064 Lorna Wassdorf
Special Assistant
Office of the Secretary of State

Effective date: October 19, 1989

Proposal publication date: April 14, 1989

For further information, please call: (512) 463-5701

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TITLE 22. EXAMINING BOARDS

Part XXII. Texas State Board of Public Accountancy

Chapter 501. Professional Conduct

General Provisions

• **22 TAC §501.2**

The Texas State Board of Public Accountancy adopts an amendment to §501.2, without changes to the proposed text as published in the August 15, 1989, issue of the *Texas Register* (14 TexReg 4040).

The amendment to this section is necessary for conformity with recent amendments to the Act and clearer definitions.

The amended section will modify and expand the following definitions in the rules of professional conduct: competitive bid, holding out to the public as a certificate or registration holder, licensee, person, and the practice of public accountancy.

One commenter expressed concern and requested an explanation and determination of status in regard to §501.2, specifically, the definition of practice of (or practicing) public accountancy, subsection (d) as it pertains to holding out and the ultimate effect on continuing education requirements.

This amendment was specifically written to capture those individuals who represents themselves to be CPAs while offering financial and tax advice, thereby inviting the public to rely upon professional skills implied by the certificate or registration.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to definitions used in the rules of professional conduct.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 29, 1989.

TRD-8909155 Bob E. Bradley
Executive Director
Texas State Board of Public Accountancy

Effective date: October 20, 1989

Proposal publication date: August 15, 1989

For further information, please call: (512) 450-7066

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Other Responsibilities and Practices

• **22 TAC §501.45**

The Texas State Board of Public Accountancy adopts the repeal of §501.45, without changes to the proposed text as published in the August 15, 1989, issue of the *Texas Register* (14 TexReg 4044).

The repeal of this section will allow for the adoption of a new section that will establish minimum standards on the amount of information a competitive bid must contain, thereby giving the public and the profession certain guidelines with which to evaluate bids.

The repeal of this section will allow for the adoption of a new section that will set out the situations in which a competitive bid is prohibited, and the minimum amount of information a competitive bid must contain.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 41a-1 §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to competitive bidding.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 29, 1989.

TRD-8909153 Bob E. Bradley
Executive Director
Texas State Board of Public Accountancy

Effective date: October 20, 1989

Proposal publication date: August 15, 1989

For further information, please call: (512) 450-7066

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The Texas State Board of Public Accountancy adopts new §501.45, without changes to the proposed text as published in the August 15, 1989, issue of the *Texas Register* (14 TexReg 4044).

The new section establishes minimum standards on the amount of information a competitive bid must contain, thereby giving the public and the profession certain guidelines with which to evaluate bids.

The new section sets out the situations in which a competitive bid is prohibited, and the minimum amount of information a competitive bid must contain.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to competitive bidding.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 29, 1989.

TRD-8909154 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Effective date: October 20, 1989

Proposal publication date: August 15, 1989

For further information, please call: (512) 450-7066

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Exemption for Attorneys

• 22 TAC §511.73

The Texas State Board of Public Accountancy adopts an amendment to §511. 73, with changes to the proposed text as published in the August 15, 1989, issue of the *Texas Register* (14 TexReg 4047).

The amendment is necessary in order for the section to conform with recent amendments to the Act. The change made on this section is to be found on line 1 of subsection (b). The section referred should have been §511.73(a).

The amendment will require an exam candidate who is an attorney to notify the board that he is an attorney prior to release of grades, and provide credit only after passing at least one other exam subject.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to the granting of credit for candidates taking the Uniform CPA Examination.

§511.73. Exemption for Attorneys.

(a) Any candidate who meets the applicable educational requirements under the Act and who is duly enrolled as an attorney by the Supreme Court of Texas shall be given credit for the business law subject of the examination without taking this written examination, only after the candidate has passed at least one other subject of the examination.

(b) Any candidate who meets the requirements of §511.73(a) of this title (relating to Exemption for Attorneys) must notify the board of his/her status as an attorney prior to the release of the examination results in order to receive credit for the business law subject and one other subject.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 29, 1989.

TRD-8909158 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Effective date: October 20, 1989

Proposal publication date: August 15, 1989

For further information, please call: (512) 450-7066

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 311. Watershed Protection

Subchapter G. Lakes Worth, Eagle Mountain, Bridgeport, Cedar Creek, Arlington, Benbrook, and Richland-Chambers.

• 31 TAC §§311.61-311.66

The Texas Water Commission (TWC) adopts new §§311.61-311.66. Sections 311. 61 and 311.63 are adopted with changes to the proposed text as published in the June 6, 1989, issue of the *Texas Register* (14 TexReg 2652). Sections 311.62, 311.64, 311.65, and 311.66 are adopted without changes and will not be republished.

The new sections are a response to a petition for rulemaking submitted by Tarrant County Water Control District Number One. The new sections require wastewater treatment systems, other than oxidation pond systems, discharging to Lake Worth, Eagle Mountain, Bridgeport, Cedar Creek, Arlington, Benbrook, and Richland-Chambers to employ additional treatment for domestic wastewater prior to discharge, specifically filtration to supplement suspended solids removal. Additionally, all domestic wastewater dischargers are required to take composite samples for purposes of effluent monitoring.

TWC received three comments concerning this rulemaking. The Texas Water Development Board was in favor of this rule and also indicated that several regional wastewater facility planning projects involving the seven reservoirs are underway and that these final planning reports may recommend effluent limitations more stringent than the rule. TWC encourages the regional planning occurring in this area and may require more stringent effluent limitations if as a result of regional facility planning and associated water quality modeling such additional limitations are necessary to maintain desired water quality levels.

Comments from Scanlan & Buskirk, P.C., suggested the term "non-oxidation pond systems" is confusing and suggested instead the alternative phrase "wastewater treatment systems other than oxidation ponds." TWC has incorporated this suggestion in the final rule.

Comments were also received from TU Services concerning the applicability of these rules to industrial facilities which also have domestic wastewater treatment facilities. Specifically, TU Services believes that industrial facilities should not be subject to this rule and suggests the language in proposed §311.62 be amended to only include discharges into these lakes from municipal or domestic sewage treatment or disposal systems that are not operated in conjunction with a federally or state permitted industrial facility. The commission does not agree with TU Services. TWC believes that even the small domestic wastewater volumes discharged by industrial facilities have localized effects and thus should undertake the additional treatment outlined in this rule.

The new sections are adopted under the Texas Water Code, §§5.103, 5.105, and 5.120, which provides the commission with the authority to promulgate rules as necessary to carry out its powers and duties under the Texas Water Code and other laws of the state, and to establish and approve all general policies of the commission.

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

BOD5--Biochemical oxygen demand (five-day).

Cedar Creek reservoir water quality area--Those portions of the Cedar Creek Reservoir Watershed within five stream miles upstream of the pool level of Cedar Creek Reservoir (322.0 feet, mean sea level).

Cedar Creek reservoir watershed--Cedar Creek Reservoir and its tributaries located between Joe B. Hoggsett Dam and a point along Cedar Creek up to the normal pool elevation.

Eagle Mountain lake water quality area--Those portions of the Eagle Mountain Lake Watershed within five stream miles upstream of the pool level of Eagle Mountain Lake (649.1 feet, mean sea level).

Eagle Mountain lake watershed--Eagle Mountain Lake and its tributaries located between Eagle Mountain Dam and a point 0.6 kilometers downstream from the confluence of Oates Branch.

Lake Arlington water quality area--Those portions of the Lake Arlington Watershed within five stream miles upstream of the pool level of Lake. Arlington (550.0 feet, mean sea level).

Lake Arlington watershed--Lake Arlington and its tributaries located between Arlington Dam up to the normal pool elevation along Village Creek.

Lake Benbrook water quality area--Those portions of the Lake Benbrook

Watershed within five stream miles upstream of the pool level of Lake Benbrook (694.0 feet, mean sea level).

Lake Benbrook watershed–Lake Benbrook and its tributaries located between Benbrook Dam and a point 200 meters downstream from US 337 in Tarrant County.

Lake Bridgeport water quality area–Those portions of the Lake Bridgeport Watershed within five stream miles upstream of the pool level of Lake Bridgeport (836.0 feet, mean sea level).

Lake Bridgeport watershed–Lake Bridgeport and its tributaries located between Bridgeport Dam to a point immediately upstream from the confluence of Bear Hollow.

Lake Worth water quality area–Those portions of the Lake Worth Watershed within five stream miles upstream of the pool level of Lake Worth (594.3 feet, mean sea level).

Lake Worth watershed–Lake Worth and its tributaries located between Lake Worth Dam and a point 4.0 kilometers downstream from Eagle Mountain Dam.

Mg/l–Milligram per liter.

DO–Dissolved oxygen.

Oxidation pond system–Facility in which oxidation ponds are the primary process used for secondary treatment and in which the ponds have been designed and constructed in accordance with applicable design criteria.

Richland-Chambers reservoir water quality area–Those portions of the Richland-Chambers Reservoir Watershed within five stream miles upstream of the pool level of Richland-Chambers Reservoir (315.0 feet, mean sea level).

Richland-Chambers watershed–Richland-Chambers Reservoir and its tributaries located between Richland Creek Dam and a point along Richland Creek up to the normal pool level.

TSS–Total suspended solids.

§311.63. Discharges into Water Quality Areas and Lakes.

(a) Wastewater treatment systems other than oxidation ponds systems.

(1) By January 1, 1993, all domestic wastewater discharges from wastewater treatment systems other than oxidation pond systems shall meet the following effluent limits:

	30-Day Average	7-Day Average	Daily Maximum	Single Grab	Minimum
BOD_5 (mg/l)	10	15	25	35	-
TSS (mg/l)	15	25	40	60	-
DO (mg/l)	--	--	--	--	4

(2) By January 1, 1993, all wastewater treatment systems other than oxidation pond systems shall employ filtration to supplement suspended solids removal.

(3) Domestic wastewater dis-

charged from wastewater treatment systems other than oxidation pond systems shall be disinfected prior to discharge in a manner to protect public health and aquatic life. Any appropriate process may be considered and approved on a case-by-case basis. If chlorine is utilized as the disinfectant, the effluent shall have a minimum concentration of one mg/l chlorine after a 20 minute detention time. The maximum chlorine residual in any discharge shall in no event be greater than four mg/l, or that necessary to protect aquatic life.

(b) Oxidation pond systems.

(1) All domestic wastewater from oxidation pond systems shall meet the following effluent limits:

	30-Day Average	7-Day Average	Daily Maximum	Single Grab
BOD_5	30	45	70	100
TSS	90	—	—	—

(2) Unless otherwise specified in a permit, chemical disinfection is not required for oxidation pond systems when the total retention time in the wastewater treatment system (based upon design flow) is at least 21 days.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 29, 1989.

TRD-8909169 Jim Haley
Director, Legal Division
Texas Water Commission

Effective date: October 20, 1989.

Proposal publication date: June 6, 1989.

For further information, please call: (512) 463-8087

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TITLE 34. PUBLIC FINANCE

Part IV. Employees Retirement System

Chapter 73. Benefits

• 34 TAC §73.27

The Employees Retirement System of Texas adopts an amendment to §73.27, without changes to the proposed text as published in the August 11, 1989, issue of the *Texas Register* (14 TexReg 58).

Senate Bill 58, 71st Legislature, Regular Session, 1989, which was effective September 1, 1989, amended §24.105(b), Title 110B, Texas Civil Statutes, to require the Board of Trustees of the Employees Retirement System of Texas to promulgate a rule which shall, for the purpose of computing standard service retirement annuities, increase to 2.0% the value of each of a person's membership of the ERS, unless the actuary for the ERS certifies that the adoption of the rule will cause the time required to amortize the unfunded actuarial liabilities of the ERS to be increased to a period that exceeds 31 years.

The amendment will increase from 1.8% to 2.0% the value of each of a person's first 10 years of service credit in the employee class of membership. This will be effective for persons retiring September 30, 1989 and thereafter.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Government Code, §814.105(a), Title 110B, Texas Civil Statutes, §24.105(b), which provides the Board of Trustees of the Employees Retirement System of Texas with the authority to promulgate a rule which shall, for the purpose of computing standard service retirement annuities, increase from 1.8% to 2.0% the value of a person's first 10 years of service credit in the employee class of membership of the ERS.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-8909034 Clayton T. Garrison
Executive Director
Employees Retirement System of Texas

Effective date: October 18, 1989

Proposal publication date: August 11, 1989

For further information, please call: (512) 476-6431, ext. 213

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 6. Disaster Assistance Program

Case Decision, Review, and Closing

• 40 TAC §6.303, §6.306

The Texas Department of Human Services (DHS) adopts amendments to §§6.303 and §6.306, without changes to the proposed text as published in the August 25, 1989, issue of the *Texas Register* (14 TexReg 4297).

The justification for the amendments is to comply with federal regulations which specify assistance available through the Individual and Family Grant (IFG) Program.

The amendments will function by placing current IFG Program eligibility criteria in DHS's Disaster Assistance Program rules.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public 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 September 29, 1989.

TRD-8909104 Ron Lindsey
Commissioner
Texas Department of Human Services

Effective date: October 20, 1989.

Proposal publication date: August 25, 1989.

For further information, please call: (512) 450-3765

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Part IV. Texas Commission for the Blind

Chapter 169. Visually Handicapped Children's Program

• 40 TAC §§169.3-169.6

The Texas Commission for the Blind adopts the repeal of §§169.3-169.6, without changes to the proposed text as published in the August 25, 1989, issue of the *Texas Register* (14 TexReg 4298).

The sections are being repealed and new sections are being adopted concurrently in order to advise citizens of the criteria by which they will be ruled eligible for services from the program. The agency's repeal of the chapter title and renaming it the "Blind and Visually Impaired Children's Program" is needed to conform to today's preferred terminology for referring to children with visual disabilities.

In repealing the sections, the agency is concurrently proposing a clearer definition of the criteria by which the commission determines the client's economic status and by which the agency determines whether or not it may purchase certain services for the client.

No comments were received regarding adoption of the repeal.

The repeals are adopted under the Human Resources Code, Title 5, Chapter 91, which provides the Texas Commission for the Blind with the authority to provide services to visually handicapped children to supplement the services provided by other state agencies if the commission determines that the provision of the services is appropriate.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on September 25, 1989.

TRD-8909123 Pat D. Westbrook
Executive Director
Texas Commission for the Blind

Effective date: October 20, 1989

Proposal publication date: August 25, 1989

For further information, please call: (512) 459-2600

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The Texas Commission for the Blind adopts new §§169.3-169.6, without changes to the proposed text as published in the August 25, 1989, issue of the *Texas Register* (14 TexReg 4298).

The new sections are adopted to advise citizens of the criteria by which they will be ruled eligible for services from the program. The agency's renaming of the chapter "Blind and Visually Impaired Children's Program" conforms to today's preferred terminology for referring to children with visual disabilities.

The new sections contain eligibility criteria; guidelines for establishing the client's economic need relative to the federal poverty level; and a list of services which require application of economic need prior to determining the commission's level of financial participation in services. A new section on definitions includes the definition of monthly income and defines the poverty level used by the agency in determining economic need.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Human Resources Code, Title 5, Chapter 91, which provides the Texas Commission for the Blind with the authority to provide services to visually handicapped children to supplement the services provided by other state agencies if the commission determines that the provision of the services is appropriate.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas on September 25, 1989.

TRD-8909123 Pat D. Westbrook
Executive Director
Texas Commission for the Blind

Effective date: October 20, 1989

Proposal publication date: August 25, 1989

For further information, please call: (512) 459-2600

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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 Aeronautics Commission

Wednesday, October 11, 1989, 1:30 p.m. The Texas Aeronautics Commission will meet in Room 221, Anson Jones State Office Building, 410 East 5th Street, Austin. According to the agenda summary, the commission will consider resolutions of commendation; air carrier administration report-items pending commission action, Houston Hobby; director's report; and the chairman's report.

Contact: Lydia Scarborough, P.O. Box 12607, 410 East 5th Street, Austin, Texas 78701, (512) 476-9262.

TRD-8909115

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Texas Department of Agriculture

Wednesday, October 11, 1989, 1:30 p.m. The Produce Recovery Fund Board of the Texas Department of Agriculture will meet in Room 924-A, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda, the hearing before the board to review: alleged violation of Texas Agriculture Code Ann., §103.001 by Alberto Garza as petitioned by Kay-Dee Produce.

Contact: Margaret Alvarez, P.O. Box 12847, Austin, Texas 78711, (512) 463-7604.

Filed: September 29, 1989, 3:15 p.m.

TRD-8909129

Thursday, October 12, 1989, 10 a.m. The Agriculture Resources Protection Authority of the Texas Department of Agriculture will meet in Suite 201, 611 South Congress, Austin. According to the agenda, opening remarks by Commissioner Hightower; distribute briefing materials on state agency responsibilities; present proposed rules for adoption by the authority: operating rules, rules governing appeals process; adoption of proposed rules; announcements by Commissioner Hightower; presentation on pesticide issues by the National Academy of Sciences; and public comments.

Contact: Susan Rieff, P.O. Box 12847, Austin, Texas 78711, (512) 463-7664.

Filed: September 29, 1989, 3:08 p.m.

TRD-8909127

Thursday, October 12, 10 a.m. The Produce Recovery Fund Board of the Texas Department of Agriculture will meet in Room 924-A, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda, hearing before the board to review: alleged violation of Texas Agriculture Code Ann., §103. 001 by Plantation Produce Company as petitioned by Sun Valley Produce.

Contact: Margaret Alvarez, P.O. Box 12847, Austin, Texas 78711, (512) 463-7604.

Filed: September 29, 1989, 3:14 p.m.

TRD-8909130

Thursday, October 12, 1989, 1 p.m. The Produce Recovery Fund Board of the Texas Department of Agriculture will meet in Room 924-A, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda, hearing before the board to review: alleged violatiton of Texas Agriculture Ann., §103. 001 by Hunt Oil Company doing business as Plantation Produce Company as petitioned by Lucas and Green Farms.

Contact: Margaret Alvarez, P.O. Box 12847, Austin, Texas 78711, (512) 463-7604.

Filed: September 29, 1989, 3:14 p.m.

TRD-8909131

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Texas Board of Architectural Examiners

Saturday, October 7, 1989, 8 a.m. The Rules Committee of the Texas Board of Architectural Examiners will meet in Suite 107, 8213 Shoal Creek boulevard, Austin. According to the agenda, the committee will review landscape architect and architect statues; review of landscape architect, and architect rules and regulations.

Contact: Robert H. Norris, 8213 Shoal Creek Boulevard, Suite 107, Austin, Texas 78758, (512) 458-1363.

Filed: September 28, 1989, 2:20 p.m.

TRD-8909085

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Texas Small Business Industrial Development Corporation

Wednesday, October 11, 1989, 1 p.m. The Board of Directors of the Texas Small Business Industrial Development Corporation will meet in the Westin Paso Del Norte, 101 South El Paso Street, El Paso. According to the agenda summary, the board will introduce board members; approve minutes of June 23, 1989, meeting; accept resignation of J. William Lauderback as president of TSBIDC; consider and possibly act to elect a president; certify net earnings; written status report on TSBIDC activity.

Contact: Barbara Carpenter, First City Centre, 816 Congress, Suite 1200, Austin, Texas 78701, (512) 320-9695.

Filed: October 3, 1989, 8:51 a.m.

TRD-8909221

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Child Care Development Board

Tuesday, October 3, 1989, 1:30 p.m. The Child Care Development Board met for an emergency meeting in Room 831, General Land Office, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda, the committee received a report from the legislative council; appointed advisory committee members; considered specifications for child care center; and heard public testimony. The emergency status was necessary to obtain the opinion of the legislative council on the issue of whether lease space may statutorily be used for a day care center; a decision on this issue must be reached before an October 15, 1989, deadline.

Contact: Lynn Leverty, P.O. Box 12608, Austin, Texas 78711, (52) 463-6000.

Filed: September 28, 1989, 11:28 a.m.

TRD-8909080

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Texas Department of Commerce

Wednesday, October 11, 1989, 1:15 p.m. The Board of Directors of the Texas Department of Commerce will meet at the Westin Paso Del Norte, 101 South El Paso Street, El Paso. The agenda includes presentations from the Mayor of El Paso, chairman of the Texas Industrial Development Corporation, and president of MBank–El Paso; prior minutes; consider delegation of approval authority on enterprise zones and projects; consider enterprise project application for CTEC, Inc.–San Marcos; consider proposed rules for the Texas Exporters Loan Fund program; appointment of loan review committee for the Texas Exporters Loan Fund program; consider proposed rules for the Texas Rural Economic Development Loan Fund program; appoint of loan review committee for the Texas Rural Economic Development Loan Fund program; consider restructuring tourism advisory committee; consider participating in overseas projects; discussion of foreign office openings; and present 1990 tourism advertising program.

Contact: Mary Lana, P.O. Box 12728, Austin, Texas 78711, (512) 320-9666.

Filed: October 3, 1989, 8:52 a.m.

TRD-8909222

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Texas State Board of Examiners of Professional Counselors

Friday, October 6, 1989, 1 p.m. The Pubic Relations Committee of the Texas State Board of Examiners of Professional Counselors will meet for an emergency meeting in the Conference Suite, Westin Paso del Norte, 101 South El Paso Street, El Paso. According to the agenda summary, the committee will consider the next newsletter, news columns, and other public relations projects. The emergency status was necessary because official public posting place (State Capitol) was closed due to a fire.

Contact: Don F. Rettberg, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7531.

Filed: October 2, 1989, 4:04 p.m.

TRD-8909210

Friday, October 6, 1989, 1 p.m. The Rules, Supervisors, Specialties and Reciprocity Committee of the Texas State Board of Examiners of Professional Counselors will meet for an emergency meeting in the Conference Suite, Westin Paso del Norte, 101 South El Paso Street, El Paso. According to the agenda summary, the committee will consider specialty designations; supervisory contracts for Mary Knolle and others; testing by counselors. The emergency status was necessary became official public posting place (State Capitol) was closed due to a fire.

Contact: Don F. Rettberg, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7531.

Filed: October 2, 1989, 4:04 p.m.

TRD-8909209

Friday, October 6, 1989, 1 p.m. The Testing, Licensing, Continuing Education and Renewals Committee of the Texas State Board of Examiners of Professional Counselors will meet for an emergency meeting in the Conference Suite, Westin Paso del Norte, 101 South El Paso Street, El Paso. According to the agenda summary, the committee will consider reports on ad hoc testing committee membership and status of renewals. The emergency status was necessary because official public posting place (State Capitol) was closed due to a fire.

Contact: Don F. Rettberg, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7531.

Filed: October 2, 1989, 4:03 p.m.

TRD-8909206

Friday, October 6, 1989, 1 p.m. The Fees and Budget Committee of the Texas State Board of Examiners of Professional Counselors will meet for an emergency meeting in the Conference Suite, Westin Paso del Norte, 101 South El Paso Street, El Paso. According to the agenda, the committee will consider financial report and expenditures. The emergency status was necessary because official public posting place (State Capitol) was closed due to a fire.

Contact: Don F. Rettberg, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7531.

Filed: October 2, 1989, 4:03 p.m.

TRD-8909204

Friday, October 6, 1989. 1 p.m. The Complaints Committee of the Texas State Board of Examiners of Professional Counselors will meet for an emergency meeting in the Conference Suite, Westin Paso del Norte, 101 South El Paso Street, El Paso. According to the agenda summary, the committee will hear reports on complaints processing and pending hearings. The emergency status was necessary because official public posting place (State Capitol) was closed due to a fire.

Contact: Don F. Rettberg, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7531.

Filed: October 2, 1989, 4:03 p.m.

TRD-8909211

Friday, October 6, 1989, 1 p.m. The Applications, Ethics, Suspension and Revocations Committee of the Texas State Board of Examiners of Professional Counselors will meet for an emergency meeting in the Conference Suite, Westin Paso del Norte, 101 South El Paso Street, El Paso. According to the agenda summary, the committee will consider applications of Esther Bernstein and others; persons whose licenses have expired for over one year; and appeals. The emergency status was necessary because official public posting place (State Capitol) was closed due to a fire.

Contact: Don F. Rettberg, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7531.

Filed: October 2, 1989, 4:03 p.m.

TRD-8909212

Friday, October 6, 1989, 3:30 p.m. and Saturday, October 7, 1989, 9 a.m. The Texas State Board of Examiners of Professional Counselors will meet for an emergency meeting in the Juarez Room #3, Civic Center, on Friday and in the Board of Directors Meeting Room Westin Paso del Norte, El Paso, on Saturday, El Paso. According to the agenda summary, the committee will hear announcements; presentation on "dialogue with LPC board"; conduct public hearing on proposed rules and consider approval of final rules; approve minutes of August 4-5 meeting; hear public comments; consider: administrative report, financial report, expenditures, ad hoc testing committee membership, status of renewals, applications of Esther Bernstein and others, reports on persons whose licenses have expired for over one year; appeals, complaints processing; pending hearings; newsletter; news columns and other public relations projects; speciality designations; supervisory contracts with Mary Ann Knolle and others; testing by counselors; other matters not requiring committee action. The emergency status was necessary because official public posting place (State Capitol) was closed due to a fire.

Contact: Don F. Rettberg, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7531.

Filed: October 2, 1989, 4:04 p.m.

TRD-8909207

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Texas Commission for the Deaf

Saturday, September 30, 1989, 3:15 p.m., or upon completion of BEI Board Meeting The Commissioners' BEI Subcommittee of the Texas commission for the Deaf met for an emergency meeting in the Conference Room, 510 South Congress, Austin. According to the agenda, the subcommittee will discuss new rules proposal and BEI budget in preparation for presentation at the

commission meeting. The emergency status was necessary so that all members could make this meeting date and must complete task before next commission meeting for commissioner's approval.

Contact: Larry D. Evans, 510 South Congress, Suite 300, Austin, Texas 78704, (512) 4469-9891.

Filed: September 28, 1989, 10:22 a.m.

TRD-8909081

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Texas Employment Commission

Tuesday, October 10, 1989, 8:30 a.m. The Texas Employment Commission will meet in Room 644, TEC Building, 101 East 15th Street, Austin. According to the agenda summary, the commission will hear prior meeting notes; executive session on Texas Industries, Inc., v. TEC and Frank Cleveland, Jr.; actions, if any, resulting from executive session; internal procedures of commission appeals; consider and act on tax liability cases and higher level appeals in unemployment compensation cases listed on commission Docket 41; set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: October 2, 1989, 4:09 p.m.

TRD-8909213

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Texas Department of Health

Tuesday, October 3, 1989, 9 a.m. The Hospital Data Advisory Committee of the Texas Department of Health met for an emergency meeting in Room M-418, Texas Department of Health, 1100 West 49th Street, Austin. According to the agenda summary, the committee will have an informal work session covering: the Attorney General's special task force on non-profit hospitals and unsponsored charity care recommendations on reporting charity care; draft report on hospital discharge databases; no action will be taken. The emergency status was necessary because official public posting place (State Capitol) was closed due to a fire.

Contact: Carol Daniels, 1100 West 49th street, Austin, Texas 78756, (512) 458-7261.

Sunday, October 22, 1989, 9 a.m. The Texas Radiation Advisory Board of the Texas Department of Health will meet in the Conference Room, Bureau of Radiation Control, 1212 East Anderson Lane, Austin. According to the agenda summary, the board will approve minutes of previous meeting; consider: appointment of nominating committee; update on Texas low-level radioactive waste disposal authority activities; committee reports, executive, medical, uranium, waste, fees strategic action; rules and regulatory guide update; program activities, general, compliance and inspection, licensing registration and standards; set date of next meeting and place.

Contact: L. Don Thurman, 1100 West 49th Street, Austin, Texas 78756, (511) 835-7000.

Filed: October 2, 1989, 4:03 p.m.

TRD-8909205

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Texas Health and Human Services Coordinating Council

Friday, October 13, 1989, 2 p.m. The Youth Committee of the Texas Health and Human Services Coordinating Council will meet in the Sergeant's Committee Room, State Capitol, Austin. According to the agenda, the committee will review and approve minutes; consider staff reports and committee action on levels of care; review and adopt final draft of common application; adopt proposed monitoring process and implementation schedule; agency approved rates for residential care; preliminary FY 1988 cost report analysis; staff reports on children and youth services state coordinating committee; progress of community resource coordination groups; progress of children and adolescent service system project; staff reports and committee action on commission on children, youth, and family services transition to commission on children, youth and family services; discuss and committee action on nominations to commission on children, youth, and family services; old business; new business.

Contact: Tom Olsen, 311-A East 14th Street, Austin, Texas 78734, (512) 463-2195.

Filed: October 2, 1989, 1:51 p.m.

TRD-8909187

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Texas Housing Agency

Wednesday, October 4, 1989, 9 a.m. The Audit Committee of the Texas Housing Agency met for an emergency meeting in the THA Conference Room, Suite 300, 811 Barton Springs, Austin. According to the agenda summary, the committee will consider and possibly act on report from Ernst and Young; discuss and prescribe the scope of audit to be performed by Ernst and Young. The emergency status was necessary due to urgent public necessity to better manage and preserve state funds and property to provide safe, decent, and sanitary housing for Texans of low and moderate income.

Contact: Thomas C. Adams, P.O. Box 13941, Austin, Texas 78711, (512) 474-2974.

Filed: October 2, 1989, 4:21 p.m.

TRD-8909216

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State Board of Insurance

Tuesday, October 10, 1989, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 342, 1110 San Jacinto, Austin. According to the agenda, the public hearing on Docket No. 10547–to consider an assumption reinsurance agreement between State Reserve Life Insurance Company, San Antonio, Texas and American Security Life Insurance Company, San Antonio, Texas, pursuant to the provisions of the Texas Insurance Code, Articles 3.10 and 21.49-1, §4(d)(2)(ii); and to consider the transfer by State Reserve Life Insurance Company of assets, exclusive of sufficient capital and surplus required of State Reserve to qualify for its certificates of authority in various states, to American Security Life Insurance Company pursuant to Texas Insurance Code, Article 21.49-1, §4.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: October 2, 1989, 3:25 p.m.

TRD-8909192

Tuesday, October 10, 1989, 10 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 414, 1110 San Jacinto, Austin. According to the agenda summary, the final action on amendments to 28 TAC 5.4001 and 5.4101. Emergency and proposed action on new §7.81; proposed action on new 28 TAC §7.74; board orders on several different matters; motion for withdrawal of the appeal of Sea Isle II doing business as The Pelican Condominium from action of the Texas Catastrophe Property Insurance Association; proposal for decision in the appeal of T. Nick Fenger and Susan McGroarty Sabots from action of the Texas Catastrophe Property Insurance Association; personnel matters; pending and contemplated litigation; and solvency matters.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: October 2, 1989, 3:23 p.m.

TRD-8909215

Tuesday, October 10, 1989, 1:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 342, 1110 San Jacinto, Austin. According to the agenda, the public hearing on Docket No. 10548–to consider issuance of a certificate of authority of First Baptist/Amarillo Foundation, Inc., doing business as Park Place Towers, Amarillo, Texas, under the Texas Continuing Care Facility Disclosure and Rehabilitation Act, §4(g).

Contact: Will McCann, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: October 2, 1989, 3:25 p.m.

TRD-8909191

Wednesday, October 11, 1989, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 460, 1110 San Jacinto, Austin. According to the agenda, the public hearing on Docket No. 10541–to consider whether disciplinary action should be taken against Gerald Lee McCracken, San Antonio, Texas who holds a Group I, legal reserve life insurance agent's license and a local recording agent's license issued by the State Board of Insurance.

Contact: Wendy L. Ingham, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: October 2, 1989, 3:24 p.m.

TRD-8909200

Wednesday, October 11, 1989, 1:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 342, 1110 San Jacinto, Austin. According to the agenda, the public hearing on Docket No. 10537–to consider the application of Clyde Louis Wilson aka Hooke, Amarillo, Texas, for a Group I, legal reserve life insurance agent's license.

Contact: O. A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: October 2, 1989, 3:24 p.m.

TRD-8909199

Wednesday, October 11, 1989, 1:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 353, 1110 San Jacinto, Austin. According to the agenda, the public hearing on Docket No. 10550–to consider issuance of a certificate of authority for Presbyterian Village North, Inc., doing business as Presbyterian Village North, Dallas, Texas, under the Texas Continuing Care Facility Disclosure and Rehabilitation Act, §4(g).

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: October 2, 1989, 3:24 p.m.

TRD-8909198

Friday, October 13, 1989, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 342, 1110 San Jacinto, Austin. According to the agenda, the public hearing on Docket No. 10509–to consider whether disciplinary action should be taken against Roger Tellez, doing business as Roger Tellez Insurance Agency, San Antonio, Texas, who holds a Group I, legal reserve life insurance agent's license and a local recording agent's license issued by the State Board of Insurance.

Contact: Wendy L. Ingham, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: October 2, 1989, 3:24 p.m.

TRD-8909197

Friday, October 13, 1989, 1:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 353, 1110 San Jacinto, Austin. According to the agenda, the public hearing on Docket No. 10546–to consider the application of Kenneth Robert Urban, Jr., Houston, Texas, for a resident insurance adjuster's license.

Contact: Will McCann, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: October 2, 1989, 3:25 p.m.

TRD-8909196

Monday, October 16, 1989, 9.a.m. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 353, 1110 San Jacinto, Austin. According to the agenda, the public hearing on Docket No. 10522–to consider whether disciplinary action should be taken against American Excel Insurance Company Cedar Rapids, Iowa, who holds a certificate of authority issued by the State Board of Insurance.

Contact: Wendy L. Ingham, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: October 2, 1989, 3:25 p.m.

TRD-8909195

Monday, October 16, 1989, 1:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 460, 1110 San Jacinto, Austin. According to the agenda, the public hearing on docket No. 10514–to consider whether disciplinary action should be taken against Royce Dale Hanna, Wichita, Kansas, who holds a Group I, legal reserve life insurance agent's license issued by the State Board of Insurance.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: October 2, 1989, 3:25 p.m.

TRD-8909193

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Texas Department of Licensing and Regulation

Tuesday October 10, 1989 9:30 a.m. and Wednesday October 11, 1989, 8 a. m. The Commission of Licensing and Regulation of the Texas Department of Licensing and Regulation will meet in Room 1012, E. O. Thompson Building, 920 Colorado, Austin. According to the agenda summary, the commission will be receiving orientation; introduce staff; department overview; elect chairperson; executive session, pursuant to Texas Civil Statutes, Article 6252-17, §2(e) and §2(g), to consider and possibly act on the following: review of pending litigation, pending homeowners' recovery fund litigation, possible appointment of an executive director/commissioner, and act on executive session items as required in open session; receive staff report; consider rule to allow all licenses, registrations, permits and certificates issued by the department to expire on their anniversary date; approve FY 1990 operating budget; approve FY 1990 fee schedule; and hear public comment.

Contact: Larry Kosta, 920 Colorado, E. O. Thompson Building, Austin, Texas 78711, (512) 463-3173.

Filed: October 2, 1989, 1:07 p.m.

TRD-8909185

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Texas Department of Mental Health and Mental Retardation

Monday, October 16, 1989, 10:30 a.m. The Interagency Council on ICF/MR Facilities of the Texas Department of Mental Health and Mental Retardation will meet at the Red Lion Hotel, 6121 IH 35 North, Austin. According to the agenda, the council will convene in accordance with Senate Bill 1426, §3, to consider for approval the annual plan for the development of new beds in the ICF/MR program for FY 1990 as developed by TDMHMR; address the need to elect one member to serve as chairperson of the council and develop policies and procedures governing the council's actions; if deaf interpreters are required notify TDMHMR (512) 465-4639, Carole Smith, 72 hours in advance of meeting.

Contact: Carole Smith, P.O. Box 12668, Austin, Texas 78711, (512) 465-4639.

Filed: October 3, 1989, 9:58 a.m.

TRD-8909223

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Board of Pardons and Paroles

Tuesday, October 10, 1989, 9 a.m. The Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda, the board will convene in open meeting and act on: minutes of August 21, August 29, September 14, September 26, 1989 meetings; board rules–revocation: sexual harassment policy; media policy; PPT/HH facility contracts; criteria NCIC warrant entry; report from TCADA quarterly meeting; PPT/Elec. mon. conditions and MOU between householder and BPP; cont. of pilot proj/special reviews; Harris County PIA cases; special reviews/PIA cases; tent. par. specified date rescission; disc. inmate cases; parole panel compositions; substance abuse advisory com. rpt; executive director report.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-7249.

Filed: October 2, 1989, 4:16 p.m.

TRD-8909214

Tuesday, October 10, 1989, 1:30 p.m. The Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda, the board will meet to consider executive clemency recommendations and related actions (other than out of country conditional pardons), including: full pardons/restoration of civil rights of citizenship; emergency medical reprieves; commutations of sentence; other reprieves, remissions and executive clemency actions.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2749.

Filed: September 29, 1989, 10:33 a.m.

TRD-8909116

Monday-Friday, October 9-13, 1989, 1:30 p.m., except for Friday, 11 a.m. The Board Panel of the Board of Pardons and Paroles will meet at 8619 Shoal Creek Boulevard, Austin. According to the agenda summary, the board panel will receive, review and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction, and initiate and carry through with appropriate action.

Contact: K. Armstrong, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2713.

Filed: September 29, 1989, 10:32 a.m.

TRD-8909117

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State Preservation Board

Monday, October 2, 1989, 2 p.m. The State Preservation Board met for an emergency meeting in Room 3143, Library and Archives Building, Austin. According to the revised agenda, the board approved minutes; old or unfinished business; new business: asbestos report, listing of change requests, resolution of thanks, capitol collections annual report, legislative council; remodel/design review/ GLO restoration project, capitol restoration project. The emergency status was necessary to add to asbestos report which requires board action.

Contact: Michael Schneider, P.O. Box 13286, Austin, Texas 78711, (512) 463-5495.

Filed: October 2, 1989, 9:45 a.m.

TRD-8909173

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Texas State Board of Public Accountancy

Tuesday, October 10, 1989, 9:30 a.m. The Public Hearing of the Texas State Board of Public Accountancy will meet in Suite 340, 1033 La Posada, Austin. According to the agenda, the public hearing on complaint numbers 86-12-04L and 88-11-02L.

Contact: Bob E. Bradley, 1033 LaPosada, Suite 340, Austin, Texas 78752-3892.

Filed: October 2, 1989, 8:56 a.m.

TRD-8909172

Thursday, October 12, 1989, 9 a.m. The Informal Conferences of the Texas State Board of Public Accountancy will meet in Suite 340, 1033 La Posada, Austin. According to the agenda, the informal conferences on complaint numbers: 88-12-20-L, 88-06-21L, 89-03-40L, 89-04-33L.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: October 2, 1989, 3:48 p.m.

TRD-8909201

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Public Utility Commission of Texas

Monday, October 9, 1989, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the prehearing conference will be held on Docket No. 8585–inquiry of the general counsel into the reasonableness of the rates and services of Southwestern Bell Telephone Company and Docket No. 8218–inquiry of the general counsel into the WATS prorate credit.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 29, 1989, 2:52 p.m.

TRD-8909136

Monday, October 9, 1989, 4 p.m. Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda summary, the open meeting to consider the following dockets and projects: 8717, 8941, 8913, 9008, and 8739; and rules to consider publication of a proposed rule for implementing the state-wide relay service for hearing and speech impaired (Project No. 8290).

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 29, 1989, 2:56 p.m.

TRD-8909133

Monday, October 9, 1989, 4:15 p.m. The Administrative Meeting of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda summary, the meeting will be to discuss: reports; discussion and action on budget and fiscal matters in cluding a report on the status of the lease on the PUC offices and a workshop to review the agency's FY 1990 operating budget; discussion regarding consideration of a proposed rule applicable to 900 service; approval of TECA expenses relating to administration of universal service fund; report on relay service advisory committee; adjourn to executive session to consider litigation and personnel matters; reconvene for executive session; set time and place for next meeting.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 29, 1989, 2:55 p.m.

TRD-8909134

Tuesday, October 10, 1989, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the prehearing conference on Docket No. 9056–application of Concho Valley Electric Cooperative, Inc., for authority to change rates.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 29, 1989, 2:53 p.m.

TRD-8909137

Monday, October 30, 1989, 10 a.m. the Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the rescheduled meeting from October 9, 1989, at 10 a.m., on Docket No. 8914–compliant of National Telecommunications of Austin against Southwestern Bell Telephone Company.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 29, 1989, 2:54 p.m.

TRD-8909135

Monday, November 6, 1989, 1:30 p.m. The Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the hearing was rescheduled from November 6, 1989, 10 a.m. to November 6, 1989, 1:30 p.m., on Docket No. 9023–petition of South Texas Electric Cooperative, Inc., for the authority to change the line extension policy.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 2, 1989, 3:19 p.m.

TRD-8909203

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Task Force on Public Utility Regulation

Tuesday-Thursday, October 10-12, 1989, 9 a.m. The Task Force on Public Utility Regulation will meet in the Old Supreme Court Room 310, Capitol Building, Austin. According to the agenda: Tuesday, call to order; approve minutes; present testimony by electric utilities, electric cooperatives, municipal public power entities, and river authorities; Wednesday, present testimony by telecommunications cooperatives, local service companies, and toll service companies; Thursday, present testimony by current and former PUC commissioners, former key PUC staff, and current and former counsel for the Office of Public Utility Counsel, and other business.

Contact: Karl Spock, 305 Reagan Building, Austin, Texas, (512) 463-1300.

Filed: October 2, 1989. 2:07 p.m.

TRD-8909188

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Texas Racing Commission

Monday, October 9, 1989 10 a.m. The Texas Racing Commission will meet for an emergency meeting in Room 101, John H. Reagan Building, 105 West 15th street, Austin. According to the agenda, the commission will approve minutes; take action on commission rules and regulations for horse and greyhound racing; consider and vote on final adoption of §§301.1, 303.84, 303.85, 305.36, 305.247, 309.26, 309.53, 309.67, 305.48, 309.102, 309.155, 309.181, 209.193, 309.351, and 309.363; consider and vote to adopt an emergency rules and to propose for publication, §§305.66, 305.264, 311.106, 309.114, 313.103, 313.406; consider and vote on proposal to reopen application periods for pari-mutuel horse racetrack licenses; consider and vote on request for nonpari-mutuel race day for Ross Downs; consider and vote on request for recognition at pari-mutuel racetracks at Ross Downs; discuss nonpari-mutuel racing for greyhounds; discuss status of Manor Downs; consider and vote on proposal to require performance bonds from Class 2 licensees. The emergency status was necessary to expedite the receipt of state revenue by requiring performance bonds from Class II licensees and ensuring that all rules are adopted.

Contact: Paula Cochran Carter, P.O. Box 12080, Austin, Texas 78701, (512) 476-7223.

Filed: October 2, 1989, 9:50 a.m.

TRD-8909174

Tuesday, October 10, 1989, 9 a.m. The Greyhound Racing Section will meet at 105 West 15th Street, Austin. According to the agenda summary, the section will consider motions and other matters relating to the greyhound racetrack license for Galveston County; reconsider and vote on staff's motion to stay entrance of final order to allow limited discovery and staff to reopen evidence; consider and vote on appeals by Galveston Greyhound Racing Associates from interim orders; consider and vote on final order.

Contact: Paula Cochran Carter, P.O. Box 12080, Austin, Texas 78701, (512) 476-7223.

Filed: October 2, 1989, 11:26 a.m.

TRD-8909181

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State Seed and Plant Board

Monday, October 23, 1989, 10 a.m. The Seed and Grain Warehouse /Texas Department of Agriculture will meet in the Imperial Suite, Westin Galleria, 24th Floor, Houston. According to the agenda summary, the board will consider minutes; review applications for license as certified seed growers; acknowledgment of name changes; request for certification eligibility of new varieties; discuss proposed changes in turfgrass standards; standards for corn isolation distances and application date change.

Contact: Seed and Grain Warehouse Program, P.O. Box 629, Giddings Texas, (409) 542-3691.

Filed: September 29, 1989, 3:13 p.m.

TRD-8909132

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Board for Lease of State-owned Lands

Wednesday October 11, 1989, 3 p.m. The Board for Lease of Texas Department of Corrections will meet in the General Land Office, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the board will approve minutes of previous meeting; consider bids received for the October 3, 1989, oil, gas, and other minerals lease sale; discuss state leases on TDC lands, Houston County.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas, (512) 463-5016.

Filed: October 2, 1989, 4:28 p.m.

TRD-8909217

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University Interscholastic League

Wednesday, October 4, 1989, 1 p.m. The Waiver Review Board of the University Interscholastic League met in Room 2.110, Thompson Conference Center, UT Campus, 26th and Red River, Austin. According to the agenda summary, the board considered appeal of waiver decision to determine student eligibility.

Contact: Bob Young, P.O. Box 8028, UT Station, Austin, Texas 78713-8028, (512) 471-5883.

Filed: September 29, 1989, 2:28 p.m.

TRD-8909126

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The University of Texas at Austin

Wednesday, October 4, 1989, 3 p.m. The Intercollegiate Athletics for Women of the University of Texas at Austin met in the Conference Room, Frank Erwin Center, 1701 Red River, Austin. According to the agenda summary, the board approved minutes of previous meeting; considered announcements/information reports; old business; new business.

Contact: Donna A Lopiano, P.O. Box N, UT Station, Austin, Texas 78713-7327, (512) 471-7693.

Filed: September 29, 1989, 10:11 a.m.

TRD-8909120

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Texas Water Commission

Thursday, October 12, 1989, 10 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will consider various matters within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to scheduling an item in the entirety or for particular action at a future date or time.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 475-2161.

Filed: September 29, 1989, 4:10 p.m.

TRD-8909165

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Regional Meetings

Meetings Filed September 29, 1989

The Austin Transportation Study, Planning Process Subcommittee met in the Lt. Governor's Committee Room, State Capitol, Austin, October 4, 1989, at 1 p.m. Information may be obtained from Joseph P. Gieselman, 811 Barton Springs, Road, Suite 700, Austin, Texas, (521) 472-7483.

The High Plains Underground Water Conservation District No. 1, Board of Directors will meet in the Conference Room, 2930 Avenue Q, Lubbock, October 10,

1989, at 10 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, 79405.

The Sabine Valley Regional Mental Health and Mental Retardation Center, Board of Trustees will meet in the Administration Building, 107 Woodbine Place, Longview, October 9, 1989 at 7 p.m. Information may be obtained from Ron R. Cookston, P.O. Box 6800, Longview, Texas 75608.

TRD-8909102

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Meetings Filed October 2, 1989

The Brazos River Authority, Water Utilization Committee will meet at 4400 Cobbs Drive, Waco, October 9, 1989, at 10 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555.

The Canadian River Municipal Water Authority, Board of Directors will meet at the Plainview Country Club, 2902 West Fourth, Plainview, October 11, 199 at 11 a.m. Information may be obtained from John C. Williams, P.O. Box 99, Sanford, Texas 79078, (806) 865-3325.

The Central Appraisal District of Johnson County, Appraisal Review Board will meet in Room 202, Suite 202, 109 North Main, Cleburne, October 16, 1989, at 9 a.m. Information may be obtained from Jackie Gunter, 109 North Main, Cleburne, Texas 76031, (817) 645-3987.

The Deep East Texas Private Industry Council, Inc., Planning Committee will meet in the DETCOG Office, 118 South First Street, Lufkin, October 11, 1989, at 10:30 a.m. Information may be obtained from Charlene Meadows, P.O. Box 1423, Lufkin, Texas 75901, (409) 634-2247.

The Deep East Texas Private Industry Council, Inc., Worker Adjustment Committee will meet in Room 103, Best Western Inn, Highway 59 South, Lufkin, October 11, 1989, at 1:30 p.m. Information may be obtained from Charlene Meadows, P.O. Box 1423, Lufkin, Texas 76901, (409) 634-2247.

The Deep East Texas Private Industry Council, Inc., will meet in the Best Western Inn, Highway 59 South, Lufkin, October 11, 1989, at 2 p.m. Information may be obtained from Charlene Meadows, P.O. Box 1423, Lufkin, Texas 75901, (409) 634-2247.

The North Texas Private Industry Council, Inc., will meet in the Wichita Falls Sheraton, 100 Central Freeway, Wichita Falls, October 12, 1989, at 12:15 p.m. Information may be obtained from Art Prerich, 4515 Allendale Road, Wichita Falls, Texas 76310, (817) 691-0020.

The North Texas State Planning Region Consortium, will meet in the Wichita Falls Sheraton, 100 Central Freeway, Wichita Falls, October 12, 1989, at 1 p.m. Information may be obtained from Bobbie A. Owen, County Courthouse, Jacksboro, Texas 76056, (817) 567-2241.

The Region XVII Education Service Center, Board of Directors will meet in the Board Room, ESC Region XVII, 1111 West Loop 289, Lubbock, October 17, 1989, at 10 a.m. Information may be obtained from Weldon E. Day, 1111 West Loop 289, Lubbock, Texas 79416, (806) 792-4000, ext. 202.

The Rusk County Appraisal District, Board of Directors will meet in the Administrative Office, 107 North Van Buren, Henderson, October 12, 1989, at 1:30 p.m. Information may be obtained from Melvin R. Cooper, P.O. Box 7, Henderson, Texas 75653-0007, (214) 756-99697.

TRD-8909170

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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 State Board of Public Accountancy

Consultant Proposal Request

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas State Board of Public Accountancy (TSBPA) requests proposals for consulting services which will be awarded based on procedures set forth in the Professional Services Procurement Act, Texas Civil Statutes, Article 664-4.

Description of Services. The board invites individual certified public accountants to offer their services, part-time, to evaluate the findings of the Report Review program reviewers; make reports and draft recommendations to the Report Review Committee. The consultant will also assist in the training of reviewers and advise on development of the report review program. Work is to be performed at the TSBPA offices in Austin, on a part-time basis, approximately 20 hours per week.

Contact Persons. For further information, contact Executive Director, Texas State Board of Public Accountancy, 1033 La Posada Drive, Suite 340, Austin, Texas 78752, (512) 451-0241.

Closing Date. Proposals are due by 3 p.m. Tuesday November 7, 1989, at the address shown.

Evaluation and Selection. Individuals must meet the following minimum requirements: must be a current Texas licensed certified public accountant in good standing, served at the senior manager or partner level of a CPA firm; have no less than 10 years review responsibility in his/her firm at the quality control level; have technical expertise in the areas of commercial, not-for-profit, governmental, and federally financed entities.

The proposal should include a resume of relevant engagements, a proposed budget specifying consultant cost on an hourly basis, out-of-pocket expenses to be charged, and a not-to-exceed budget.

TSBPA intends to evaluate each proposal and may then award a contract based upon cost and the proposer's demonstrated competence, capabilities, knowledge, and qualifications for the expected services.

Issued in Austin, Texas on September 29, 1989.

TRD-8909136 Bob E. Bradley
Executive Director
Texas State Board of Public Accountancy

Filed: September 29, 1989

For further information, please call: (512) 451-0241

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Ark-Tex Council of Governments

Consultant Proposal Request

Pursuant to Texas Civil Statutes, Article 6252-11c, the Ark-Tex Council of Governments (ATCOG) is in the process of selecting a certified public accountant firm to perform a fiscal year single audit of federal, state, and local grants and contracts administered by the ATCOG for the period of October 1, 1988-September 30, 1989 with consideration of a multi-year proposal.

The certified public accountant firm selected will be expected to meet the audit requirements set forth in Office of Management and Budget (OMB) *Compliance Supplement for Single Audits of State and Local Governments* concerning uniform administrative requirements; Governmental Auditing Standards (1988 Edition) *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions* promulgated by the United States Comptroller General as they relate to financial and compliance audits; generally accepted audit standards established by the American Institute of Certified Public Accountants (AICPA) including the audit and accounting guide, *Audits of State and Local Governmental Units*; and all other applicable audit requirements.

Those firms interested in receiving a request for proposal package should contact Margaret Haak-Muse, Comptroller, P.O. Box 5307, Texarkana, Texas 75505 (214) 832-8636. The deadline for requesting the above package is October 11, 1989.

The contract will be awarded based on the applicant's abilities, experience, and qualifications as defined in detail in the Request for Proposal. Selection will be made by the ATCOG Board of Directors.

Issued in Wake Village, Texas, on September 26, 1989.

TRD-8909105 James D. Goerke
Executive Director
Ark-Tex Council of Governments

Filed: September 29, 1989

For further information, please call: (214) 832-8636

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Texas Department of Banking

Notice of Application

Texas Civil Statutes, Article 342-401a, requires any person who intends to buy control of a trust company to file an application with the banking commissioner for the commissioner's approval to purchase control of a particular trust company. A hearing may be held if the application is denied by the commissioner.

On September 8, 1989, the banking commissioner received an application to acquire control of First RepublicBank Trust Company, Dallas, by NCNB Texas National Bank, Dallas.

On September 26, 1989, notice was given that the application would not be denied.

Additional information may be obtained from William F. Aldridge, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

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

TRD-8909089 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: September 27, 1989

For further information, please call: (512) 479-1200

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Notices of Hearings

The hearing officer of the State Banking Department will conduct a hearing on the application to acquire control of National Guaranty Trust Company, Houston, by Charles A. Barron, Van Nuys, California; Richard Bender, Rialto, California; K. Barron Bradshaw, P.C., Evergreen Colorado; C. J. Chrzan, Burbank, California; John Farber, Shoreview, MN; Calvin Fong, Beverly Hills, California; Warren Brownfield, Burbank, California; Rowena Bennett, Canoga Park, California; Brian W. Fisher, Los Angeles, California; Jack Koga, Sylmar, California; Carol McGowan, La Crescenta, California; Darryl Sato, Tujunga, California; Raven Limited, Burbank, California; Albert Snell, Monterey Park, California; Kenneth Tiele, Glendale, California; William C. Wiles, Burbank, California; M. W. LeCrone, Pasadena, California; Dragi Milor, Glendale, California; Thomas Satc, Tujunga, California; Frank Simmeth, Glendale, California; George F. Stroope, M.D. , N. Little Rock, Arkansas; Janis Wiles, Burbank, California; and Rodney L. Wilson, Glendale, California. The hearing will be held on October 12, 1989, at 9 a.m. at the Texas Department of Banking, 2601 North Lamar Boulevard, Austin.

Additional information may be obtained from Carlos J. Contreras, III, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas on September 29, 1989.

TRD-8909166 Ann Graham
General Counsel
Texas Department of Banking

Filed: September 29, 1989

For further information, please call: (512) 479-1200

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The hearing officer of the State Banking Department will conduct a hearing for the alleged sale of checks without a license in violation of the Sale of Checks Act by Smith's Pharmacy, Lindale. The hearing will be held on October 20, 1989 at 9 a.m. at the Texas Department of Banking, 2601 North Lamar Boulevard Austin.

Any interested person wishing to appear must file a written notice of intent to appear including a brief statement of position with the Texas Department of Banking at least 10 days prior to the hearing. A copy of this notice, and all other pleadings must be sent to each party to the hearing. All parties appearing at the hearing are requested to provide the department with two copies of all exhibits received as evidence, excepting poster size exhibits and photographs.

Additional information may be obtained from: Ann Graham, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas on September 29, 1989.

TRD-8909168 Ann Graham
General Counsel
Texas Department of Banking

Filed: September 29, 1989

For further information, please call: (512) 479-1200

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The hearing officer of the State Banking Department will conduct a hearing for the alleged sale of checks without a license in violation of the Sale of Checks Act by Ella Minimax, Houston. The hearing will be held on October 17, 1989 at 9 a.m. at the Texas Department of Banking, 2601 North Lamar Boulevard Austin.

Any interested person wishing to appear must file a written notice of intent to appear including a brief statement of position with the Texas Department of Banking at least 10 days prior to the hearing. A copy of this notice, and all other pleadings must be sent to each party to the hearing. All parties appearing at the hearing are requested to provide the department with two copies of all exhibits received as evidence, excepting poster size exhibits and photographs.

Additional information may be obtained from: Ann Graham, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas on September 29, 1989.

TRD-8909167 Ann Graham
General Counsel
Texas Department of Banking

Filed: September 29, 1989

For further information, please call: (512) 479-1200

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Texas Department of Commerce

Weekly Report on the 1989 Allocation of the State Ceiling on Certain Private Activity Bonds

The Tax Reform Act of 1986 (the Tax Act) imposes a volume ceiling on the aggregate principal amount of private activity bonds that may be issued within the State of Texas during any calendar year. The state ceiling for Texas, imposed by the Tax Act for calendar year 1989 is $839,250,000.

State legislation, Texas Civil Statutes, Article 5190.9(a), (the Act), established the allocation process for the State of Texas. The Act specifies that one-third of the state ceiling is to be made available to qualified mortgage bonds and of that one-third, one-third is available to the Texas Housing Agency. One-fourth of the state ceiling is available to state-voted issues, and the balance of the state ceiling is available for all other issuers of bonds requiring an allocation.

Pursuant to the Act, the aggregate amount for qualified mortgage bond subceiling is $279,750,000, with $186,500,000 available to the local housing authorities and $93,250,000 available to the Texas Housing Agency. The aggregate amount for state-voted issues is $209,812,500 and the amount for all other bonds requiring an allocation is $349,687,500.

Generally, the state ceiling is allocated on a first-come, first-served basis, with the Texas Department of Commerce (the department) administering the allocation system.

The information that follows is a weekly report of the allocation activity for the period, September 18, 1989-September 22, 1989.

Weekly report on the 1989 allocation of the state ceiling on certain private activity bonds as pursuant to Texas Civil Statutes, Article 5190.9(a).

Total amount of state ceiling remaining unreserved for the $279,750,000 subceiling for qualified mortgage bonds under the Act as of September 22, 1989: $48,251,166.

Total amount of state ceiling remaining unreserved for the $209,812,500 subceiling for state-voted issues under the Act as of September 22, 1989: $164, 812,500.

Total amount of state ceiling remaining unreserved for the $349,687,500 subceiling for all other bonds under the Act as of September 22, 1989: $2,500.

Total amount of the $839,250,000 state ceiling remaining unreserved as of September 22, 1989: $213,066,166.

Comprehensive listing of bond issues which have received a reservation date pursuant to the Act from September 18, 1989-September 22, 1989: none.

Comprehensive listing of bonds issued and delivered as pursuant to the Act from September 18, 1988-September 22, 1989: none.

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

TRD-8909082 William D. Taylor
Executive Director
Texas Department of Commerce

Filed: September 28, 1989

For further information, please call: (512) 472-5059

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Texas Department of Community Affairs

Requests for Proposals

The Texas Department of Community Affairs (TDCA), administering agency for the Community Services Block Grant (CSBG) Program in Texas, announces a request for proposals (RFP) to provide services to low-income persons in the County of Dallas pursuant to the Community Service Block Grant Act (42 United States Code, §9901 et seq.).

Any grantee selected pursuant to this RFP will be expected to operate, on an equitable basis throughout Dallas County, a program to ameliorate the causes of poverty through the provision of the types of services and activities specified in 42 United states Code, §9904(c)(1). Proposals should include a description of planned publicity and outreach for the program and a provision for providing the proposed program activities through the use of neighborhood centers located in low-income areas.

The initial proposed contract performance period is January 1, 1990-December 31, 1990. Funds available under this solicitation are estimated to be $1,000,000. Any subsequent grant awards will be dependent upon the grantee's satisfactory performance, as determined by TDCA, of the initial contract and the receipt of Fiscal Year 1991 Community Services Block Grant funding by TDCA from the United States Department of Health and Human Services.

Qualifications. Eligible grantees are political subdivisions of the State of Texas or private, non-profit, community-based organizations with a board of directors meeting the requirements of 42 United States Code, §9904(c) (3). Selection of a grantee is to be competitive and will be based on a grading system that awards points to proposals in the following areas: organization purpose(s); planned outreach methods; financial accounting system; audit history; work force and task planning; interagency coordination; and compliance with RFP submission requirements. Preference will be given to those organizations whose record demonstrates effectiveness in providing tangible assistance to low-income households. Preference will also be given to proposals which demonstrate board-based community support, including the support of local elected officials such as the county commissioners' court and city councils in the service area. Proposals should include documentation of the applicant's legal authority and eligibility to contract with TDCA. Pursuant to 42'United States Code, §9902(1) designation as an eligible entity by the Governor is a prerequisite to final selection as the new CSBG grantee for the County of Dallas.

Deadline. The deadline for TDCA's receipt of proposals is 5 p.m. Friday, November 3, 1989. Proposals should be mailed to Lucio Varela, Director of Planning and Program Support, Texas Department of Community Affairs, P.O. Box 13166, Austin, Texas 78711-3166. Proposals sent by special mailing or by hand should be delivered to 8317 Cross Park Drive, Third Floor, Austin, Texas 78754-5124. A copy of the proposal should also be sent to William Mahomes, Jr., Court-Appointed Receiver, Dallas County Community Action Committee, Inc., 2121 Main Street, Suite 208, Dallas, Texas 76201.

General Information. TDCA reserves the right to accept or reject any or all proposals submitted. TDCA is under no obligation to execute a contract on the basis of this RFP and intends this notice only as a means of identifying various alternatives available to the Department. TDCA intends to use responses to this RFP as a basis for further negotiation of specific program details with potential grantees. This RFP does not commit TDCA to pay for any costs incurred prior to the execution of a contract and is subject to the availability of sufficient CSBG funds from the United States Department of Health and Human Services. TDCA specifically reserves the right to vary any or all provisions of this RFP at any time prior to the execution of a contract if TDCA determines that such variances are required by law or are in the best interests of the CSBG Program.

To obtain a RFP packet. A RFP packet or additional information regarding this notice may be obtained from Lucio Varela, Director of Planning and Program Support, Texas Department of Community Affairs, P.O. Box 13166, Austin, Texas 78711-3166, (512) 834-6006.

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

TRD-8909119 Roger A. Coffield
General Counsel
Texas Department of Community Affairs

Filed: September 29, 1989

For further information, please call: (512) 834-6010

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The consumer credit commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

Type of Rate Ceilings	Effective Period (Dates are Inclusive)	Consumer(3)/Agricultural/Commercial(4) thru $250,000	Commercial(4) over $250,000
Indicated (Weekly) Rate - Art. 1.04(a)(1)	10/02/89-10/08/89	18.00%	18.00%
Monthly Rate Art. 1.04(c)(1)	10/01/89-10/31/89	18.00%	18.00%
Standard Quarterly Rate - Art. 1.04(a)(2)	10/01/89-12/31/89	18.00%	18.00%
Retail Credit Card Quarterly Rate - Art. 1.11(3)	10/01/89-12/31/89	18.00%	N.A.
Lender Credit Card Quarterly Rate - Art. 15.02(d)(3)	10/01/89-12/31/89	15.52%	N.A.
Standard Annual Rate - Art. 1.04(a)(2)(2)	10/01/89-12/31/89	18.00%	18.00%
Retail Credit Card Annual Rate - Art. 1.11(3)	10/01/89-12/31/89	18.00%	N.A.
Annual Rate Applicable to Pre-July 1, 1983 Retail Credit Card and Lender Credit Card Balances with Annual Implementation Dates from:	10/01/89-12/31/89	18.00%	N.A.
Judgment Rate - Art. 1.05, Section 2	10/01/89-10/31/89	10.00%	10.00%

(1) For variable rate commercial transactions only.

(2) Only for open-end credit as defined in Art. 5069-1.01(f) V.T.C.S.

(3) Credit for personal, family or household use.

(4) Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on September 25, 1989

TRD-8909025 Al Endsley
Consumer Credit Commissioner

Filed: September 27, 1989

For further information, please call: (512) 479-1280

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Texas Department of Health
HIV Public Hearings

Senate Bill 959, 71st Legislature, 1989, requires the department to establish and administer a state grant program for the conduct of human immunodeficiency virus (HIV) services and education. The department will award grants for HIV educational programs and health and social service programs for persons with HIV infection. The department will hold public hearings on the proposed grants in the department's public health regions in Texas, as follows:

Public Health Region 1: October 25, 1989, 9 a.m., Texas Department of Health, Auditorium, 1100 West 49th St., Austin; Public Health Region 2: October 23, 1989, 1 p.m., Texas Department of Health, Conference Room, 4709 66th Street, Lubbock; Public Health Region 3: October 24, 1989, 9 a.m., El Paso City-County Health Department, Auditorium, 222 South Campbell, El Paso; Public Health Region 4: October 17, 1989, 8 a.m., M.D. Anderson Hospital, Houston Main Buildinig., Room HMB 10.112c., 1100 Holcombe, Houston; Public Health Region 5: October 18, 1989, 9 a.m., Arlington Community Center, 2800 South Center Street, Arlington; Public Health Region 6: October 17, 1989, 9 a.m., San Antonio State Hospital, Staff Development Building, Auditorium, 8500 Presa, San Antonio; Public Health Region 7: October 27, 1989, 9 a.m., Texas Department of Health - Public Health Region 7, 1517 West Front Street, Tyler; Public Health Region 8: October 19, 1989, 8 a.m., Texas Department of Health - Public Health Region 8, 601 West Sesame Drive, Harlingen.

Each speaker will have a maximum time of 10 minutes for his/her presentation. For further information about each hearing, please call the following region staff members: PHR 1 - Jennifer Smith (817-778-6744); PHR 2 - Duncan MacKellar (806-797-4331); PHR 3 - Sarana Savage (915 -

683- 9492); PHR 4 - Judy Spong (713-995-1112); PHR 5 - Ron Tomlinson (817-792- 7213); PHR 6 - Mary Martinez (512-534-8857 ext. 464); PHR 7 - Carolyn Peterman (214-595-3585); and PHR 8 - David Cavazos (512-423-0130).

Issued in Austin, Texas, on October 2, 1989.

TRD-8909171 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Filed: October 2, 1989.

For further information, please call: (512) 458-7207

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Texas Industrial Accident Board

Correction of Error

The Texas Industrial Accident Board submitted a proposed section which contained errors as published in the July 21, 1989, issue of the *Texas Register* (14 TexReg 3507). The notice of correction also contained errors as published in the August 18, 1989, issue of the *Texas Register* (14 TexReg 4147).

The section heading should read: "§42.110. Official Health Facility Fee Guidelines."

"In §42.110, subparagraph (B) should read: "(B) The first regular required health facility ratio report filing date in 1990 shall be July 31, 1990, for facilities with a fiscal year of April 1 to March 31."

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State Board of Insurance

Company Licensing

The following applications have been filed with the State Board of Insurance and are under consideration.

1. Application for admission to do business in Texas of Life and Health Insurance Company of America, a foreign life, accident and/or health insurance company. The home office is in Philadelphia, Pennsylvania.

2. Application for admission to do business in Texas of First Colonial Insurance Company, a foreign life, accident and/or health insurance company. The home office is in Jacksonville, Florida.

3. Application for incorporation in Texas of Associated Administrators Group, Inc., a domestic third party administrator. The home office is in Dallas.

4. Application for incorporation in Texas of J.C. Penney Reinsurance Company, a domestic life, accident and/or health insurance company. The home office is in Plano.

5. Application for admission in Texas of Laurier Indemnity Company, a foreign fire and/or casualty insurance company. The home office is in Atlanta, Georgia.

6. Application for admission to do business in Texas of Nordstern Insurance Company of America, a foreign fire and/or casualty insurance company. The home office is in New York, New York.

Issued in Austin, Texas, on September 25, 1989.

TRD-8909010 Nicholas Murphy
Chief Clerk
State Board of Insurance

Filed: September 27, 1989

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

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The following applications have been filed with the State Board of Insurance and are under consideration.

1. Application for admission to do business in Texas of Investors Consolidated Insurance Company, a foreign life, accident and/or health insurance company. The home office is in Durham, North Carolina.

2. Application for admission to do business in Texas of Group Programs, Inc., a foreign third party administrator. The home office is in Breaux Bridge, Louisiana.

3. Application for admission to do business in Texas of Oakmark of Tucson, Inc., a foreign third party administrator. The home office is in Tucson, Arizona.

4. Application for incorporation in Texas of Preventacare Dental Plans of Texas, Inc., a domestic health maintenance organization. The home office is in Houston.

5. Application for incorporation in Texas of Prearranged Funeral Services Insurance Company, a domestic life insurance company. The home office is in Houston.

Issued in Austin, Texas, on September 21, 1989.

TRD-8909015 Nicholas Murphy
Chief Clerk
State Board of Insurance

Filed: September 27, 1989

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

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The following applications have been filed with the State Board of Insurance and are under consideration.

1. Application for admission to do business in Texas of Network America Life Insurance Company, a foreign life, accident and/or health insurance company. The home office is in Allentown, Pennsylvania.

2. Application for admission to do business in Texas of Albert H. Wohlers and Company, a foreign third party administrator. The home office is in Park Ridge, Illinois.

3. Application for incorporation to do business in Texas of Berkley Risk Management, Inc., a domestic third party administrator. The home office is in Dallas.

4. Application for incorporation in Texas of Texas EBA, Inc., a domestic third party administrator. The home office is in Dallas.

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

TRD-8909066 Nicholas Murphy
Chief Clerk
State Board of Insurance

Filed: September 28, 1989

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

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General Land Office

Correction of Error

The General Land Office submitted sections which were published with errors in the September 15, 1989, issue of the *Texas Register* (14 TexReg 4689) .

Concerning §1.91, the preamble should read: "No comments were received regarding adoption of the amendment".

Concerning §9.5, subsection (3) should read: "Leasing the state's free royalty interests".

Concerning §9.7, in subsection (a) the apostrophe was omitted from the word "state's".

In subsection (b)(1)(E)(viii), quotation marks were omitted from the terms "available" and "actually available".

Concerning §9.8(e)(5)(A), subparagraph should read: (A) "Within 30 days of forfeiture..."

Concerning §9.9(e)(1), the apostrophe was omitted from the word "state's".

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Texas Legislative Council

Consultant Proposal Request

This request for consultant proposals is filed under the provisions of Texas Civil Statutes, Article 6252-11c.

The Texas Legislative Council requests proposals for consulting services to conduct a study examining long term care services and needs in Texas, focusing on the population currently in nursing homes.

Based on the study, the consultant will propose program alternatives within existing financial resources that offer a better continuum of care and treatment that is more cost effective and more appropriate to the needs of the individual. The study must take into account state and federal legislative and regulatory requirements as well as court mandates. The study shall focus on institutional programs that are licensed by the Texas Department of Health and must include consideration of cases covered by Medicaid.

Proposals should contain the name of the consultant; previous experience similar to the services to be performed; a list of key personnel who would be assigned to perform the services; an explanation of the consultant's proposed fee schedule and expense charges; and any other information that the consultant deems relevant.

Proposals should be submitted to Dorothy Wells, Assistant Director, Texas Legislative Council, P.O. Box 12128, Austin, Texas 78711. Proposals must be received by 5 p.m. on November 10, 1989.

The contract will be awarded on the basis of demonstrated competence in working on projects similar to the project described in this request for proposals; the consultant's knowledge and experience in performing and ability to perform services similar to those described; accessibility and availability of the consultant for required activities, including attendance of committee meetings and activities related to the services to be performed; and the total cost for services to be performed.

Issued in Austin, Texas on September 28, 1989.

TRD-8909083 Sharon Carter
Administrative Assistance
Texas Legislative Council

Filed: September 28, 1989

For further information, please call: (512) 463-1151

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Texas Municipal Retirement System

Correction of Error

The Texas Municipal Retirement System submitted proposed sections which contained an error as published in the August 11, 1989, *Texas Register* (14 TexReg 3977).

Concerning §123.3, subsection (c) should read: "(c) Option 5A is a reduced monthly allowance that is the actuarial equivalent of the standard annuity to which the member otherwise would be entitled, payable during the lifetime of the member, but after the member's death, two-thirds of the reduced annuity is payable throughout the life of a person designated by the member."

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Public Utility Commission of Texas

Notices of Applications to Amend CCN

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on September 20, 1989, to amend a certificate of convenience and necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52, and 54. A summary of the application follows:

Docket Title and Number: Application of Southwestern Bell Telephone Company to revise base rate area in the Beeville Exchange, Docket Number 9060 before the Public Utility Commission of Texas.

The Application: In Docket Number 9060, Southwestern Bell Telephone Company requests approval of its application extends the Beeville Exchange base rate area in Bee County.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227, or (512) 458-0221 for typewriter for the deaf.

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

TRD-8909090 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: September 28, 1989

For further information, please call: (512)458-0100

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Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on September 20, 1989, to amend a certificate of convenience and necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52, and 54. A summary of the application follows.

Docket Title and Number: Application of West Texas Utilities Company for a certificate of convenience and necessity for proposed transmission line within Coke County, Docket Number 9061, before the Public Utility Commission of Texas.

The Application: In Docket Number 9061, West Texas Utilities Company requests approval of its application to construct approximately 4.8 miles of 69kV transmission line in Coke County.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0223, or (512) 458-0227, or (512) 458-0221 for typewriter for the deaf.

Issued in Austin, Texas on September 27, 1989.

TRD-8909091 Mary Ross McDonald
Secretary of Commission
Public Utility Commission of Texas

Filed: September 28, 1989

For further information, please call: (512) 458-0100

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Texas Racing Commission

Correction of Error

The Texas Racing Commission submitted adopted sections which contained errors as published in the August 4, 1989, issue of the *Texas Register* (14 TexReg 3805).

Concerning §319.104(c) the term desensitize should read: "desensitize".

Concerning §319.106(a), there should be no comma following the word race.

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Railroad Commission of Texas

Invitation for Bids

The Railroad Commission of Texas, Surface Mining and Reclamation Division, is soliciting bids for the revegetation of approximately 800 acres at the ALCOA Abandoned Mine Land (AML) site. The site is located in Milam County, 9.5 miles southwest of Rockdale. Sealed bids will be received until 2 p.m. on October 25, 1989, at which time the bids will be publicly opened and read.

Construction shall include: seed bed preparation; fertilization; seeding; mulching; and erosion repair.

Copies of the specifications, drawings, and other contract documents are on file in Austin at the address shown below and at the Commission Field Office, 1419 Third Street, Floresville, Texas 78114. The complete bid package may be obtained at cost ($15) from the mailing address given below. Bid documents must be purchased prior to the pre-bid conference.

ALCOA AML Area 11 Revegetation Project, Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, Austin, Texas 78701.

All interested parties are required to attend a pre-bid conference followed by an on-site inspection at 1 p.m. on October 4, 1989, at the ALCOA Lake Training Facility, located approximately three miles northeast of the intersection of FM 1786 and FM 2116 on FM 2116.

The Texas AML Fund currently has $20 million dollars available (100% federal funds) solely for abandoned mine reclamation.

Issued in Austin, Texas on September 22, 1989.

TRD-8909069 Cril Payne
Assistant Director Legal Division-General Law
Railroad Commission of Texas

Filed: September 28, 1989

For further information, please call: (512) 463-7187.

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Teacher Retirement System of Texas

Correction of Error

The Teacher Retirement System of Texas submitted adopted sections which contained errors as published in the September 15, 1989 issue of the *Texas Register* (14 TexReg 4784).

Concerning §25.153(e) the word "stat" should read: "state".

Concerning the preamble to Chapter 47, the first sentence should read: "The Teacher Retirement System of Texas (TRS) adopts new §§47.1-47.10 and §§47. 13-47.16."

Concerning §47.10, the comma should be omitted after "TRS" in (6) and after "sum" in (8).

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Texas Water Commission

Enforcement Order

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 G. H. Hensley Industries, Inc., SWR Number 35628 on September 22, 1989, waiving a previous penalty of $9,800 from its agreed order issued April 14, 1987.

Information concerning any aspect of this order may be obtained by contacting Michelle McFaddin, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

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

TRD-8909050 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: September 27, 1989

For further information, please call: (512) 463-8069.

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Meeting Notices

The Citizen's Advisory Steering Committee of the Galveston Bay National Estuary Program will hold a public meeting on October 10, 1989, 1 p.m., Room 3-213, University of Houston-Clear Lake, 2700 Bay Area Boulevard, Houston, Texas 77058.

Topics discussed during this meeting will include: Galveston Bay Area Navigational Study statement approved by Management Committee; Galveston Bay Public Forum written/oral comments; recent S/TAC meetings; program summary; and discussion with Fran Flannigan from Alliance for Chesapeake Bay.

Issued in Houston, Texas, on September 27, 1989.

TRD-8909068 Frank S. Shipley, Ph.D.
Program Manager
Galveston Bay National Estuary Program

Filed: September 28, 1989

For further information, please call: (713) 488-9495

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A meeting of the Scientific/Technical Advisory Committee of the Galveston Bay National Estuary Program is scheduled for: Thursday, October 5, 1989, 10 a.m. , Room 3-214, Bayou Building, University of Houston-Clear Lake, 2700 Bay Area Boulevard, Houston.

The committee will reconsider the Houston ship channel project statement from the previous meeting, in light of recent EPA and Corps of Engineer actions. The committee

will then consider work scopes for interagency contracts to be awarded by the Texas Water Commission for three Galveston Bay National Estuary Program projects for fiscal year 1990. These are a comprehensive literature survey and acquisition of publications concerning Galveston Bay, and information center to be created in the Galveston Bay area, and an inventory of data sets currently existing concerning the bay. In the afternoon, the committee will hear a series of university representatives speaking concerning respective university roles in Galveston Bay Research.

Issued in Houston, Texas, on September 27, 1989.

TRD-8909088 Frank S. Shipley, Ph.D.
Program Manager
Galveston Bay National Estuary Program

Filed: September 28, 1989

For further information, please call: (713) 488-9495

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Notice of Application For Waste Disposal Permit

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of September 18-22, 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.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number, and type of application-new permit, amendment, or renewal.

Azteca Milling Company, Edinburg; corn milling operation; south of U.S. Highway 87 (State Highway 27), approximately one half mile east of FM Road 2337 and five miles southwest of the City of Plainview, Hale County; 03111; new.

Edinburg Consolidated Independent School District; Edinburg; wastewater treatment facility; on school property, approximately 1,300 feet south and 2.5 miles west of the intersection of State Road 113 and FM Road 1925 in Hidalgo County; 13501-01; new.

Harris County WCID Number 99; Spring; wastewater treatment facility; on the north side of Cypress Creek, approximately 4,600 feet east of Interstate Highway 45 in Harris County; 11444-01; renewal.

Naiad Corporation; Liverpool; wastewater treatment plant for farm raised catfish facility; approximately 4.2 miles east of Danbury and 1.9 miles west of Liverpool along County Road 171, Brazoria County; 03116; new.

David K. Moore doing busines as DKM Enterprises; Mauriceville; wastewater treatment facility to serve a convenience store and restaurant; on the west side of State Highway 62, one tenth of a mile south of the intersection of State Highway 62 and State Highway 12, Orange County; 03011; new.

City of Gunter; wastewater treatment facility; just west of the St. Louis and San Francisco Railway in line with Hickory Street, 2,300 feet west of State Highway 289, 1,400 feet north of FM Road 121, in the City of Gunter, Grayson County; 10569-01; amendment.

City of Honey Grove; wastewater treatment facility; approximately 7,600 feet north of U. S. Highway 82 and approximately 4,000 feet west of FM Road 100 in Fannin County; 10710-01; renewal.

City of Alba; wastewater treatment facility; just west of FM 17, approximately one mile south of the City of Alba in Wood County; 10547-01; renewal.

Jefferson County Water Control and Improvement District Number 10; Nederland; wastewater treatment facility; on the west side of Central Boulevard, at the junction of Central Boulevard and Second Avenue in the Central Gardens Subdivision in Jefferson County; 10838-02; renewal.

TRA-Tech Corporation, Inc.; Fort Worth; wastewater treatment facility; west of Interstate Highway 35W, at the intersection of Golden Triangle Boulevard and the west service road for Interstate Highway 35W in Tarrant County; 12982-01; renewal.

City of Giddings; South Wastewater Treatment Facility; approximately 2,200 feet southeast of FM Road 448 and 4,000 feet southwest of U.S. Highway 77 in Lee County; 10456-02; amendment.

Proler International Corporation; Houston; Jacintoport Wastewater Treatment Facility; approximately 1,500 feet south of the intersection of Sheldon Road and Jacintoport Boulevard in Harris County; 13498-01; new.

City of Hempstead; wastewater treatment facility; at the intersection of 23rd Street and Hamilton Street, approximately 1.5 miles southwest of the intersection of U.S. Highway 290 and State Highways 6 and 159 in Waller County; 10948-01; amendment.

West Rusk County Consolidated Independent School District; New London; Gaston Campus Wastewater Treatment Facility to serve the elementary and junior high schools; approximately 1,300 feet north of State Highway 64, in the northeast corner of the Gaston Campus located on Highway 64, approximately 0.8 mile east of Joinerville in Rusk County; 13495-01; new.

ACF Industries Inc.; Longview; Shippers Car Line Facility, a railcar repair and cleaning facility; 300 Stevens Street which is about one mile west of the intersection of U.S. Highway 80 and FM Road 1845 and about three blocks south of U.S. Highway 80 in the City of Longview in Gregg County; 03115; new.

Texas Industries, Inc.; Dallas; the Streetman Plant, a lightweight aggregate production facility; in the northwest quadrant defined by the crossing of the Fort Worth and Denver Railway over Elm Creek, approximately three miles northwest of the City of Streetman, Navarro County; 01691; amendment.

E. I. Dupont De Nemours and Company, Inc.; Ingleside; waste disposal wells; located on company property approximately 3,322 feet from the east line and 614 feet

from the north line of the T. T. Williamson Survey, A-292, in San Patricio County; WDW-109 and WDW-121; amendment.

Issued in Austin, Texas, on September 26, 1989

TRD-8909093 Brenda W. Foster
Chief Clerk
Texas Water Commission

Filed: September 27 1989

For further information, please call: (512) 463-7906

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Texas Water Development Board
Requests for Proposal on Ability to Pay

In response to the Texas water Development Board's allocation of $60,000 for FY 1990 authorized under the Texas Water Code, §15.404, and pursuant to 31 TAC §355.54(a)(2), the board requests the submission of proposals to develop procedures to determine the ability of average customers of projects to serve economically distressed areas to pay for water and wastewater services and to integrate ability to pay considerations in the Texas Water development Board's financial assistance programs. An economically distressed area meets the following requirements: water supply or sewer services are inadequate to meet minimal needs of residents; financial resources of the residents are inadequate to provide water and wastewater services; and located in Texas counties which are along an international boundary or for which the per capita income is 25% below the state average and the unemployment rate is 25% above the state average. The board's funding program is authorized in Senate Bill 2, 71st Texas Legislature.

The topics to be addressed by this research include: developing a procedure to determine the ability of residents of economically distressed areas to pay for water or wastewater service provided by projects funded under provisions of Senate Bill 2, 71st Texas Legislature. The procedure must be based upon the rates, fees, and charges that the average resident of an economically distressed area will pay for services and the rates, fees, and charges that other families of similar income who are similarly situated pay for comparable service. Other data to be considered include level and source of personnel, family, and household income; and family and household size, expenditures, and employment status. The developed procedure must be capable of being used to determine the average customer's ability to pay for each economically distressed area that applies for financial assistance, using data describing that particular economically distressed area; developing a procedure to integrate the ability to pay determination into the board's financial assistance program. The procedure must provide a method and describe the steps that the board can use to make the necessary determinations prior to providing financial assistance as described in Senate Bill 2, 71st Legislature.

The board will provide funding from the research and planning fund in an amount not to exceed $60,000. In the event that no acceptable proposal is submitted, the board retains the right to not award contract funds as specified by provisions of 31 TAC §355.54(a)(3). The selected applicant will have 30 days from the date of board approval of its proposal to execute a contract.

The board's procedures for evaluating and selecting proposals and applications for assistance awards are set forth in 31 TAC §355.57. All proposals must conform to all of the requirements in 31 TAC §§355.51-355.60. Incomplete applications will not be considered, so every effort must be made to supply all the necessary information.

Ten copies of each proposal and application must be submitted to G.E. Kretzschmar, Executive Administrator, Texas Water Development Board, P.O. Box 13231, 1700 North Congress Avenue, Room 513, Austin, Texas 78711-3231. Proposals and applications must be received in the Board's Austin office by Noon (CST), October 16, 1989. Work must be completed by December 14, 1989, at which time the applicant must submit a draft report to the board.

Potential applicants desiring more information can write to Todd Chenoweth at the preceding address or call him at (512) 463-7847.

A final report covering the work completed and incorporating review comments must be submitted to the board by January 31, 1990, unless this requirements is extended at a later date by the board.

Procedures for awarding contracts shall comply with Texas Water Code, Article 664-4, §15.404, where applicable, and with 31 TAC §§355.51-355.60. Contractual agreements and associated funding will terminate on January 31, 1990. Completion date: January 31, 1990.

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

TRD-8909121 Suzanne Schwartz
General Counsel
Texas Water Development Board

Filed: September 29, 1989

For further information, please call: (512) 463-7981

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Texas Youth Commission
Consultant Proposal Request

In accordance with Texas Civil Statutes, 6252-11C, the Texas Youth Commission is requesting proposals for the services of an evaluation consultant.

Notice of Invitation. The Texas Youth Commission has been awarded two Title VII Federal Bilingual Grants from the United States Department of Education. The grants are currently in the second year of operation. The technical assistance to be provided by the consultant involves evaluating both of the bilingual programs and reporting findings to the Texas Youth Commission (TYC) education department.

Specifically the evaluation consultant will: design procedures for documentation of activities and required data collection based on performance objectives specified in grant application; prepare a general evaluation design and assist with the preparation of a specific plan; prepare a checklist of activities and data collection procedures; perform objective and narrative case study methods of evaluation; provide information of analysis to Project Director; assist in the preparation of materials for dissemination; prepare quarterly process evaluation reports for project; and, prepare a summative evaluation report on the global activities and accomplishments of program including areas identified for improvement and suggestions for improving.

The proposed term of service will be eleven months convening on November 17, 1989.

Agency Contact. To obtain additional information, please contact Hy Steinberg, Director of Curriculum and Instruction, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765, (512) 483-5163.

Response Data. To be considered, proposals must be received at the Texas Youth Commission, office of the Superintendent of Education, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765 before 5 p.m. on November 16, 1989.

Selection Criteria. Proposals will be reviewed by, and final selection will be made by, the Superintendent of Education of the Texas Youth Commission. Proposals will be evaluated on the basis of the offeror's qualifications and previous experience working with evaluating federal bilingual grants as well as the offeror's proposed operational approach to the task. The Texas Youth Commission intends to award the contract for these consulting services to a private consultant who is presently performing these services unless a better offer is received from a person having the necessary qualifications and experience.

Issued in Austin, Texas, on September 28, 1989.

TRD-8909118 Neil E. Nichols
Assistant Executive Director for
Professional Services
Texas Youth Commission

Filed: September 29, 1989

For further information, please call: (512) 483-5244

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