

Texas Register

Volume 13, Number 48, June 21, 1988

Pages 3097-3191

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Texas Register

The *Texas Register* (ISN 0362-4781) is published twice each week at least 100 times a year. Issues will be published on every Tuesday and Friday in 1987 with the exception of January 6, September 1, December 1, and December 29 by the Office of the Secretary of State.

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

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Withdrawn Sections—sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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: "13 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 13 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, 503E Sam Houston 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).

a section of the
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Subscriptions—one year (96 regular issues), \$80; six months (48 regular issues and two index issues), \$60. Single copies of most issues are available at \$3 per copy.

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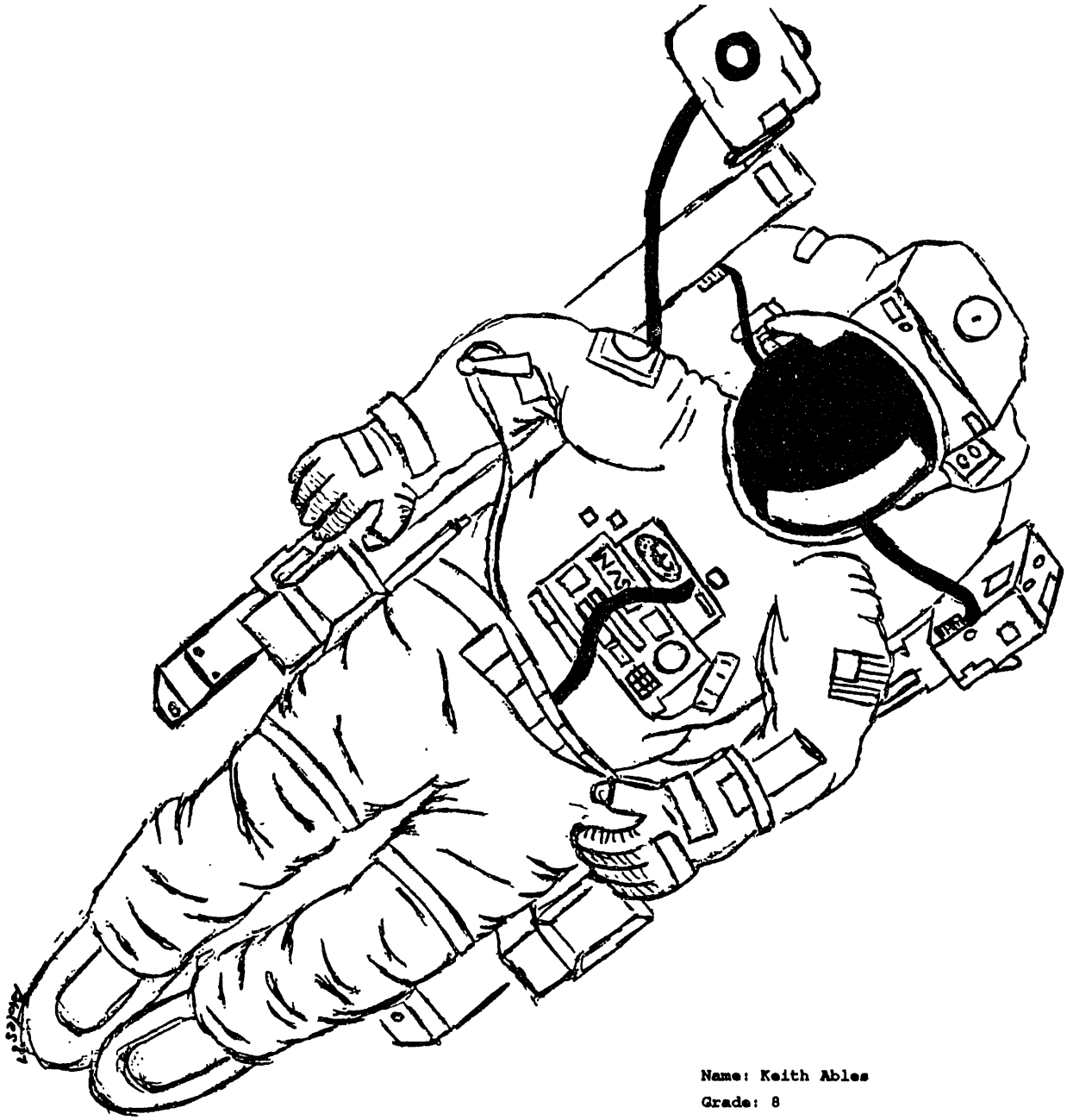
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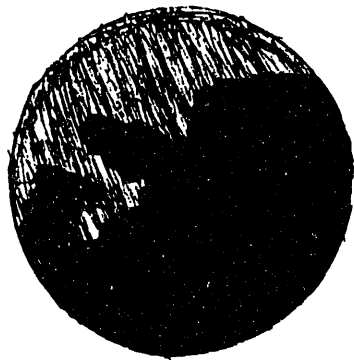
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Attorney General

Description of Attorney General submissions. Under provisions set out in the Texas Constitution, Texas Civil Statutes, Article 4399, 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*.

Open Records Decisions

ORD-495 (RQ-1289). Request from Anthony Kouneski, General Manager, Capital Metropolitan Transportation Authority, Austin, concerning whether certified agendas or tapes that are subject to the Open Meetings Act, Texas Civil Statutes, Article 6252-17, §2A(e), are subject to review by the attorney general under the Open Records Act, Texas Civil Statutes, Article 6252-17a, §7.

Summary of Decision. Certified agendas and tapes of executive sessions held under the exceptions of the Texas Open Meetings Act, Texas Civil Statutes, Article 6252-17, are deemed confidential by law within the meaning of the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a, §3(a)(1). The attorney general lacks authority to review certified agendas or tapes of executive sessions to determine compliance with the Open Meetings Act. TRD-8806055

Opinions

JM-912 (RQ-1325). Request from Jimmy F. Davis, Castro County District Attorney, Dimmitt, concerning the expungement of criminal convictions under certain provisions of the Texas Code of Criminal Procedure.

Summary of Opinion. A person seeking expunction of records relating to a complaint dismissed under the Code of Criminal Procedure, Article 45.54, must comply with the requirements delineated in the Code of Criminal Procedure, Article 55.02, by filing a petition in the district court in the county in which the defendant was arrested. When the penalty assessed in an Article 45.54 proceeding has been deferred, such conviction may not be used in proving a conviction under Article 6687b, §22, until such time as the fine has been imposed and there is a final judgment in the case. The Department of Public Safety should record a conviction even though the punishment has been deferred under the Code of Criminal Procedure, Article 45.54. The record should reflect the fact that punishment has been deferred. TRD-8806060

JM-913 (RQ-1347). Request from Toby C. Wilkinson, Hunt County Attorney, Greenville, concerning constitutionalality of temporary occupation tax on attorneys.

Summary of Opinion. A classification scheme specified by the legislature, levying a temporary occupation tax on attorneys according to the Tax Code, §191, does not violate the "equal and uniform" rule of the Texas Constitution, Article VIII, §2, unless the classes devised by the legislature clearly appear to be arbitrary and without a reasonable basis.

JM-914 (RQ-1351). Request from Charles D. Travis, Executive Director, Parks and Wildlife Department, Austin, concerning a conflict between provisions of the Parks and Wildlife Code.

Summary of Opinion. Any punishments assessed for violation of the following sections of the Parks and Wildlife Code must be assessed in accordance with the provisions of Senate Bill 980: §§47.002, 47.003(a), 47.004-47.006, 47.008-47.015, 47.017, 47.032-47.034, and 47.037. Therefore, the punishment to be assessed for violation of any of the sections listed above, except for §§47.003(a), 47.007, and 47.012, is a fine of not less than \$10 nor more than \$100; additionally, anyone so convicted is subject to the forfeiture, for one year from the date of the conviction, of any license held under the authority of the listed sections. Punishment to be assessed for the violation of §§47.003(a), 47.007, or 47.012 of the code shall be by a fine of not less than \$100 nor more than \$1,000, by confinement in jail for a term of not less than one month nor more than one year, or by both.

Punishments to be assessed for violation of the remaining sections of Chapter 47 are governed by Senate Bill 464. Therefore, violation of any such section shall be a Class C Parks and Wildlife Code misdemeanor with punishment to be assessed as a fine of not less than \$25 nor more than \$500. Senate Bill 980 is silent as to enhancement of punishment for any prior convictions; accordingly, any specific enhancement provisions set forth in Senate Bill 464 will control. Therefore, pursuant to Senate Bill 464, if any person has a prior conviction within five years of the trial date under either §§47.008, 47.016, or 47.038 of the

code and he is convicted of an offense under the section for which he has a prior conviction, punishment upon conviction is enhanced to the level of a Class B Parks and Wildlife Code misdemeanor. TRD-8806058

JM-915 (RQ-1226). Request from W. N. Kirby, Commissioner of Education, Texas Education Agency, Austin, concerning whether a school district may offset workers' compensation benefits under Texas Civil Statutes, Article 8309h, against benefits paid pursuant to the Texas Education Code, §13.904.

Summary of Opinion. The offset provision of Texas Civil Statutes, Article 8309h, §5, does not apply to sick leave benefits received pursuant to Education Code, §13.904. TRD-8806056

JM-916 (RQ-1302). Request from Bob Bullock, Comptroller of Public Accounts, Austin, concerning the authority of the comptroller to contract with paid informants for information about revenue or property the state may be legally entitled to recover.

Summary of Opinion. Texas Civil Statutes, Article 4344g, which authorizes the comptroller to contract with informants to pay them for information about revenue or property the state may be entitled to recover, does not violate the Texas Constitution, Article III, §51. State employees are not authorized to contract with the comptroller to provide such information in exchange for consideration under Texas Civil Statutes, Article 4344g, contract. Funds appropriated to the comptroller's office may be used to fund Texas Civil Statutes, Article 4344g, contracts, even though the appropriation act does not expressly state that such contracts may be funded. Whether a particular line item may be fused to fund such contracts depends upon the legislature's intent in adopting that line item. The comptroller's office would not be authorized to show an informant information that is confidential under the Tax code, §§111.006, 151.027, or 171.206. TRD-8806057

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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 I. Railroad Commission of Texas

Chapter 5. Transportation Division

Subchapter W. Registration of Commercial Carriers

• 16 TAC §5.501

The Railroad Commission of Texas adopts on an emergency basis an amendment to §5.501, concerning the definition of commercial motor vehicles. The amendment is adopted on an emergency basis due to the unreasonable burden which would be placed on the exempted persons by the temporary applicability of the registration and insurance requirements. These exemptions have been in effect on an emergency basis, and were inadvertently allowed to expire. They will be reinstated by final adoption of an identical amendment. This burden poses an imminent threat to the general welfare.

The amendment exempts farmers, ranchers, agricultural cooperatives, gins, elevators, persons subject to the regulation of the Texas Alcoholic Beverage Commission, tow truck owners, rural electric cooperatives, and rural telephone cooperatives from the commercial motor vehicle registration requirements.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 911b, §4(a)(13), which provide the commission with the authority to define commercial motor vehicle.

§5.501. Definitions.

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

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, the following are not subject to the provisions of this subchapter:

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

(5) a carrier operating under an agricultural permit pursuant to Subchapter X of this chapter (relating to Agricultural Permits); [.]

(6) an electric cooperative corporation organized pursuant to the provisions of Texas Civil Statutes, Article 1528b;

(7) a telephone cooperative organized pursuant to the provisions of Texas Civil Statutes, Article 1528c.

(d) Notwithstanding the provisions of subsection (a) of this section, the following are not commercial motor vehicles:

(1) a vehicle registered with the commission pursuant to §9.17 of this title (relating to LP-Gas Transport); [and]

(2) a vehicle registered with the commission pursuant to §5.40 of this title (relating to Intercorporate Transportation Exemption); [.]

(3) a motor vehicle transporting alcoholic beverages pursuant to a wholesale permit or license issued by the Texas Alcoholic Beverage Commission under the provisions of the Texas Alcoholic Beverage Code;

(4) a tow truck registered with the Texas Department of Labor and Standards pursuant to the provisions of Texas Civil Statutes, Article 6687-9b, §1; and

(5) a motor vehicle operated by or on behalf of a farmer or rancher, an agricultural cooperative of which the farmer or rancher is member, a gin, or an elevator.

Issued in Austin, Texas, on June 13, 1988.

TRD-8806096

James E. (Jim) Nugent -
Chairman
Railroad Commission of
Texas

Effective date: June 14, 1988

Expiration date: October 12, 1988

For further information, please call: (512) 463-6922

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter V. Bingo Regulation and Tax

• 34 TAC §3.549

The Comptroller of Public Accounts adopts on an emergency basis an amendment to §3.549, concerning allowable expenditures of receipts from bingo. The amendment amends subsection (a)(2) to limit the amount of compensation which may be paid by a licensee to accountants and/or bookkeepers (other than accountants and/or bookkeepers licensed by the Texas State Board of Public Accountan-

cy); security personnel; and janitorial personnel. The amendment is intended to clearly inform licensees and their employees who are engaged to perform accounting and/or bookkeeping, security, and janitorial services pursuant to the Act of terms and restrictions to which they may be subject. The amendment also repeals the present subsections (d) and (e), which duplicate provisions in the Bingo Enabling Act, and reletters other subsections.

The amendment is adopted on an emergency basis and is intended to clarify what is to be considered as reasonable compensation which is authorized pursuant to the Bingo Enabling Act, §19(c), to be paid by a licensed organization for services related to bingo. The amendment implements the statement of legislative purpose expressed in the Bingo Enabling Act, §16(a), of discouraging the commercialization of bingo and maximizing the availability of bingo proceeds for charitable purposes.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179d, which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the Bingo Enabling Act.

§3.549. Allowable Expenditures of Receipts from Bingo.

(a) All gross receipts from the conduct of bingo must be used for one or more of the following purposes:

(1) the payment of necessary and reasonable expenses actually incurred and paid in connection with the conduct of bingo, limited to the following:

(A) (No change.)

(B) bingo supplies and equipment; except items purchased to be resold to bingo players such as [bingo daubers,] bingo boards, etc.;

(C)-(E) (No change.)

(F) security during bingo games, limited as provided in paragraph (2) of this subsection;

(G) [the portion of lease] lease [not as a qualifying distribution under §3.555 of this title (relating to Certain Charitable Distributions.);

(H)-(L) (No change.)

(2) the payment of necessary and reasonable compensation actually incurred and paid in connection with the conduct of bingo for the following personnel and no others:

(A) bookkeepers or[,] accountants; [or]

(B) attorneys;

(C)[(B)] cashiers, not to exceed \$50 per cashier per occasion;

(D)[(C)] ushers, not to exceed \$50 per usher per occasion;

(E)[(D)] the total amount paid to all callers, not to exceed \$50 per occasion;

(F)[(E)] security or guard services; and

(G)[(F)] janitorial services.

(H) For an individual employed by any licensed organization to perform more than one of the services listed in paragraph (2)(C), (D), (E), and (F) of this subsection, the total compensa-

tion paid to the individual may not exceed \$50 per bingo occasion.

(I) The total amount paid to all bookkeepers or accountants may not exceed the total amount which may be paid to all callers, provided that this limit shall not apply to certified public accountants or any other individual, partnership, or corporation registered with and licensed by the Texas State Board of Public Accountancy. The amount paid for security or guard or janitorial services may not be greater per guard or per janitor than the amount which may be paid to each cashier or usher.

(3) (No change.)

(b) Upon written request by a licensee, the comptroller will issue a ruling on the legality of a proposed expenditure out of bingo receipts or of a proposed disbursement for charitable purposes. Ruling requests should be addressed to the Regulatory Tax [Bingo Regulation] Division, Comptroller of Public Accounts, Austin, Texas 78774.

(c) (No change.)

[(d) No part of the net proceeds, if they are given to any person or organization for charitable purposes, may be used by the donee either:

[(1) to pay for services or materials supplied in connection with the con-

duct of bingo by the donor organization; or

[(2) for any activities which would not be charitable purposes if the donor has conducted the activities.

[(e) No part of the net proceeds may be used, directly or indirectly, to support or oppose a particular candidate or a slate of candidates for public office, to support or oppose any measure submitted to a vote of the people, or to influence or attempt to influence legislation.]

[(d)[(f)] the license of any authorized organization which does not distribute the required amount of proceeds for charitable purposes during any quarter may be suspended or revoked.

(e)[(g)] No expenses may be paid out of the petty cash fund, except for emergency expenses validated by proper receipts.

(f)[(h)] The only expenses that may be paid from the petty cash fund are expenses necessary to continue or complete the operation of a bingo occasion.

Issued in Austin, Texas, on June 14, 1988.

TRD-8806095

Bob Bullock
Comptroller of Public
Accounts

Effective date: June 14, 1988

Expiration date: October 12, 1988

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 10. COMMUNITY DEVELOPMENT

Part II. Texas Department of Commerce

Chapter 178. Texas Community Development Program

Subchapter A. General Provisions

• 10 TAC §178.1, §178.2

The Texas Department of Commerce proposes new §178.1 and §178.2, concerning the implementation of a formal complaint system to investigate complaints received concerning the Texas Community Development Program contractors. The new section governs the responsibilities of the Texas Department of Commerce and its Texas Community Development Program contractors under this system and sets time limits for responding to complaints.

Bruce Anderson, general counsel, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Anderson also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the implementation of a formal complaint system to investigate complaints received about the Texas Community Development Program contractors and improved monitoring of their compliance with federal and state law. 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 Bruce W. Anderson, General Counsel, P.O. Box 12782, Austin, Texas 787112.

The new sections are proposed under Texas Civil Statutes, Article 6252-13e, §6, which provide the Texas Department of Commerce with the authority to maintain a procedure for investigating complaints about programs funded by federal block grants administered by the department.

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

Contract—A written agreement executed by the department and contractor to

implement a Texas Community Development Program project.

Contractor—A city, county, or council of government with which the department has executed a contract.

Department—Texas Department of Commerce.

Recipients—Individuals or classes of individuals who are the beneficiaries of a contract.

Texas Community Development Program—The program by which the department administers the State of Texas' allocation of community development block grant nonentitlement area funds.
§178.2. Complaint System.

(a) A recipient who has a comment or complaint about the quality of services funded under a contract may submit such comment or complaint in writing to the department's inspector general.

(b) The inspector general shall either refer the comment or complaint to the contractor which is the subject of the comment or complaint for investigation or conduct its own investigation.

(c) If the comment or complaint is referred to the contractor, it shall complete its investigation and submit its findings, in writing, to the inspector general within seven working days after the date the contractor received the comment or complaint, or notify the inspector general, within such period, of the date the investigation can be completed.

(d) The inspector general shall notify the complainant of the findings of the investigation before the 15th working day after the date the comment or complaint was received by the inspector general, or the inspector general shall notify the complainant, within such period, of the date the investigation can be completed.

(e) The department shall consider the history of complaints regarding a contractor in determining whether to enter into a new Texas Community Development Program contract with the contractor.

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 January 1, 1988.

TRD-8808102

J. William Lauderback
Executive Director
Texas Department of
Commerce

Earliest possible date of adoption: July 22, 1988

For further information, please call: (512) 320-9666

TITLE 16. ECONOMIC REGULATION

Part VIII. Texas Racing Commission

Chapter 301. General Provisions

Subchapter A. Organization of the Commission

• 16 TAC §§301.1, 301.3, 301.5, 301.7, 301.9, 301.11, 310.13, 301.15, 301.17, 301.19, 301.21, 301.23, 301.25, 301.27

The Texas Racing Commission proposes new §§301.1, 301.3, 301.5, 301.7, 301.9, 301.11, 310.13, 301.15, 301.17, 301.19, 301.21, 301.23, 301.25, and 301.27, concerning purpose, offices, meetings, quorum, commission officers, executive secretary, employees, executive secretary, duties, term, legal representation, records, vacancies in the commission, unofficial statements, and acts in the commission's name. All the proposed rules reflect procedures for organization of the commission.

Nancy Fisher, deputy secretary, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections, since the sections are adjudicative procedures for matters committed by law to the commission's jurisdiction. However, since the Texas Racing Commission is a new state agency, normal expenditures associated with setting up the agency are anticipated including but not limited to hiring necessary employees and purchasing equipment.

At this time, the Texas Racing Commission is unable to establish a cost compliance comparison for small businesses with large businesses.

Ms. Fisher 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 to allow for an orderly and efficient procedure for administration of matters under the Texas Racing Commission's jurisdiction. 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 Nancy Fisher, Deputy Secretary, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 476-7223.

The new sections are proposed under the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which provide the Texas Racing Commission with the authority to adopt rules for conducting racing involving wagering and the adoption of other rules to administer the Texas Racing Act.

§§301.1. Purpose.

(a) The Texas Racing Commission, created by the Texas Racing Act (the Act), Texas Civil Statutes, Article 179e, is charged with the administration of the Texas Racing Act and these regulations. It is the intent of the commission that these rules be interpreted in the interest of strict regulation and control of pari-mutuel wagering in the connection with greyhound racing and horse racing.

(b) The Texas Racing Commission purposes are to encourage agriculture, the horse-breeding industry, the horse-training industry, the greyhound-breeding industry, the greyhound-training industry, tourism, and employment opportunities in Texas related to horse and greyhound racing, and to strictly control and regulate strictly pari-mutuel wagering in connection with that racing.

§301.3. Offices.

(a) The Texas Racing Commission is located at 400 West 15th Street, Suite 625, Austin. The commission mailing address is P.O. Box 12080, Austin, Texas 78711-2080. The telephone number is (512) 476-7223. Office hours are 8 a.m. to 5 p.m., Monday-Friday.

(b) Branch offices may also be established in any other county which the commission, or its respective sections, finds that a branch office is necessary or required in order to fulfill its purposes.

§301.5. Meetings.

(a) Except as otherwise provided by the Texas Racing Act, commission and section meetings are subject to the Texas Open Meetings Act, Texas Civil Statutes, Article 6252-17.

(b) The commission shall hold at least six regular meetings each year on dates fixed by the commission. Special meetings shall be called by the Chairman or any four members of the commission. Notice of each meeting shall be published in the *Texas Register* at least seven days in advance of the meeting. Agendas will be available to any interested individual not less than seven days in advance of the

meeting. All meetings are open to the public unless an executive session is convened upon proper notice and procedure.

(c) Robert's rules of order (Revised 1981) shall govern the proceedings of the commission, except as otherwise provided by commission rule or by statute.

(d) The order of business at all regular and special meetings of the commission or its sections will, when practicable, be as follows:

- (1) roll call;
- (2) reading of minutes;
- (3) report of committees;
- (4) report of executive director and reading of communications;
- (5) unfinished business;
- (6) new business;
- (7) reading and consideration of applications; and
- (8) adjournment.

(e) The commission reserves the right to delete, add to, or rearrange the previously stated order of business where required by law or deemed by the commission to be more efficient in the conduct of its business.

§301.7. *Quorum.* A majority of the commission constitutes as quorum. A majority of a section of the commission constitutes a quorum for the purposes of conducting business related to matters under the exclusive jurisdiction of that section. When a quorum is present, a motion is carried by an affirmative vote of the majority of the entire membership of the commission. A motion is carried by an affirmative vote of the majority of a section on matters under the exclusive jurisdiction of that section.

§301.9. Commission Officers.

(a) The membership of the commission shall elect one of the members to serve as chairman for a term of two years. The membership of the commission shall elect one of the members to serve as vice-chairman for a term of two years. The chairman and vice-chairman shall be elected from different sections of the commission.

(b) In the event of a vacancy in either office, the vacancy shall be filled for the unexpired term upon majority vote of the commission at the next regular meeting of the commission at which notice has been given.

(c) In the absence of the chairman and vice-chairman from a regular or special meeting of the commission, the remaining members, providing there is a quorum, shall elect a pro tem presiding officer who shall serve until the conclusion of the meeting or until the arrival of the chairman or vice-chairman.

§301.11. Executive Secretary: Employees.

(a) The commission shall employ an executive secretary who shall employ such other employees as necessary to administer the provisions of the Texas Racing Act. The commission may confirm the executive secretary's appointment of employees.

(b) Neither the commission nor the executive secretary may employ or continue to employ a person:

- (1) who owns a financial interest in a racetrack association or its operation;
- (2) who accepts any remuneration from a racetrack association, except as mandated by the Texas Racing Act;
- (3) who is an owner, lessor, or lessee of a greyhound or a horse that is entered in a race in this state; or
- (4) who accepts or is entitled to any part of the purse or purse supplement to be paid on a greyhound or a horse in a race conducted in this state.

(c) Neither the commission nor the executive secretary may employ or continue to employ a person related within the second degree by affinity or the third degree by consanguinity to a person who is subject to a disqualification prescribed by subsection (b) of this section.

(d) It is the intent of the commission to employ the executive secretary and other employees in a manner which reflects the diversity of the population in this state as regards to race, color, creed, handicap, sex, religion, age, and national origin.

(e) The commission shall develop and publish a personnel handbook which complies with applicable state and federal laws.

§301.13. *Executive Secretary: Duties; Term.* The executive secretary shall maintain in good order the records of the commission, including a public record of every vote, and shall perform other duties as required by the commission. The executive secretary serves at the pleasure of the commission on a full-time basis and may not hold other employment.

§301.15. *Legal Representation.* The attorney general or the designated member(s) of the attorney general's staff shall be present at all public meetings of the commission or its sections to counsel and advise the commission and shall represent the commission in all legal proceedings.

§301.17. Records.

(a) Except as otherwise provided by the Texas Racing Act, commission and section records are subject to the Texas Open Records Act, Texas Civil Statutes Article 6252-17a.

(b) All records of the commission not made confidential by law are open to inspection by the public during regular office hours. The contents of investigatory files of the commission, however, are not

public records and are confidential except in a criminal proceeding or in a hearing conducted by the commission.

(c) A request to inspect commission records must be made with reasonable prior notice in writing. A person requesting to inspect commission records must establish proper identification. The custodian of the records, the chairman of the commission, or his designee, will upon written request produce information for inspection or duplication. If a record requested is in storage, the custodian shall notify the requesting party in writing and shall set an hour and date when the record will be available. No person shall remove an original record from the offices of the commission.

(d) Any expense in the reproduction, preparation, or retrieval of records shall be paid by the person requesting the record. The charge for such reproduction, preparation, and retrieval shall be in accord with the maximum charge established by the State Board of Control. The commission may charge a lesser amount when the cost of reproducing said document or documents is less than the maximum charge established by the State Board of Control. The commission may mail upon request reproduced records to any person who so requests. If the commission mails said records, a charge for postage may be included in the charge for reproduction. The charge for reproduction of a document must include state and local sales taxes of 5.0%. Postage is not subject to state and local tax. (RF. Sales Tax Bulletin Number 5-Revised, Comptroller of Public Accounts). Requests for computerized documents or records will be billed at the actual cost of retrieval of such documents or records, unless otherwise provided by law.

§301.19. Vacancies in the Commission. If for any reason a vacancy shall occur in the commission, the chairman shall call a special meeting for the purpose of preparing notice to the governor asking for the appointment of a new member to fill the unexpired term. If the vacancy shall occur in the office of the chairman, the vice-chairman shall call the meeting.

§301.21. Fiscal Matters. The fiscal year of the board shall begin September 1 and close August 31 of each year, unless otherwise provided for by law. Payment of all salaries and other operating expenses of the commission shall be made by itemized vouchers (claims) on the Texas Racing Commission's fund. Such vouchers shall be approved as stipulated by commission action.

§301.23. Seal of the Commission. The official seal of the board shall be an embossed circular seal 2 1/4 inches in diameter, consisting of two concentric circles. The inner circle shall be 1 3/8 inches in diameter and the area between the two circles shall contain the wording "Texas Racing Commission."

§301.25. Unofficial Statements. Unofficial statements made by a commission member or staff are not binding on the commission

or its sections.

§301.27. Acts in Commission's Name. No commission member shall act in the name of the commission in any manner, such as making a request of another state agency, private organization, or individual without first clearing the matter through the chairman or, in his absence, the vice chairman or, in absence, the chairman protem.

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

Issued in Austin, Texas, on June 14, 1988

TRD-8806130

Nancy Fisher
Deputy Commissioner
Texas Racing Commission

Earliest possible date of adoption: July 22, 1988

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

Subchapter B. Powers and Duties of the Commission

- 16 TAC §§301.41, 301.43, 301.45, 301.47, 301.49, 301.51, 301.53, 301.55, 301.57, 301.59, 301.61, 301.63, 301.65, 301.67, 301.69

The Texas Racing Commission proposes new 16 TAC §§301.41, 301.43, 301.45, 301.47, 301.49, 301.51, 301.53, 301.55, 301.57, 301.59, 301.61, 301.63, 301.65, 301.67, and 301.69, concerning commission sections, regulations and supervision, power of entry, requirement of books, records and financial statements, subpoena power, certified documents, officials of race meetings, appeals from decisions of stewards or racing judges, the Texas Racing Commission Fund, the annual report, cooperation with peace officers, reporting of violations, leasing, recognition of racetracks in Mexico, and application of the Administrative Procedure and Texas Register Act. All the proposed rules reflect powers and duties of the commission.

Nancy Fisher, deputy secretary, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections, since the sections are adjudicative procedures for matters committed by law to the commission's jurisdiction. However, since the Texas Racing Commission is a new state agency, normal expenditures associated with setting up the agency are anticipated, including, but not limited to, hiring necessary employees and purchasing equipment.

At this time, the Texas Racing Commission is unable to establish a cost compliance comparison for small businesses with large businesses.

Ms. Fisher 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 to allow for an orderly and efficient procedure for administration of matters under the Texas Racing Commission's jurisdiction. There is no anti-

ipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Nancy Fisher, Deputy Secretary, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 476-7223.

The new sections are proposed under the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which provide the Texas Racing Commission with the authority to adopt rules for conducting racing involving wagering and the adoption of other rules to administer the Texas Racing Act.

§ 301.41. Commission Sections.

(a) For purposes of rulemaking and licensing and for any action relating exclusively to horse racing or exclusively to greyhound racing, the commission shall operate as separate sections.

(b) For issues related to greyhound racing, the veterinarian member who specializes in the treatment of small animals, the members who have special knowledge or experience related to greyhound racing, and the two ex officio members shall exercise exclusive jurisdiction. For issues related to horse racing, the veterinarian member who specializes in the treatment of large animals, the members who have special knowledge or experience related to horse racing, and the two ex officio members shall exercise exclusive jurisdiction.

(c) On matters of general application to both greyhound and horse racing, the commission shall act as a single body.

§301.43. Regulation and Supervision. The commission and its sections shall regulate and supervise every race meeting involving wagering on the result of greyhound or horse racing. All persons and things relating to the operation of those matters are subject to regulation and supervision by the commission. The commission shall regulate all aspects of greyhound racing and horse racing in this state whether or not that racing involves pari-mutuel wagering.

§301.45. Power of Entry. A member of the commission, an authorized agent of the commission, a commissioned officer of the Department of Public Safety, or a peace officer of the local jurisdiction in which the association maintains a place of business may enter the office, racetrack, or other place of business of an association at any time for the purpose of enforcing and administering the Texas Racing Act. An association which refuses access to a person identified in this section shall be subject to disciplinary action by the commission.

§301.47. Requirement of Books and Records; Financial Statements. All associations, managers, and concessionaires shall keep books and records and submit financial statements to the commission at the times as required by the commission and in a format as required by the commission. The failure to maintain or submit required books, records, or financial statements shall be grounds for instituting disciplinary pro-

ceedings.

§301.49. Subpoena Power.

(a) A member of the commission, or a duly appointed agent of the commission, while involved in carrying out functions under the Texas Racing Act, may take testimony and may require by subpoena the attendance of witnesses and the reproduction of books, records, papers, correspondence, and other documents that the commission considers advisable. Subpoenas shall be issued under the signature of the commission or its duly appointed agent and shall be served by any person designated by the commission. A member of the commission, or a duly appointed agent of the commission, may administer oaths or affirmations to witnesses appearing before the commission or its agents.

(b) If a subpoena issued under this section or §307.169 of this title (relating to Subpoenas) is disobeyed, the commission or its duly appointed agent may invoke the aid of the appropriate state court in requiring compliance with the subpoena. Any court that has jurisdiction where the person in violation of the subpoena is found or transacts business may issue an order requiring the person to appear and testify and to produce books, records, papers, correspondence, and documents. Failure to obey the order of the court shall be punished by the court as contempt.

§301.51. Certified Documents. The commission may require a certification of any document under penalty of perjury instead of requiring an affidavit or other sworn statement in any application or other documents that are required to be filed with the commission.

§301.53. Officials of Race Meetings.

(a) All designated racing officials shall be nominated by and compensated by the appropriate association holding the race meeting except the stewards at a horse race and the racing judges at a greyhound race who shall be approved or appointed as provided in subsection (i) of this section. Nominees for appointments by the association are subject to the approval of the commission which reserves the right to demand a change of personnel for what it deems good and sufficient reason. Biographical information shall not be required of a currently licensed racing judge or steward. The replacement of any officials are subject to commission approval. Racing officials shall be employees of the commission pursuant to subsection (j) of this section.

(b) Associations shall submit to the commission for approval the names of all racing officials not less than 30 days prior to the first day of the race meeting. Names of association nominees for stewards or racing judges shall be submitted no later than 60 days before the commencement of a race meeting and be accompanied by biographical data setting up the experience and qualifications of the nominees. One person may serve in more than one official position if

that person can do so without detriment to any of the other positions and if that person has the consent and approval of the commission, provided that neither the racing secretary nor the director of racing may serve as a steward or racing judge except in temporary emergency situations.

(c) No one interested in the result of any race at the race meeting, either because of ownership of any greyhound or horse, or because of wagers or otherwise, shall act as a racing official.

(d) If any owner, trainer, attendant or any other person licensed by the commission uses profane or indecent language to a racing official or otherwise disturbs the peace of any track enclosure, that person shall be immediately reported to the commission.

(e) Racing officials shall not accept directly or indirectly, any gratuity, reward or favor in connection with racing at the meet.

(f) Racing officials shall report to the stewards or racing judges all observed violations of the rules.

(g) Any grievance or complaint against a track official, an employee of the permittee, or a licensee shall be made in writing within five days of the alleged objectionable act or behavior. The grievance or complaint shall be made to the stewards or racing judges, who shall consider the matter, take whatever action is deemed to be appropriate, and make a full report of their action to the commission.

(h) Any grievance or complaint against an official or employee of the commission shall be reported in writing within five days of the alleged objectionable behavior. The grievance or complaint shall be made to the executive secretary of the commission, who shall refer the matter to the commission.

(i) Each horse or greyhound race meeting shall be supervised by three stewards approved by the commission for horse racing from a list of qualified nominees submitted by the association or by three racing judges for greyhound racing appointed by the commission. The commission shall compensate each of the stewards who supervises a horse race meeting. The commission shall also compensate one of the racing judges who supervises a greyhound meeting; the other racing judges at a greyhound race meeting shall be compensated by the association.

(j) For each race meeting, the commission shall employ a state veterinarian and all other racetrack officials who shall be compensated by the appropriate association. Racing officials employed by the commission pursuant to this section shall be governed by §301.11 of this title (relating to Executive Secretary; Employees).

(k) The commission may consider

for appointment for a racing judge or steward position any persons who have:

(1) engaged in greyhound or horse racing in a capacity and for a period satisfactory to the commission;

(2) satisfactorily passed an optical examination within one year prior to approval as a steward or racing judge evidencing corrected 20/20 vision and the ability to distinguish color correctly;

(3) satisfactorily passed a medical examination within one year prior to approval as a steward or racing judge;

(4) satisfied the commission that income, other than salary as a steward or racing judge, is independent of an unrelated to patronage of or employment by any occupational licensee under the supervision of such steward or racing judge, so as to avoid the appearance of any conflict of interest or suggestion of preferential treatment of an occupational licensee; and

(5) successfully taken and passed the annual written steward or racing judge occupational examination.

§301.55. Appeal From Decision of Stewards or Racing Judges.

(a) A decision of the stewards or racing judges may be appealed to the commission or its designated hearing examiner in the manner provided for a contested case under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a. Chapter 307 of this title (relating to Rules of Practice and Procedure) shall govern such proceedings.

(b) Upon every appealable decision of the stewards or racing judges, the person subject to the decision or order shall be made aware of his right to an appeal before the commission and the necessary procedures.

(c) The commission shall notify the appellant and the stewards or racing judges of the date, time and location of its hearing in the matter upon appeal. The burden shall be on the appellant to provide the facts necessary to sustain the appeal.

§301.57. Texas Racing Commission Fund. The commission shall deposit the money it collects under the Texas Racing Act, in the State Treasury to the credit of the Texas Racing Commission fund. The Texas Racing Commission fund may be appropriated only for administration and enforcement of the Texas Racing Act. Any unappropriated money in this fund at the close of each fiscal biennium shall be transferred to the General Revenue Fund and may be appropriated for any legal purpose.

§301.59. Annual Report. The commission shall submit an annual report to the governor, lieutenant governor, and speaker of the house of representatives not later than January 31 of each year. The report shall cover the operations of the commission and its sections and the condition of horse breeding and racing and greyhound breeding and

racing during the previous year.

§301.61. Cooperation With Peace Officers. The commission, its employees and licensees shall cooperate with all district attorneys, criminal district attorneys, county attorneys, the Department of Public Safety, the attorney general, and all peace officers in enforcing the Texas Racing Act, and these regulations.

§301.63. Reporting of Violations.

(a) Anonymous reporting of violations of the Texas Racing Act or of the Texas Racing Commission regulations shall be referred to the Executive Secretary who shall forward the reports to the commission, the attorney general, or the Department of Public Safety, for appropriate investigation and action.

(b) Anonymous reports, including those made under the authority and protection of the Texas Whistle Blowers Act, Texas Civil Statutes, Article 6252-16a, are investigatory files as provided in TM 301.17 of this title relating to Records).

§301.65. Lease.

(a) If any applicant for an association license will lease a racing facility from another entity, the lessor shall be required to provide the same information required by §§305.51-305.89 (relating to Application Procedures to the Commission) including copies of all leases, agreements, and contracts of any nature between the lessor entity and the applicant.

(b) The commission shall not approve a lease if:

(1) it appears that the lease is a subterfuge to evade the compliance with the Texas Racing Act or rules adopted by the commission;

(2) the lessee, prospective lessee, or lessor is disqualified from holding a racetrack license; or

(3) the racetrack and surrounding structures do not conform to rules adopted by the commission.

(c) The commission may not approve a lease if the lessor and lessee do not provide the required information.

§301.67. Recognition of Racetracks In Mexico. The commission, on application of the owner or operator of a racetrack in a neighboring Mexican state at which horse racing is regularly conducted, may recognize that racetrack as having a racing program equivalent to the program required by the Texas Racing Act of a class 1, class 2, or class 3 racetrack. The commission may withdraw or alter any recognition it has made upon a finding that the facts warrant the action.

§301.69. Application of the Administrative Procedure and Texas Register Act. Except as otherwise provided by the Texas Racing Act, Texas Civil Statutes Article 179e, the commission rules and orders are subject to the Administrative Procedure and Texas Register Act, (or the APTRA), Texas Civil

Statutes, Article 6252-13a.

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

Issued in Austin, Texas, on June 14, 1988

TRD-8806131

Nancy Fisher
Deputy Commissioner
Texas Racing Commission

Earliest possible date of adoption: July 22, 1988

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

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Subchapter C. Powers and Duties of the Comptroller

• **16 TAC §§301.101, 301.103, 301.105, 301.107, 301.109, 301.111**

The Texas Racing Commission proposes new §§301.101, 301.103, 301.105, 301.107, 301.109, and 301.111, concerning books and records, power of entry, rules of the comptroller, collection of state's portion of pari-mutuel pool, and compliance and deposit. All the proposed sections reflect powers and duties of the comptroller.

Nancy Fisher, deputy secretary, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections, since the sections are adjudicative procedures for matters committed by law to the commission's jurisdiction. However, since the Texas Racing Commission is a new state agency, normal expenditures associated with setting up the agency are anticipated including but not limited to hiring necessary employees and purchasing equipment. At this time, the Texas Racing Commission is unable to establish a cost compliance comparison for small businesses with large businesses.

Ms. Fisher 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 to allow for an orderly and efficient procedure for administration of matters under the Texas Racing Commission's jurisdiction. 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 Nancy Fisher, Deputy Secretary, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 476-7223.

The new sections are proposed under the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which provide the Texas Racing Commission with the authority to adopt rules for conducting racing involving wagering and the adoption of other rules to administer the Texas Racing Act.

§301.101. Books and Records. All books, records, and financial statements of associations, managers, and concessionaires which are required by the commission rules, shall be open to inspection by the comptroller.

Denying inspection of required documents to the comptroller is grounds for the commission to initiate disciplinary proceedings against the licensee.

§301.103. Power of Entry. The comptroller and the authorized agents of the comptroller may enter the office, racetrack, or other place of business of an association at any time to inspect an association's books, records, or financial statements which are required by commission rules. To aid the comptroller in achieving access to any required premises or records, the commission may issue a subpoena pursuant to the provisions of §301.49 of this title (relating to Subpoena Power).

§301.105. Rules of the Comptroller. The comptroller may adopt rules for the enforcement of the comptroller's powers and duties under the Texas Racing Act. The failure to comply with a rule of the comptroller constitutes a failure to comply with the rules of the commission and is grounds for disciplinary action by the commission against the licensee.

§301.107. Collection of State's Portion of Pari-Mutuel Pool. The comptroller may prescribe by rule procedures for the collection of the state's portion of each pari-mutuel pool. The state's portion of each pool shall be deposited at the end of each racing day in accordance with the rules of the comptroller.

§301.109. Compliance. If an association does not comply with rules adopted under the Texas Racing Act by the comptroller or refuses to allow access to or inspection of any of its required books, records, or financial statements or if the association is shown on the records of the comptroller as being delinquent for the state's portion of the pari-mutuel pool collected by the comptroller, the comptroller shall certify that fact to the commission. On receipt of the comptroller's certification, the commission or its sections, shall immediately call a hearing to revoke or suspend the association's license or shall take other action that the commission considers appropriate.

§301.111. Deposit. The comptroller shall deposit the state's share of each pari-mutuel pool from horse racing and greyhound racing in the general revenue fund.

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

Issued in Austin, Texas, on June 14, 1988

TRD-8806132

Nancy Fisher
Deputy Commissioner
Texas Racing Commission

Earliest possible date of adoption: July 22, 1988

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

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Chapter 305. Licensing Provisions

Subchapter A. General Licensing Provisions

- 16 TAC §§305.1, 305.3, 305.5, 305.7, 305.9, 305.11, 305.13, 305.15, 305.17, 305.19, 305.21, 305.23, 305.25, 305.27, 305.29

The Texas Racing Commission proposes new §§305.1, 305.3, 305.5, 305.7, 305.9, 305.11, 305.13, 305.15, 305.17, 305.19, 305.21, 305.23, 305.25, 305.27, and 305.29, concerning general, application files, form of application, initial review, original and renewal license fees, bonds, form of certificate, references, fingerprints, access to criminal history records, conditions of licensure, disciplinary actions, rehabilitation guidelines, judicial review of commission decision, and effect of legal action on application. All the proposed sections reflect general licensing provisions for licensure by the commission.

Nancy Fisher, deputy secretary, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections. There will be revenue gain to the Texas Racing Fund as a result of the fees collected by the agency. However, since the Texas Racing Commission has not proposed a fee schedule for licenses at this time, it is not possible to establish the estimated increases in revenue to the Texas Racing Fund.

At this time, the Texas Racing Commission is unable to establish a cost compliance comparison for small businesses with large businesses.

Ms. Fisher 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 to allow for an orderly and efficient procedure for administration of matters under the Texas Racing Commission's jurisdiction. The sections pertaining to references, fingerprints, and access to criminal records will help ensure the integrity of each licensee and maintain a high level of confidence in the licensee by the betting public. The anticipated economic cost to individuals who are required to comply with the sections as proposed will be that applicants may anticipate some economic costs when they apply to the commission for a license.

Comments on the proposal may be submitted to Nancy Fisher, Deputy Secretary, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 476-7223.

The new sections are proposed under the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which provides the Texas Racing Commission with the authority to adopt rules for conducting racing involving wagering and the adoption of other rules to administer the Texas Racing Act.

§305.1. General. The process of licensing is initiated upon submission of the application for licensure by the commission. The fee which accompanies the application is applied toward the required license fee.

Subsequent to application approval, the applicant is assigned a serial number. These numbers will be issued consecutively in the order in which applications are approved. The applicant will be advised of his serial number in the notification of approval sent by the executive secretary. Any applicant who fails to complete the licensing provisions as provided for by law and herein within a period of six months after notice is mailed to him by the executive secretary that he has been approved for licensure shall have such approval withdrawn by action of the commission.

§305.3. Application Files.

(a) Applications approved for registration and incidental papers deemed pertinent to the application will be microfilmed. One copy will be kept in the commission office file, and one microfilm copy will be kept in the permanent State Archives file. All other applications for registration will be retained for a period of two years and then destroyed or further retained at the discretion of the commission staff, or as otherwise required by law.

(b) The licensee is responsible for keeping his commission file updated.

§305.5. Form of Application.

(a) All license applications shall be made in compliance with commission or section instructions on forms provided by the commission, and shall also be in compliance with commission rules and law.

(b) Withholding information, misrepresentation, or untrue statements on the application for licensure or supplemental documents will be cause for rejection of the application.

(c) If an applicant declines a commission or section request to provide additional information for licensure, the application will be referred to the commission or appropriate section of the commission for consideration with documentation of such declination.

§305.7. Initial Review.

(a) An application will be considered complete and received when all information required by the Texas Racing Act, the commission or section rules, and the instructions has been received and accepted by the executive secretary or his designated representative. When an application is complete, it will be reviewed by the executive secretary or his designated representative, and a summary of the application will be prepared.

(b) An incomplete application shall be returned to the applicant. When an incomplete application is returned to the applicant, the time for commission review of a license application shall not commence to run until a completed application is submitted by the applicant.

(c) If the commission discovers an error was made in processing an application, in examining an applicant, or in any of

its other activities, the commission has the authority to correct the error.

§305.9. Original and Renewal License Fees.

(a) On or before September 1 of each year, the commission and its section shall by rule prescribe and publish a schedule of fees for each category of licensee required by the Texas Racing Act or these regulations. An application for license post-marked before September 1 of the year of application need only contain the fee required at the time of posting and not the fee in effect at the time the license is approved.

(b) Original and renewal license fees shall be nonrefundable and payable to the Texas Racing Fund. The board assumes no responsibility for loss in transit of cash remittances. Applications not accompanied by the proper fee will be returned to the applicant. All fees required by the commission shall be payable in United States currency. Personal, company or other checks are not acceptable.

(c) A license issued by the commission must be renewed by the licensee; otherwise, such license shall become invalid until the date the commission receives the applicant's renewal and penalty fee. Each licensee shall notify the commission in writing of each change of mailing address as it occurs. The commission will mail a renewal notice to the last recorded address of each licensee. However, it is the sole responsibility of the licensee to pay the required renewal fee together with any applicable penalty at the time of payment, regardless of whether the renewal notice is received late.

(d) A delinquent license may be reinstated upon the payment of the current license fee plus an additional 10% as late penalty for each month that the license was delinquent.

(e) A delinquent license may only be reinstated upon payment of all fees within twelve months of its expiration. Thereafter, a new license must be obtained.

(f) No provision of this section shall be construed to prohibit the commission or its sections from initiating contested case proceedings opposing a delinquent licensee's reinstatement.

§305.11. Bonds.

(a) On or before September 1 of each year, the commission and its sections shall by rule prescribe and publish a bonding schedule for each category of licensee required by the Texas Racing Act.

(b) Before the issuance of a original or renewal license, an applicant for a license shall give bond in the form approved and sum prescribed by the Texas Racing Act and the commission, payable to the Texas Racing Fund and conditioned upon compliance with the Texas Racing Act and these regulations.

(c) In a disciplinary proceeding before the commission or its sections, the licensee's bond may be forfeited.

§305.13. Form of Certificate.

(a) The commission shall issue a certificate to each licensee in the form of an identification card. The certificate shall bear the signature of the chairman and executive secretary of the commission and the seal of the commission.

(b) Each certificate shall contain the licensee's:

- (1) first or middle name, or both, and surname;
- (2) signature;
- (3) weight, height, and sex;
- (4) hair and eye color;
- (5) category of license;
- (6) photograph;
- (7) fingerprint or facsimile of a fingerprint;
- (8) date of expiration; and
- (9) serial number.

(c) A person who is not in possession of a valid identification certificate may not remain in nonpublic areas of an enclosure without the permission of authorized racing officials.

(d) A new certificate of registration to replace any certificate lost, destroyed, or mutilated, may be issued, subject to the rules of the commission, on payment of a fee of \$5.00, unless otherwise provided by law. A licensee requesting a replacement certificate under this section will, if possible, surrender to the commission any remaining portions of the original certificate and shall file with the request a sworn affidavit setting out the reasons for his request so that the commission records will reflect the reason for issuance of a new certificate. Replacement certificates will reflect the assigned serial number of the licensee.

(e) In the event the commission by its own initiative or the requirements of law redesigns the certificate, a licensee holding a valid certificate of the design existing prior to the date the new design is approved may obtain a certificate of the new design upon payment of a fee to be established by the commission. The licensee will be required to surrender his original certificate to obtain a certificate of the new design.

§305.15. References.

(a) The commission occasionally finds it necessary to correspond or interview directly with a reference to seek a clarification or amplification of the references original statement, which may have been unfavorable, questionable, or simply inadequate to substantiate a claim by the applicant. If the reference fails or declines to furnish the necessary additional informa-

tion within a reasonable time, all information submitted by that reference may be disregarded in consideration of the application involved. In that event, the commission may require additional references.

(b) Current members of the commission may not be used as references by an applicant for any applications made to the commission.

§305.17. Fingerprints.

(a) An applicant for any license issued by the commission shall submit a complete set of fingerprints of the individual natural person applying for the license or, if the applicant is not an individual natural person, a complete set of fingerprints for all shareholders of more than 5.0% of the outstanding stock of a corporate applicant, the officers and incorporators.

(b) Only a person authorized by law shall take an applicant's fingerprints in a manner and on a form prescribed by the commission.

(c) Not later than the next day after receiving the prints, the commission shall transmit the prints by mail to the Texas Department of Public Safety which shall:

- (1) classify the prints;
- (2) check them against fingerprint files; and
- (3) report to the commission concerning the criminal record of the applicant or lack of such a record.

(d) No license shall be issued to an applicant until all required prints are submitted and a report is made to the commission.

§305.19. Access to Criminal History Records.

(a) The commission may obtain criminal history record information from any law enforcement agency that relates to each applicant for a license issued by the commission.

(b) The criminal history record information is privileged and confidential and is for the exclusive use of the commission. Except on court order or with the consent of the applicant, the criminal history record information may not be released or otherwise disclosed to any person or agency.

§305.21. Conditions of Licensure.

(a) A license issued by the commission or its sections shall be issued upon the condition that the applicant observes and complies with the Texas Racing Act and commission regulations.

(b) If commission or section rules are amended, the continued holding of a license shall be conditioned upon the licensee's compliance with the rules as amended unless specifically exempted from the application of the amendment by the commission or appropriate section of the commission.

(c) If an exemption is granted, the

exemption must be non-discriminatory and applicable to an entire class of licensees. Notwithstanding this subsection, an exemption may also be granted, in the sole discretion of the commission, upon showing of undue hardship by the licensee.

§305.23. Disciplinary Actions.

(a) Under the authority and provisions of the Texas Racing Act and these regulations, the board must take disciplinary action against a licensee who is found guilty of a violation of law, rules, or prohibited conduct. In such a case, the commission may:

- (1) revoke a license;
- (2) suspend a license;
- (3) probate a suspended license;
- (4) refuse to renew a license; or
- (5) levy a fine against the licensee.

(b) A license which has expired is not construed to be a current license and subject to the disciplinary actions provided herein, unless and until such time as the commission at its discretion accepts the fees required to renew the expired license.

(c) In defining misconduct detrimental to the racing industry, the commission will consider applicable commission regulations and conviction of certain crimes as provided in Texas Civil Statutes, Article 6252-13c and Article 6252-13d.

(d) Any commission action under this subsection which is not informally disposed by stipulation, consent agreement, or default, may be contested as provided by the rules for public hearings to suspend or revoke a license.

§305.25. Rehabilitation Guidelines.

(a) In the event of revocation or suspension of a license due to non-compliance with the rules of the commission the licensee may, in the sole discretion of the commission or its sections, request and receive from the commission a plan of rehabilitation at a regularly scheduled commission meeting following the date of the order. The plan shall outline the steps the person must follow in order to be considered for relicensure or removal of suspension. Completion of the plan may lead to consideration of:

- (1) submission of an application for relicensure;
- (2) removal of suspension;
- (3) removal of supervision requirements.

(b) In the event the licensee has not met the board's criteria for rehabilitation, the plan may be revised, expanded, or continued, depending upon the progress of the rehabilitation program.

(c) The commission may follow one or more options in devising a rehabili-

tation plan:

(1) The individual may be supervised in all or selected areas of activities related to his license by a licensee approved by the commission for a specified length of time.

(A) The commission will specify the focus of the supervision.

(B) The commission will specify the number of hours per week required in a face-to-face supervisory contract.

(C) The supervisor will provide periodic and timely reports to the commission concerning the progress of the supervisee.

(D) Any fees for supervision time will be the responsibility of the supervisee.

(E) The supervisor is acting as a "friend" of the commission. Judgments of the supervisor are to be made independently and without reference to commission opinions.

(2) The individual may be expected to successfully complete a variety of appropriate educational programs. Appropriate educational formats may include but are not limited to workshops, seminars, courses in regionally accredited universities, or organized internship settings. Workshops or seminars which are not held in a setting of academic review need prior approval of the commission. Any course of study must be approved by the commission prior to enrollment if it is to meet the criteria of a rehabilitation plan.

(3) The commission may require of the individual:

(A) psychodiagnostic evaluations by a psychologist acceptable to the commission and the individual;

(B) psychotherapy on a regular, continuing basis from a psychologist or other professional acceptable to the commission and the individual;

(C) evaluation of physical health status.

(4) The commission may require the individual to take or retake the licensing examination.

§305.27. Judicial Review of Commission Decisions. As provided by of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §19, an applicant or party who has exhausted all administrative remedies and who is aggrieved by a final decision rendered by the

Commission is entitled to judicial review. A petition for judicial review shall be filed as provided in of the Administrative Procedure and Texas Register Act, §19.

§305.29. Effect of Legal Action on Application.

(a) The commission shall not consider the application of any applicant for a license against whom the commission has initiated legal action unless and until:

(1) all legal proceedings have been terminated by a final judgment and the time for appeal has expired, or if an appeal is taken, such appeal has been terminated and the appellate court's mandate returned to the trial court;

(2) the applicant is in full compliance with all orders and judgments of the court, all rules of the commission, and all provisions of the act; and

(3) such applicant has filed evidence satisfactory to the board of such compliance.

(b) When such compliance has been secured and evidence furnished, the commission shall consider such applicant's application in its regular order of business as other applications to the commission.

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

Issued in Austin, Texas, on June 14, 1988

TRD-8806133

Nancy Fisher
Deputy Commissioner
Texas Racing Commission

Earliest possible date of adoption: July 22, 1988

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

Subchapter B. Racetrack Licenses

General

• 16 TAC §§305.31, 305.33, 305.35, 305.37, 305.39, 305.41, 305.43, 305.45, 305.47

The Texas Racing Commission proposes new §§305.31, 305.33, 305.35, 305.37, 305.39, 305.41, 305.43, 305.45, and 305.47, concerning license required, racing restricted to designated place, racing at temporary location, management and concession contracts, fee for racetrack license, disclosure of records and financial statements, criteria for issuance of a racetrack license. All the proposed sections reflect general provisions for racetrack licenses.

Nancy Fisher, deputy secretary, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for local government. There will be some revenue gain to the Texas Racing Fund as a result of the fees collected by the agency. However, since the Texas Racing Commission has not prescribed the

proposed license fee, it is not possible at this time to establish the estimated revenue increase to the Texas Racing Fund. The cost compliance with these sections for small businesses shall be identical to all other businesses who apply for a racetrack license. But the commission may prescribe different license fees for various types, sizes, and uses of racing facilities.

Ms. Fisher 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 to allow for an orderly and efficient procedure for obtaining a racetrack license under the Texas Racing Commission's jurisdiction. The public benefit anticipated as a result of enforcing these sections as proposed will be the assurance of the integrity of each racetrack license applicant. The anticipated economic cost to individuals who are required to comply with the proposed sections will be determined upon the promulgating of the fee schedule by the commission.

Comments on the proposed sections may be submitted to Nancy Fisher, Deputy Secretary, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 476-7223.

The new sections are proposed under the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which provide the Texas Racing Commission with the authority to adopt rules for conducting racing involving wagering and the adoption of other rules to administer the Texas Racing Act.

§305.31. License Required.

(a) No person or association shall conduct greyhound or horse race meetings without first obtaining a racetrack license from the commission or its sections.

(b) The commission may deny any person's or association's application for a racetrack license who is found to have permitted wagering on the results of a greyhound or horse race at a unlicensed racetrack in this state or elsewhere.

(c) Unless approved by the commission or the appropriate commission section, a racetrack license may not be transferred.

§305.33. Racing Restricted to Designated Place.

(a) No person or association shall conduct a greyhound or horse race or race meeting at any place in this state other than the place designated in the license except as provided by subsection (b) of this section.

(b) In the case of fire, flood or other catastrophe making the racetrack or enclosure unsuitable for racing, an association may temporarily conduct a race meeting or any remaining portion if a race meeting at a racetrack or place within a county designated by the commission.

§305.35. Racing at Temporary Location.

(a) Except as provided in §305.33 of this title (relating to Racing Restricted to Designated Place), the commission or its sections may only issue a temporary license that permits an association to conduct races at a location in the same county as the

association's permanent designated race-track location for a period not to exceed two years after the date of issuance of the temporary license or the completion of the permanent facility, whichever occurs first. A temporary racetrack license issued under this section may not be renewed.

(b) The conditions and standards for issuance of a temporary license as well as the allocation of appropriate race days shall be set forth in the commission's or section's order approving the temporary license.

(c) No temporary license shall be issued pursuant to the provisions of this section unless and until the applicant for a temporary license has paid all required application fees and posted the bonds required by law.

§305.37. Management and Concession Contracts.

(a) All management and concession contracts of each racetrack applicant or licensee must receive the prior written approval of the commission.

(b) Concessionaires, managers and management firms shall comply and assist associations in complying with §305.63 of this title (relating to Management and Concession of Racetrack Facility). The failure to comply with this section shall be grounds for the commission or commission section to deny or withdraw approval of a management or concession contract.

(c) The refusal of concessionaires, managers or management firms to provide required fingerprints, criminal history records, and other information required by law or otherwise fail to cooperate with authorities regarding background checks shall be grounds for denying or withdrawing approval of their management or concession contract.

§305.39. Fee for Racetrack License.

(a) In addition to the minimum application fee established by the legislature in the Texas Racing Act, each association shall pay to the commission an annual license fee.

(b) On or before September 1 of each year, the commission or its sections shall prescribe and publish by rule a schedule of license fees for the various types, sizes, and uses of racing facilities.

§305.41. Disclosure of Records and Financial Statements. Each association holding a racetrack license which fails to annually file required records or financial statements indicating compliance with the Texas Racing Act or commission regulations shall be subject to disciplinary action by the commission.

§305.43. Criteria for Issuance of a Racetrack License.

(a) In a proceeding concerning an application for a racetrack license, the license shall not be issued or approved by the commission or its sections unless the appli-

cant demonstrates:

(1) that the conduct of race meetings at the proposed track and location will be in the public interest;

(2) compliance with all zoning laws, the Texas Racing Act, and commission rules and criterion;

(3) that bond has been given in a form and amount as required by law;

(4) that the applicant is otherwise eligible for a license; and

(5) by clear and convincing evidence, that the applicant will not violate the criminal laws of this state.

(b) The commission or its sections shall apply, as appropriate, the general criteria identified in Chapter 309 of this title (relating to Minimum Standards) and this subchapter in conducting a review of a racetrack license application. Criteria form the basis of review by providing measures against which various aspects of the proposed project are compared. Not all criteria may be relevant in a particular case. When a project compares favorably with all of the established criteria against which it is properly measured, the applicant may receive a racetrack license. When a project compares unfavorably with one or more of the criteria against which it is properly measured, the application may be denied. The applicant should present information in the application and evidence of fact at the hearing which address each relevant criterion and each sub-part of the criterion so as to prove that the criterion is satisfied. Failure of the applicant to address all relevant criterion may result in the denial of the application.

§305.45. Burden of Proof.

(a) In a proceeding concerning the issuance or renewal of a racetrack license, the burden of proof is on the applicant to show compliance with the requirements of the Texas Racing Act and commission regulations.

(b) An applicant for an original or renewal racetrack license who fails to affirmatively show the necessary compliance with state law shall not be eligible to receive or renew the license.

(c) In instances where more than one applicant is a party to a racetrack licensing proceeding competing for the same license or location, and each party, in the opinion of the section before which the application is pending, meets the burden of proof required by law, the section shall issue the license to the party applicant which it determines, in its sole discretion, will best serve the public interest and the racing industry. The basis for such a finding shall be succinctly stated in the order issuing the racetrack license.

§305.47. Issuance of Racetrack License.

(a) Upon receipt of a completed racetrack license application as set forth in §307.7 of this title (relating to Initial Re-

view), the commission or the appropriate commission section shall issue or refuse to issue a license within 120 days after the day on which the application was received.

(b) On the vote of four members of the commission section before which the racetrack license is pending, the commission may extend the time for issuing the license for not more than 30 days.

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

Issued in Austin, Texas, on June 14, 1988

TRD-8806134

Nancy Fisher
Deputy Commissioner
Texas Racing Commission

Earliest possible date of adoption: July 22, 1988

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

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**Grounds for Denial,
Revocation, Suspension**

**• 16 TAC §§305.91, 305.93, 305.95,
305.97**

The Texas Racing Commission proposes new §§305.91, 305.93, 305.95, and 305.97, concerning grounds for denial, revocation and suspension of a license, disciplinary hearings, deliberate violation, and effect of legal action on application. The proposed sections reflect matters for which a racetrack license may be denied, suspended, or revoked, and administration of matters for disciplinary hearing violations of the Texas Racing Act or commission regulations.

Nancy Fisher, deputy secretary, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections, since the sections are adjudicative procedures for matters committed by law to commissions jurisdiction. However, since the Texas Racing Commission is a new state agency, normal expenditures associated with setting up the agency are anticipated including but not limited to hiring necessary employees and purchasing equipment.

At this time the Texas Racing Commission is unable to establish a cost compliance comparison for small businesses with large businesses.

Ms. Fisher 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 to allow for an orderly and efficient procedure for denial, revocation, and suspension of a license under the Texas Racing Commission's jurisdiction. 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 Nancy Fisher, Deputy Secretary, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 476-7223.

The new sections are proposed under the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which provide the Texas Racing Commission with the authority to adopt rules for conducting racing involving wagering and the adoption of other rules to administer the Texas Racing Act. §305.91. *Grounds for Denial, Revocation, and Suspension of a License.*

(a) A racetrack license may be denied, suspended or revoked, if after notice and hearing the commission section having jurisdiction of the matter has reasonable grounds to believe and finds that the applicant or licensee:

(1) secured a license by fraud or deceit;

(2) violated or conspired to violate the Texas Racing Act or a commission rule in a manner that involves moral turpitude, as distinguished from a technical violation of the Act or rule;

(3) advertised, engaged in greyhound or horse racing, or attempted to engage in greyhound or horse racing under the name or trade name of another license of the commission;

(4) has been convicted of an offense or of aiding, abetting, or conspiring to commit an offense under the Texas Racing Act or a commission rule;

(5) has failed or refused to make a true and correct disclosure of information required by the Texas Racing Act or commission rules;

(6) has failed to comply with all citizenship and residency requirements required for the granting and retention of the license;

(7) is otherwise not qualified by age, experience, or otherwise to perform the duties required by a licensee;

(8) is not of good moral character;

(9) is otherwise disqualified by law;

(10) has knowingly or intentionally allowed access to an enclosure to a person who has engaged in bookmaking, touting, or illegal wagering, whose income is from illegal activities or enterprises or who has been convicted of a violation of the Texas Racing Act; or

(11) has permitted a person excluded, ejected, or ruled off to remain on association grounds.

(b) If, in the sole discretion of the commission, the background checks of any applicant for a racetrack license reveal anything which might be detrimental to the public interest or the racing industry, the appropriate section of the commission shall refuse to issue or renew a license or approve a concession or management contract. §305.93. *Disciplinary Hearings.*

(a) Upon the filing of a complaint with or the initiating of a complaint by the commission charging a racetrack licensee with a violation of the Texas Racing Act or commission rules constituting grounds for disciplinary action, the commission shall provide for a hearing of the charges. All parties must be afforded an opportunity for hearing after reasonable notice of not less than 10 days prior to the hearing.

(b) Chapter 307 of this title (relating to Rules of Practice and Procedure) governs the conduct of hearings to grant, deny, suspend, revoke, or reinstate a racetrack license.

§305.95. *Deliberate Violation.* Any licensee who directly or indirectly shall enter into any contract, arrangement, plan or scheme with any person, firm, partnership, association, or corporation which in any manner whatsoever results in a violation of the Texas Racing Act or commission regulations, shall be subject to legal and disciplinary actions available to the board.

§305.97. *Effect of Legal Action on Application.*

(a) The commission shall not consider the application of any applicant for a racetrack license against whom the commission has initiated legal action unless and until:

(1) all legal proceedings have been terminated by a final judgment and the time for appeal has expired, or if an appeal is taken, such appeal has been terminated and the appellate court's mandate returned to the trial court;

(2) the applicant is in full compliance with all orders and judgments of the court, all rules of the commission, and all provisions of the act; and

(3) such applicant has filed evidence satisfactory to the board of such compliance.

(b) When such compliance has been secured and evidence furnished, the commission shall consider such applicant's application in its regular order of business as other applications to the commission.

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

Issued in Austin, Texas, on June 15, 1988.

TRD-8806135 Nancy Fisher
Deputy Secretary
Texas Racing Commission

Earliest possible date of adoption: July 22, 1988

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



Subchapter C. Other Licenses

- 16 TAC §§305.121, 305.123, 305.125, 305.127, 305.129, 305.131, 305.133, 305.135, 305.137, 305.139, 305.141, 305.143, 305.145, 305.147, 305.149, 305.151

The Texas Racing Commission proposes new §§305.121, 305.123, 305.125, 305.127, 305.129, 305.131, 305.133, 305.135, 305.137, 305.139, 305.141, 305.143, 305.145, 305.147, 305.149, and 305.151, concerning licensees, license acceptance, recommendations by stewards or racing judges, unlicensed employees, applications endorsed, applications recommended by track security, temporary license certificates, ineligible license applicants, duration of license, workers' compensation, best effort, prohibited practices, veterinarians, owners, trainers, and authorized agents. All the proposed sections reflect procedures for administration of licensees who either participate in horse or greyhound racing, whether as permit holder, holder of any interest in a permit, association employee, concessionaire/contract holder, owner or general manager of same, concessionaire employee, racing official, and all other persons whose duties require them to be present on association premises during racing hours or to regularly visit such premises during racing hours are required to have an occupational license from the commission authorizing them to be employed on the licensed premises and to practice their business, profession, or skill.

Nancy Fisher, deputy secretary, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections. However, since the Texas Racing Commission is a new state agency, normal expenditures associated with setting up the agency are anticipated including but not limited to hiring necessary employees and purchasing equipment.

At this time, the Texas Racing Commission is unable to establish a cost compliance comparison for small businesses with large businesses.

Ms. Fisher 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 to allow for an orderly and efficient procedure for licensing of individuals under the Texas Racing Commission's jurisdiction. 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 Nancy Fisher, Deputy Secretary, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 476-7223.

The new sections are proposed under the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which provide the Texas Racing Commission with the authority to adopt rules for conducting racing involving wagering and the adoption of other rules to administer the Texas Racing Act.

§305.121. *Licensees.* Every person partici-

pating in horse or greyhound racing, whether as permit holder, holder of any interest in a permit, association employee, concessionaire/contract holder, and owner or general manager of same, concessionaire employee, or racing official, and all other persons whose duties require them to be present on association premises during racing hours or to regularly visit such premises during racing hours, are required to have an occupational license from the commission authorizing them to be employed on the licensed premises and to practice their business, profession, or skill. License applicants may be required to furnish to the commission a set of fingerprints and recent photograph and may be required to be refingerprinted or rephotographed periodically as the commission may require.

§305.123. License Acceptance. Acceptance of the license or permit from the commission by an permittee or licensee, is considered a consent to search and inspection by the commission under this rule and a consent to the seizure of any prohibited medication, drugs, paraphernalia, or devices.

§305.125. Recommendations by Stewards or Racing Judges. The commission may not issue licenses to applicants previously not licensed in this state for the occupations listed here, except on prior recommendation by the stewards or racing judges at the meeting: owners; trainers; jockeys; jockey agents; blacksmiths; apprentice blacksmiths; veterinarians; veterinarian assistants; horse dentists; exercise persons; stable or kennel agents; and authorized agents. The stewards or racing judges may, for the purpose of determining recommendation under this section, add to their membership a representative of the association, the horsemen or greyhound owners, the blacksmiths, the jockeys, or the commission veterinarian. The stewards or racing judges may require any applicant to support his application by endorsers, who may be called to testify as to the applicant's qualifications for license. The commission may renew licenses without approval of the stewards or racing judges.

§305.127. Unlicensed Employees. The employment at any association premises of any unlicensed person by an association, owner, trainer, or other licensee is prohibited. On discharge of any licensed person by any other licensee or permit holder for violation of rules or laws within the jurisdiction of the commission, the employer shall report that fact in writing to the commission, including the name and occupation of the discharged licensee and the reasons for the discharge.

§305.129. Applications Endorsed. The commission may not issue any license to any association employee or to any concessionaire employee unless the application includes the prior endorsements of the employee's department head.

§305.131. Applications Recommended by Track Security. All applicants for licenses not described in the foregoing paragraphs,

and including stable, kennel, and track facility employees, must submit with their application to the commission the prior recommendation of the supervisor of track security.

§305.133. Temporary License Certificates.

(a) General. Pending investigation of an applicant's qualifications to receive an original or renewal license, the commission may issue a temporary license to an applicant whose application appears to comply with all applicable licensing requirements and who has paid the necessary fee. The temporary license is valid for a period not to exceed 30 days from the date of issuance.

(b) Owners.

(1) A temporary horse or greyhound owner's license certificate may be issued in emergency situations (i.e., owner out of country or seriously ill).

(2) On submission of an affidavit setting forth the emergency by the owner's trainer, the stewards or racing judges may approve issuance of a temporary license certificate to an owner. This certificate will be good for a maximum of 30 calendar days from the date of issue.

(3) Failure to obtain a permanent license within the designated time may result in the automatic revocation of the owner's license eligibility and may result in a fine or suspension, or both a fine and suspension, for the affiant that has failed to comply.

(4) Purses shall not be paid to any owner holding a temporary license certificate under the provisions of this section. Such payments shall only be permitted after the owner has obtained a permanent license.

§305.135. Ineligible License Applicants. The commission may deny, revoke, or suspend the license of any applicant or holder who:

(1) has been convicted of any of the offenses listed below, if the commission determines that the circumstances of the offense giving rise to the conviction make the applicant's presence a hazard to the regulation and conduct of racing and pari-mutuel wagering, or may reasonably undermine the public confidence in the integrity of racing:

(A) offenses related to alcohol, drugs, or narcotics;

(B) offenses related to book-making;

(C) offenses related to arranging the outcome of a race, or to any fraud or deception while participating in racing or pari-mutuel wagering activities;

(D) offenses related to representations made about any horse or grey-

hound ownership, interest in any horse or greyhound, or lease or sale of any horse or greyhound; or

(E) a felony or any other crime of moral turpitude which is reasonably related to the applicant's present fitness to hold a license of which the applicant has been convicted.

(2) is not 18 years of age except that persons at least 16 years of age may be employed on association premises in stables, kennels, parking lots, kitchens, and maintenance and administrative offices, except, however, no person who has not yet attained the minimum age required to purchase alcoholic beverages in this state shall ever be allowed in betting areas where betting is being conducted unless accompanied by the person's parents or legal guardian;

(3) has demonstrated a lack of financial responsibility in transactions related to racing or pari-mutuel wagering;

(4) is ineligible to participate in racing in another state or racing jurisdiction whose racing regulatory agency is recognized by and reciprocates in the actions of this state;

(5) seeks application for more than one occupational license if, in the determination of the stewards or racing judges, the holding of the two licenses would subject the applicant to a conflict of his interests in those two licensed activities;

(6) is employed in any part-time or full-time position with a government or private employer in any work in which a conflict exists with the interests and objectives of a licensed employment;

(7) has been denied patron privileges by order of the commission and not reinstated;

(8) supplies false or incorrect information in the original or renewal application;

(9) is not of good moral character or the applicant's reputation on a peaceable, law abiding citizen in the community where he resides is bad;

(10) is indebted to the state for any fees or for the payment of any penalty imposed by the commission;

(11) is unqualified, by experience or otherwise, to perform the duties required of a licensee by the the commission;

(12) fails to disclose the true ownership interest in a greyhound or horse as required by the rules of the commission;

(13) is or may be excluded from a track enclosure by the commission; or

(14) violates or causes to be violated a commission rule in a manner involving moral turpitude or engages in conduct

prohibited by a commission rule.
§305.137. *Duration of License.*

(a) Licenses issued by the commission shall be good for one year or such other period of time greater than one year as permitted by the commission.

(b) The commission may also issue a license good for one racing season at a pari-mutuel facility.

§305.139. *Workers' Compensation.* All owners and trainers shall carry workers' compensation insurance covering all their employees. This section is intended to include all individuals employed, including jockeys, owners, and trainers involved in the training and racing of horses or greyhounds.

§305.141. *Best Effort.* All licensed personnel shall give their best efforts to win in all races in which they participate, and any instructions or advice to any person or any handling of the horses or greyhounds by any person other than for the purpose of winning are forbidden.

§305.143. *Prohibited Practices.* The following practices by licensees are prohibited:

(1) giving or offering directly or indirectly a bribe in any form to any person licensed by the commission to violate these rules or the laws of this state related to racing;

(2) soliciting or offering to accept directly or indirectly a bribe in any form, by a person licensed by the commission, to violate these rules or the laws of this state related to racing;

(3) failing as a licensee to report any bribe or solicitation as provided in subsection (a) and (b) of this section;

(4) soliciting by an licensee, except the association, of bets by the public;

(5) improperly influencing or attempting to improperly influence the results of a race or combining with any person or conspiring to combine with any person to improperly influence or attempt to improperly influence the results of a race;

(6) entering or starting a horse or greyhound known or believed to be ineligible or disqualified;

(7) offering or receiving money or other benefit for withdrawing a horse or greyhound from a race;

(8) making a wager for a jockey by any person except the jockey's owner or trainer;

(9) an owner or trainer making a wager for a jockey on a horse to win other than that ridden by the jockey;

(10) offering or giving a jockey money or other benefit concerning a race, except by the owner or trainer of the horse to be ridden;

(11) possessing any electrical or

mechanical device designed to increase or decrease the speed of a horse during a race, other than an ordinary riding whip;

(12) bookmaking, which is the taking or receiving of a wager on the result of any horse or greyhound race of which betting is being conducted by an association licensed by the commission, except through the regular betting windows and facilities provided by the association;

(13) purchasing any ticket or share of a pari-mutuel pool for another, for hire or anything of value;

(14) giving under oath any false statement or refusing to testify after proper notice to the commission about any matter regulated by the commission, except in the exercise of a lawful legal privilege;

(15) subjecting an animal to cruel and inhumane treatment by failing to supply it with adequate food, water, medical treatment, exercise, or shelter, or by neglect or intentional act causing a horse or greyhound to suffer unnecessary pain;

(16) permitting a horse or greyhound to start a race unless the horse or greyhound has been officially tattooed for identification under the upper lip;

(17) giving false, misleading, or inaccurate information about a horse's or greyhound's performance for publication in a printed program or racing publication;

(18) in addition to any of the foregoing prohibited practices, any person who commits an act on the grounds of any pari-mutuel facility that is patently contrary to the best interest of racing or that is in violation of a criminal statute of the United States or this state and classified as a felony, shall be subject to administrative action including license revocation, suspension, fine, or deprivation of patron privileges;

(19) disorderly or offensive conduct that breaches the public peace or use of profane, obscene, or indecent language so as to be heard by another or offer such prohibited conduct to any representative of the commission or the association;

(20) possessing, carrying, or exhibiting a deadly weapon, or otherwise disturbing the peace on the premises of any permittee. This rule does not prohibit the carrying of a weapon by any duly authorized on-duty law enforcement officer or licensed security personnel;

(21) possessing in any pari-mutuel wagering area of any association, any alcoholic beverage unless the beverage is purchased on the premises;

(22) possessing any equipment for hypodermic injection, any substance for hypodermic administration, or any foreign substance that can be administered internally to a horse or greyhound by any route, except for an existing condition and as prescribed by a veterinarian. The supply of

such prescribed foreign substance shall be limited by ethical practice consistent with the purposes of this section. Notwithstanding the provisions of this section any person may have in his possession within a race track enclosure any chemical or biological substance for use on his own person, provided that, if such chemical substance is prohibited from being dispensed by any federal law or law of this state without a prescription, he is in possession of documentary evidence that a valid prescription for such chemical or biological substance has been issued to him. Notwithstanding the provisions of this section, any person may have in his possession within any race track enclosure any hypodermic syringe or needle for the purpose of administering a chemical or biological substance to himself, provided that he has notified the steward or racing judge:

(A) of his possession of the device;

(B) of the size of the device; and

(C) of the chemical substance to be administered by the device, and has obtained written permission for possession and use from the steward or racing judge;

(23) threaten another person with physical harm or probable physical harm, if the threatened person could reasonably believe the person making the threat intends to carry out the threat or attempts to carry it out; and

(24) possess or use any radio transmitter or other transmitting device on a race course without prior written permission of the commission and racing secretary.

§305.145. *Veterinarians.*

(a) Eligibility. Every veterinarian practicing on association premises shall be:

(1) licensed by the state veterinarian regulatory authority; and

(2) licensed by the commission.

(b) Practicing veterinarians.

(1) Prohibited acts.

(A) Ownership. A licensed veterinarian practicing at any meeting is prohibited from possessing any ownership, directly or indirectly, in any horse or greyhound that is racing during the meeting.

(B) Wagering. Veterinarians licensed by the commission as veterinarians are prohibited from placing any wager of money or other things of value directly or indirectly on the outcome of any race conducted at the meeting at which he is furnishing professional service.

(C) Prohibition of furnishing injectable materials. No veterinarian shall furnish, sell, or loan any hypodermic syringe, needle, or other injection device or any drug, narcotic, or prohibited substance to any other person within the grounds of an association where race horses are stabled or greyhounds are kenneled unless with written permission of the stewards or racing judges.

(2) Single use syringes. The use of other than single use disposable syringes and infusion tubes on association premises is prohibited. Whenever a veterinarian has used a hypodermic needle or syringe, he shall destroy the needle and syringe and remove it from the association premises.

(3) Drug use reports. A licensed veterinarian, who prescribes or administers any medication or treatment to a horse or greyhound that the veterinarian considers could affect the racing condition of the horse or greyhound, shall furnish immediately to the horse's or greyhound's trainer and to the stewards or racing judges a written statement setting forth the name of the horse or greyhound, its owners, the type of drug or medication prescribed or administered, and the date of the administration or prescription.

(4) Records of treatment. Each licensed veterinarian practicing on association premises shall maintain records showing all medications purchased, and for each horse or greyhound treated, the name of the horse or greyhound and its owner, the medication, the method of administration, and the date of administration. Veterinarians shall retain duplicate copies of bills or statements to trainers or owners. The copies shall be retained for at least three years and made available to the commission on request.

(5) Report of illness. Each veterinarian shall report immediately to the stewards, racing judges, and the commission veterinarian any illness in a horse or greyhound entrusted into his care presenting unusual or unknown symptoms.
§305.147. Owners.

(a) Corporation. For purposes of all licensing rules, beneficial interest includes all direct and indirect forms of ownership and control, voting power, or investment power, held through any contract, lien, lease, partnership, stockholding, syndication, joint venture, understanding, relationship (including family relationship), present or reversionary right, title, or interest, or otherwise.

(1) Duly licensed. The corporation must be duly licensed and authorized to do business in this state. A copy of these rules shall be attached to the corporation's records.

(2) Individuals licensed. In a corporation the following individuals must be licensed by the commission:

(A) the chief executive officer and all other corporation officers;

(B) all members of the board of directors; and

(C) all stockholders owning a beneficial interest of five percent or more.

(3) Corporate changes. All changes in either the corporation structure or the respective interest of stockholders as described in paragraph (2)(C) of this subsection must be notarized and promptly filed with the commission, and a copy sent to the appropriate breed registry or greyhound association.

(4) Authorized agent. A corporation, in lieu of the executive officer, must appoint a racing manager or an authorized agent, or both, for purposes of entry, scratches, and the signing of claims slips among other obligations.

(5) License eligibility. The commission may deny, suspend, or revoke the license of a corporation in which a beneficial interest includes or involves any person or entity that would be, or is, ineligible in any respect, such as through character, moral fitness, or any other criteria employed by the commission, to be licensed as an owner or to participate in racing, regardless of the percentage of ownership interest involved.

(6) Articles of incorporation. A corporation must have on file with the commission a current copy of the articles of incorporation. A corporation must also have on file with the commission, and must provide a copy of same to the racing secretary's office to be attached to the registration papers, or eligibility certificate, and a copy to the appropriate breed registry or greyhound association, a notarized statement signed by the chief executive officer of the corporation agreeing to represent the entire ownership and be responsible for the corporation's horses or greyhounds. Such responsibility shall not include the responsibility of the trainer imposed by § 305.149 of this title (relating to Trainers) in connection with the condition of the horse or greyhound unless the chief executive officer is also the trainer.

(7) Beneficial interest. Any stockholder holding a beneficial interest of 5.0% or more of a corporation shall, in addition to being licensed, list any interest in all racing horses or greyhounds in which the stockholder owns any beneficial interest.

(8) Corporation name. All horses or greyhounds owned by a corporation shall race in the name of the corporation or in the name of the chief executive officer with a designation (C) following the name.

(9) Eligibility certificate. The commission, the stewards or racing judges, or both the commission and the stewards or racing judges, shall review the ownership of each horse or greyhound entered to race and ensure that each registration certificate or eligibility certificate is properly endorsed by the transferor to the present owners. The commission, the stewards or racing judges, or both the commission and the stewards or racing judges, may determine the validity for racing purposes of all liens, transfers, and agreements pertaining to ownership of a horse or greyhound and may call for adequate evidence of ownership at any time. The commission, the stewards or racing judges, or both the commission and the stewards or racing judges, may declare ineligible to race any horse or greyhound, the ownership or control of which is in question.

(10) Coupling. For the purpose of this section only, ownership is any individual person or other entity required to be licensed as an owner under these rules and, in the instance of corporations, individuals, or entities possessing an aggregate commonality of ownership of 25% interest in any of the respective horses or greyhounds; provided, however, that when a trainer enters two or more horses or greyhounds in a stakes, handicap, futurity, or other special event under beneficial separate ownerships, the horses or greyhounds, at the request of the race track permittee (association), and with the approval of the commission, the stewards or racing judges, or both the commission and the stewards or racing judges, may be permitted to race as separate wagering entities.

(11) Coupling divisions. If the race is split in two or more divisions, horses or greyhounds in an entry shall be seeded in separate divisions insofar as possible, but the divisions in which they compete and the post position shall be determined by lot.

(12) Nonlicensed stockholders. The corporation stockholders owning less than 5.0% of the stock of a corporation need not be licensed; however, a list of all such stockholders shall be supplied to the commission and the appropriate breed registry or greyhound association by the corporation annually. Such list shall include names, percentages owned, addresses, social security numbers, and dates of birth. The stockholders need not be licensed and will not have access to the backstretch, to the paddock area, or to the winner's circle. The stockholders may be required to submit additional information as requested by the commission, which may include a release for confidential information and submission of fingerprint cards, and the commission may assess costs, as required for criminal history checks. Such information shall be supplied to the commission within 30 days of date of the request. Copies of all such requests and responses shall be furnished to the appropriate breed registry or greyhound

association.

(13) Disclosures. The full nature and extent of all beneficial interests shall be disclosed. The list shall include the names of all such individuals and entities, the nature of their relationships, and the exact nature of their beneficial interests.

(14) Disclosure time. Disclosure of ownership shall be made when registering each horse or greyhound with the racing secretary on arrival on the grounds of any racetrack association, but no less than 48 hours before entry, and shall be revised immediately on any subsequent change in such ownership.

(15) Disclosure documents. Disclosure documents, together with all written agreements and affidavits setting out oral agreements pertaining to the ownership of or rights in and to a horse or greyhound, shall be attached to the registration certificate for the horse or greyhound and filed with the racing secretary, who shall be responsible for the care and security of the papers while the horse or greyhound is located on the permittee's grounds.

(16) Public disclosure. Disclosure is made for the benefit of the public, and all documents pertaining to the ownership or lease of a horse or greyhound filed with the commission shall be available for public inspection.

(b) General partnership.

(1) Duly licensed. A copy of these rules shall be attached to all partnership forms. Each partner in a general partnership must obtain a license. The commission may deny, suspend, or revoke the license of any partnership in which is a member whose interest is qualified or limited by rights or interests held or controlled by an individual or entity that would be ineligible to be licensed as an owner, or to participate.

(2) Partnership documents. A partnership must have on file with the commission, and must have a copy attached to the registration certificate on file in the racing secretary's office, an agreement whereby one member of the partnership shall be designated to be responsible for each horse or greyhound. Such responsibility shall not include the responsibility of the trainer imposed by § 305.149 of this title (relating to Trainers) in connection with the condition of the horse or greyhound unless the responsible person under the agreement is also the trainer. The agreement must be notarized and must be signed by all partners, and a copy sent to the appropriate breed registry or greyhound association.

(3) Authorized agent. An authorized agent must be appointed to represent the partnership in all matters and be responsible for all stakes, forfeits, power of entry, scratches, signing of claims slips, and other obligations. The authorized agent may also be a partner.

(4) Commission review. The commission, the stewards or racing judges, or both the commission and the stewards or racing judges, shall review the ownership of each horse or greyhound entered to race and ensure that each registration certificate or eligibility certificate is properly endorsed by the transferor to the present owners. The commission, stewards or racing judges, or both the commission and the stewards or racing judges, may determine the validity for racing purposes of all liens, transfers, and agreements pertaining to the ownership of a horse or greyhound and may call for adequate evidence of ownership at any time. The commission or stewards or racing judges, or both the commission and the stewards or racing judges, may declare ineligible to race any horse, the ownership or control of which is in question.

(5) Partnership changes. Any alteration in a partnership structure, or percentages, must be reported promptly in writing, notarized, and signed by all members of the partnership, and filed with the commission, and sent to the appropriate breed registry or greyhound association.

(6) Interest in partnership. Any owner who is a member of a partnership must list all horses or greyhounds in which he owns an interest either whole or part.

(7) Partnership designation. All horses or greyhounds owned by a partnership must race in the same name with a designation (P) following the name.

(8) Coupling. For the purpose of this section only, ownership is any individual person or other entity required to be licensed as an owner under these rules and, in the instance of a partnership, individual persons or other entities possessing a commonality of interest in any of the respective horses or greyhounds; provided, however, that when a trainer enters two or more horses or greyhounds in a stakes, handicap, futurity, or other special event under beneficial separate ownerships, the horses or greyhounds, at the request of the racetrack operator and with the approval of the commission, the stewards or racing judges, may be permitted to race as separate wagering entities. If the race is split in two or more divisions, horses or greyhounds in an entry shall be seeded in separate divisions insofar as possible, but the divisions in which they compete and the post positions shall be determined by lot. A licensed member of a partnership may not have an interest in more than one horse or greyhound in any race unless that horse or greyhound is coupled except by permission of the stewards or racing judges.

(c) Limited partnership.

(1) Duly licensed. A copy of these rules shall be attached to all limited partnership forms. A limited partnership must supply to the commission and the appropriate breed registry or greyhound association, certified copies of proof of com-

pliance with filing and registration requirements.

(2) Individuals licensed. The general partners in a limited partnership must be licensed by the commission, as must any member of the limited partnership with a beneficial interest of 5.0% or more of the limited partnership. It is the responsibility of the limited partnership to ensure that every member of the limited partnership is eligible to be licensed. A limited partnership must have on file with the commission, and a copy attached to the registration certificate of each horse or greyhound in the limited partnership, a notarized designation of the general partner to represent the entire ownership of and be responsible for each horse in the limited partnership; such responsibility shall not include the responsibility of the trainer imposed by § 305.149 of this title (relating to Trainers.) in connection with the condition of the horse or greyhound, unless the general partner is also the trainer.

(3) Authorized agent. An authorized agent shall be appointed to represent the limited partnership in all matters and be responsible for all stakes, power of entry, scratches, and signing of claims slips, among other obligations. The general partner, or other member, may be the authorized agent.

(4) Partnership changes. Any alteration in the structure or percentages of the limited partnership must be promptly reported in writing to the commission, and to the appropriate breed registry or greyhound association. The general partner shall be responsible for reporting to the commission any interest in all racing horses or greyhounds in which a licensed member owns an interest.

(5) Ineligibility. The commission may deny, suspend, or revoke the license of a limited partnership in which is a member whose interest is qualified or limited by rights or interests held or controlled by an individual, or entity that would be ineligible to be licensed as an owner or to participate regardless of percentage of interest.

(6) Nonlicensed partners. All members of a limited partnership owning less than 5.0% shall be listed with the commission. All beneficial interests shall be listed. Such a list shall include names, addresses, portion owned, social security numbers, and dates of birth. The list shall be supplied to the commission by the limited partnership as required by the commission. A limited partner owning less than 5.0% need not be licensed and will not have access to the backstretch, the paddock area, or the winner's circle, and may be required to submit additional information as requested by the commission, which may assess additional fees for the purpose of criminal history checks.

(7) Disclosure. Licensed owners

and licensed trainers shall be held jointly responsible for making a full disclosure of the entire ownership of each horse and greyhound in their care. The disclosure shall identify in writing all individuals or entities who, directly or indirectly, through a contract, lien, lease, partnership, stockholding, syndication, joint venture, understanding, relationship (including family relationship), present or reversionary right, title, or interest, or otherwise hold any interest in and to the horse or greyhound, and those individuals or entities who by virtue of any form of such an interest might exercise control over the horse or greyhound or can benefit from the racing of the horse or greyhound. The degree and type of the ownership held by each individual person shall be designated. The disclosure shall be made when registering each horse or greyhound with the racing secretary on arrival on association grounds, or at time of entry, whichever event occurs first, and shall be revised immediately on any subsequent change in ownership. The disclosure together with all written agreements, and affidavits setting out oral agreements, pertaining to the ownership of or rights in and to a horse or greyhound, shall be attached to the registration certificate for the horse or greyhound and filed with the racing secretary, who shall be responsible for the care and security of the papers while the horse or greyhound is located on association grounds. The disclosure is made for the benefit of the public, and all documents shall be available for public inspection.

(8) Commission review. The commission, stewards or racing judges, or the commission and the stewards or racing judges, shall review the ownership of each horse or greyhound entered to race and ensure that each registration certificate or eligibility certificate is properly endorsed by the transferor to the present owners. The commission, stewards or racing judges, or the commission and the stewards or racing judges, may determine the validity for racing purposes of all liens, transfers, and agreements pertaining to ownership of a horse or greyhound, and may call for adequate evidence of ownership at any time. The commission, stewards or judges, or the commission and the stewards or judges, may declare ineligible to race any horse or greyhound, the ownership or control of which is in question.

(9) Coupling. A member of a limited partnership shall not have an interest in more than one uncoupled horse or greyhound in any race except by permission of the stewards or racing judges. For purposes of this section only, ownership shall be construed to mean any individual person or entity required to be licensed as an owner under these rules and, in the instance of a limited partnership, individual person or other entity possessing at least a 5.0% beneficial interest, provided, however, that when a trainer enters two or more horses or greyhounds in a stakes, handicap, futurity,

or other special event under beneficial separate ownerships, the horses or greyhounds, at the request of the association and with the approval of the commission, stewards or racing judges, may be permitted to race as separate wagering entities.

(10) Coupling divisions. If the race is split in two or more divisions, horses or greyhounds in an entry, shall be seeded in separate divisions insofar as possible, but the divisions in which they compete and the post positions shall be determined by lot.

(11) Partnership designation. The horses or greyhounds owned by a limited partnership must run in the name of the general partner with a designation (LP) following the name.

(d) Breed registry certificate; greyhound association registration. Each owner must be registered by the applicable breed registry or greyhound association.

(e) Stable or kennel names.

(1) Authorization. Licensed owners and lessees may adopt stable, kennel, farm, racing, or corporate names, if registered with the appropriate breed registry or greyhound association, and the commission.

(2) Applications for stable name. Applications shall include the identity or identities of all persons interested in the ownership of the name. After a stable or kennel name is registered by the commission, changes in identities of owners of the name must be reported immediately to and approved by the commission.

(3) Trainer's legal name only. A trainer who is a licensed owner or a part owner may use a stable or kennel name in his capacity as owner or part owner but a trainer may be licensed as a trainer only in his legal name.

(4) Canceling a stable or kennel name. Any person registered under a stable or kennel name may cancel the stable or kennel name by giving written notice to the commission. A stable or kennel name may be changed by registering the new name with the commission.

(5) Prohibited names. No person may register as his stable or kennel name, one that has already been registered by another person with any other racing authority, that is the real name of another owner of race horses or greyhounds, that is the real stable or kennel name of any prominent person who does not own race horses or greyhounds, that is not plainly distinguishable from that of another registered stable or kennel name, or that the stewards or racing judges determine is being used to advertise any product or service.

(f) Leases.

(1) Prior approval by stewards or racing judges. No licensee shall lease a horse or greyhound for the purpose of rac-

ing at tracks in this state without prior approval of the stewards or racing judges.

(2) Licensing requirements. Both lessor and lessee shall be licensed.

(3) Lease furnished to commission. Each licensee who leases a horse or greyhound at any meeting must submit a copy of that lease to the stewards or racing judges. The lease must contain at least all of the conditions of the lease arrangement and the names of all parties and horses or greyhounds related to the lease. The failure to submit accurate and complete information under this section is a violation of this paragraph. The stewards or racing judges shall immediately forward a copy of the lease to the commission.

(4) Eligibility certificate. An eligibility certificate must be issued by the appropriate breed registry or greyhound association for each lessee.

(5) Lessor information. When a lessor of a horse or greyhound is a corporation, syndicate, partnership, or other entity of multiple interests, it shall furnish to the commission under oath the identification of its stockholders, members, partners, or other interested persons.

(A) Racing colors. Colors provided by the owners, and approved by the stewards or racing judges of the meeting, shall be used during racing competition.

(B) Registration of horses or greyhounds. No owner may participate in racing or stable or kennel any horse or greyhound on association premises unless each horse or greyhound in his charge is registered with the racing secretary of the association showing for each horse or greyhound the name, color, sex, age, breeding, and ownership. The appropriate breed registry or greyhound association eligibility certificate for each horse or greyhound and evidence of registration with the appropriate breed registry or greyhound association, shall be presented when the horse or greyhound is registered with the racing secretary.

(C) Transfer of horses or greyhounds. Each transfer of horse or greyhound ownership must be recorded with the appropriate breed registry or greyhound association.

(D) Change of trainer. No owner shall change the trainer of his horse or greyhound unless by written notice to the stewards or racing judges of the meeting. The stewards or racing judges will advise the racing secretary of the change, and the racing secretary shall require the new trainer to sign his name on the owner's registration.

(g) Prohibited acts.

(1) Unlicensed veterinarian. No owner shall employ a veterinarian who is not licensed by both this state and the commission.

(2) Ineligible entry. No owner shall enter or start a horse or greyhound in any race if the horse or greyhound is ineligible under these rules or the laws of this state related to racing.

(3) Trainer as agent. A trainer may represent the owner of a horse or greyhound in making entry of a horse or greyhound in a race, or declaring the horse or greyhound out of a race.
§305.149. Trainers.

(a) Eligibility. No person shall hold a trainer's license unless he:

(1) is at least 18 years old;

(2) is qualified, in the opinion of the stewards or judges, by reason of experience, background, and knowledge of racing as manifested by:

(A) passing a written examination administered by the stewards or racing judges; and

(B) passing a barn test administered by horsemen's or greyhound owners' representatives under the supervision of the stewards or judges;

(3) has complied with the provisions of the workers' compensation law and has secured compensation for his employees in accordance with that law; and

(4) has applied in his legal name, and not under any fictitious or stable name.

(b) Trainer responsibility.

(1) Absolute insurer. The trainer is responsible for and is the absolute insurer of the condition of the horses or greyhounds in his care and custody and for the conditions and contents of kennels, stalls, tack rooms, feed rooms, sleeping rooms, and other areas that have been assigned by the association to him. The trainer is liable for the presence in his horse or greyhound during the race of any drug, medication, or any other prohibited substance. A trainer whose horse or greyhound has been claimed remains responsible for the horse or greyhound under this section until after the collection of urine or blood specimens as may be required.

(2) Report of illness or sex alteration. Each trainer shall report immediately to the stewards or racing judges and the commission veterinarian, any illness in a horse or greyhound entrusted into his care presenting unusual or unknown symptoms. Any alteration in the sex of a horse or greyhound must be reported and noted by the trainer to the racing secretary or horse

or greyhound identification office immediately, and that office must note the same on the foal, breed registry, or greyhound association certificate.

(3) Trainer at paddock. A trainer or his assistant must be present with his horse or greyhound in the paddock and shall supervise the saddling or muzzling of the horse or greyhound unless the stewards or judges permit a substitute trainer to perform those duties. Each trainer who brings a horse or greyhound to the paddock warrants that the horse or greyhound is qualified for the race, ready to run, and in physical condition to exert its best efforts, and entered with the intention to win.

(4) Paddock time. A trainer shall present his horse or greyhound in the paddock at least 20 minutes before post time of the race in which the horse or greyhound is entered.

(5) Trainer prohibited acts.

(A) Entry ineligible. No trainer shall enter or start a horse or greyhound in any race if the horse or greyhound is ineligible under these sections or the laws of this state related to racing.

(B) Employees.

(i) Unlicensed veterinarian. No trainer shall employ a veterinarian who is not licensed by both this state's veterinarian regulatory authority and the commission.

(ii) Minor. No trainer shall employ any person under the age of 16.

(iii) Jockey. No trainer shall employ a jockey for the purpose of preventing him from riding in any race.

(C) Training for suspended persons. No trainer shall train or be responsible for any horse or greyhound that is wholly or partly owned by a person under suspension by the stewards, the racing judges, or the commission.
§305.151. Authorized Agent.

(a) Eligibility, term of appointment, and restrictions. An agent's license and appointments by an owner expire at the end of the license year unless earlier revoked by the owner, the stewards or judges, or the commission. An owner may appoint only one person at a time to act as his agent. After the appointment the acts of the agent shall be considered the acts of the owner.

(b) The stewards or racing judges shall approve the appointment of an agency by endorsing that fact on the appointment of agent documents submitted to them and shall verify the validity of the agent's license before approving the appointment. If the agency is for a partnership, stable or kennel name, each of the owners of the

partnership, stable or kennel name shall execute the appointment of agent written authority.

(c) Each authorized agent must obtain a license from the commission.

(d) A written instrument signed by the owner shall accompany the application, which shall clearly set forth among the delegated powers whether or not the agent is empowered to collect money from the association.

(e) If the written instrument is a power of attorney, it shall be filed permanently with the racing secretary. If, however, the powers are properly delegated by the owner on the application for a license, the application shall be in duplicate with both copies signed and sworn to before a notary public and one copy filed permanently with the racing secretary.

(f) An authorized agent may appoint a subagent only when specifically authorized by the written instrument signed by the owner and, to be effective, notice of such appointment must be given immediately in writing to the commission and the racing secretary.

(g) Any changes in the power delegated by the owner to the authorized agent must be in writing, sworn to before a notary public, and filed with the commission and the racing secretary.

(h) An owner's revocation of an authorized agent's authority must be in writing, sworn to before a notary public, and filed with the commission and racing secretary.

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

Issued in Austin, Texas, on June 15, 1988.

TRD-8806136

Nancy Fisher
Deputy Secretary
Texas Racing Commission

Earliest possible date of adoption: July 22, 1988

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

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Chapter 307. Rules of Practice and Procedure

Subchapter A. Definitions and General Rules Section

- 16 TAC §§307.1, 307.3, 307.5, 307.7, 307.9, 307.11, 307.13, 307.15

The Texas Racing Commission proposes new §§307.1, 307.3, 307.5, 307.7, 307.9, 307.11, 307.13, and 307.15, concerning purpose and scope, definitions, filing documents, computing time, agreements to be in writing, conduct and decorum, procedures not otherwise provided, and severability. The purpose

of these proposed sections is to provide orderly and efficient procedures for administration of matters committed by law to the Texas Racing Commission's jurisdiction.

Nancy Fisher, deputy secretary, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections, since the sections are adjudicative procedures for matters committed by law to the commission's jurisdiction. However, since the Texas Racing Commission is a new state agency, normal expenditures associated with setting up the agency are anticipated including but not limited to hiring necessary employees and purchasing equipment.

At this time, the Texas Racing Commission is unable to establish a cost compliance comparison for small businesses with large businesses.

Ms. Fisher 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 to allow for an orderly and efficient procedure for administration of matters under the Texas Racing Commission's jurisdiction. 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 Nancy Fisher, Deputy Secretary, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 476-7223.

The new sections are proposed under the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which provide the Texas Racing Commission with the authority to adopt rules for conducting racing involving wagering and the adoption of other rules to administer the Texas Racing Act.

§307.1. Purpose and Scope.

(a) Purpose. The purpose of this chapter is to provide orderly and efficient procedures for administration of matters committed by law to the Texas racing Commission's jurisdiction.

(b) Scope. This chapter governs procedures for instituting, conducting, and determining those matters within the commission's jurisdiction. The sections in this chapter shall not be construed to enlarge, diminish, or alter the jurisdiction, powers, or authority of the commission or the substantive rights of any person. The procedures prescribed in these sections supplement any applicable procedures required by statute.

(c) Conflict. The commission may modify these general sections by other sections specifically adapting them to particular types of matters.

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

Applicant—A person who by written application seeks commission action.

Commission—The Texas Racing Commission.

Examiner—A person designated by the commission to conduct a hearing.

Hearing—A proceeding conducted to receive evidence or argument on a matter before the commission.

Hearing Examiner—An examiner who is not a member of the commission.

Intervenor—A person other than an applicant or respondent who, upon showing a justifiable interest in a matter before the commission, is permitted to become a party to a proceeding.

Nonparty participant—A person other than a party who is admitted to participant status and who according to commission procedure, supports or opposes in part or whole, an application submitted to the commission.

Party—A person who, having a justifiable interest in a matter before the commission, is admitted to full participation in a proceeding concerning that matter.

Person—A natural person or a partnership, corporation, association, agency, or governmental or private organization of any character.

Pleading—A written allegation by a party or applicant of his claims in the form of an application, complaint, exception, reply, motion, or answer.

Proceeding—A conference, meeting, hearing, investigation, inquiry, or other fact-finding or decision-making procedure, including the dismissal of a complaint. It may be rulemaking or adjudicative.

Register—The Texas Register.

Respondent—A person against whom a complaint has been filed with the commission.

Rule—A statement of general applicability by which the commission implements, interprets, or prescribes the procedure or practice requirements of the commission. The term includes the amendment or repeal of a prior rule, but does not include statements which concern only the internal management or organization of the commission and do not affect private rights.

Staff—The employees of the Texas Racing Commission, other than hearing examiners, who serve as the staff of the commission in any proceeding.

§307.5. Filing Documents.

(a) Filing with the commission

staff. All documents relating to a proceeding pending or to be instituted before the commission shall be filed with the commission staff. For the sole purpose of determining the date of filing, a document shall be deemed filed only when actually received, accompanied by the filing fee, if any, required by statute or commission rule. This section does not govern the commission's determination as to the substantive adequacy or completeness of an application.

(1) If a document is sent to the commission staff by first-class United States mail in an envelope or wrapper properly addressed and stamped and is deposited in the mail two days or more before the last day for filing, it shall be deemed filed in time if received not more than five days after the last day for filing. A legible postmark affixed by the United States Postal Service is prima facie evidence of the date of mailing.

(2) For purposes of any responsive document (e.g.: a reply to exceptions, responsive brief, or reply to motion) for which the time period for filing commences with the filing of another document, the initiating document shall be deemed filed when it is actually received by the commission staff, whether on, before, or after the last day for filing it.

(b) Extension of time. Unless a statute provides otherwise, the commission may extend the time for filing a pleading:

(1) upon its own motion; or

(2) upon a written motion which is duly filed by a party within the applicable period of time for the filing of the pleading and which shows:

(A) that there is good cause to extend the time; and

(B) that the need for an extension is not caused by the movant's neglect, indifference, or lack of diligence.

(c) Service of documents. Unless the commission specifies otherwise, a party filing a document relating to a proceeding pending or to be instituted shall deliver a copy of the document in person or by mail to each party to the proceeding or to his authorized representative, and shall, as required by §307.65 of this title (relating to Filing), certify to the commission the fact and date of such service.

(d) Office address of commission. The commission offices are located at 15th and Guadalupe Street, Austin. The mailing address of the commission is P.O. Box 12080, Austin, Texas 78711-2080. Office hours are 8 a.m. to 5 p.m., Monday-Friday. Offices are closed on Saturdays, Sundays, and state-observed holidays.

§307.7. Computing Time. An interval of time prescribed or allowed by this chapter by decision of the commission, or by any

applicable statute, begins on the day after the act, event, or default in question and, in the case of an interval of nth days, concludes on the close of business on the nth day after the act, event, or default, unless the nth day of the interval falls on a Saturday, Sunday, or state-observed holiday, in which case the interval concludes at the end of the next day after the nth day which is neither a Saturday, Sunday, nor state-observed holiday.

§307.9. Agreements to be in Writing. The commission will not consider an agreement between or among parties or their representatives affecting any pending matter unless it is either:

(1) reduced to writing, signed by each party or his authorized representative, and filed as part of the record; or

(2) announced at the hearing in which it was reached and entered into the record of the hearing.

§307.11. Conduct and Decorum. Each party, witness, and attorney or other representative, shall in all proceedings before the commission, conduct himself with dignity, courtesy, and respect for the commission, the examiners, and all other participants. A party, witness, attorney, or other representative violating this section may be excluded by the commission from a hearing and is subject to such other lawful disciplinary action as the commission may prescribe.

§307.13. Procedures not Otherwise Provided. If in connection with any hearing the commission determines that there are no statutes or other applicable sections resolving a particular procedural question before it, the commission will direct the parties to follow procedures consistent with the purpose of these sections.

§307.15. Severability. If any provision of a section or its application is held invalid, the inability does not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this and the provisions of the sections are severable.

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

Issued in Austin, Texas, on June 14, 1988.

TRD-8806137 Nancy Fisher
Deputy Commissioner
Texas Racing Commission

Earliest possible date of adoption: July 22, 1988

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

Subchapter C. Special Proceedings Objections; Costs

Appeals From Stewards and Judges Hearings

• 16 TAC §307.31

The Texas Racing Commission proposes new section §307.301, concerning commission hearing and stays for appeals from stewards and judges. This new section proposes that any licensee aggrieved by the imposition by the stewards or racing judges of any fine, suspension, or disqualification may appeal to the commission.

Nancy Fisher, deputy secretary, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section, since the sections are adjudicative procedures for matters committed by law to the commission's jurisdiction. However, since the Texas Racing Commission is a new state agency, normal expenditures associated with setting up the agency are anticipated including but not limited to hiring necessary employees and purchasing equipment.

At this time, the Texas Racing Commission is unable to establish a cost compliance comparison for small businesses with large businesses.

Ms. Fisher also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to allow for an orderly and efficient procedure for administration of matters under the Texas Racing Commission's jurisdiction. 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 Nancy Fisher, Deputy Secretary, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 476-7223.

The new section is proposed under the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which provide the Texas Racing Commission with the authority to adopt rules for conducting racing involving wagering and the adoption of other rules to administer the Texas Racing Act.

§307.301. Commission Hearing and Stays.

(a) Appeals. Any license aggrieved by the imposition by the stewards or judges of any fine, suspension, or disqualification may appeal to the commission.

(b) Filing. Appeals shall be in writing, stating the basis of the appeal, be signed by the person making the appeal or his attorney, and filed with the commission within seven days of the judges or stewards order.

(c) Report. The stewards or judges shall in that event forward to the commission their charges and evidence for a complete rehearing de novo by the commission on all of the evidence.

(d) Stay. No appeal from a judges

or stewards order to the commission shall stay or supersede the penalty imposed by the stewards or judges unless the commission shall in writing order a stay of the penalty.

(e) Appearance. When a hearing is to be held by the commission, or when a matter or case is referred to the commission for review, the person involved must be notified by the commission, and if the person fails to appear, it shall be construed as a waiver of right to a hearing before the commission.

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

Issued in Austin, Texas, on June 14, 1988

TRD-8806138 Nancy Fisher
Deputy Commissioner
Texas Racing Commission

Earliest possible date of adoption: July 22, 1988

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

• 16 TAC §§307.71, 307.73, 307.75, 307.77, 307.79

The Texas Racing Commission proposes new §§307.71, 307.73, 307.75, 307.77, and 307.79, concerning filing and withdrawing objections, assessment of costs, decision on objections, withholding of prize, and validity of objection. These are new sections for filing and withdrawing objections to the stewards or racing judges.

Nancy Fisher, deputy secretary, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections, since the sections are adjudicative procedures for matters committed by law to the commission's jurisdiction. However, since the Texas Racing Commission is a new state agency, normal expenditures associated with setting up the agency are anticipated including, but not limited to, hiring necessary employees and purchasing equipment.

At this time, the Texas Racing Commission is unable to establish a cost compliance comparison for small businesses with large businesses.

Ms. Fisher 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 to allow for an orderly and efficient procedure for filing and withdrawing objections to the stewards or racing judges. 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 Nancy Fisher, Deputy Secretary, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 476-7223.

The new sections are proposed under the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which provide the Texas

Racing Commission with the authority to adopt rules for conducting racing involving wagering and the adoption of other rules to administer the Texas Racing Act.

§307.71. Filing and Withdrawing Objections.

(a) Filing. All objections shall be made to the stewards or racing judges in writing and signed by the objector, and a copy shall be sent immediately to the commission.

(1) Objections shall be filed with the stewards or racing judges within 48 hours, exclusive of Sundays, from the time the race in which the horse or greyhound that occasioned the objection participated, is run.

(2) In all cases of fraud or willful deception, the time limitation shall not apply, provided the stewards or racing judges are satisfied that the allegations are bona fide.

(b) Withdrawing. Permission of the stewards or racing judges is necessary before an objection can be withdrawn.

§307.73. Assessment of Expenses/Costs.

(a) Any person lodging an objection must pay all costs and expenses incurred in determining the objection is such proportions as the steward or racing judges shall decide, unless relieved from such expense by the commission.

(b) Cash deposit. The judges may require a cash deposit before considering an objection. The deposit may be forfeited if the objection proves to be frivolous or without foundation.

§307.75. Decision Objections.

(a) Stewards and racing judges. The stewards or racing judges must decide every objection pertaining to the race. From every decision an appeal in writing may be made to the commission within 48 hours of the time the objector has been officially informed of the decision.

(b) Owners and trainers. Objections to a horse or greyhound engaged in a race may be made to one of the stewards or racing judges by the owner or trainer of another horse or greyhound engaged in the same race or by an official of the meeting.

(c) Clerk of scales. Objections to any decision of the clerk of scales may be made before the horses or greyhounds leave the paddock for the start of the race.

§307.77. Withholding of Prize. Pending a decision on an objection, any prize that the horse or greyhound against which the objection is lodged may have won or may win in the race shall be withheld until the objection is determined.

§307.79. Validity of Objection. If an objection to a horse or greyhound that has won or that has placed in a race is declared valid, that horse or greyhound is disqualified, and the other horses or greyhounds in the race are entitled to place in the order in

which they finished.

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

Issued in Austin, Texas, on June 14, 1988

TRD-8806139

Nancy Fisher
Deputy Commissioner
Texas Racing Commission

Earliest possible date of adoption: July 22, 1988

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

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Subchapter C. Special Proceedings Judges and Stewards; Duties and Authority

• **16 TAC §§307.251, 307.253, 307.255, 307.257, 307.259**

The Texas Racing Commission proposes new §§307.251, 307.253, 307.255, 307.257, and 307.259, concerning general enforcement provisions, imposition of fines and penalties, collection of fines, and effect of suspension. The new proposed sections charge the stewards and racing judges with enforcing the rules and racing laws of Texas and authorizing them to charge any licensee for a violation of the rules. They are authorized to conduct hearings and impose fines or suspensions.

Nancy Fisher, deputy secretary, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections, since the sections are adjudicative procedures for matters committed by law to the commission's jurisdiction. The Texas Racing Fund will realize some revenue from the imposition of fines which must be paid to the commission within 48 hours after imposition. Since the Texas Racing Commission is a new state agency, normal expenditures associated with setting up the agency are anticipated including but not limited to hiring necessary employees and purchasing equipment.

At this time, the Texas Racing Commission is unable to establish a cost compliance comparison for small businesses with large businesses.

Ms. Fisher 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 to allow for an orderly and efficient procedure for administration of matters under the Texas Racing Commission's jurisdiction. 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 Nancy Fisher, Deputy Secretary, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 476-7223.

The new sections are proposed under the Texas Racing Act, Texas Civil Statutes, Arti-

cle 179a, §3.02, which provide the Texas Racing Commission with the authority to adopt rules for conducting racing involving wagering and the adoption of other rules to administer the Texas Racing Act.

§307.251. General Enforcement Provisions. The stewards and racing judges shall enforce these rules and the racing laws of this state and have authority to charge any licensee for a violation of these rules, to conduct hearings, and to impose fines or suspensions within the limits and procedures of this section. The decision of the racing judges and stewards as to the extent of a disqualification of any person, greyhound, or horse in any race shall be final for purposes of distribution of the pari-mutuel pool.

§307.253. Imposition of Fines and Penalties. Stewards and racing judges may impose fines of up to \$5,000 for each offense or suspend occupational license for up to one year for each offense, or both fine and suspend. The stewards' and racing judges' action shall not bar the commission from imposing a more severe penalty if so required in the determination of the commission. However, the commission shall initiate no action increasing any racing judges' or stewards' penalty after 60 days from the date of the racing judges' or stewards' action. The stewards and racing judges may, instead of taking action against a licensee, refer any violation to the commission for hearing and decision, but the stewards' or racing judges' reference to any violation shall not be necessary as a condition to commission action against a licensee. In cases where fines or penalties after the results of a race, the stewards and racing judges may reward purses, prizes, awards, and trophies. No racing official other than the stewards or racing judges shall have the right to impose a suspension or fine.

§307.255. Reporting and Rescission of Penalties.

(a) Reporting. All fines and suspensions imposed by the racing judges or stewards shall be promptly reported to the racing secretary and the commission.

(b) Rescission. A suspension or fine may not be rescinded by the racing judges or stewards without prior approval of the commission.

§307.257. Collection of Fines. All fines imposed by the racing judges or stewards on a licensee shall be paid by the licensee to the commission within 48 hours after imposition.

§307.259. Effect of Suspension.

(a) Spouses. Suspension of a license shall extend to the spouse of the licensee unless otherwise permitted by appeal to the commission.

(b) Other tracks. When an owner, trainer, horse, or stable of horses, greyhound or kennel of greyhounds is suspended by the stewards or racing judges at one track, that suspension shall immediately become effective on all other horse or grey-

hound tracks under the jurisdiction of the commission until the case in question is decided by the commission.

(c) Modification. The commission shall have the power to alter, amend, or modify the suspension or fines imposed by the stewards or racing judges, or to rule off the offenders from all greyhound tracks under its supervision. The commission shall also have the power to reinstate without suspension or fine.

(d) Reciprocity. A horse, greyhound, stable, or kennel under suspension by the racing commission of any other state or country or by any recognized association shall not be permitted to race on any horse or greyhound tracks in this state where these rules are in force during the continuance of such ruling.

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

Issued in Austin, Texas, on June 14, 1988

TRD-8806142 Nancy Fisher
Deputy Commissioner
Texas Racing Commission

Earliest possible date of adoption: July 22, 1988

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

◆ ◆ ◆
• 16 TAC §307.291, §307.293

The Texas Racing Commission proposes new §307.291 and §307.293, concerning summary hearings and summary hearings procedure. The new sections propose to authorize the stewards and judges to take summary and immediate action when violations constitute an immediate danger to the public health, safety, and action. Violations on which stewards and racing judges may conduct summary proceedings are listed.

Nancy Fisher, deputy secretary, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections, since the sections are adjudicative procedures for matters committed by law to the commission's jurisdiction. However, since the Texas Racing Commission is a new state agency, normal expenditures associated with setting up the agency are anticipated including but not limited to hiring necessary employees and purchasing equipment.

At this time, the Texas Racing Commission is unable to establish a cost compliance comparison for small businesses with large businesses.

Ms. Fisher 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 to allow for an orderly and efficient procedure for administration of matters under the Texas Racing Commission's jurisdiction. There is no anticipated economic cost to individuals who are required to comply with the sections as pro-

posed.

Comments on the proposal may be submitted to Nancy Fisher, Deputy Secretary, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 476-7223.

The new sections are proposed under the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which provide the Texas Racing Commission with the authority to adopt rules for conducting racing involving wagering and the adoption of other rules to administer the Texas Racing Act.

§307.291. *Summary Hearings.*

(a) Summary fines and suspensions. The stewards and racing judges may take summary and immediate action when violations constitute an immediate danger to the public health, safety and welfare. If the action is taken before the summary hearing procedure, the affected license is entitled to a postsuspension hearing pursuant to §307.293 (relating to Summary Hearing Procedure).

(b) Violations. The racing judges and stewards may conduct summary proceedings for violations involving:

- (1) horse riding;
- (2) the use of drugs and medication;
- (3) possessing a device for the injection of prohibited substances in horse or greyhounds;
- (4) suspensions under reciprocity agreements with other states;
- (5) assaults and violent crimes;
- (6) prearranging the outcome of a race;
- (7) an offense related to or including bookmaking; or
- (8) any other offense requiring exclusion or ejection from a racetrack.

§307.293. *Summary Hearing Procedure.*

(a) Racing judges and stewards hearings in respect to matters exempted from notice and hearing provisions, unless waived by the licensee, shall provide at least written notice to the licensee, delivered three days before the hearing, informing the licensee of the charges against him and the possible penalties that may be imposed; and of the right to counsel; the right to present a defense, including witnesses for that purpose; and of the right to cross-examine the stewards and judges witnesses.

(b) The stewards or judges may grant a continuance of any hearing set under the summary procedures for good cause shown.

(c) Failure of a licensee to appear at any scheduled hearing shall constitute a violation of §307.291 (relating to Summary Hearings).

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

adopt.

Issued in Austin, Texas, on June 14, 1988

TRD-8806140 Nancy Fisher
Deputy Commissioner
Texas Racing Commission

Earliest possible date of adoption: July 22, 1988

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

• 16 TAC §§307.311, 307.313,
307.315, 307.317, 307.319

The Texas Racing Commission proposes new §§307.311, 307.313, 307.315, 307.317, and 307.319, concerning exclusion of persons, appeal of exclusion, notification, exclusion by association and effect of being ruled off. The new sections propose who the stewards, racing judges, or commission may exclude from an association and the effects of being ruled off an association. The sections provide for orderly and efficient procedures for the appeal of exclusion.

Nancy Fisher, deputy secretary, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections, since the sections are adjudicative procedures for matters committed by law to the commission's jurisdiction. However, since the Texas Racing Commission is a new state agency, normal expenditures associated with setting up the agency are anticipated including but not limited to hiring necessary employees and purchasing equipment.

At this time, the Texas Racing Commission is unable to establish a cost compliance comparison for small businesses with large businesses.

Ms. Fisher 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 to allow for an orderly and efficient procedure for administration of matters under the Texas Racing Commission's jurisdiction. 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 Nancy Fisher, Deputy Secretary, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 476-7223.

The new sections are proposed under the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which provide the Texas Racing Commission with the authority to adopt rules for conducting racing involving wagering and the adoption of other rules to administer the Texas Racing Act.

§307.311. *Exclusion of Persons.*

(a) Offenses. The stewards, racing judges, or the commission may exclude a person who has been convicted of any of the offenses listed in this subsection if the commission determines that the circumstances of the offense giving rise to the conviction, make the person's presence a hazard to the regulation and conduct of racing and pari-mutuel wagering, or may reasonably undermine the public confidence

in the integrity of racing:

- (1) offenses related to drugs or narcotics;
- (2) offenses related to theft;
- (3) offenses related to arranging the outcome of a race, or to any fraud, corruption, or deception while participating in racing or pari-mutuel wagering activities;
- (4) offenses under the penal law of another jurisdiction for committing an act that would have constituted an excludable offense under this subsection;
- (5) offenses related to representations made about any horse or greyhound, ownership interest in a horse or greyhound, or lease or sale of any horse or greyhound;
- (6) offenses under the Texas Racing Act, Texas Civil Statutes, Article 179e;
- (7) any felony of which the person has been convicted;
- (8) any offense related to or including bookmaking, touting, or illegal wagering; or
- (9) any offense involving a lewd or lascivious act or other crime involving moral turpitude.

(b) Conduct. The stewards, racing judges, or the commission may exclude any person who:

- (1) is under supervision or ruled off a racetrack by the commission, racing judge, or steward in this state or by a reciprocating racing authority in another state or country because of fraudulent or corrupt practices or other acts detrimental to racing;
- (2) has submitted a forged pari-mutuel ticket, has altered or forged a pari-mutuel ticket for cashing, or who has cashed or caused to be cashed an altered, raised, or forged pari-mutuel ticket;
- (3) is guilty of boisterous or disorderly conduct while inside a racing enclosure;
- (4) is an agent or habitual associate of a person excludable under this section;
- (5) has committed a corrupt or fraudulent act in connection with horse or greyhound racing or pari-mutuel wagering; or
- (6) has committed any act tending or intended to corrupt horse or greyhound racing, pari-mutuel wagering in this state, or elsewhere.

§307.313. Appeal of Exclusion.

(a) Hearing. A person who is excluded or ejected from an enclosure under this section or other sections of the commission, may apply to the commission for a hearing to review the exclusion or ejection.

(b) Order. If, after a hearing, the commission determines that the exclusion

or ejection was proper, it shall make and enter an order to that effect in its minutes, and the person shall continue to be excluded from and by each association.

§307.315. Notification. In all cases where the stewards, racing judges, or commission excludes a person from any or all pari-mutuel facilities in this state, the commission will attempt to notify the person of the facts or conduct that warrant exclusion and provide the person with an immediate postexclusion hearing.

§307.317. Exclusion by Association. Nothing in this section shall preclude an association from exercising its right to eject persons from its premises.

§307.319. Effect of Being Ruled Off.

(a) Disciplinary action. The license of anyone ruled off any racetrack in this state for violation of any of the rules of racing may be revoked.

(b) Return prize. When a licensee is ruled off for any fraudulent practice in relation to a particular horse or greyhound wholly or partly belonging to him, he shall return all money or prizes that the horse or greyhound has fraudulently won.

(c) Animals ineligible.

(1) Owners. When an owner is ruled off a track or suspended, every horse or greyhound owned in whole or in part by him shall be ineligible to be entered or to start in any race until the horse or greyhound has been made eligible, either by the rescinding of his owner's penalty or his transfer through bona fide sale to an ownership acceptable to the stewards or racing judges.

(2) Trainers. When a trainer is ruled off a track or suspended, any horse or greyhound that is under his care, management, training, or superintendence, shall not be qualified to be entered or to start in any race until the horse or greyhound has been made eligible by the rescinding of the trainer's penalty or by the placement of the horse or greyhound in the hands of a licensed trainer with the approval of the transfer by the stewards or racing judges.

(3) Others. When a person is ruled off a track or suspended, he shall not be qualified, whether acting as agent or otherwise, to subscribe for, or to enter, or run any horse or greyhound in any race either in his own name or in that of any other person, until the rescinding of that person's penalty.

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

Issued in Austin, Texas, on June 14, 1988

TRD-8806141

Nancy Fisher
Deputy Commissioner
Texas Racing Commission

Earliest possible date of adoption: July 22, 1988

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

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**Subchapter D. Rulemaking
Proceedings**

- 16 TAC §§307.331, 307.333, 307.335, 307.337, 307.339, 307.341, 307.345, 307.347, 307.349, 307.351

The Texas Racing Commission proposes new §§307.331, 307.333, 307.335, 307.337, 307.339, 307.341, 307.345, 307.347, 307.349, and 307.351, concerning purpose, amendments, deletions, and additions of rules, petition for adoption of rules, petition decision by commission, suspension of rules, invalid portions and savings provisions, violations of rules and act, effective date, emergency rules, rules for identification and format, and dissemination of adopted rules. These new sections provide for orderly and efficient procedures for rulemaking proceedings by the Texas Racing Commission.

Nancy Fisher, deputy secretary, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections, since the sections are adjudicative procedures for matters committed by law to the commission's jurisdiction. However, since the Texas Racing Commission is a new state agency, normal expenditures associated with setting up the agency are anticipated including but not limited to hiring necessary employees and purchasing equipment.

At this time, the Texas Racing Commission is unable to establish a cost compliance comparison for small businesses with large businesses.

Ms. Fisher 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 to allow for an orderly and efficient procedure for administration of matters under the Texas Racing Commission's jurisdiction. 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 Nancy Fisher, Deputy Secretary, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 476-7223.

The new sections are proposed under the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which provide the Texas Racing Commission with the authority to adopt rules for conducting racing involving wagering and the adoption of other rules to administer the Texas Racing Act.

§307.331. Purpose. The commission shall promulgate and adopt rules as authorized and required by statute which are necessary for the performance of its duties, to establish standards of conduct for its licensees, to insure strict compliance with and enforcement of the provisions of the Texas Racing Act, to insure uniform standards of practice and procedure, and to provide for public

participation, notice of agency actions, and a fair and expeditious determination of causes.

§307.333. Amendments, Deletions, and Additions of Rules. Proposed amendments, deletions, or additions to the commission rules of practice and procedure may be made by any commission member by filing with the executive secretary. A copy of the proposed amendment, deletion, or addition shall be furnished each commission member prior to the next regular or special commission meeting. Upon approval by a quorum, the proposed amendment, deletion, or addition to the commission rules of practice and procedure will be adopted in accordance with the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5.

§307.335. Petition for Adoption of Rules. Any interested person may petition the commission requesting the adoption of a section by filing with the executive secretary, accompanied by any fee required by statute or commission rules. A signed copy will be submitted for each commission member. Such petition shall include, but need not be limited to, the following.

(1) Text. The text of the section or amendment proposed for adoption.

(2) Identity information. Full name and complete mailing address and telephone number of the petitioner on whose behalf the petition is filed.

(3) Reference. Reference to the section which it is proposed to make, change or amend, or delete, so that it may be identified, prepared in a manner to indicate the word, phrase, or sentence to be added, changed, or deleted from the current text, if any.

(4) A suggested effective date. The proposed section should be presented in the exact form in which it is to be published, adopted, or promulgated and should include a proposed effective date.

(5) Justification. Justification for the proposed action in narrative form with sufficient particularity to fully inform the commission and any interested party of the facts upon which the petitioner relies, including that statutory authority for the promulgation of the proposed section.

(6) Desired effect of proposal. A brief statement detailing the desired effect to be achieved by the proposed section, change, amendment, or deletion.

(7) Summary. A concise summary of the proposed section, change, or amendment.

(8) Signatures. Signatures on the petition of the petitioner or the attorney or representative of the petitioner.

(9) Fiscal implications. The fiscal implications of the proposed section or amendment to the state and to units of local government.

§307.337. Petition Decision by Commission. Within 60 days after submission of a petition requesting the adoption of a section the commission either shall deny the petition in writing, stating its reasons for the denial, or shall initiate rulemaking proceedings in accordance with §307.333 of this title (relating to Amendments, Deletions, and Additions of Rules) and by law.

§307.339. Suspension of Rules. In any case in which a public emergency or imperative public necessity so requires, the commission may suspend the operation of these rules to the extent authorized by law.

§307.341. Invalid Portions and Saving Provisions.

(a) In any subcategory, rule, section, subsection, sentence, clause, or phrase of these rules is for any reason held invalid, such decision shall not affect the validity of the remaining portions of these rules. The commission hereby declares that it would have adopted these rules and such subcategories, rules, sections, subsections, sentences, clauses, or phrases thereof irrespective of the fact that any one or more of the subcategories, rules sections, subsections, sentences, clauses, or phrases be declared invalid.

(b) Since individual commission sections are adopted, changed, or deleted periodically, each section herein will apply only to acts occurring on or after the effective date of the section. An offense committed before the effective date of one or more of these sections will be governed by the sections existing before the effective date, if any, which sections are continued in effect for this purpose as if these sections were not in force. Any proceeding pending before the commission on the effective date of one or more of these sections is governed by the sections existing before the effective date of these sections, which sections are continued in effect for this purpose as if these sections were not in force.

§307.343. Violations of Rules and Act. The commission may enforce its rules by rejecting, dismissing, or suspending processing of a motion, application, or petition of a person the commission determines to be in violation of the commission rules or the Texas Racing Act.

§307.345. Effective Date. The commission rules govern the practice and procedure of the commission on all matters initiated after they take effect; and they also govern the practice and procedure of the commission on all matters pending on the effective date except to the extent that the commission shall determine that any practice and procedure applied to a particular pending matter would not be feasible or would work injustice. Any section adopted shall become effective 20 days after filing two certified copies of said section with the secretary of state, unless otherwise specified in the section, because of statutory directive or federal law or emergency.

§307.347. Emergency Rules. When the commission finds that imminent peril to the

public health, safety, or welfare exists, it may adopt an emergency section pursuant to the provisions of the Administrative Procedure or Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(d). When an emergency section is adopted, the provisions of the commission section §307.343 shall not apply. The commission may make the emergency section effective for a period of 120 days, renewable once for a period not exceeding 60 days.

§307.349. Rules Identification and Format. The commission reserves the right to revise the format of these rules to comply with statutory requirements, and such required revision shall not invalidate any portion or change the effective date of the rules as adopted by the commission.

§307.351. Dissemination of Adopted Rules.

(a) In addition to any other requirements set forth in this subchapter, the commission shall annually publish its current statute and rules with any amendments in booklet form for distribution to the public and commission licensees.

(b) The costs of such publication and distribution shall be calculated as provided in §301.17(c) of this title (relating to Records).

(c) The application fee for an original or renewal license shall include a charge for one copy of the commissioner's rule book. Upon approval of the application, the commission shall provide the licensee with a copy of the rule book.

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

Issued in Austin, Texas, on June 14, 1988

TRD-8806143

Nancy Fisher
Deputy Commissioner
Texas Racing Commission

Earliest possible date of adoption: July 22, 1988

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

Chapter 309. Minimum Standards for Permit Holders

Subchapter A. Racetracks; Horse Facilities

- 16 TAC §§309.1, 309.3, 309.5, 309.7, 309.11, 309.13, 309.15, 309.17, 309.21, 309.23, 309.25, 309.27, 309.29, 309.31, 309.33, 309.35, 309.37, 309.39, 309.41, 309.43, 309.45

The Texas Racing Commission proposes new sections or rules §§390.1, 309.3, 309.5, 309.7, 309.9, 309.11, 309.13, 309.15, 309.17, 309.19, 309.21, 309.23, 309.25, 309.27, 309.29, 309.31, 309.33, 309.35, 309.37, 309.39, 309.41, 309.43, and 309.45, concerning general requirements, commission of-

fices, ejections, racing surfaces, racing hours, number of races per performance, first race time approval, appointment of racing officials and department heads, horsemen's bookkeeper, condition book, photofinish equipment, VTR/VCR equipment, photograph posted, starting gate, distance poles, detention enclosure, grounds' facilities, water, and sewage, safety and medical aid, helmets, fire protection, stable and ground security, electric timing device and judges communication. These proposed new sections propose minimum standards for racetracks and horse facilities.

Nancy Fisher, deputy executive secretary, has determined that for the first five-year period the proposed sections will be in effect, there will be no fiscal implication for state or local government or small businesses as a result of enforcing or administering these sections, since the sections are adjudicative procedures for matters committed by law to the commission's jurisdiction. However, since the Texas Racing Commission is a new state agency, normal expenditures associated with setting up the agency are anticipated including but not limited to hiring necessary employees and purchasing equipment.

At this time the Texas Racing Commission is unable to establish a cost compliance comparison for small businesses with large businesses.

Ms. Fisher also has determined that for each year of the first five years, the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections as proposed will be a standardization of racetracks and horse facilities. The new sections will provide for the safety of the betting public, employee of the association and horses. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposed rules may be submitted to Nancy Fisher, Deputy Executive Secretary, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 476-7223.

The new sections are proposed under the authority of the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which provide the Texas Racing Commission with the authority to adopt rules for conducting racing involving wagering and the adoption of other rules to administer the Texas Racing Act.

§309.1. General Requirements. Every licensee to hold a meeting is granted on the condition that the licensee shall accept, observe, and enforce these sections. Furthermore, it shall be the duty of every officer, director, and official, and employee of the licensee to observe and enforce these sections.

§309.3. Commission Offices. Each association shall furnish for the commission's use on the association grounds, reasonable office space for the commission's exclusive use. The office shall be accessible to the public.

§309.5. Ejections. Associations are obli-

gated to honor commission exclusions and to eject immediately any person found on association grounds who is under exclusion status by the commission and to report that election to the commission. Whenever any association ejects any person from the premises, it shall furnish a written notice to the person ejected and shall report the ejection to the commission.

§309.7. Racing Surfaces. Each racing association shall provide:

(1) training and racing surfaces whose construction, elevation, and surfaces have received scientific approval as safe and humane; provided, however, that on proof of economic hardship and a bona fide effort to comply, exemptions to this rule may be granted by the racing commission. Application for exemption shall be in writing with notice to all interested parties;

(2) adequate and proper equipment to maintain those surfaces;

(3) sufficient trained personnel to properly operate the equipment; and

(4) daily records on the condition of each training and racing surface, which shall be open for inspection by the commission.

§309.9. Racing Hours. A permitted association shall conduct horse racing between the hours of 8 a.m. and midnight, unless otherwise authorized by the commission.

§309.11. Numbers of Racers Per Performance. Unless otherwise permitted by the commission, no association shall offer other than 10 races per performance on any one day.

§309.13. First Race Time Approval. The association shall notify the commission of the post time of the first race of each performance.

§309.15. Appointment of Racing Officials and Department Heads. Each association shall submit to the commission at least 30 days before the opening day of a meeting, a complete list of the association racing officials set forth in §313.77 of this title (relating to Description and Eligibility of Officials) and department heads appointed for the meeting. No person shall hold any appointment for a race meeting unless approved by the commission after a determination that the appointee is qualified to perform his duties, and not prohibited by any law or rule of this state from participating in racing.

§309.17. Horsemen's Bookkeeper.

(a) Each association shall maintain a separate bank account, to be known as the horsemen's account, with at all times sufficient funds in such account to pay all money owing to horsemen in regard to purses, stakes, rewards, claims, and deposits. Withdrawals from this account shall at

all times be subject to audit by the commission, and the horsemen's bookkeeper in charge of the account shall be bonded in an amount determined by the commission.

(b) All portions of purse money shall be made available to earners thereof within 48 hours, Sundays excluded, after the result of the race in which the money was earned has been declared official, except, however, when the stewards or commission shall order money withheld until final adjudication of a dispute determining which persons are entitled to the money in dispute.

(c) No portion of purse money other than jockey fees shall be deducted by the association for itself or for another, unless so requested in writing by the person to whom such purse money is payable, or his duly authorized representative. Irrespective of whether requested, the horsemen's bookkeeper shall mail to each owner a duplicate of each record of a deposit, withdrawal, or transfer of funds affecting the owner's racing account at the close of each race meeting.

§309.19. Condition Book. The association shall, at least one week before the opening of each meeting, furnish to the commission a copy of its first condition book. Additional condition books or sheets shall be furnished to the commission as soon as published.

§309.21. Photofinish Equipment. Each association shall use photofinish equipment approved by the commission to assist the placing judges and stewards in determining the order of finish of every race.

§309.23. VTR/VCR Equipment. Each association shall furnish for each race a complete video tape recording of the race. The equipment and tape must be of a reliability and quality approved by the commission and capable of replay within one minute after the end of any race. The association shall safeguard the tapes of any race in which were lodged objections, inquiries, or reports of accidents for one year from the date of the tape and shall keep them available for inspection by officials of the association and the commission.

§309.25. Photograph Posted. At least one photograph or television picture of the finish of each race shall be posted conspicuously and promptly after each race.

§309.27. Starting Gate. A starting gate approved by the commission shall be used in starting all races. Each association must maintain at least two operable starting gates during racing hours. The association shall also make at least one starting gate along with adequate personnel available for schooling for two hours each day during training hours, exclusive of nonrace days.

§309.29. Distance Poles. Each association shall maintain distance poles as follows:

1/4 poles	Red and White
1/8 poles	Green and White
1/16 poles	Black and White

§309.31. Detention Enclosure. Each association shall maintain a detention enclosure for use by the commission in securing, from horses who have run a race, samples of urine, saliva, blood, or other bodily substances, or tissues for chemical analysis. The enclosure shall include a wash rack, a commission veterinarian office, a walking ring, and at least eight stalls each equipped with a window sufficiently large to allow the taking of the samples to be witnessed from outside the stall.

§309.33. Grounds, Facilities, Water, and Sewage.

(a) General. Each association shall provide and maintain adequate and sanitary drinking water and toilets for all licensees, patrons, and other persons invited to the track.

(b) Insect control. When a race meeting is in progress, or scheduled for opening, the association shall provide systematic and effective insect control at all times against flies, mosquitoes, and other insects.

(c) Stalls. The association shall ensure that horses are stabled in individual box stalls with separate feeding and watering facilities; that the stables and immediate surrounding area are maintained in approved sanitary condition at all times; that satisfactory drainage is provided; and that manure and other refuse is kept in separate boxes or containers at locations distant from living quarters and promptly and properly removed.

(d) Paddocks and equipment. Management shall be responsible for ensuring that paddocks, starting gates, and other equipment subjected to contact by different animals be kept in a clean condition and free of dangerous surfaces.

(e) Isolation facilities. Management shall provide isolation facilities for horses ordered isolated by the association or commission veterinarian. Approved sanitary measures shall be instituted in cooperation with the state livestock regulatory authority, and the commission shall be kept informed.

(f) Receiving barn. Each association shall provide a conveniently located receiving barn for the use of arriving horses during the meeting. The barn shall have adequate stable room and facilities, hot and cold water, and stall bedding. The association shall employ attendants to operate and maintain the receiving barn in clean and healthful condition.

§309.35. Safety and Medical Aid. Each association shall maintain on the grounds during every day that its track is open for racing or exercising an ambulance for humans and an ambulance for horses, equipped according to prevailing standards and manned by medical doctors, paramedics, or other personnel trained to operate them. When an ambulance is used for the transfer of a horse or a human to medical

facilities, a replacement ambulance must be furnished by the track to comply with this rule.

§309.37. Helmets. The association shall not allow any person to exercise any horse on association grounds unless that person is wearing a protective helmet of a type approved by the commission.

§309.39. Fire Protection. The association in accordance with applicable state fire codes shall prohibit for the protection of persons and property from fire damage the following:

(1) smoking in horse stalls, feed rooms, or under the sheds;

(2) sleeping in feed rooms or stalls;

(3) open fires, oil or gasoline burning lanterns or lamps in the stable area;

(4) leaving electrical appliances unattended or in unsafe proximity to walls, beds, or furnishings; and

(5) keeping inflammable materials, including cleaning fluids or solvents, in the stable area.

§309.41. Stable and Ground Security. Each association shall secure the peaceful use of its grounds and stable areas to licensees and prohibit the use of the grounds to persons not authorized by license or invitation of the association.

(1) Stable enclosure. The stable area shall be properly fenced as defined by the commission and admission to the stables permitted only in accord with rules of the commission. No person shall be admitted to the stable area except:

(A) Licensees. Licensees whose duties require them to be in the area and who are wearing a photographic identity badge issued by the association and recorded in a permanent record maintained by the association.

(B) Temporary pass holders.

(i) Issuance. A temporary written pass will be issued by the chief of security or his designee for the stable area, for a maximum period of 72 hours, and a copy of the pass will be retained by the chief of security.

(ii) Applicants. A temporary pass is available only to guests of the association, trainers, owners, jockeys, veterinarians, or other appropriately licensed individuals. Guest shall not include any person brought to the stable area for the purpose of working in any capacity requiring a commission license except for the individuals who deliver and accompany horses to association premises on nights and weekends when the commission offices for regular licensing are closed.

(iii) Privilege. A temporary pass to enter the stable area is not an occupational license and does not permit the holder to enter a horse in a race or in any other way participate in racing.

(iv) Content. A temporary pass must contain at least:

(I) the bearer's name, address, and employer;

(II) the bearer's signature;

(III) the date and time of issuance;

(IV) the date and time of expiration;

(V) the reason for issuance;

(VI) the signature of the chief of security of his designee; and

(VII) a pass number showing the sequence in which the pass was issued.

(2) Twenty-four hour security. The association through its own employees or persons retained by the association shall maintain 24-hour-a-day security service throughout the stable enclosure during the time horses occupy the grounds, employing such electronic, telephonic, television, and human guard personnel as are required to adequately police the grounds. The association shall furnish to the commission a list of personnel employed in security services, giving for each such person his name, duties, duty station, and areas supervised.

(3) Incident report. The security department of each association shall submit to the stewards a written report describing every arrest or completed incident of security investigation or real or suspected rule violation including, with each person mentioned as charged in the report, his name, the charges against him, and his present whereabouts.

(4) Records open. Each association shall maintain current records relating to security in permanent form available for commission inspection for a period of one year from the completion of the record and shall provide at the commission's request any additional information related to track security as the commission may require.

§309.43. Electric Timing Device. No electric timing device shall be used by the association unless approved by the commission.

§309.45. Judge's Communication. The association shall provide adequate communi-

cation between the stewards and each judge's station and necessary track officials.

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

Issued in Austin, Texas, on June 15, 1988.

TRD-8806144 Nancy Fisher
Deputy Secretary
Texas Racing Commission

Earliest possible date of adoption: July 22, 1988

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

Chapter 313. Rules of Horse Racing

Subchapter A. Conduct of Races

- 16 TAC §§313.1, 313.3, 313.5, 313.7, 313.9, 313.11, 313.13, 313.15, 313.17, 313.19, 313.21, 313.23, 313.25, 313.27, 313.29, 313.31, 313.35, 313.37, 313.39, 313.41, 313.43

The Texas Racing Commission proposes new §§313.1, 313.3, 313.5, 313.7, 313.9, 313.11, 313.13, 313.15, 313.17, 313.19, 313.21, 313.23, 313.25, 313.27, 313.29, 313.31, 313.35, 313.37, 313.39, 313.41, and 313.43, concerning ownership, deceased owners, documents, registrations and eligibility, entries, sweepstakes entries, closing of entries, prohibited entries, preferences and eligibles, post positions, scratch, declaring out, workouts, equipment, racing numbers, penalties and allowances, valuation of purse money, dead heats, purse money presumption, coggins test, race procedures, running of a race, and claiming races. The proposed sections will allow for the orderly and efficient procedures for the conduct of horse races in Texas.

Nancy Fisher, deputy secretary, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections. However, since the Texas Racing Commission is a new state agency, normal expenditures associated with setting up the agency are anticipated, including, but not limited to, hiring necessary employees and purchasing equipment.

At this time, the Texas Racing Commission is unable to establish a cost compliance comparison for small businesses with large businesses.

Ms. Fisher 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 to allow for an orderly and efficient conduct of horse races in Texas. 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 Nancy Fisher, Deputy Secretary, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 476-7223.

The new sections are proposed under the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which provide the Texas Racing Commission with the authority to adopt sections for conducting racing involving wagering, and the adoption of other sections to administer the Texas Racing Act.

§313.1. Ownership.

(a) Publication. The legal ownership of each horse, and the name of each owner that is printed on the official program for the horse, shall conform to the ownership as it is declared on the horse's certificate of registration, eligibility certificate, or lease agreement on file with the organization licensee. Any stable name may be registered with the commission as the owner or owners. If the owner is a syndicate, corporation, partnership or other association or entity, the horseowner whose name is printed on the official program shall be the responsible managing owner, officer, or partner who assumes all responsibilities of the owner.

(b) Horse ineligible. Each horse owned in whole or in part, or under the care and control of an individual who is excluded from a racetrack or who has a suspended license, shall be ineligible to enter or to start in any race. The horse's eligibility may be reinstated when the individual's penalty terminates, or when the horse is transferred through a bona fide sale to an owner approved by the stewards. Each individual who is excluded from a racetrack or who has a suspended license, whether acting as an agent or otherwise, shall not be qualified to subscribe for, to enter, or to run any horse in any race either in his or her own name, or in the name of any other person until the termination of the penalty.

§313.3. Deceased Owners.

(a) Personal representative. Any personal representative of a deceased owner may exercise and transfer the deceased owner's nominations, entries, and rights of nomination and entry subject to his or her compliance with the regulations of the commission. Each personal representative shall be deemed to hold an owner's license with respect to horses belonging to the estate of the deceased until the commission declares that the deceased owner's license is no longer in effect.

(b) Multiple ownership. When a horse is held by multiple ownership and a member of the multiple ownership dies, any nominations, entries, and rights of nomination and entry continue, and may be exercised by any remaining members.

(c) Void nominations and entries. Nominations and all entries or rights of entry under them become void when the nominator dies subject to the following exceptions:

- (1) when the horse is held by

multiple ownership; or

- (2) when the personal representative of an estate requests in writing that the benefits of the nominations accrue to the estate of the deceased nominator for the purpose of selling or transferring a horse, and the personal representative agrees to assume any and all obligations incident to the original entries, and the stewards approve the request.

§313.5. Documents.

(a) Omitted information. Each win sheet, certificate of registration, certificate of eligibility, entry card, or other document of ownership or registration shall have no information omitted, and any required signature on the documents shall not be willfully altered or forged by any person.

(b) Release of documents. Each certificate of registration or document of ownership that is filed with the racing secretary to establish a horse's eligibility to enter a race shall be released only to the horse's trainer of record, except that the trainer may authorize the release of the certificate to the owner named on the certificate, or the authorized agent on a form provided by the racing secretary. Each dispute concerning a right to the registration certificate shall be decided by the stewards.

§313.7. Registration and Eligibility.

(a) Registration. Each horse shall not enter or start a race unless:

- (1) it is duly registered with and approved by the registry offices of:

- (A) the Jockey Club, if a thoroughbred;

- (B) the American Quarter Horse Association, if a quarter horse;

- (C) the Appaloosa Horse Club, if an appaloosa;

- (D) the Arabian Horse Club Registry of America, if an Arabian;

- (E) the American Paint Horse Association, if a paint;

- (F) the Pinto Horse Association of America, Inc., if a pinto; or

- (G) any successors to any of the registries named in subparagraphs (A)-(F), or other registry recognized by the commission;

- (2) the horse's registration certificate showing the tattoo number of the horse is filed with the racing secretary by scratch time for the race, except in stakes races when the registration certificate must be filed not less than two hours prior to the scheduled post time for the race;

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

(4) at the time of entry, the horse is eligible under the conditions of the race as specified by the racing secretary, and remains eligible until the race; and

(5) if the horse's name is changed, its new name is registered with the appropriate registry listed in subsection (a), paragraph (1)(A)-(G) of this section. Both the horse's previous name and new name shall be stated in every entry list until the horse has run three races. Both names shall be printed in the official programs for those three races.

(b) Eligibility. A horse is ineligible to enter or start a race when:

(1) the horse is not stabled on the grounds of the licensed association or facilities approved by the association at least 72 hours before the race;

(2) the horse's breed registry certificate is not on file with the racing secretary or horse identifier;

(3) the horse is not fully identified by an official tattoo on the inside of the upper lip;

(4) with respect to a horse that is entered for the first time, the nominator has failed to identify the horse by name, color, sex, age, and the names of his sire and dam as registered;

(5) the horse's age, determined by an examination of its teeth by the official veterinarian, does not correspond to the age shown on its registration certificate in accordance with the current official guide for determining the age of the horse as adopted by the American Association of Equine Practitioners, the official guide for determining the age of the horse (198__) is adopted by reference;

(6) the horse is brought to the paddock and is not in the care of and saddled by a trainer or assistant trainer;

(7) the horse has been knowingly entered or raced in any jurisdiction under a different name, with an altered registration certificate or altered lip tattoo by a person having lawful custody or control of the horse for the purpose of deceiving any association or regulatory agency;

(8) the horse has been allowed to enter or start by a person having lawful custody or control of the horse who participated in or assisted in the entry of racing of some other horse under the name of the horse in question;

(9) the horse is wholly or partially owned by a disqualified person, or the horse is under the direct or indirect management of a disqualified person;

(10) the horse is wholly or partially owned by the spouse of a disqualified

person; in such cases, it is presumed that the disqualified person and spouse constitute a single financial entity with respect to the horse, which presumption may be rebutted;

(11) the horse has no current negative Coggins test certificate attached to the registration certificate;

(12) the stakes or entrance money for the horse has not been paid;

(13) the horse appears on the starter's list, stewards' list, or veterinarian's list;

(14) the horse is a first-time starter, and not approved by the starter;

(15) the horse is owned in whole or in part by an undisclosed person or interest;

(16) the horse, within the past calendar year, has started in a race that has not been reported in a nationally published monthly chartbook unless at least 48 hours before entry, the owner of the horse provides to the racing secretary under oath performance records that show the place and date of the race, the distance, the weight carried, the amount carried, and the horse's finishing position and time;

(17) in a stakes race, the horse has been transferred with its engagements unless, before the start, the fact of transfer of the horse and its engagements has been filed with the racing secretary;

(18) the horse is subject to a lien that has not been approved by the stewards and filed with the horsemen's accountant;

(19) the horse is five years of age or older and still a maiden;

(20) the horse is subject to a lease not filed with the stewards;

(21) the horse is not in sound racing condition;

(22) the horse has been nerved by surgical neurectomy, except in the case of heel nerves on veterinarian approval, or cryosurgery;

(23) the horse has been trachea-tubed to artificially assist its breathing;

(24) the horse has been blocked with alcohol or otherwise drugged to desensitize the nerves above the ankle;

(25) the horse has impaired eyesight in both eyes; or

(26) the horse is suspended.

(c) Improper entries. Each horse shall not start in a race unless it has been properly entered in the race. Each horse that is improperly entered shall not be entitled to any part of the purse. However, once the official sign is posted, this subsection shall not affect wagering on the race.

(d) Trainers and owners. Each trainer shall be responsible for the eligibil-

ity of horses entered by the trainer or an authorized agent of the trainer, and each owner shall be responsible for the eligibility of horses personally entered by the owner or an authorized agent of the owner.

(e) Any nomination or entry of a horse, or the transfer of any nomination or entry may be refused by the association for reasonable cause.

§313.9. Entries.

(a) Filing. The association shall provide forms for making entries and declarations with the racing secretary. Entries and declarations shall be in writing, or by telephone or telegraph subsequently confirmed in writing by the owner, trainer, or authorized agent. When any entrant or nominator claims failure or error in the receipt by an association of any entry or declaration, he may be required to submit evidence within a reasonable time of the filing of the entry or the declaration. Each signed entry blank shall be prima facie evidence that the contents of the entry blank express the desire and intent of the person making the entry.

(b) Posting. On the closing of entries, the racing secretary shall promptly compile a list of entries and cause it to be conspicuously posted.

(c) Coupling.

(1) Entry coupling. When one trainer or owner enters more than one horse in the same race, the horses shall be coupled as an entry. However, horses trained by a public stable trainer shall not be coupled with horses trained by another public stable trainer, unless the horses are owned by the same person or are coupled as a field for wagering purposes. Horses shall be regarded as having a common owner where an owner of one horse, either as an individual or as a licensed member of a partnership or as a licensed shareholder of a corporation, shall have an ownership interest in another horse, either as an individual or as a licensed member of a partnership or as a licensed shareholder of a corporation. If two or more horses are coupled as an entry only for the reason that the horses are trained by the same trainer, any organization licensee may run the horses as separate interests, and the provisions of this subsection shall not govern.

(2) Coupled entries prohibited. Coupled entries shall not be permitted to race on any program in a race that is part of a daily double or trifecta wager.

(3) Coupled entry limitations on owner. No more than two horses coupled by a common ownership or trainer shall be entered in an overnight race. When any licensee shall nominate and enter two horses coupled by common ownership or trainer, the nominator shall express a preference for which horse will start in the event that only one horse can be run by virtue of the rules of eligibility related to trifecta,

daily double, or other exotic betting.

(4) Coupling of entries by stewards. The stewards shall couple as a single entry any horses that, in the determination of the stewards, are connected by common ownership by a common trainer, or when the stewards determine that coupling is necessary in the interest of the regulation of the pari-mutuel wagering industry or necessary to the public confidence in racing.

(5) Coupled entry excluding others. A coupled entry shall not be permitted to enter or start if the effect of the entry is to deprive an uncoupled single entry horse from starting.

(d) Splitting of a race. An association may withdraw or change any race with the permission of the stewards. If a race is canceled and declared off for insufficient

entries, the association may split the list of entries for any other overnight race to provide an additional race to replace the one canceled. The racing secretary shall by lot divide the entries of the race to split them into two different races.

(e) Entry weight. Owners, trainers, or any other person duly authorized by either an owner or a trainer who enters a horse for a race shall ensure that the entry is correct and accurate as to the weight allowances available, and claimed for the horse under the conditions set for the race. After a horse is entered and has been assigned a weight to carry in the race, the assignment of weight shall not be changed except in the case of error.

(f) Horses run once daily. No horse shall be entered for more than one race on

the same day on which pari-mutuel wagering is conducted, unless one of the races is a stakes race. However, no horse may compete in more than one race on the same day.

(g) Foreign entries. For the purposes of determining eligibility, weight assignments, and allowances for horses imported from a foreign nation, the racing secretary shall take into account the *Pattern Race Book* published jointly by the Irish Turf Club, the Jockey Club of Great Britain, and the Societe d'Encouragement.

(h) Weight conversions. For the purposes of determining eligibility, weight assignments, and allowances for horses imported from a foreign nation, the racing secretary shall convert metric distances to English measures by reference to the following scale:

110 yards = 100 meters

1 furlong = 200 meters

1 mile = 1600 meters

(i) Name. The name of a horse means the name reflected on the certificate of registration, or racing permit, or temporary racing permit issued by horse's breed registry. Imported horses shall have a suffix, enclosed by brackets, added to their registered names showing the country of foaling. The suffix is derived from the *International Code of Suffixes*, and constitutes part of the horse's registered name. The registered names and suffixes, where applicable, shall be printed in the official program.

(j) Entry of ineligible horse. Each person shall not:

(1) enter in the person's name a horse of which the person is not the actual owner;

(2) enter or cause to be entered, or start a horse that the person knows or believes to be ineligible or disqualified;

(3) enter a horse in more than one race on any day, except stakes races; or

(4) enter a horse in a race if it is wholly or partly owned by, trained by, or under the management of an unlicensed person, a person whose license is under suspension, or a person who acts in concert with or under the control of a person whose license is under suspension.

§313.11. Sweepstakes Entries.

(a) Entry and withdrawal. The entry of a horse in a sweepstakes is a subscription to the sweepstakes. Before the time of closing, any entry or subscription may be altered or withdrawn.

(b) Loss of entries. A person who alleges loss of any entry or declaration for a stakes race must provide satisfactory proof to the racing secretary that it was mailed or telegraphed within a reasonable time before the designated time for closing, or it shall not be considered received.

(c) Entrance money. Entrance money shall be paid by the nominator to a race. In the event of the death of the horse or a mistake made in the entry of an otherwise eligible horse, the nominator subscriber shall continue to be obligated for any stakes, and the entrance money shall not be returned.

§313.13. Closing of Entries.

(a) Overnight entries. Entries for overnight racing shall be closed at 10 a.m. by the racing secretary, unless a later closing is established by the racing secretary, or unless approved by the stewards.

(b) Sweepstakes entries. If an hour for closing is designated, entries and declarations for sweepstakes cannot be received after that time. However, if a time for closing is not designated, entries and declarations may be mailed or telegraphed until midnight of the day of closing, if they are

received in time to comply with all other conditions of the race. In the absence of notice to the contrary, entries and declarations for sweepstakes that close during or on the day preceding a race meeting shall close at the office of the racing secretary in accordance with any requirements he shall make. Closing for sweepstakes not during race meetings shall be at the office of the association.

(c) Exception. Nominations for stakes races shall not close nor shall any eligibility payment be due on a day in which the United States Postal Service is not operating.

§313.15. Prohibited Entries.

(a) Entry by disqualified person. An entry made by a disqualified person or the entry of a disqualified horse shall be void. Any money paid for such an entry shall be returned if the disqualification is disclosed at least 45 minutes before post time for the race. Otherwise, the entry money shall be paid to the winner.

(b) Limited partner entry prohibited. No person other than a managing partner of a limited partnership or a person authorized by the managing partner may enter a horse owned by that partnership.

(c) Altering entries prohibited. No alteration shall be made in any entry after the closing of entries, but the stewards may permit the correction of an error in an entry.

(d) Limitation on overnight entries. If the number of entries to any purse or overnight race is in excess of the number of horses that may be accommodated due to the size of the track, the starters for the race and their post positions shall be determined by lot conducted in public by the racing secretary.

(e) Stake race entry limit. In a stake race, the number of horses that may compete shall be limited only by the number of horses nominated and entered. In any case, the association's lawful race conditions shall govern.

(f) Stewards' denial of entry. The stewards may, after notice to the entrant, subscriber, or nominator, deny entry of any horse to a race if the stewards determine the entry to be in violation of these rules or the laws of this state or to be contrary to the interests of the commission in the regulation of pari-mutuel wagering or to the public confidence in racing.

313.17. Preferences and Eligibles.

(a) Eligible-to-start list. A list of not more than eight names may be drawn from entries filed in excess of positions available in the race. The names shall be listed as eligible-to-start as originally entered horses are withdrawn. The order in which the names become eligible-to-start and their post positions shall be determined

by the racing secretary. Any owner, trainer, or authorized agent who has entered a horse listed as an eligible-to-start and who does not wish to start, shall file a scratch card with the secretary not later than the scratch time designated for that race.

(b) Preferences for excluded horses. Horses that have been excluded from races shall be given preference in the next race in which they are entered, provided the next race is one of similar conditions. Horses whose names appear in the entries and have an opportunity to start will be given no preference if they are entered for a race to be held on the day following entry and the race overfills.

(c) Preferred list entrants. In making an entry of a horse on the preferred list, a claim of preference must be made at the time of entry and noted on the entry form or the preference will be lost. The preferred list shall be posted in a place readily available to all horsemen.

§ 313.19. Post Position. Post positions shall be determined by the racing secretary publicly and by lot. Post positions shall be drawn from also-eligible entries at scratch time. In all races, horses drawn into the race from the also-eligible list shall take the outside post positions.

§ 313.21. Scratch; Declaring Out.

(a) Notification to the secretary. No horse shall be considered scratched, declared out, or withdrawn from a race until the owner, agent, or other authorized person has given notice in writing to the racing secretary before the time set by the association as scratch time. All scratches must be approved by the stewards.

(b) Declaration irrevocable. Scratching, or the declaration of a horse out of an engagement for a race, is irrevocable.

(c) Limitation on scratches. No horse shall be permitted to be scratched from a race if the horses remaining in the race number fewer than 10, unless the stewards permit a lesser number. Where there are more requests to scratch that, if granted, would leave a field fewer than 10, the stewards shall determine by lot which entrants may be scratched and permitted to withdraw from the race. In the case of scratches from races involving daily doubles or trifecta wagering, eight entries must remain in the race to enable an entrant to voluntarily scratch.

(d) Scratch time. Unless otherwise set by the racing secretary, scratch time shall be:

(1) for stake races, at least 45 minutes before post time;

(2) for other races, no later than 8 a.m. of the day of the race.

§313.23. Workouts.

(a) When required. No horse shall be started, unless the horse has raced or has an approved time workout satisfactory to the stewards. The workout must have occurred on the grounds of a licensed pari-mutuel facility within the previous 30 days. A horse that has not started for a period of 60 days or more shall be ineligible to race until the horse has completed a timed workout satisfactory to the stewards before the day of the race. No horse shall be taken onto the track for training or a workout except during hours designated by the association.

(b) Identification. The timer or the stewards may require any licensee to identify a horse in his care being worked. The owner, trainer, or jockey may be required to identify the distance the horse is to be worked and the point on the track where the workout will start.

(c) Information dissemination. If the stewards approve a timed workout so as to permit the horse to run in a race, they shall make it mandatory that the information is furnished to the public in advance of the race including, but not limited to, the following means:

(1) announcement over the track's public address system;

(2) transmission on the track's message board;

(3) posting in designated conspicuous places in the racing enclosure; and

(4) exhibit on track television monitors at certain intervals if the track has closed-circuit television. If the workout is published before the race in either the daily racing form or the track program, it shall not be necessary to make the announcement set forth above.

(d) Restrictions. No horse shall be taken onto the track for training or a workout, except during the hours designated by the association.

§313.25. Equipment.

(a) Whip and bridle limitations.

Unless permitted by the stewards, no whip or substitute for a whip shall exceed one pound or 30 inches, and no bridle shall exceed two pounds.

(b) Equipment change. No licensee may change the equipment used on a horse from that used in the horse's last race unless with permission of the paddock judge. No licensee may add blinkers to a horse's equipment or discontinue their use without the prior approval of the starter, the paddock judge, and the stewards. In the paddock before a race, a horse's tongue may be tied down with clean bandages, clean gauze, or a tongue strap.

§313.27. Racing Numbers.

(a) Number display. Each horse in a race shall carry a conspicuous saddle cloth number corresponding to the official number given that horse on the official program.

(b) Coupled entries. In the case of a coupled or other entry that includes more than one horse, each horse in the entry shall carry the same number, with a different distinguishing letter following the number. As an example, two horses in the same entry shall be entered as one and one-A.

(c) Field horses. In a combined field of horses, each horse in the field shall carry a separate number.

§313.29 Penalties and Allowances.

(a) Determination. Penalties and allowances shall be determined as follows.

(1) Penalties and allowance shall not be cumulative, unless they are declared to be so in the conditions of the race. They shall be effective at the start, except in overnight events when a horse shall have only the allowance to which it was entitled at the time of entry.

(2) Penalties shall be obligatory; allowance shall be option in whole or in part. In overnight events, penalties or allowances shall be claimed at the time of entry.

(3) Each horse shall not receive an allowance of weight or be relieved from extra weight because it has been beaten in one or more races, but this shall not prohibit the awarding of a maiden allowance or allowances to horses that have not won a race within a specified period or a race of specified value.

(4) Failure to claim a weight allowance by oversight or omission shall not be cause for disqualification. Claims of weight allowance to which a horse is not entitled shall not disqualify the horse unless an incorrect weight is carried in the race. However, a fine may be imposed upon the person who claims an allowance to which the horse is not entitled.

(5) Eligibility, penalties, and allowances of weight for all races shall be determined from the reports, records, and statistics published by the daily racing form, and from the horse registries identified in § 313.7 of this title (relating to Registration and Eligibility). However, responsibility for weight carried and eligibility shall remain with the owner and the trainer as stated in § 313.149 of this title (relating to Trainers).

(6) Each horse shall not incur a weight penalty for a placement from which it is disqualified, but each horse which places because of the disqualification of another horse shall incur the weight penalties of the placement. Each horse which places because of the disqualification of another horse shall not be ruled ineligible in a race which has already been run.

(7) When a race is disputed, both the horse that finished first, and each horse that is alleged to have finished first shall be subject to all penalties levied against the winner of that race until the matter is decided.

(b) Weights stated in pounds. Races written to be run under scale of weights or weight for age shall be run under the following weights state in pounds when the weights are not stated otherwise in the conditions of the race:

		<u>Years</u>									
		Jan	Mar							Nov	
<u>Distance</u>	<u>Age</u>	Feb	Apr	May	Jun	Jul	Aug	Sep	Oct	Dec	
Half mile	2	...	...	...	...	...	105	108	111	114
	3	117	119	121	123	125	126	127	128	129	

	4	130	130	130	130	130	130	130	130	130
	5 & up	130	130	130	130	130	130	130	130	130
Six	2	...	...	...	...	...	102	105	108	111
furlongs	3	114	117	119	121	123	125	126	127	128
	4	129	130	130	130	130	130	130	130	130
	5 & up	130	130	130	130	130	130	130	130	130
One mile	2	...	...	...	...	...	...	96	99	102
	3	107	111	113	115	117	119	121	122	123
	4	127	128	127	126	126	126	126	126	126
	5 & up	128	128	127	126	126	126	126	126	126

One and a 2	...	...	...	...	...	...	...	...	...
quarter 3	101	107	111	113	116	118	120	121	122
mile 4	125	127	127	126	126	126	126	126	126
5 & up	127	127	127	126	126	126	126	126	126
One and a 2	...	...	...	...	...	...	...	...	...
half miles3	98	104	108	111	114	117	119	121	122
4	124	126	126	126	126	126	126	126	126
5 & up	126	126	126	126	126	126	126	126	126
Two miles 3	96	102	106	109	112	114	117	119	120
4	124	126	126	126	126	125	125	124	124
5	126	126	126	126	126	125	125	124	124

(c) Thoroughbred exception. For thoroughbreds only, in all races against male horses, two year old fillies shall be allowed three pounds, and three year old and older fillies and mares shall be allowed five pounds before September 1, and three pounds after September 1.

§313.31. *Valuation of Purse Money.* The amount of purse money earned is credited in United States currency, and there shall be no appeal for any loss on the exchange rate at the time of transfer from the United States currency to that of another country.

§313.33. *Dead Heats.*

(a) In the event of a dead heat, the prize money will be distributed in equal shares to the owners of the horses so finishing. In a dead heat finish for first place, each horse shall be considered a winner of the amount of the purse or prize.

(b) If a prize includes a cup, plate, or other indivisible prize, owners shall draw lots for the prize in the presence of at least two stewards.

(c) In the event of a dead heat finish for second place and thereafter, an objection to the winner of the race is sustained, and the horses in the dead heat shall be considered to have run a dead heat for first place.

§313.35. *Purse Money Presumption.* The fact that purse money has been distributed before the issuance of a laboratory report shall not be considered a finding that no chemical substance has been administered, in violation of these rules, to the horse earning the purse money.

§313.37. *Coggins Test.*

(a) Certificate required. No horse shall be allowed to enter, start, or be stabled on the grounds of the racing establishment, unless a valid negative Coggins test certificate is presented.

(b) Trainer responsibility. In the event of claims, sales, or transfers, it shall be the responsibility of the new trainer to ascertain the validity of the certificate for the horse within 24 hours. If the certificate is either unavailable or invalid, the previous trainer shall be responsible for any reasonable cost associated with obtaining a Coggins certificate.

(c) Positive test reports. Whenever any owner or trainer is furnished a Coggins test positive result that his horse has equine infectious anemia (EIA), the horse shall be removed by the owner or trainer from association premises or approved farms within 24 hours of actual notice to the owner or trainer of the infection.

§313.39. *Race Procedures.*

(a) Full weight. Each horse shall carry the full weight assigned for that race from the paddock to the starting point, and shall parade past the stewards' stand unless excused by the stewards.

(b) Touching and dismounting prohibited. After the horses enter the track, no jockey may dismount nor entrust his horse to the care of an attendant, unless because of an accident occurring to the jockey, the horse, or the equipment, and then only with the prior consent of the starter. During any delay during which a jockey is permitted to dismount, all other jockeys may dismount and their horses may be attended by others. After the horses enter the track, only the hands of the jockey, the assistant starter, or an outrider on a lead pony may touch the horse before the start of the race.

(c) Jockey injury. If a jockey is seriously injured on the way to the post, his horse shall be returned to the paddock and a replacement jockey obtained. In such an event, both the injured jockey and the replacement jockey will be paid by the owner.

(d) Twelve minute parade limit. After entering the track, all horses shall proceed to the starting post in not more than 12 minutes unless approved by the stewards. After passing the stewards' stand in parade, the horses may break formation and proceed to the post in any manner. Once at the post, the horses shall be started without unnecessary delay. All horses must participate in the parade carrying their weight and equipment from the paddock to the starting post, and any horse failing to do so may be disqualified by the stewards. No lead pony leading a horse in the parade shall obstruct the public's view of the horse it is leading except with permission of the stewards.

(e) Striking a horse prohibited. In assisting the start of a race, no person other than the jockey, the starter, the assistant starter, or the veterinarian shall strike a horse or use any other means to assist the start.

(f) Loading of horses. Horses shall take their positions at the post in the starting gate in post position order, the order in which their names have been drawn, beginning from the inside rail.

(g) Delays prohibited. No person shall obstruct or delay the movement of a horse to the starting post.

§313.41. *Running of a Race.*

(a) The following rules shall apply to the running of a race:

(1) Each horse that leaves the course during a race shall be disqualified.

(2) Any horse may be taken to any part of the course when clear, but no horse shall cross or weave in front of other horses in such a way as to impede them, or cause interference or intimidation such that it would affect the outcome of the race.

(3) If a horse or jockey jostles another horse such that it affects the outcome of the race, the aggressor may be disqualified, unless the jostled horse or the jockey was partly at fault, or the jostling

was wholly caused by some other horse or jockey.

(4) Each jockey shall not wilfully strike or touch another jockey or another jockey's horse or equipment during a race for the purpose of interfering with the horse or jockey. No jockey shall strike the jockey's horse on or about the head.

(5) Any rider may be fined, set down, or both, by the stewards for wilful fouling or careless riding. The nature and seriousness of the offense shall be considered by the stewards.

(6) Any jockey whose horse has been disqualified or who unnecessarily causes the horse to change or shorten its stride for the purpose of losing a race may be fined or suspended.

(b) The steward shall be vested with the discretion to determine the propriety and nature of a disqualification and whether it applies to any other part of an entry. The stewards' decision shall be final.

(1) To determine the disqualification of a horse in any race, the stewards may either place the horse behind the horse or horses with which they believe it interfered, or they may place it last.

(2) When a horse of one ownership or interest is coupled with a horse or horses of the same or another ownership or interest, the disqualification of one shall not necessarily affect the placing of the other.

§313.43. *Claiming Races.*

(a) General requirements.

(1) Starting requirement. No person may file a claim for any horse unless he has started a horse at the meeting and holds an owner's license.

(2) One stable claim. No stable that consists of horses owned by more than one person, and that has a single trainer may submit more than one claim in any race, and an authorized agent may submit only one claim in any race regardless of the number of owners represented.

(3) Procedure for claiming. To make a claim for a horse, an eligible person shall:

(A) deposit. Deposit to his account with the horsemen's bookkeeper, the full claiming price and applicable taxes as established by the racing secretary's conditions.

(B) File claim. File the claim filled out completely and with sufficient accuracy to identify the claim in writing on forms provided by the association to be approved by the commission at least 15 minutes before the time of the race in a locked claim box maintained for that purpose by the stewards. Each claim shall be signed and sealed in an envelope having no

identification marks except:

- (i) the name of the track;
- (ii) the number of the race from which the claim is made; and
- (iii) a time stamp which demonstrates that the claim was made not later than 15 minutes prior to the post time of the race in which the horse to be claimed is entered.

(4) Invalid or void claims; prohibitions on claims.

(A) Each claim shall be invalid if:

(i) the name of the horse to be claimed is erroneously spelled, or is not specified in the space provided on the claim form;

(ii) the claimant does not have at least the amount of the claim and any applicable state sales tax on deposit or credited with the horsepersons' bookkeeper;

(iii) the claim form does not specify the designated price as printed in the program or is not signed, or does not fully indicate the name of the party making the claim, or is otherwise incorrectly completed; or

(iv) the claim envelope is inaccurate.

(B) If a claim is voided by the stewards, the horse claimed shall be returned to the original owner who, in turn, shall refund all of the claim money to the unsuccessful claimant.

(C) Each person or racing interest shall not:

(i) claim more than one horse from any one race;

(ii) claim their own horse or cause the horse to be claimed, directly or indirectly, for their own account;

(iii) refuse to deliver a claimed horse to the successful claimant;

(iv) remove any horse that has been entered in a claiming race from the racetrack facility where it has been entered to race, or fail or refuse to comply with any rule or any condition of the meeting for the purpose of avoiding or preventing a claim for the horse;

(v) offer or enter into an agreement to claim or not to claim, or attempt to prevent another person from claiming any horse in a claiming race;

(vi) attempt to intimidate or prevent anyone from running a horse in any claiming race;

(vii) claim horses owned or trained by the claimant's trainer's spouse, child, sibling, parent, mother-in-

law, or father-in-law;

(viii) claim a horse from an owner whose horse is trained by the claimant's trainer;

(ix) if a trainer, claim a horse from an owner for whom the trainer trains; or

(x) enter or allow to be entered any horse against which any claim is held, either by mortgage or lien of any kind, without having filed the written consent of the holder of the mortgage or lien with the racing secretary and horsepersons' bookkeeper prior to the entry.

(D) If a filly or mare has been bred, she shall be ineligible to enter a claiming race, unless:

(i) full disclosure of the fact she has been bred is on file with and posted in the office of the racing secretary;

(ii) the breeding slip has been deposited with the racing secretary;

(iii) all payments due for the service in question, and for any live progeny resulting from the service are paid in full; and

(iv) the release of the breeding slip to the successful claimant at the time of the claim is guaranteed; or

(v) as an alternative to clauses one-four of this subparagraph, a licensed veterinarian's certificate dated at least 40 days after the last breeding of the mare or filly is on file with the racing secretary, which states that the mare or filly is not in foal.

(b) Claim box.

(1) The claim box shall be approved by the commission, and kept locked until 15 minutes before the start of the race, when it shall be presented to the stewards or their designee for opening and publication of the claims.

(2) The claim box shall also include a time clock that automatically stamps the time on the claim envelope before it is dropped in the box.

(3) No official of the association shall give any information as to the filing of claims therein until after the race has been run.

(c) Claim irrevocable. After a claim has been filed in the locked box, it shall not be withdrawn or revoked.

(d) Claiming race. If a horse is excused by the stewards in a claiming race, or the claiming race is cancelled, each claim for the horse shall be void. However, in its next start, the horse must race in a claiming race for a claiming price not greater than the amount for which it could have been in the race from which it was excused. If the horse is entered in an allowance or stakes

race in its next start, the horse shall be subject to claim for the claiming price from the previous race from which it was excused. The provisions of this subsection shall apply for a period of 90 days from the date of the claiming race in which the horse was excused.

(e) Multiple claims on single horses. If more than one claim is filed on a horse, the successful claim shall be determined by lot conducted by the stewards or their representatives.

(f) Coggins test condition. If a claimant so indicates on the claiming form, he may make his claim conditional on the successful testing of the horse for equine infectious anemia as determined by a Coggins test. In that event, the claimant shall at his expense procure through a licensed veterinarian a blood sample of the claimed horse that shall be forwarded within 24 hours to a laboratory approved by the commission as competent to conduct Coggins tests. Pending the result of the test, money paid for the claimed horse shall be held by the association. In the event of a positive test result, the ownership of the claimed horse shall revert to the original owner, the claiming money shall be returned to the unsuccessful claimant of the horse, and the expenses of the test shall be paid by the original owner.

(g) Post-race testing; trainer responsibility. A claimed horse that has been designated for post-race testing shall remain the responsibility of its trainer until after the collection of a test specimen at the detention barn and transfer according to subsection (i) of this section.

(h) Successful claims; later races.

(1) Sale or transfer. No successful claimant may sell or transfer a horse, except in a claiming race, for a period of 30 days from the date of claim.

(2) Eligibility price. A claimed horse may not start in a race in which the claiming price is less than the price in which it was claimed for a period of 30 days. If a horse is claimed, no right, title, or interest therein shall be sold or transferred except in a claiming race for a period of 30 days following the date of claiming. The day claimed shall not count, but the following calendar day shall be the first day. The horse shall be entitled to enter whenever necessary so the horse may start on the 31st calendar day following the claim for any claiming price. The horse shall be required to continue to race at the track where claimed for a period of 30 days or the balance of the current race meeting, whichever comes first.

(3) Racing elsewhere. A horse that was claimed under these rules may not participate at a race meeting other than that at which it was claimed until the end of the meeting, except with written permission of the stewards. This limitation shall not apply

to stakes races.

(4) Same management. A claimed horse shall not remain in the same stable or under the control or management of its former owner.

(5) Claimed out. When a horse is claimed out of a claiming race, the horse's engagements are included.

(i) Transfer after claim.

(1) Forms. On a successful claim, the stewards shall issue in triplicate, on forms approved by the commission, an authorization of transfer of the horse from the original owner to the claimant. Copies of the transfer authorization shall be forwarded to and maintained by the commission, the stewards, and the racing secretary for the benefit of the horse identifier. No claimed horse shall be delivered by the original owner to the successful claimant until authorized by the stewards. Every horse claimed shall race in the interest of and for the account of the original owner, but title to the horse shall be transferred to the claimant from the time the horse becomes a starter unless the claim becomes void under subsection (d) of this section. The successful claimant shall become the owner of the horse at the time of starting, regardless of whether it is alive or dead, sound or unsound, or injured during the race or after it.

(2) Other jurisdiction rules. The commission will recognize and be governed by the rules of any other jurisdiction regulating title and claiming races when ownership of a horse is transferred or affected by a claiming race conducted in that other jurisdiction. However, while the horse races in this jurisdiction, this subsection shall apply.

(3) Determination of sex and age. The claimant shall be responsible for determining the age and sex of the horse claimed notwithstanding any designation of sex and age appearing in the program or in any racing publication. In the event of a spayed mare, the (s) for spayed shall appear next to the mare's name on the program. If it does not and the claimant finds that the mare is in fact spayed, the claimant may then return the mare for full refund of the claiming price.

(4) Affidavit by claimant. The stewards may, if they determine it necessary, require any claimant to execute a sworn statement that the claimant is claiming the horse for his own account or as an authorized agent for his principal and not for any other person.

(5) Delivery required. No person shall refuse to deliver a properly claimed horse to the successful claimant, and the claimed horse shall be disqualified from entering any race until delivery is made to the claimant.

(6) Obstructing rules of claim-

ing. No person or licensee shall obstruct or interfere with another person or licensee in claiming any horse, or enter any agreement with another to subvert or defeat the object and procedures of a claiming race, or attempt to prevent any horse entered from being claimed.

(j) Elimination of stable. An owner whose stable has been eliminated by fire, misfortune or claiming may claim for the remainder of the meeting at which he was eliminated or for 30 racing days, whichever is longer. If the 30-day period extends into a succeeding meeting, the owner shall obtain a certificate from the stewards of the meeting at which his last horse was claimed to attach to any claim he makes at the succeeding meeting. With the permission of the stewards, stables eliminated by fire or other casualty may claim under this rule.

(k) Deceptive claim. The stewards may cancel and disallow any claim within 24 hours after a race if they determine that a claim was made on the basis of a lease, sale, or entry of a horse made for the purpose of fraudulently obtaining the privilege of making a claim. In the event of such a disallowance, the stewards may further order the return of a horse to its original owner and the return of all claim money.

(l) Protest of claim. A protest to any claim must be filed with the stewards before noon of the day following the date of the race in which the horse was claimed. Nonracing days are excluded from this rule.

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

Issued in Austin, Texas, on June 15, 1988.

TRD-8806145

Nancy Fisher
Deputy Secretary
Texas Racing Commission

Earliest possible date of adoption: July 22, 1988

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

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Subchapter C. Jockeys,
Apprentice Jockeys, and
Jockey Agents

- 16 TAC §§313.121, 313.123, 313.125, 313.127, 313.129, 313.131, 313.133, 313.139, 313.141, 313.143, 313.145, 313.147, 313.149, 313.151, 313.155

The Texas Racing Commission proposes new §§313.121, 313.123, 313.125, 313.127, 313.129, 313.131, 313.133, 313.135, 313.137, 313.139, 313.141, 313.143, 313.145, 313.147, 313.149, 313.151, 313.153, and 313.155, concerning eligibility, jockey fees, apprentices subject to jockey rules, apprentice allowances, conduct, jockey effort, duty to fulfill engagements, riding interfer-

ence, jockey weighed out, overweight limited, weigh in, unsaddling, contracts, jockey fines and forfeitures, competing claims, jockey suspension, association valet-attendant, jockey agent, and jockey agent eligibility. These new sections propose rules for jockeys, apprentice jockeys and jockey agents who will be racing in Texas.

Nancy Fisher, deputy secretary, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections. However, since the Texas Racing Commission is a new state agency, normal expenditures associated with setting up the agency are anticipated including but not limited to hiring necessary employees and purchasing equipment.

At this time the Texas Racing Commission is unable to establish a cost compliance comparison for small businesses with large businesses.

Ms. Fisher 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 to allow for an orderly and efficient procedure for administration of matters concerning jockeys, apprentice jockeys, and jockey agents. 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 Nancy Fisher, Deputy Secretary, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 476-7223.

The new sections are proposed under the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which provide the Texas Racing Commission with the authority to adopt rules for conducting racing involving wagering and the adoption of other rules to administer the Texas Racing Act. §313.121. Eligibility.

(a) Jockeys.

(1) Age. No person under 18 years of age will be licensed by the commission as a jockey, except those who have previously been licensed.

(2) Examination. All jockeys must pass annual physical examinations given by a doctor approved by the commission. The stewards may require that any jockey be reexamined and may refuse to allow any jockey to ride until he successfully completes such an examination.

(3) Owner and trainer prohibition. A jockey may not be an owner or trainer of any race horse.

(4) License. A license will not be granted until the applicant has successfully completed two rides under a provisional license of the commission and been approved by the starter.

(5) Foreign jockeys. Whenever a jockey from a foreign country, excluding Mexico and Canada, rides in the United States, he must declare that he is a holder of a valid license and currently not under sus-

pension. To facilitate this process, the jockey shall present a declaration sheet, in four languages, to the commission. The sheet shall state that the jockey:

(A) is the holder of a valid license to ride;

(B) is not currently under suspension; and

(C) agrees to be bound by the rules of the jurisdiction in which he is riding. The sheet shall be retained by the commission and at the conclusion of the jockey's participation in racing, it shall be returned to the jockey, properly endorsed by the commission, stating that the jockey has not incurred any penalty or had a fall. If a penalty has been assessed against the jockey, the appropriate racing official shall notify the racing authority issuing the original license to extend the penalty for the same period of time.

(b) Apprentice jockeys.

(1) Contract. A contract with an owner to provide apprentice jockey services or an apprentice certificate from the stewards must be presented to be licensed.

(2) General. The conditions set forth in paragraph (1) of this subsection for jockeys shall also apply to apprentice jockeys.

§313.123. Jockey Fees.

(a) Schedule. The fee to jockeys, in the absence of special agreement, shall be in all races as follows:

<u>Purse</u>	<u>Win</u>	<u>2nd</u>	<u>3rd</u>	<u>Unplaced</u>
\$400 and under	\$27	\$19	\$17	\$16
\$500	30	20	17	16
\$600	36	22	17	16
\$700-\$900	10%	25	22	20
\$1,000-\$1,400	10%	30	25	22
\$1,500-\$1,900	10%	35	30	28
\$2,000-\$3,400	10%	45	35	33
\$3,500-\$4,900	10%	55	45	35
\$5,000-\$9,900	10%	65	50	40
\$10,000-\$14,900	10%	5%	5%	45
\$15,000-\$24,900	10%	5%	5%	50
\$25,000-\$49,900	10%	5%	5%	60
\$50,000-\$99,900	10%	5%	5%	75
\$100,000 and up	10%	5%	5%	100

(b) Entitlement. Any apprentice or contract rider shall be entitled to the regular jockey fees, except when riding a horse owned in part or solely by his contract holder. An interest in the winnings only, such as trainer's percent, shall not constitute ownership.

(c) Fee earned. A jockey's fee shall be considered earned when the jockey is weighed out by the clerk of the scales. The fee shall not be considered earned if the jockey, of his own free will, takes himself off his mount, where injury to the horse or rider is not involved. Any conditions or considerations not covered by the above ruling shall be at the discretion of the stewards.

(d) Multiple engagements. If any owner or trainer engages two or more jockeys for the same race, the owner or trainer shall be required to pay both jockeys whether or not the jockey rides in the race.

(e) Dead heats. Jockeys finishing a race in a dead heat shall divide equally the totals they individually would have received had one jockey won the race alone. The owners of the horses finishing in the dead heat shall pay equal shares of the jockey fees.

§313.125. Apprentices Subject to Jockey Rules. Unless excepted under these sections, apprentices are subject to all commission rules governing the conduct of jockeys.

§313.127. Apprentice Allowances. An apprentice jockey shall ride with a five-pound weight allowance beginning with his first mount and for one full year from the date of his fifth winning mount. If after riding one full year from the date of his fifth winning mount the apprentice jockey has failed to ride a total of 40 winners from the date of his first winning mount, he shall continue to ride with a five-pound weight allowance for one more year from the date of his fifth winning mount or until he has ridden a total of 40 winners, whichever comes first. If an apprentice jockey is unable to ride for a period of 14 consecutive days or more after the date of his fifth winning mount because of service in the armed forces of the United States, or because of physical disablement, the commission may extend the time during which the apprentice weight allowance may be claimed for a period not to exceed the period the apprentice jockey was unable to ride.

§313.129. Conduct.

(a) Clothing and appearance. A jockey shall wear the colors furnished by the owner or association, and the number on the saddlecloth shall correspond to the number given in the racing program. A jockey shall maintain a neat and clean appearance while engaged in his duties on association premises and shall wear a clean jockey costume, cap, helmet approved by commission, jacket of silk or waterproof fabric, breeches, and top boots.

(b) Competing against contractor. No jockey may ride in any race against a starting horse belonging to the jockey's contract employer unless the jockey's mount and the contract employer's horse are both trained by the same trainer.

(c) Competing against spouse. No jockey may compete in any race against any horse that is owned or trained by the jockey's spouse.

(d) Confined to jockey room. A jockey who is engaged to ride a race shall report to the scale room on the day of the race at the time designated by association officials. He shall then report his engagements and any overweight to the clerk of the scales. Thereafter, he shall not leave the jockey room except by permission of the stewards until all of his riding engagements of the day have been fulfilled. Once a rider has fulfilled his riding engagements for the day and has left the jockey's quarters, he shall not be readmitted to the jockeys' quarters until after the entire racing program for that day has been completed, except on permission of the stewards. A jockey is not allowed to communicate with anyone but the trainer or his agent while he is in the room during the performance except with approval of the stewards. On these occasions, he shall be accompanied by a security guard.

(e) Jockey betting. A jockey shall only be allowed to wager on a race in which he is riding if:

(1) the jockey's owner or trainer makes the wager for the jockey; and

(2) the jockey only wagers on his own mount to win or in combination with other horses in multiple bets.

(f) Whip prohibited. No jockey may use a whip on a two-year-old horse before April 1 of each year.

(1) Spurs prohibited. No jockey shall use spurs.

(2) Possessing drugs or devices. No jockey shall have in his care, control, or custody, any drugs or prohibited substances or any electrical or mechanical device that could affect a horse's racing performance.

§313.131. Jockey Effort. A jockey shall exert every effort to ride his horse to the finish in the best and fastest run of which the horse is capable. No jockey shall ease up or coast to a finish, without adequate cause, even if the horse has no apparent chance to win prize money.

§313.133. Duty to Fulfill Engagements. Every jockey shall fulfill his duly scheduled riding engagements unless excused by the stewards. No jockey shall be forced to ride a horse he believes to be unsound, nor over a racing strip he believes to be unsafe, but if the stewards find a jockey's refusal to fulfill a riding engagement is based on personal belief unwarranted by the facts and circumstances, the

jockey may be subject to disciplinary action. The jockey shall be responsible to his agent for any engagements previously secured by the agent.

§313.135. Riding Interference.

(a) Interference. When the way is clear in a race, a horse may be ridden to any part of the course but may not weave nor cross in front of other contenders so as to interfere with their course or threaten their safety.

(b) Jostling. No jockey shall jostle another horse or jockey. No jockey shall strike another horse or jockey or ride so carelessly as to cause injury or possible injury to another horse in the race.

(c) Partial fault/third party interference. If a horse or jockey interfered with or jostles another horse, the aggressor may be disqualified unless the interfered with or jostled horse or jockey was partly at fault or the infraction was wholly caused by the fault of some other horse or jockey.

§313.137. Jockey Weighed Out.

(a) Each jockey must be weighed for his assigned horse not more than 30 minutes before the time fixed for the race.

(b) A jockey's weight shall include his clothing, saddle, girth, pad, and saddle cloth.

(c) A jockey's weight shall not include the number cloth, whip, head number, bridle, bit or reins, blinkers, helmet, tongue strap, tongue tie, muzzle, hood, noseband, shadow roll, martingale, breast plate, bandages, boots and racing plates, or shoes.

§313.139. Overweight Limited. No jockey may weight more than two pounds over the weight his horse is assigned to carry unless with consent of the owner or trainer and unless the jockey has declared the amount of overweight to the clerk of the scales at least 45 minutes before the time of the race. However, under no circumstances shall a horse carry more than five pounds overweight. The overweight shall be publicly announced and posted in a conspicuous place both before the first race of the day and before the running of the race.

§313.141. Weigh in, Unsaddling.

(a) Weigh in. On completion of a race each jockey shall ride promptly to the winner's circle and dismount. He shall then present himself to the clerk of the scales to be weighed in. If a jockey is prevented from riding his mount to the winner's circle because of accident or illness either to himself or the horse, he may walk or be carried to the scales unless excused by the stewards.

(b) Unsaddling. Each jockey on completion of a race must return to the winner's circle and must unsaddle his own horse unless excused by the stewards.

(c) Removing horse's equipment. No person except the valet-attendant for each mount is permitted to assist the jockey

in removing the horse's equipment that is included in the jockey's weight unless the stewards permit indicates otherwise. To weigh in, each jockey shall carry to the scales all pieces of equipment with which he weighed out. Thereafter he may hand the equipment to the valet-attendant.

(d) Underweight. When any horse places first, second, or third in a race, or is coupled in any form of multiple exotic wagering, and thereafter the horse's jockey is weighed in short by more than two pounds of the weight of which he was weighed out, his mount may be disqualified and all purse money forfeited.

(e) Overweight. No jockey may be weighed in more than two pounds over his declared weight, but consideration shall be given for excess weight caused by rain or mud. If a jockey is overweight, his mount may be disqualified and all purse money forfeited.

§313.143. Contracts.

(a) Jockey contracts. A jockey may contract with an owner or trainer to furnish jockey services whenever the owner shall require, and in that event a jockey shall not ride or agree to ride in any race for any other person without the consent of the owner or trainer to whom the jockey is under contract.

(b) Apprentice contracts and transfers.

(1) Owners or trainers and apprentices who are parties to contracts for apprentice jockey services shall file a copy of the contract with the commission, on forms approved by the commission, and shall on any transfer, assignment, or amendment of the contract, immediately furnish a copy to the commission.

(2) No apprentice jockey may ride for a licensed owner or agent unless with the consent of the apprentice's contract employer.

(3) No person other than an owner, trainer, jockey agent, or authorized agent of an owner in good standing, shall make engagements for an apprentice jockey or jockey. However, a jockey not represented by an agent may make his own engagements.

§313.145. Jockey Fines and Forfeitures. A jockey shall pay any fine or forfeiture from his own funds within 48 hours of the imposition of the fine. No other person shall pay jockey fines or forfeitures for the jockey.

§313.147. Competing Claims. Whenever two or more licensees claim the services of one jockey for a race, first call shall have priority and any dispute shall be resolved by the stewards.

§313.149. Jockey Suspension.

(a) Offenses involving fraud. Suspension of a licensee for an offense involving fraud or deception of the public or another participant in racing, shall begin immediately after the ruling unless other-

wise ordered by the stewards or the commission.

(b) Offenses not involving fraud. Suspension for an offense not involving fraud or deception of the public or another participant in racing, shall begin on the third day after the ruling.

(c) Withdrawal of appeal. Withdrawal by the appellant of a notice of appeal filed with the commission whenever imposition of the disciplinary action has been stayed or enjoined pending a final decision by the commission, shall be considered a frivolous appeal and referred to the commission for further disciplinary action in the event the appellant fails to show good cause to the stewards why such withdrawal should not be considered frivolous.

§313.151. Association Valet-Attendant. No jockey shall have a valet-attendant except one provided and paid for by the association.

§313.153. Jockey Agent.

(a) No jockey shall have more than one agent.

(b) All engagements to ride other than those for the jockey's contract employer shall be made by the agent.

(c) No revocation of a jockey agent's authority is effective until the jockey notifies the stewards in writing of the revocation of the agent's authority.

§313.155. Jockey Agent Eligibility.

(a) Eligibility. No person may act as a jockey's agent unless the person has first demonstrated to the stewards that he has a contract for agency with at least one jockey and has been licensed by the commission.

(b) Limit on contract. No jockey agent may serve as agent for more than two jockeys. No jockey agent shall make or assist in making any riding engagement for a jockey with whom the agent has no contract.

(c) Agent's record.

(1) All jockey agents must have in their possession at all times engagement books approved by the stewards, and all engagements made for jockeys by agents must be recorded in the books. Books are subject to examination by the stewards at all times.

(2) When an owner or trainer engages the services of a jockey through a jockey agent, he must obtain a card from the jockey agent specifying whether or not he has first or second call on the services of the jockey. Such calls must be declared at the time of entry.

(3) Before each day's entries are taken, jockey agents are required to file their first, second, and third calls in each race in the racing secretary's office with a person designated by the stewards. If, during the time entries are being taken, an

agent should lose or pick up a call, he shall immediately add the call to the ones previously filed.

(4) No jockey agent shall falsify his records.

(d) Agent withdrawal. When any jockey agent withdraws from his representation of a jockey, the agent shall immediately notify the stewards and shall submit to the stewards a list of any unfilled engagements he has made for the jockey. No agent shall be permitted to withdraw from the representation of any jockey unless written notice to the stewards has been provided.

(e) Agent's contract filed. No agent's contract with a jockey or apprentice or any assignment of that contract shall be effective unless filed with the stewards.

(f) Prohibited areas. A jockey agent is prohibited during racing hours from being present in the paddock, the winner's circle, or the saddling enclosure, unless permitted by the stewards.

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

Issued in Austin, Texas, on June 15, 1988.

TRD-8806147

Nancy Fisher
Deputy Secretary
Texas Racing Commission

Earliest possible date of adoption: July 22, 1988

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

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**Chapter 317. Rules of
Greyhound Racing**

**Subchapter A. Conduct of
Races**

- 16 TAC §§317.1, 317.3, 317.5, 317.7, 317.9, 317.11, 317.13, 317.15, 317.17, 317.19, 317.21, 317.23, 317.25, 317.27, 317.29, 317.31, 317.33

The Texas Racing Commission proposes new §§317.1, 317.3, 317.5, 317.7, 317.9, 317.11, 317.13, 317.15, 317.17, 317.19, 317.21, 317.23, 317.25, 317.27, 317.29, 317.31, and §317.33, concerning partnerships; registration, kennel names; registration, greyhounds; registration, schooling, sweepstakes entries, closing of entries, prohibited entries, entrance money and fees, grading, weights and weighting, qualifying time, post positions, scratches, declarations, dead heats, and the race. The proposed sections will allow for the orderly and efficient procedures for the conduct of greyhound races in Texas.

Nancy Fisher, deputy secretary, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections, since

the sections are adjudicative procedures for matters committed by law to the commission's jurisdiction. However, since the Texas Racing Commission is a new state agency, normal expenditures associated with setting up the agency are anticipated including but not limited to hiring necessary employees and purchasing equipment.

At this time the Texas Racing Commission is unable to establish a cost compliance comparison for small businesses with large businesses.

Ms. Fisher 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 to allow for an orderly and efficient conducting of greyhound racing in Texas. 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 Nancy Fisher, Deputy Secretary, Texas Racing Commission, P.O. Box 12080, Austin, Texas. 78711-2080, (512) 476-7223.

The new sections are proposed under the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which provide the Texas Racing Commission with the authority to adopt rules for conducting racing involving wagering and the adoption of other rules to administer the Texas Racing Act.

§317.1. Partnerships; Registration.

(a) All partnerships must be registered with the commission and the name and address of every person having any interest in a greyhound, the relative proportions of such interest, and the terms of any sales with contingencies or arrangements must be signed by all parties or by their authorized agents and filed with the racing secretary. A copy shall be transmitted immediately before the opening of the racing meeting to the office of the commission. All partners shall be jointly and severally liable for all stakes and forfeits.

(b) All statements of partnerships of sales with contingencies or arrangements shall declare to whom winnings are payable, in whose name the greyhound shall run, and with whom the power of entry or of declaration of forfeit rests. A copy of the information shall be transmitted immediately to the commission.

(c) In case of emergency, authority to sign declarations of partnership may be given to the racing secretary by a telegram promptly confirmed in writing.

(d) The part owner of any greyhound cannot assign his share or any part of it without the written consent of the other partners. The consent shall be filed with the racing secretary.

(e) Each of the partners must be licensed as an owner, and must comply with the rules covering partnerships.

§317.3. Kennel Names; Registration.

(a) A licensed owner wishing to race under a kennel name may do so by registering for the racing season with the

commission and by paying the prescribed fee.

(b) A trainer, who is also a licensed owner or part owner, may use a kennel name as owner or part owner. However, no trainer may be licensed as trainer other than in his legal name.

(c) In applying to race under a kennel name the applicant must disclose the identity behind a kennel name.

(d) If a partnership is involved in the identity behind a kennel name, each of the partners must be licensed as owner and must comply with the rules covering partnerships.

(e) If a corporation is involved in the identity behind a kennel name, it must comply with the rules covering corporations.

(f) Changes in identities involved in a kennel name must be reported immediately to and approved by the commission.

(g) A licensed owner cannot be a party to more than one kennel name at the same time, nor can he use his real name for racing purposes if he has a registered name.

(h) A licensed owner who has registered under a kennel name may at any time abandon it after he has given written notice to the commission.

(i) A kennel name may be changed at any time if the licensed owner registers a new kennel name and pays the prescribed fee.

(j) A licensed owner cannot register as his kennel name one that is then registered by any other owner.

(k) A licensed owner cannot register as his kennel name one that is the real name of any owner of greyhounds racing or one that is the real or kennel name of any prominent person not owning greyhounds.

(l) A kennel name shall be plainly distinguishable from that of another duly registered kennel name.

(m) The commission reserves the right to refuse any corporation the privilege of registering a kennel name.

§317.5. Greyhounds; Registration

(a) No greyhound shall be entered or permitted to race or to be schooled at any race track licensed by the commission unless properly registered in either the American Kennel Club Stud Book maintained and kept by the American Kennel Club, Inc., of New York City, or by the National Greyhound Association of Abilene, Kansas.

(b) A certificate of registration or a registered certificate of lease for each greyhound shall be filed with the racing secretary at the race track where the greyhound is to be schooled, entered, or raced.

(c) All certificates of registration must be available at all times for inspection

by the racing judges.

(d) All transfer of any title to, leasehold, or other interest in greyhounds schooled, entered, or racing at any track under the jurisdiction of the commission shall be registered and recorded with the American Kennel Club, Inc., of New York City, or by the National Greyhound Association of Abilene, Kansas.

(e) No title, leasehold, or other interest in any greyhound will be recognized by the commission under such title, leasehold, or other interest is evidenced by written instrument duly filed with and recorded by the American Kennel Club, Inc., of New York City, or by the National Greyhound Association of Abilene, Kansas, and certified copies are filed with the commission and the racing secretary at the track where the greyhound is to be schooled, entered, or raced.

§317.7. Schooling.

(a) Greyhounds must be properly schooled in the presence of the racing judges, and must, in the opinion of the racing judges, be sufficiently experienced before they can be entered or started.

(b) All schooling races shall be at a distance not less than the distance nearest to 5/16 mile in use at the track.

(c) Greyhounds that transfer from one track to another under the jurisdiction of the commission need not be schooled if they have raced within 10 racing days.

(d) Each official schooling race must consist of at least six greyhounds. However, if this condition creates a hardship, fewer than six may be schooled with the permission of the racing judges.

(e) No hand schooling will be considered official.

(f) A greyhound that has not been entered for a period of six racing days or has not raced for a period of 10 racing days or more shall be schooled at least once at its racing weight before being eligible for entry.

(g) All greyhounds in official schooling races must be raced at their established racing weight and started from the box wearing blankets.

(h) Any owner, trainer, or authorized agent, licensed by the commission, who has greyhounds under his care and management that are booked to race on tracks licensed by the commission, and who permits those greyhounds to be schooled on any track in this state or elsewhere, not approved by the commission during these bookings, shall be subject to the immediate revocation of his license.

(i) A greyhound may be ordered on the schooling list by the racing judges at any time. A greyhound ordered on the schooling list by the racing judges must be schooled officially and satisfactorily before

being allowed to enter a race.

(j) Each association shall provide a photo-finish camera approved by the commission to be in operation at all official schooling races.

§317.9. Entries

(a) Every person who enters a greyhound, or in any way participates in any race under these rules, obligates himself to accept these rules on all questions relating to a race.

(b) The racing secretary is the person authorized to receive entries and declarations for all races.

(c) Every entry in a race must be in the name of the registered owner or lessee, or his kennel name, and must be in writing or by telephone, immediately confirmed in writing. The full name of every person having an ownership in a greyhound, or accepting the trainer's percentage, or having any interest in its winnings, must be registered with the racing secretary before the greyhound starts any meeting, as must every change in ownership or interest, made during that meeting. A copy of the change must be promptly delivered to the commission by the racing secretary of the track where the greyhound is racing. Any failure to comply with this rule shall be punished by a fine or suspension or both, and if any objection because of such default is duly made an sustained against a greyhound that has run in a race, its winnings in that race shall be forfeited and the purse redistributed by the racing judges. Such a redistribution shall in no way affect the pari-mutuel payoff for the race.

(d) The entrance to a race shall be free unless otherwise stipulated in its conditions. If the conditions require an entrance fee, the fee must accompany the entry.

(e) Any person having an interest in a greyhound less than the interest or property of any other person is not entitled to assume any of the rights or duties of an owner as provided by these rules including the rights of entry and declaration.

(f) Joint subscriptions and entries may be made by any one or more of the owners. However, all partners shall be jointly and severally liable for all fees and forfeits.

(g) The racing officials shall have the right to call on any person in whose name a greyhound is entered to produce proof that the greyhound entered is not the property either wholly or in part of any person who is disqualified, or to produce proof of the extent of his interest or property in the greyhound, and failing of such proof shall declare the greyhound out of the race.

(h) Any person who knowingly attempts to establish the identity of a greyhound or his ownership shall be held to account the same as the owner and shall be

subject to the same penalty as in case of fraud or attempted fraud.

(i) The entries of any person or the transfer of any entry may be refused with or without notice or reason being given.

(j) If an entry from any person or of any greyhound that stands suspended or expelled is received, the entry shall be void and the money, if any, paid for the entry refunded. Any money or prize won under that entry shall be returned.

(k) The association shall have the right to withdraw or change any unclosed race.

(l) Every greyhound entered for a purse must be a starter unless it be declared or scratched.

§317.11. Sweepstakes Entries

(a) Entries for stake races, the conditions of which have previously been published, shall close at the time advertised in such publication, and no entry shall be received after that time, but in case races fail to fill, additional time may be granted.

(b) In the event the number of entries to any stake race exceeds the number of greyhounds that may be permitted to start because of track limitations, the starters for the race shall be determined by the racing secretary.

(c) An entry in a sweepstakes is a subscription and cannot be withdrawn.

(d) A greyhound shall not become a starter for a stake race unless any stake or entrance money payable in respect to that race has been paid.

(e) Entrance money is not refunded on the death of a greyhound or his failure to start.

(f) The nominator is liable for the entrance money or stake and the death of a greyhound or a mistake in its entry when eligible does not release the subscriber or transferee from liability for stakes.

(g) In the absence of notice to the contrary, entrance and declarations for sweepstakes that close during or on the eve of a racing meeting, close at the office of the racing secretary who shall make adequate provisions. Closing at all other times for sweepstakes shall be at the office of the association.

(h) Entries and declarations for sweepstakes cannot be received later than the designated hour for closing. If a closing hour is not designated, entries and declarations for sweepstakes may be mailed or telegraphed as late as midnight of the day of closing, provided they are received in time for compliance with every other condition of the race.

(i) Nominations for stake races received and postmarked before midnight of the day of closing shall be valid if received 24 hours in advance of closing overnight

entries.

(j) By entering a greyhound, a person becomes liable for the entrance money or stake.

(k) An entry of a greyhound in a sweepstake is a subscription to the sweepstakes and the subscriber is liable for stake and forfeit, but should he transfer the entry he is liable only in case of default to the transferee. Similarly, the seller of a greyhound with engagements is liable for stake or forfeit if the engagements are not kept.

(l) A person making a wrong entry or nomination shall be liable for stake and forfeits under the nomination.

§317.13. Closing of Entries.

(a) Entries that have closed shall be compiled without delay by the racing secretary and conspicuously posted.

(b) No alteration shall be made in any entry after closing of entries, but an error may be corrected.

(c) If a miscarriage of any entry or declaration in a stake is alleged, satisfactory proof that it was mailed or telegraphed must be presented within a reasonable time or it shall not be received.

§317.15. Prohibited Entries.

(a) A greyhound shall not be qualified to run in any race unless it has been and continues to be entered for the race. Unless otherwise specified by the conditions of a race, or disqualified by a violation of racing rules, any greyhound eligible at the time of entry shall continue to be qualified, except in an overnight event, in which case it must be eligible at the time of the start.

(b) No greyhound shall be permitted to start that has not been fully identified.

(c) No disqualified greyhound shall be allowed to enter or to start in any race.

(d) A greyhound shall not be qualified to be entered or to start in any race if owned in whole or in part or is under the control, directly or indirectly, of a disqualified person.

(e) No greyhound shall be permitted to enter or to start unless conditioned by a licensed trainer.

(f) No entry shall be accepted from husband or wife while either is disqualified.

(g) No greyhound on the schooling list or the veterinarian's list shall be qualified to enter or to start.

(h) In purse races, there shall be at least six greyhounds of completely different ownership. No trainer or owner shall have more than two greyhounds in any race except in stakes, sweepstakes, or a feature race without the permission of the commission. In all other purse races, the following conditions shall apply:

(1) no double entries shall be

allowed until all single interests are used and double entries shall be uncoupled for wagering purposes;

(2) the owner shall have agreed to a double entry; when no other single entry is available, the racing secretary may use a double entry without the permission of the owner;

(3) greyhounds nominated for any distance over 5/16 mile are subject to double entry without permission of the owner.

(i) No greyhound under the age of 12 months shall run in any official race other than races conditioned for greyhounds of the same age.

§317.17. Entrance Money and Fees.

(a) The entrance money and starting and subscription fees in every race shall go to the winner unless otherwise provided in the conditions of the race. When, from any cause, a race is not run off, all stakes or entrance money, if any is paid, shall be refunded.

(b) When a person is prevented by these rules from entering or starting a greyhound for any race without paying arrears for which he would not otherwise be liable, he may, by paying the same, enter or start the greyhound and have the arrears placed on the forfeit as due to himself.

(1) If the seller of a greyhound with engagements is compelled to pay arrears through the purchaser's default, he may place the amount on the forfeit list as due from the purchaser to him. This rule shall also apply in the transfer of entries when the transferee defaults.

(2) The racing secretary, with the approval of the racing judges, shall have full authority to waive the obligations incurred by this section according to the circumstances of the case.

(c) Any person not having money to his credit with the association must, before his greyhound can start, pay, in cash, if required, to the association all entrance money, stakes, and arrears then due the association or on the greyhound he intends to start.

(d) If a greyhound is sold to a disqualified person, the greyhound's racing engagements shall be void as of the date of sale.

(e) In case of fire or accident, or for other reasons, after due public notice all races or stakes may be postponed or declared off, and when so declared off, all subscriptions and declaration money paid must be refunded.

§317.19. Grading.

(a) There will be five grades for experienced greyhounds. When designating the grades of races, the letters A, B, C, D, E, S, and M will be used. Grade A shall be the highest classification and Grade E shall

be the lowest classification. Grade S indicates mixed grade, special, and stakes races. Grade M refers to Maiden classification, which indicates greyhounds that have not won an official race.

(b) At any time within a greyhound's first three starts, the racing secretary may reclassify the greyhound, but not more than one grade either higher or lower. From that classification the grading system will apply in the established manner.

(c) The winner of any graded race shall advance one grade until reaching Grade A.

(d) Greyhounds that finish farther back than third for three consecutive times while in the same grade shall be lowered one grade.

§317.21. Weights and Weighing.

(a) All greyhounds must be weighed not less than one hour before the time of the first race of the day.

(b) Before a greyhound is allowed to be schooled or to race at any track, the owner or trainer must establish its racing weight with the clerk of scales.

(c) At weighing-in time, if there is a variation of more than 1 1/2 pounds either way from its established weight, the judges shall order that greyhound scratched.

(d) At weighing-out time, if a greyhound loses weight in excess of one pound from its weighing-in weight while in the lock-out kennels, the racing judges shall order the greyhound scratched. However, on certificate from the veterinarian that such loss of weight in the lock-out kennels does not impair the racing condition of the greyhound, the racing judges may allow the greyhound to race.

(e) If at weighing-in time, there is more than a two pound variation between the weight of its present race and the weight at weighing-in time of its last race, the racing judges shall order that greyhound scratched.

(f) The weight regulations provided in subsection (a)-(d) of this section shall be printed in the daily program.

(g) The established racing weight may be changed from time to time on written request of the owner or trainer and by written consent of the racing judges, provided the change is made four calendar days before the greyhound is allowed to race at the new weight.

(1) All greyhounds having an established weight change of more than one pound must be schooled at least once, or more at the discretion of the racing judges, at the new established weight before being eligible for starting.

(2) Greyhounds that have not raced or been schooled officially for a period of three weeks, will be allowed to establish a new racing weight with the writ-

ten consent of the racing judges and may be schooled officially immediately on receipt of that written consent.

(h) The racing judges shall have the privilege of weighing a greyhound entered in a race at any period from the time the greyhound is entered in a race until post time.

(i) Immediately after being weighed in, the greyhounds shall be placed in lock-out kennels under the supervision of the paddock judge and no owner or other person except the paddock judge, veterinarian, kennel master, clerk of scales, lead-out, racing judges, or commission's representatives shall be allowed in or near the lock-out kennels.

§317.23. Qualifying Time.

(a) Each association licensed by the commission shall establish qualifying times.

(b) Each association shall notify the commission at least three days before the first day of official racing of the qualifying times established, and such times, while in effect, shall be continuously posted on the notice board at the track. Any change in the qualifying times established during the course of the meeting shall be made only with the approval of the commission.

(c) A greyhound that fails to meet the qualifying times shall not be permitted to start in any race.

§317.25. Post Position. The post position of greyhounds in starting shall be assigned by lot or drawing, supervised by the racing judges and racing secretary, at a time and place properly posted in the paddock, at least one day previous to the running of the races, so that all interested owners, trainers, or authorized agents may be present if they desire.

§317.27. Scratches.

(a) To scratch a greyhound entered in a race, sufficient cause must be given to satisfy the racing judges. All scratches and the cause must be reported immediately to the racing judges.

(b) A scratch that occurs that is the result of a violation of a racing rule must carry a penalty or suspension or both of that greyhound for a period of six racing days. Scratches for other causes must be disciplined at the discretion of the racing judges. However, if any owner or trainer fails to have a greyhound entered at the track at the appointed time for weighing-in, and as a result the greyhound is scratched, the racing judges shall impose a forfeiture or suspension or both on the person responsible.

(c) If three or more greyhounds are withdrawn or scratched in any one race, the racing judges may cancel the race.

(d) The racing judges may scratch for sufficient cause a greyhound entered in a race.

§317.29. Declarations.

(a) The declaration of a greyhound

out of an engagement is irrevocable.

(b) Declarations in sweepstakes shall be made to the racing secretary in the same manner as provided for making entries in the sweepstakes. The racing secretary shall record the day and hour of receipt and give early publicity to the declarations.

(c) Declarations in purse races shall be made by the owner, trainer, or authorized agent to the racing secretary or his assistant at least one-half hour before the time designated for the drawing of post positions on the day before on which the greyhound is to race, or at a time appointed by the racing secretary.
§317.31. *Dead Heats.*

(a) When greyhounds run a dead heat for first place, all money and prizes to which the greyhounds would have been entitled shall be divided equally among them. This rule applies in dividing prizes whatever the number of greyhounds running a dead heat. Each greyhound shall be considered a winner.

(b) When greyhounds run a dead heat for second place, they shall divide the second and third place money.

(c) When greyhounds run a dead heat for third place, they shall divide the third and fourth place money.

(d) If the dividing owners cannot agree as to which of them is to have a cup or other prize that cannot be divided, the question shall be determined by lot in the presence of one or more of the racing judges.

§317.33. *The Race*

(a) If a greyhound bolts the course, runs in the opposite direction, or does not run the entire prescribed distance for the race, it shall forfeit all rights in the race and, no matter where it finishes, the racing judges shall declare the finish of the race the same as if the greyhound were not a contender. However, for the purpose of the section, the greyhound shall be considered a starter.

(b) If a greyhound bolts the course, or runs in the opposite direction during the running of the race, and in so doing, the greyhound, in the opinion of the racing judges, interferes with any other greyhound in the race, the racing judges shall declare it no race and all money wagered shall be refunded, except when, in the opinion of the racing judges, the interference clearly does not affect the outcome of the race.

(c) If it appears that a greyhound may interfere with the running of a race because of failure to leave the box, because of an accident, or for any other reason, any person under the supervision of the racing judges, stationed around the track, may remove the greyhound from the track. However, for the purpose of this section, the greyhound shall be considered a starter.

(d) All greyhounds must wear the

regulation association muzzle and blanket while racing. Blinker muzzles must be approved by the racing judges.

(e) Muzzles and blankets must be carefully examined in the paddock by the paddock judge before the greyhounds leave for the post and again be examined before the racing judges at the racing judges' stand or before the starter at the starting box by the patrol judge.

(f) All greyhounds must be exhibited in the show paddock before post time of the race in which they are entered.

(g) After the greyhounds leave the paddock on their way to the starting point, and until the racing judges direct the gates to be reopened, all persons except the racing officials and necessary attendants shall be excluded from the track.

(h) No race shall be called official unless the lure is in advance of the greyhounds at all times during the race and if, at any time during the race, any greyhound catches or passes the lure, the racing judges shall declare it no race and all money shall be refunded.

(i) The racing judges shall closely observe the operation of the lure and hold the lure operator to strict accountability for any inconsistency of operation.

(j) If a greyhound is left in the box when the doors of the starting box open at the start, there shall be no refund, but if one or more greyhounds are prevented from leaving the box at the start because of being locked in the starting box, the money wagered on those greyhounds shall be deducted from the pool and shall be refunded. The racing judges shall make the sole decision on the question of which greyhounds are prevented from starting in a race through failure of the doors of the starting box to open.

(k) If a race is marred by jams, spills, or racing circumstances other than accident to the machinery while a race is being run, and three or more greyhounds finish, the racing judges shall declare the race finished, but if fewer than three greyhounds finish, the racing judges shall declare it no race and all money shall be refunded.

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

Issued in Austin, Texas, on June 15, 1988.

TRD-8806148

Nancy Fisher
Deputy Secretary
Texas Racing Commission

Earliest possible date of adoption: July 22, 1988

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

Subchapter B. Greyhound Racing Officials

• 16 TAC §§317.51, 317.53, 317.55, 317.57, 317.59, 317.61, 317.63, 317.65, 317.67, 317.69, 317.71

The Texas Racing Commission proposes new §§317.51, 317.53, 317.55, 317.57, 317.59, 317.61, 317.63, 317.65, 317.67, 317.69, and 317.71, concerning officials, racing secretary; duties, racing judges; authority, racing judges; duties; investigations and complaints, lead-outs; duties, chart writer; duties, clerk of scales; duties, paddock judge, starter; duties, and veterinarian; duties. The proposed sections describe the racing officials which every association must appoint, and the officials qualifications and duties.

Nancy Fisher, deputy secretary, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections. However, since the Texas Racing Commission is a new state agency, normal expenditures associated with setting up the agency are anticipated, including, but not limited to, hiring necessary employees and purchasing equipment.

At this time, the Texas Racing Commission is unable to establish a cost compliance comparison for small businesses with large businesses.

Ms. Fisher 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 to allow for the orderly and efficient operation of greyhound races. 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 Nancy Fisher, Deputy Secretary, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 476-7223.

The new sections are proposed under the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which provide the Texas Racing Commission with the authority to adopt sections for conducting racing involving wagering, and the adoption of other sections to administer the Texas Racing Act.
§317.51. *Officials.*

(a) The racing officials of a greyhound racing meeting are racing judges (presiding judge and two associate judges), racing secretary, paddock judge, timer, clerk of scales, chart writer, and veterinarian.

(b) All racing officials designated in these sections shall be appointed by the commission. The successor to an official who is replaced is subject to the approval of the commission.

(c) The following positions at a greyhound racing meeting shall be designated as key personnel: director of racing, patrol judge, kennel master, operator of the mechanical lure, mutuel manager, and announcer. All key personnel shall be appointed by the association, subject to the

approval of the commission under the same conditions as set forth in subsection (b) of this section.

(d) Associations shall submit to the commission the names of all racing officials and all designated key personnel not less than 30 days before the first day of the meeting.

(e) No one interested in the result of a race, either because of ownership of any greyhound entered, or of its sire or dam, or because of bets or otherwise, shall act as racing official or designated key personnel in that race.

(f) If any owner, trainer, attendant, or any other person licensed by the commission uses profane or indecent language to a racing official, or otherwise disturbs the peace of any track enclosure, he shall be liable for a fine, suspension, or both, or may be ruled off, and such action shall be immediately reported to the commission.

(g) The racing officials have power to call on any person in whose name a greyhound is entered, to produce proof that the greyhound entered is not the property, either wholly or in part, of any person who is disqualified; or to produce proof of the extent of his interest or property in the greyhound; and in default of such proof being given to their satisfaction, the judges shall declare the greyhound out of the race.

(h) No racing official or designated key personnel of an association shall accept, directly or indirectly, any gratuity, reward, or favor in connection with racing at the meeting.

(i) No racing official may buy mutual tickets at the meeting at which he is employed. Penalty for such violation shall be immediate dismissal.

(j) Racing officials shall report to the judges all observed violations of the rules.

§317.53. Racing Secretary; Duties.

(a) The racing secretary shall discharge all duties, whether expressed or required by these sections. He shall report to the racing judges, as the case may demand, all violations of these sections, or of the regulations of the course coming under his notice. He shall keep a complete record of all races. He shall receive all stakes, entrance money, arrears, and fines, and pay over all money collected by him to such officers or persons entitled to receive it.

(b) The racing secretary shall receive all entries and declarations.

(c) The racing secretary shall inspect owners' and trainers' licenses, and all papers and documents dealing with trainers and owners, partnership agreements, appointment of authorized agents, and adoption of kennel names, and may demand production of those papers to satisfy himself as to their validity and authenticity, and that the rules in regard to them have been

compiled with. Those papers shall be available to the racing judge at all times.

(d) Conditions of races shall not conflict with these sections.

(e) The racing secretary shall view the running of each race from positions designated for that purpose by the association.

(f) The racing secretary shall each day, as soon as the entries have closed and have been compiled and the declarations have been made, post a list of the entries in a conspicuous place.

§317.55. Racing Judges; Authority.

(a) There shall be three racing judges. The judge designated by the commission as presiding judge shall, in addition to his duties as a judge, make out a report of any action of the racing judges when a report is required under these sections, and shall transmit the reports to the commission. All reports submitted shall be signed by a majority of the racing judges.

(b) The laws of this state and these sections supersede the conditions of a race and the regulations of a race meeting, and, in matters pertaining to racing, the orders of the racing judges supersede the orders of the officers of the association.

(c) The racing judges shall have the power to interpret the rules and to decide all questions not specifically covered by the rules.

(d) Should any case occur that may not be covered by these sections of racing, it shall be determined by the racing judges, in conformity with justice and in the best interest of racing.

(e) All questions pertaining to the extent of their authority shall be determined by a majority of the racing judges.

(f) The racing judges shall have general supervision over owners, trainers, grooms, and other persons attendant on greyhounds, and also over all the other officials and licensed personnel of the meeting.

(g) The racing judges shall have control over and free access to all stands, weighing rooms, enclosures, and all other places in use for the purpose of racing.

(h) All entries and declarations are under the supervision of the racing judges and they may, without notice, refuse the entries of any person or the transfer of any entries.

(i) The racing judges shall have the power to determine all questions arising with reference to entries and racing.

(j) Persons entering greyhounds to run on licensed Texas tracks agree in so doing to accept the decision of the racing judges on any questions relating to a race or racing.

(k) The racing judges shall have the power to punish for violation of the rules

any person subject to their control and in their discretion to impose fines or suspensions or both for infractions.

(l) The racing judges may suspend a person or disqualify a greyhound.

(m) The racing judges shall have the power to order the exclusion or ejection from all premises and enclosures of the association any person who is disqualified for corrupt practices on a racing course in any country.

(n) The racing judges shall have the power to call for proof that a greyhound is neither itself disqualified in any respect, or nominated by or the property, wholly or in part, of a disqualified person. In default of proof being given to their satisfaction, the racing judges may declare the greyhound disqualified.

(o) The racing judges shall have the power at any time to order an examination by a person of any greyhound entered for a race or that has run in a race.

§317.57. Racing Judges; Duties, Investigation, and Complaints.

(a) The racing judges shall take notice of any questionable conduct with or without complaint.

(b) The racing judges shall investigate promptly and render a decision on every objection and on every complaint made to them.

(c) The racing judges shall report all objections and complaints to the commission as soon as received by them, and shall make a prompt report of their investigation and decision to the commission.

(d) Complaints against an official shall be made to the racing judges in writing, signed by the complainants. All complaints shall be reported to the commission together with action taken on them by the racing judges. If a complaint involves the racing judges, it shall be made directly to the commission.

(e) The racing judges shall order the exclusion from all places under their control of persons who are warned or ruled off. They may also order the exclusion of any person declared guilty of corrupt or fraudulent practices by greyhound racing authorities of any other state, or by the racing judges of any recognized meeting. The names of all persons ordered excluded shall be promptly reported to the commission.

(f) The racing judges shall take notice of corrupt racing and other questionable transactions on the track. Complaint of corrupt racing or a questionable transaction may be made by any person, but in the failure of the complainant, if an owner, trainer, or authorized agent, to substantiate the charge, he may be liable for a fine, suspension, or both.

(g) During each racing day, a ma-

majority of the racing judges of the meeting shall be at the office building on the grounds of the association where the racing meeting is being held, not later than weighing-in time, to exercise the authority and perform the duties imposed on the racing judges by these rules.

(h) If only one racing judge is present in the stand, the association shall name one or more persons to serve with him. If no racing judges are present, the association shall name at least two persons to serve during the absence of the racing judges, immediately filing a written report with the commission.

(i) When a vacancy occurs among the racing officials other than the racing judges before post-time of the first race of the day, or when a vacancy occurs after the racing of the day has started, the racing judges shall immediately fill the vacancy. The appointment shall be effective only for the day. The racing judges shall report such an appointment immediately to the commission.

(j) A greyhound, after leaving the paddock for the post, may be excused by the racing judges, but only in cases where they consider the greyhound crippled, disabled, or unfit to run. All money wagered on the greyhound shall be refunded.

(1) After a greyhound has been placed in the starting box, no refund shall be made and all wagers stand. In case of mechanical failure to the starting box when a greyhound is prevented from starting, a full refund shall be made on the greyhound.

(2) The decision of the starter as to whether that greyhound was prevented from starting by a mechanical failure shall be final and such decision shall be immediately reported to the racing judges.

(k) The racing judges shall decide which greyhound wins, and assign the respective places to as many greyhounds as they think proper. In determining the places of the greyhounds at the finish of the race, the racing judges shall consider only the relative position of the respective muzzles of the greyhounds. In the event that a greyhound loses its muzzle or finishes with a hanging muzzle, the racing judges shall consider only the relative position of the nose of the greyhound and the muzzles of the other greyhounds in the race.

(l) The racing judges shall promptly display the numbers of the first three greyhounds in each race in order of their finish. If the racing judges differ in their placing, the majority shall prevail.

(m) On all tracks, a proper camera shall be installed as an aid to the racing judges; however, in all cases, the camera is merely an aid, and the decision of the racing judges shall be final. The commission shall approve the type of equipment used. Each association shall keep on file for a reasonable time after the close of the meet-

ing, each plate or film of each race for reference or reproduction on request of the commission.

(n) Whenever it is considered advisable to consult a picture from the finish camera, the racing judges may post without waiting for a picture, the placements they consider unquestionable and, after consulting the picture, make other placements. However, in no case shall the race be declared official until the racing judges have determined the greyhounds finishing first, second, and third.

(o) Nothing in these sections shall be construed to prevent the racing judges from correcting an error before the display of the sign showing the race as "official" or from recalling the sign showing the race as "official" in case it has been displayed through error.

(p) Any greyhound may be placed on the schooling list by the racing judges at any time.

(q) The racing judges shall make a daily written report to the commission of all infractions of the rules, and of all rulings of the racing judges on matters coming before them during the meeting.

§317.59. Lead-Outs; Duties.

(a) Owners, trainers, or attendants will not be allowed to lead their own greyhounds from the paddock to the starting box, except in schooling races. The greyhounds shall be led from the paddock to the starting box by lead-outs provided by each association for that purpose.

(b) Lead-outs will be required to present a neat appearance, conduct themselves in an orderly manner, and be attired in clean uniforms provided by the association.

(c) The lead-out must out his greyhound in its proper box before the race and then retire to his assigned place.

(d) No lead-out will be permitted to have any interest in the greyhounds racing for the association.

(e) Lead-outs shall be assigned to post position by the paddock judge by lot before each race, and a record of the position shall be maintained.

(f) Lead-outs are prohibited from holding any conversation with the public or with one another in the paddock, en route to the starting post, or while returning to the paddock.

(g) Lead-outs are prohibited from smoking while in uniform and on duty.

(h) Lead-outs are prohibited from wagering on the result of any greyhound racing at the track where they are assigned.

§317.61. Chart Writer; Duties.

(a) The chart writer shall compile the information necessary for a program which shall be printed for each racing day,

and shall contain the names of the greyhounds that are to run in each of the races for that day. The names shall appear in the order of their post positions to be designated by numerals placed at the left and in lines with the names of the greyhounds in each race. The appropriate numeral shall also be prominently displayed on each greyhound.

(b) The program or form sheet must carry at least two past performances of each greyhound at the track where it is to race. However, if a greyhound has raced within 10 racing days at a track under the jurisdiction of the commission, not fewer than two past performances of the greyhound at that track may be carried on the program or form sheet.

(c) All past performances as shown in the program shall be in order of the races or official schoolings held, the latest performance appearing on the first line.

(d) The program or form sheet must also contain the name, color, sex, date of whelping, breeding, established racing weight, number of starts in official races, and number of times finishing first, second, and third, name of owner or lessee or both, name of trainer, distance of race, track record, and other information that will enable the public to properly judge the greyhound's ability.

(e) In case the name of a greyhound is changed, the new name and the former name shall be published in the official entries and program until after the greyhound has started six times.

§317.63. Clerk of Scales; Duties.

(a) The clerk of scales shall weigh greyhounds in and out on a scale sealed by the duly authorized sealer of weights and measures, and shall exhibit the accurate weight of each greyhound on the weight board. The established racing weight, weighing-in weight, and weighing-out weight shall be promptly posted on the weight board for the information of the public.

(b) The clerk of scales shall record as soon as the weights are exhibited, any overweight or variation from the weight appearing on the weight sheet.

(c) The clerk of scales shall deliver to the racing judges a copy of the weight sheet before each day's race.

(d) All greyhounds must be weighed in and weighed out in a uniform manner.

(e) The clerk of scales shall promptly report to the racing judges any infraction of the rules as to weight or weighing.

§317.65. Paddock Judge.

(a) No greyhound shall be permitted to start in a schooling or purse race if the greyhound has not been fully identified and checked against the card index system

of identification maintained by each association. The identification cards shall be filled in and completed by the paddock judge before greyhounds are entered for schooling or for a purse race.

(b) The paddock judge shall fully identify and check against the card index system of identification maintained by the association all greyhounds starting in schooling and purse races. He shall report to the racing judges any greyhound that does not conform to the card index identification.

(c) Under the supervision of the paddock judge, the kennel master shall unlock the kennels immediately before weighing-in time to see that the kennels are in perfect repair, and that nothing has been deposited in any of the kennels for the greyhounds' consumption. He shall see that the kennels are sprayed, disinfected, and kept in proper sanitary condition. He or his assistant must receive the greyhounds from the trainer, one at a time, see that each greyhound is placed in its kennel, and remain on guard from that time until the greyhounds are removed for the last race.

(d) As each greyhound is weighed in, an identification tag shall be attached to its collar indicating the number of the race in which the greyhound is entered and its post position. The tag shall not be removed until the greyhound has been weighed out and blanketed.

(e) The paddock judge shall not allow any person to weigh in a greyhound for racing, unless the person has in his possession a valid owner's or trainer's license issued by the commission.

(f) After the greyhounds are placed in the lock-out kennels, no person other than the kennel master, racing officials, persons approved by the commission, or designated representatives of the commission shall be allowed in or near the lock-out kennels. At no time shall fewer than two such authorized persons be present in the lock-out kennels.

(g) The paddock judge shall carefully compare the identification card with the greyhound while it is in the paddock before post time.

(h) Before leaving the paddock for the starting box, each greyhound must be equipped with a regulation muzzle and blanket. The muzzles and blankets shall be approved by the paddock judge and shall be carefully examined by him in the paddock before the greyhound leaves for the post. §317.67. *Starter; Duties.*

(a) The starter shall give orders and take all measures not in conflict with these sections as necessary to secure a fair start.

(b) The greyhounds shall be started from a type of starting box approved by the commission and there shall be no start until, and no recall after, the doors of the starting

box have opened.

(c) The starter shall report causes of delay, if any occur, to the racing judges.

(d) A false start, due to any faulty action of the starting box, break in the machinery, or other cause, is void, and the greyhounds may be started again as soon as practicable, or the race may be canceled at the discretion of the racing judges. §317.69. *Timer; Duties.*

(a) The timer shall be responsible for the timing of each race. He shall time each race by hand using a stopwatch checked and certified by a competent watchmaker.

(b) The timer shall declare the official time of the race.

(c) The time of the race shall be taken from the opening of the doors of the starting box.

(d) Each association shall be required to install an automatic timing device approved by the commission. The timer shall use the time shown on the timing device as the official time of the race if he is satisfied that the timing device is functioning properly; otherwise, he shall use the time shown on the stopwatch. When the stopwatch time is used as the official time of the race, that fact shall be announced to the public. §317.71. *Veterinarian; Duties.*

(a) Each association licensed by the commission shall be serviced by at least one graduate veterinary surgeon licensed to practice under the laws of this state. The veterinarian shall be on the grounds of the association at weighing-in time and during all racing hours.

(b) The veterinarian shall make an examination of the physical condition of each greyhound at weighing-in time.

(c) Any greyhound the veterinarian does not consider in proper physical condition shall be reported through the paddock judge to the racing judges, who shall order the greyhound scratched out of the race for which it is entered.

(d) It shall be the duty of the veterinarian to make his final examination and inspection of all greyhounds during the time they are in the paddock before they leave for the track. If he finds any greyhound not in proper physical condition, the greyhound shall be reported through the paddock judge to the racing judges, who shall order such greyhound scratched.

(e) Bitches in season are not permitted on the track.

(f) Bitches coming in season during the racing meeting must not be accepted from entry within 90 days from the date of coming in season.

(g) Bitches in milk are not eligible to be schooled or to race.

(h) Bitches in season must be reported to the racing judges and the veterinarian. Owners and trainers failing to report this condition promptly shall be fined, suspended, or both.

(i) Bitches that have not raced in 10 days shall be brought to the paddock at weighing-in time for inspection by the veterinarian at least once each week. Bitches not brought in on report of the veterinarian shall be declared off for the balance of the meeting. In cases where a bitch has been prevented from racing because of an injury, the judges, on certification of such injury by the veterinarian, may modify or waive the provisions of this rule.

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

Issued in Austin, Texas, on June 15, 1988.

TRD-8806149 Nancy Fisher
Deputy Secretary
Texas Racing Commission

Earliest possible date of adoption: July 22, 1988

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

Chapter 319. Medication and Drug Testing Regulations

Subchapter A. General Provisions and Procedures

- 16 TAC §§319.1, 319.3, 319.5, 319.7, 319.9, 319.11, 319.13, 319.15, 319.17, 319.19, 319.21, 319.23, 319.25, 319.27, 319.29, 319.31, 319.33, 319.35, 319.37, 319.39, 319.41, 319.43, 319.45, 319.47

The Texas Racing Commission proposes new §§319.1, 319.3, 319.5, 319.7, 319.9, 319.11, 319.13, 319.15, 319.17, 319.19, 319.21, 319.23, 319.25, 319.27, 319.29, 319.31, 319.33, 319.35, 319.37, 319.39, 319.41, 319.43, 319.45, and 319.47, concerning testing authorized, punishment authorized, reasonable diligence required, purses, stakes and trophies returned or denied, racing prohibited, hearings held, owner, representative present, interference with testing prohibited, samples retained by the commission representative, purse held, submission required, witness permitted, devices prohibited, access and entry authorized, ruled off, cooperation required, commission review authorized, samples retained, charges for tests audited and approved, charges paid by association, outs may be used, licenses required, laboratories approved, and commission veterinarian employed. The proposed sections contain general provisions and procedures for medication and drug testing in greyhounds and horses which will be racing in Texas.

Nancy Fisher, deputy secretary, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local govern-

ment or small businesses as a result of enforcing or administering the sections, since the sections are adjudicative procedures for matters committed by law to the commission's jurisdiction. However, since the Texas Racing Commission is a new state agency, normal expenditures associated with setting up the agency are anticipated including but not limited to hiring necessary employees and purchasing equipment.

At this time, the Texas Racing Commission is unable to establish a cost compliance comparison for small businesses with large businesses.

Ms. Fisher 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 to allow for an orderly and efficient procedure for administration of medication and drug testing of greyhounds and horses which are under the Texas Racing Commission's jurisdiction. 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 Nancy Fisher, Deputy Secretary, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 476-7223.

The new sections are proposed under the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which provide the Texas Racing Commission with the authority to adopt rules for conducting racing involving wagering and the adoption of other rules to administer the Texas Racing Act.

§319.1. Testing Authorized. Urine, blood, saliva and other specimens or any combination of specimens shall be taken and tested from any horses or greyhounds the stewards, racing judges or the commission's representatives may designate upon reasonable cause. Such tests are to be under the supervision of the commission using state of the art methods. The specimens shall be collected by the veterinarian or another person the commission may designate.

§319.3. Punishment Authorized. If the stewards or judges find that any drug, stimulant, depressant, or local anesthetic or electric device has been administered or attempted to be administered internally or externally to a horse or greyhound before a race, which is of such character as could affect the racing condition of the horse or greyhound in the race, the animal shall be immediately disqualified and the stewards or racing judges may immediately suspend and take other action they consider proper under any of the rules including reference to the commission, against every owner, lessee, or trainer responsible for the proper care and protection of the horse or greyhound and against every person found by them to have administered, attempted to administer, caused to be administered, caused an attempt to administer, or conspired with another person to administer such a drug, stimulant, depressant, or local anesthetic. Such a suspension may be stayed in the discretion of the commission only during the pending of such appeal.

§319.5. Reasonable Diligence Re-

quired. The owner, trainer, groom, or any other person having charge, custody, or care of horse or greyhound is obligated to protect the horse or greyhound properly and guard it against such administration or attempted administration, and if the stewards or racing judges find that any such person has failed to show reasonable diligence in protecting and guarding of the horse or greyhound, or if the stewards or racing judges find that any owner, lessee, or trainer is guilty of negligence, they shall impose punishment and take other action they consider proper under any of the rules including reference to the commission.

§319.7. Purses, Stakes and Trophies Denied or Returned. The owner or lessee of a horse or greyhound found to have received such administration shall be denied or shall promptly return any portion of the purse or sweepstakes together with any trophy in the race, and the purse or sweepstakes shall be distributed as in the case of a disqualification. If a horse or greyhound is disqualified in a race because of this rule, the eligibility of other horses or greyhounds that ran in that race and that have started in a subsequent race before announcement of the disqualification shall not be in any way affected.

§319.9. Racing Prohibited. The stable or kennel of the owner under investigation for violation of §319.3 of this title (relating to Punishment Authorized) shall not be permitted to race until a hearing has been held by the stewards or racing judges and a decision has been rendered.

§319.11. Hearings Held. Hearings concerning the violation of medication and drug rules shall be held by and before the stewards or racing judges. A representative of the commission may be present as an observer at all such hearings.

§319.13. Owner, Representative Present. The owner, trainer, or authorized representative shall be present in the testing area when a urine or other specimen is taken from a horse or greyhound and shall remain until the sample tag is signed by the owner, trainer, or authorized representative as witness to the taking of the specimen.

§319.15. Interference with Testing Prohibited. Willful failure to be present at or refusal to allow the taking of any specimen, refusal to sign the specimen tag to the taking of a specimen, or any act or threat to impede, prevent, or otherwise interfere shall be reported to the steward or racing judges who shall subject the guilty person to immediate suspension by the stewards or racing judges of the meeting, and the matter shall be referred to the commission for any further action the commission may determine.

§319.17. Samples Retained By Commission Representative. The representative of the commission may take for analysis samples of any medicine or other materials suspected of containing improper medications or drugs that may be found in the track area or in the possession of any person connected with racing on the track if those

drugs could affect the racing condition of a horse or greyhound in a race.

§319.19. Purse Held. Any portion of the purse, if not already paid, that is to be redistributed in accordance with the provisions of §319.7 of this title (relating to Purses, Stakes and Trophies Denied or Returned) shall be held until the redistribution is approved by the commission. This rule shall apply only to the amount payable to the owner of a disqualified horse or greyhound, and shall not prevent payment due to other horses or greyhounds in the race pending approval of the commission.

§319.21. Submission Required. Every owner, trainer, or authorized agent shall immediately, whenever requested by the commission, submit any horse or greyhound of which he is the owner, trainer, or authorized agent, to any veterinary surgeon designated by the commission for any examination or test the veterinarian may consider advisable.

§319.23. Witnesses Permitted. Any examination or test made by the veterinarian designated by the commission may be witnessed by the commission or any of its representatives, and by the owner or his authorized agent, or by the trainer of the horse or greyhound.

§319.25. Devices Prohibited. No person within the track enclosure of a horse or greyhound racing association licensed by the commission, shall have in or on the premises that he occupies or controls or has the right to occupy or control in the track enclosure or in his personal property or effects in the track enclosure any hypodermic syringe, hypodermic needle, or other device that could be used for the injection or other infusion into a horse or greyhound of a drug, stimulant, narcotic, depressant, or local anesthetic. Every association licensed by the commission is required to use all reasonable efforts to prevent the violation of this rule.

§319.27. Access and Entry Authorized. Every association, the commission, and the stewards, or racing judges, or any of them, shall have the right to permit a person authorized by any of them to enter the buildings, rooms, or other places in the track enclosure of such an association and to examine the same and to inspect and examine the personal property and effects of any person in such place. Every person who has been granted a license by the commission, by accepting his license, consents to such search and seizure of any hypodermic needles or other devices, and any drugs, stimulants, narcotics, depressants, or local anesthetics apparently intended to be or that could be used in connection with them.

§319.29. Ruled Off. Any person may be ruled off all tracks in this state if found guilty by the commission of any participation in or knowledge of the fact that any drug, narcotic, stimulant, depressant, or local anesthetic, or any electrical or mechanical device, or other application has been used that, in the opinion of the stewards or

racing judges, is of such character as could affect the racing condition of a horse or greyhound in a race.

§319.31. Cooperation Required. Every association and all officials and employees of every association shall give every possible assistance to any department, bureau, division, officer, agent, inspector, or any other person connected with the government of the United States of the State of Texas who may be investigating or prosecuting any person suspected of being guilty of possessing any drug, narcotic, stimulant, depressant, local anesthetic, hypodermic syringes, or hypodermic needles, or any electrical, mechanical, or other device that, in the opinion of the stewards or racing judges, is of such character as could affect the racing condition of a horse or greyhound in a race.

§319.33. Commission Review Authorized. Nothing contained in any of the sections of this subchapter shall alter or diminish the power of the commission or its sections to review or originate action in any case covered by any of the sections set forth in this subchapter.

§319.35. Samples Retained. All urine samples shall be frozen and maintained by the commission or its designee for a period of one year in order to enable veterinarians and chemists to conduct follow-up tests to detect and identify prohibited drugs. All other specimens shall be maintained by the commission or its designee for testing purposes for 90 days after the race meeting at which it was obtained.

§319.37. Charges for Tests Audited and Approved. Charges for services performed in the process of testing samples required under this chapter shall be forwarded to the commission for auditing and approval as to the reasonableness of the charges for services. Charges may include, but are not limited to, expenses incurred for travel, lodging, testing, and processing of test results. On approval of the charges as reasonable, the commission shall forward a copy of the charges to the association that receives the services.

§319.39. Charges Paid By Association. On receipt of the approved charges, the association receiving the services shall immediately forward payment to the agency which provided the services.

§319.41. Outs May Be Used. Associations may use the proceeds of uncashed tickets, or the outs, to pay approved testing charges. If the outs are not sufficient to pay the charges, the association shall pay the additional amounts needed to pay the charges.

§319.43. Licenses Required. All persons conducting tests under this chapter must be licensed by the commission.

§319.45. Laboratories Approved. Unless the test is conducted by the Texas Veterinary Medical Diagnostic Laboratory, each test required by this chapter shall be conducted at a public or private diagnostic laboratory accredited by the American Association of Veterinary Laboratory Diagnosticians, which is approved by both the commission and the Texas Veterinary Med-

ical Diagnostic Laboratory. Each association shall nominate for approval one or more laboratories to conduct its tests under this chapter not less than 60 days prior to the race meeting at which the testing will be necessary. If approval is received as provided in this section, no further approval is required for any subsequent race meeting held during the calendar year if the same laboratories are used by the association.

§319.47. Commission Veterinarian Employed.

(a) General duties. The commission shall employ veterinarians authorized to:

(1) maintain and operate a barn for the detention and testing of greyhounds or horses after each race;

(2) collect specimens for analysis to determine the presence of prohibited substances in any entered greyhound or horse; and

(3) examine any greyhound or horse entered in any race and may, on a determination of unfitness to run, recommend to the racing judges or stewards that they scratch the greyhound or horse.

(b) Racing soundness examination. Every greyhound or horse entered to race shall be subjected to a veterinary examination for racing soundness and health on a race day, not later than two hours before official post time for the first race.

(c) Post race sampling and testing.

(1) Winner tested. After each race, the winner of each race and any other greyhound or horse designated by the stewards or racing judges, shall be taken directly to the enclosure for testing that the commission representative may require. Blood samples shall be taken only by a veterinarian.

(2) Representative present. Each greyhound or horse to be tested shall be accompanied by its owner, trainer, or the representative of either who shall remain during the testing and sign as a witness on the sample marking tag, which will be detached and safeguarded by the commission representative before the sample is forwarded to an approved laboratory.

(3) Custody of samples. Samples taken shall be marked for identification by a two-part tag initialed by the commission representative that includes on both parts an identical number, and the date of sample, and on the commission part the name of the greyhound or horse, and its owner or trainer. The numbered part shall be delivered under the seal of the commission to an approved testing laboratory. The identified part shall be retained by the commission veterinarian until the results are obtained from the laboratory at which time the sample tag shall be filed with the commission.

(4) Commission laboratory. The laboratory shall ensure the integrity of samples and sample containers.

(5) Sample retention. The laboratory shall retain and preserve by freezing samples for future analysis in accordance with §319.35 of this title (relating to Samples Retained).

(6) Postmortem examination. Every horse that suffers a breakdown on the race track, in training, or in competition, and is destroyed, and every other horse that expires while stabled on association grounds under the jurisdiction of the commission, shall undergo a postmortem examination at a time and place acceptable to the commission veterinarian to determine the injury or sickness that resulted in euthanasia or natural death.

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

Issued in Austin, Texas, on June 14, 1988

TRD-8806150

Nancy Fisher
Deputy Commissioner
Texas Racing Commission

Earliest possible date of adoption: July 22, 1988

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

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**Subchapter B. Alcohol and
Drug Testing of Licensees
and Employees**

• **16 TAC §§319.77, 319.79, 319.81**

The Texas Racing Commission proposes new §§319.77, 319.79, and 319.81, concerning alcohol prohibition/breathalyzer test, drug prohibition/body fluid test, procedures following positive chemical analysis. The proposed sections provide for alcohol and drug testing for licensees and employees at the race tracks.

Nancy Fisher, deputy secretary, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections, since the sections are adjudicative procedures for matters committed by law to the commission's jurisdiction. However, since the Texas Racing Commission is a new state agency, normal expenditures associated with setting up the agency are anticipated including but not limited to hiring necessary employees and purchasing equipment.

At this time, the Texas Racing Commission is unable to establish a cost compliance comparison for small businesses with large businesses.

Ms. Fisher 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 to ensure that the licensees and employees of any entity associated with the conduct of racing, which on the grounds of a licensed racetrack shall have within his system any amount of alcohol or drug that would constitute a legal impairment or intoxication. 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 Nancy Fisher, Deputy Secretary, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 476-7223.

The new sections are proposed under the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which provide the Texas Racing Commission with the authority to adopt rules for conducting racing involving wagering and the adoption of other rules to administer the Texas Racing Act.

§319.77. *Alcohol Prohibition/Breathalyzer Test.*

(a) No licensee or employee of any entity associated with the conduct of racing while on the grounds of a licensed racetrack shall have present within his system any amount of alcohol that would constitute legal impairment or intoxication.

(b) Acting with reasonable cause, the stewards, racing judges, or a designated racing commission representative may direct any such licensee or employee to submit to a breathalyzer test. The licensee or employee shall when so directed submit to the test. If the results show a reading of .05% alcohol content or more, the licensee or employee shall not be permitted to continue his duties for that day. Such licensee or employee shall then be subject to fine or suspension by the stewards, racing judges, or the commission.

(c) For a subsequent violation the licensee or employee may be subject to procedures following positive chemical analysis.

§319.79. *Drug Prohibition/Body Fluid Test.*

(a) No licensee or employee of any entity associated with the conduct of racing while on the grounds of a licensed or franchised racetrack shall have present within his system any controlled substance as listed in schedule I-V of the United States Code, Title 21 (Food and Drugs §812), or any prescription legend drug unless such prescription legend drug was obtained directly or under valid prescription or order from a duly licensed physician, who is acting in the course of his professional practice.

(b) Acting with reasonable cause, the stewards, racing judges, or designated racing commission representative may direct any such licensee or employee to deliver a specimen of urine in the presence of the track physician or subject himself to the taking of a blood sample or other body fluids by the track physician or other duly licensed physician appointed by the racing commission.

(c) In such cases the stewards, racing judges, or the designated racing commission representative may prohibit such a licensee or employee from participating in the day's racing or until such time as the licensee or employee evidences a negative test result. Sufficient sample should be col-

lected to ensure a quantity for a split sample when possible.

(d) Refusal by a licensee or employee to provide the samples herein described, as so directed, shall be in violation of these rules and shall subject the licensee or employee to sanction by the stewards, racing judges, the commission, or its section.

(e) All testing shall be at the expense of the racing association.

§319.81. *Procedures Following Positive Chemical Analysis.*

(a) For a licensee's or employee's first violation he shall not be allowed to participate in racing until such time as his condition has been professionally evaluated.

(1) After such a professional evaluation, if the licensee's or employee's condition proves nonaddictive and not detrimental to the best interest of racing, the licensee or employee shall be allowed to participate in racing provided he can produce a negative test result and agrees to further testing at the discretion of the stewards, racing judges, or designated commission representative to ensure his unimpairment.

(2) After such a professional evaluation, should the licensee's or employee's condition prove addictive or detrimental to the best interest of racing, the licensee or employee shall not be allowed to participate in racing until such time as he can produce a negative test result and show documented proof that he has successfully completed a certified alcohol/drug rehabilitation program approved by the commission. The licensee or employee must agree to further testing at the discretion of the stewards, racing judges, or commission representative to ensure his unimpairment.

(b) For a licensee's or an employee's second violation, he shall be suspended and allowed to enroll in a certified alcohol/drug rehabilitation program approved by the commission, to apply for reinstatement only at the discretion of the commission.

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

Issued in Austin, Texas, on June 14, 1988

TRD-8806151 Nancy Fisher
Deputy Commissioner
Texas Racing Commission

Earliest possible date of adoption: July 22, 1988

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

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Chapter 321. Pari-mutuel Wagering and Disposition of Pari-mutuel Pools

- 16 TAC §§321.1, 321.3, 321.5, 321.7, 321.9, 321.11, 321.13, 321.15, 321.17, 321.19, 321.21, 321.23, 321.25, 321.27

The Texas Racing Commission proposes new §§321.1, 321.3, 321.5, 321.7, 321.9, 321.11, 321.13, 321.15, 321.17, 321.19, 321.21, 321.23, 321.25, and 321.27, concerning general, totalisator system, records, calculation and distribution of pools, minimum wager and payoff, minors prohibited from wagering, odds of payoffs posted, betting explanation, prior approval required for betting pools, pools dependent on entries, pari-mutuel ticket sales, betting interests involving more than one horse or greyhound, emergency situations, and totalisator employees. The new proposed sections provide for pari-mutuel wagering on races conducted by an association under the pari-mutuel system employing a state of the art totalisator system that has been approved by the commission.

Nancy Fisher, deputy secretary, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections, since the sections are adjudicative procedures for matters committed by law to the commission's jurisdiction. However, since the Texas Racing Commission is a new state agency, normal expenditures associated with setting up the agency are anticipated including but not limited to hiring necessary employees and purchasing equipment.

At this time, the Texas Racing Commission is unable to establish a cost compliance comparison for small businesses with large businesses.

Ms. Fisher 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 to allow for an orderly and efficient procedure for administration of pari-mutuel wagering and disposition of pari-mutuel pools under the Texas Racing Commission's jurisdiction. 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 Nancy Fisher, Deputy Secretary, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 476-7223.

The new sections are proposed under the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which provide the Texas Racing Commission with the authority to adopt rules for conducting racing involving wagering and the adoption of other rules to administer the Texas Racing Act.

§321.1. *General.* Each association may permit wagering only on races conducted by the association on the grounds of the association except as otherwise permitted by the commission and state law. All permitted wagering shall be under the pari-mutuel system employing a state of the art

totalisator system approved by the commission. All other systems of wagering other than pari-mutuel are prohibited.

§321.3. *Totalisator System.* Each association shall install and operate during its meeting a state of the art totalisator system approved by the commission, and the system shall be tested before and during the meeting as required by the commission.

§321.5. *Records.* The pari-mutuel (mutuels) manager shall maintain complete records of all wagering so that the commission may review the records for any race including the opening line, subsequent odds fluctuation, the amount and at which window wagers were placed on any betting interest, and other information the commission may require. The wagering records shall be retained by each association and safeguard for a period of time specified by the commission.

§321.7. *Calculation and Distribution of Pools.*

(a) General. The only pari-mutuel wagering pools permitted shall be for win, place, show, daily double, quinella, exacta, and trifecta, each with separate and independent calculation and distribution. From each pool there shall be deducted by each association the commissions as provided by state law. Odd cents over any multiple of 10 cents of winning per dollar wagered are deducted, except in the event a minus pool occurs, in which case the breakage shall be in multiples of five cents, and retained by the licensee for distribution according to the Texas Racing Act, §6.08 and §6.09. The remainder of the money in the pool shall constitute the net pool for distribution as payoff to ticket holders as follows.

(b) Win pool. The amount wagered on the horse, greyhound or betting interest that finishes first is deducted from the net pool, the balance remaining being the profit; the profit is divided by the amount wagered on the horse, greyhound or betting interest finishing first, such quotient being the profit per dollar wagered to win; payoff includes return of amount wagered and profit thereon.

(1) In the event of a dead heat for first involving horses or greyhounds of two different betting interests, the win pool is distributed as if a place pool; if involving horses or greyhounds of three different betting interests, the win pool is distributed as if a show pool.

(2) In the event no win ticket is sold on the horse or greyhound that finishes first, the net win pool is distributed to holders of win tickets on the horse or greyhound finishing second.

(c) Place pool. The amounts wagered to place on the first two horses or greyhounds to finish are deducted from the net pool to determine the profit; the profit is divided into two equal amounts; one-half of the profit is divided by the amount wagered to place on the first finisher, such quotient

being the profit per dollar wagered to place on the first finisher; and one-half of the profit is divided by the amount wagered to place on the second finisher, such quotient being the profit per dollar wagered to place on the second finisher; payoffs include return of amount wagered and profit thereon as to each of the first two finishers.

(1) In the event of a dead heat for first between horses or greyhounds representing the same betting interest, the place pool is distributed as if a win pool; if between horses or greyhounds representing two different betting interests, the place pool is distributed as if one betting interest finished first and the other finished second; if between horses or greyhounds representing three different betting interests, the place pool is distributed as if a show pool.

(2) In the event of a dead heat for second between horses or greyhounds representing the same betting interest, the place pool is distributed as if no dead heat occurred; if between horses or greyhounds representing two or more different betting interests, the profit is divided in half, with one-half allocated for wagers to place on the horse or greyhound that finishes first, and the other half divided equally so as to allocate one-fourth of the profit on the net place pool for wagers to place on each of two horses or greyhounds finishing in a dead heat for second, or one-sixth of the profit for wagers to place on each of three horses or greyhounds finishing in a dead heat for second.

(3) In the event the first and second finishers comprise a single betting interest, the place pool is distributed as if a win pool.

(4) In the event no place ticket is sold on a horse or greyhound that finishes first or second, the horse or greyhound that finishes third shall replace that horse or greyhound in the distribution of wagers in the place pool.

(d) Show pool. The amounts wagered to show on the first three horses or greyhounds to finish are deducted from the net pool to determine the profit; the profit is divided into three equal amounts; one-third of the profit is divided by the amount wagered to show on the first finisher, the quotient being the profit per dollar wagered to show on the first finisher; one-third of the profit is divided by the amount wagered to show on the second finisher, the quotient being the profit per dollar wagered to show on the second finisher; and one-third of the profit is divided by the amount wagered to show on the third finisher, the quotient being the profit per dollar wagered to show on the third finisher; payoffs include return of amount wagered and profit thereon as to each of the first three finishers.

(1) In the event of a dead heat for first: between two horses or greyhounds involving different betting interests, or three horses or greyhounds involving three differ-

ent betting interests, the show pool is distributed as if no dead heat occurred; if between two horses or greyhounds involving the same betting interest, two-thirds of the profit is allocated to wagers to show on the coupled betting interest, and one-third of the profit allocated to wagers to show on the other horse or greyhound among the first three finishers; if between three horses or greyhounds involving one betting interest, the show pool is distributed as if a win pool.

(2) In the event of a dead heat for second: between two horses or greyhounds involving two different betting interests, the show pool is distributed as if no dead heat occurred; if between horses or greyhounds involving the same betting interest, two-thirds of the profit is allocated to wagers to show on the coupled betting interest, and one-third of the profit allocated to wagers to show on the horse or greyhound finishing first; if between three horses or greyhounds involving two or three betting interests, one-third of the profit is allocated to wagers to show on the horse or greyhound finishing first, and the remaining two-thirds of the profit is divided equally by the number of betting interests finishing in a dead heat for second for proportionate distribution on wagers to show for each such betting interest finishing in a dead heat for second.

(3) In the event of a dead heat for third: between horses or greyhounds involving the same betting interest, the show pool is distributed as if no dead heat occurred; if between horses or greyhounds involving two or more betting interests, two-thirds of the profit shall be allocated to wagers to show on the first two finishers, and the remaining one-third of the profit is divided equally by the number of betting interests finishing in a dead heat for third for proportionate distribution on wagers to show for each such betting interest finishing in a dead heat for third.

(4) In the event the first three horses or greyhounds to finish comprise one betting interest, the show pool shall be distributed as a win pool. In the event two horses or greyhounds coupled as a single betting interest finish first and second, or first and third, or second and third, two-thirds of the profit shall be allocated to wagers to show on the other horse or greyhound among the first three finishers.

(5) In the event one horse or greyhound coupled in the betting by reason of being in the mutuel field or part of a mutuel entry finishes first or second, and another horse or greyhound included in the same betting interest finishes in a dead heat for third: one-half of the profit in the show pool shall be allocated to wagers on such field or entry, one-third of the profit in the show pool shall be allocated to wagers on the horse or greyhound finishing first or second, and the remaining one-sixth of the profit shall be allocated to wagers on the

horse or greyhound finishing in a dead heat for third with such field or entry.

(6) In the event only two horses or greyhounds finish, the show pool, if any, shall be distributed as if a place pool; if only one horse or greyhound finishes, the place and show pools, if any shall be distributed as if a win pool; if no horse or greyhound finishes, all money wagered on the race shall be refunded on presentation and surrender of pari-mutuel tickets sold thereon. In the event no show ticket is sold on a horse or greyhound that finishes first, second, or third, the horse or greyhound that finishes fourth shall replace that horse or greyhound in the distribution of wagers in the show pool.

(e) Daily double pool. The amount wagered on the winning combination, such being the horse or greyhounds or betting interest that finishes first in the first daily double race, is deducted from the net pool to determine the profit; the profit is divided by the amount wagered on the winning combination, such quotient being the profit per dollar wagered on the winning daily double combination; payoff includes the amount wagered and profit thereon.

(1) In the event of a dead heat for first involving two different betting interests in one of the two daily double races, the daily double pool is distributed as if a place pool, with one-half of the profit allocated to wagers combining the single winner of one daily double race and one of the betting interests involved in the dead heat in the other daily double race, with the other one-half of the profit allocated to wagers combining the single winner of one daily double race and the other betting interest involved in the dead heat in the other daily double race.

(2) In the event of dead heats for first involving different betting interests in each of the daily double races resulting in four, six, or nine winning combinations, proportionate allocation is given each winning daily double wager.

(3) In the event no daily double ticket is sold combining the horse, greyhound or betting interest that finishes first in one of the daily double races, the daily double pool is distributed as if a win pool with the profit allocated to the wagering combination that includes the horse, greyhound or betting interest that finishes first in one of the daily double races.

(4) In the event no daily double ticket is sold combining the horses, greyhounds or betting interests that finished first in both the first and second race of the daily double, the winning combination for distribution of the daily double profit shall be that combining the horses, greyhounds, or betting interests that finished second in each of the daily double races.

(5) If after daily double wagering has commenced and a horse or grey-

hound not coupled with another as a betting interest in the first race of the daily double is excused by the stewards or judges or is prevented from racing because of failure of the starting gate door to open properly, then daily double wagers combining the horse or greyhound shall be deducted from the daily double pool and refunded on presentation and surrender of daily double tickets thereon.

(6) If, before closing of the daily double wagering, a scheduled starter in the second half of the daily double that is not coupled in the betting with another horse or greyhound is excused by the stewards or racing judges, then daily double wagers combining the horse or greyhound shall be deducted from the daily double pool and refunded on presentation and surrender of daily double tickets thereon.

(7) If after the first race of the daily double has been run, and a horse or greyhound not coupled with another as a betting interest in the second race of the daily double is excused by the stewards or judges or prevented from racing because of failure of the starting gate door to open properly, then daily double wagers combining the winner of the first daily double race with the horses or greyhounds prevented from racing in the second daily double race shall be allocated consolation payoffs.

(8) Consolation daily double payoffs shall be determined by dividing the net daily double pool by the amount wagered, combining the winner of the first daily double race with every horse, greyhound, or betting interest scheduled to start in the second daily double race, the quotient being the consolation payoff per dollar wagered combining the winner of the first daily double race. Such consolation payoffs shall be deducted from the net daily double pool before calculation and allocation of wagers on the winning daily double combination.

(9) If for any reason the first daily double race is canceled or declared "no race" by the stewards or judges, then the entire daily double pool shall be refunded on presentation and surrender of daily double tickets thereon. If for any reason the second daily double race is canceled or declared "no race" by the stewards or judges after the first daily double race is declared official, then the net daily double pool shall be distributed to wagering combinations that include the horse, greyhound or betting interest that finished first in the first daily double race.

(10) If no daily double ticket is sold requiring distribution, then the entire daily double pool shall be refunded on presentation and surrender of daily double tickets thereon.

(f) Quinella pool. The amount wagered on the winning combination, such being the first two finishers irrespective of which horse finishes first and which horse

finishes second, is deducted from the net pool to determine the profit; the profit is divided by the amount wagered on the winning combination, the quotient being the profit per dollar wagered on the winning quinella combination; payoff includes the amount wagered and profit thereon.

(1) In the event of a dead heat for first: between horses or greyhounds involving two different betting interests, the net quinella pool is distributed as if no dead heat occurred; if between horses or greyhounds involving three different betting interests, the net quinella pool is distributed as if a show pool and is allocated to wagers combining any of the three horses or greyhounds finishing in a dead heat for first.

(2) In the event of a dead heat for second: between horses or greyhounds involving two different betting interests, the net quinella pool is distributed as if a place pool and is allocated to wagers combining the first finisher with either horse or greyhound finishing in a dead heat for second; if between horses or greyhounds involving three different betting interests, the net quinella pool is distributed as if a show pool, and allocated to wagers combining the first horse with each of the three horses or greyhounds finishing in a dead heat for second.

(3) In the event horses or greyhounds representing a single betting interest finish first and second, the net quinella pool shall be allocated to wagers combining such single betting interest with the horse, greyhound or betting interest that finishes third.

(4) In the event no quinella ticket is sold combining:

(A) the first finisher with one of the horses or greyhounds finishing in a dead heat for second, then the net quinella pool is allocated to wagers combining the first finisher with the other horse or greyhound finishing in a dead heat for second;

(B) the first finisher with either of the horses or greyhounds finishing in a dead heat for second, then the net quinella pool is allocated to wagers combining the two horses or greyhounds finishing in the dead heat for second;

(C) the first finisher with either of the horses or greyhounds finishing in a dead heat for second, or combining the two horses or greyhounds finishing in a dead heat for second, then the net quinella pool is distributed as if a show pool and is allocated to wagers combining any of the first three finishers with any other horses or greyhounds;

(D) the first two finishers, then the net quinella pool shall be distributed as if a place pool and is allocated to wagers combining the first finisher with any other horses or greyhounds, and wagers

combining the second finisher with any other horse or greyhound;

(E) horses, greyhounds, or betting interests as would require distribution, then the entire quinella pool shall be refunded on presentation and surrender of quinella tickets thereon.

(g) Exacta pool. The exacta pool is a contract by the purchaser of a ticket combining two horses or greyhounds in a single race, selecting the two horses or greyhounds that will subsequently finish first and second in that race. Payment of the ticket shall be made only to the purchaser who has selected the same order of finish as officially posted.

(1) The exacta is not a parlay and has no connection with or relation to the win, place, and show betting and will be calculated as an entirely separate pool.

(2) If no ticket is sold on the winning combination of an exacta pool, the net pool shall be distributed equally between holders of tickets selecting the winning horse or greyhound to finish first and holders of tickets selecting the second place horse or greyhound to finish second.

(3) If no ticket is sold that would require distribution of an exacta pool to a winner as above defined, the association shall make a complete and full refund of the exacta pool.

(4) In case of a dead heat between two horses or greyhounds for first place, the net exacta pool shall be calculated and distributed as a place pool to holders of tickets of the winning combinations. In case of a dead heat between two horses or greyhounds for second place, the exacta pool shall be figured as a place pool, the holders of tickets combining the winning horse or greyhound and the two horses or greyhounds finishing second participating in the payoff.

(5) In the event of a dead heat for second place, if no ticket is sold on one of the two winning combinations, the entire net pool shall be calculated as a win pool and distributed to those holding tickets on the other winning combination. If no tickets combine the winning horse or greyhound with either of the place horses or greyhounds in the dead heat, the exacta pool shall be calculated and distributed as a place pool to holders of tickets representing any interest in the net pool.

(6) In the event of an entry finishing first and second, the net exacta pool shall be distributed to holders of tickets selecting the entry to win combined with the horse or greyhound finishing third.

(h) Trifecta pool. The trifecta pool is a contract by the purchaser of a ticket combining three horses or greyhounds in a single race that will subsequently finish first, second, and third in that race. Payment

of the ticket shall be made only to the purchaser who has selected the same order of finish as officially posted.

(1) The trifecta is not a parlay and has no connection with or relation to the win, place, and show betting and will be calculated as an entirely separate pool.

(2) If no ticket is sold on the winning combination of the trifecta pool, the net pool shall be distributed in that order. If no ticket is sold combining the win and place finish, that pool shall be distributed to the holders of tickets selecting the winner. If fewer than three horses or greyhounds finish, the payoff will be made to holders of tickets selecting the finishing horses or greyhounds in order, ignoring the balance of the selection.

(3) If no ticket is sold that would require distribution of the net trifecta pool to a winner as above defined, the association shall make a full refund of the trifecta pool.

(4) In the event of a dead heat, all trifecta tickets selecting the correct order of finish counting a horse or greyhound in a dead heat as finishing in either position dead heated shall be winning tickets. The payoff will be calculated as a place pool.

(5) In the event of a scratch in the trifecta, no exchanges will be made. All tickets that include the scratched horse or greyhound are eliminated from further participation of the trifecta pool and will be refunded.

(6) Coupled entries in fields are prohibited in trifecta races.

(i) Refunds. After wagering has begun, if a horse or greyhound not coupled with another as a betting interest is excused by the stewards or judges or is prevented from racing because of failure of the starting gate door to open properly, the wagers on the horse or greyhound shall be deducted from the pools, and refunded on presentation and surrender thereof. If more than one horse or greyhound represents a single betting interest by reason of coupling as a mutuel entry or mutuel field, the single betting interest being the sole subject of a wager or part of a combination, then there shall be no refund unless all of the horses or greyhounds representing such single betting interest are excused by the stewards or racing judges and are prevented from racing because of failure of the starting gate doors to open properly.

(j) Race canceled. If for any reason a race is canceled or declared "no race" by the stewards or racing judges after wagering has begun on the race, then all wagers on the race will be refunded on presentation and surrender of pari-mutuel tickets thereon, except as to daily double wagers on cancellation of the second daily double race, which shall be distributed as provided subsection (e)(9) of this section.

(k) Totalisator breakdown. In the event of an irreparable breakdown of the totalisator during the wagering on a race, the wagering on that race shall be declared closed and the payoff shall be computed on the sums wagered in each pool up to the time of the breakdown.

§321.9. *Minimum Wager and Payoff.* The minimum wager to be accepted by any licensed association shall be \$1,000. The minimum payoff on a \$2.00 wager shall be \$2.20.

§321.11. *Minor Prohibited from Wagering.* No person who has not yet attained the minimum age required to purchase alcoholic beverages in this state shall be permitted by any licensed association to purchase a pari-mutuel ticket. To be present in the immediate wagering areas a minor must be accompanied by the person's parent or legal guardian.

§321.13. *Odds or Payoffs Posted.* Approximate odds, based on win pool betting for finishing first for each betting interest, shall be posted on one or more boards or television screens within view of the wagering public, at intervals of not more than 90 seconds. If daily double wagering is conducted before off time of the second daily double race, the possible payoff shall be posted for each \$2.00 daily double wager combining the winner of the first daily double race with every horse, greyhound, or betting interest in the second daily double race; except that, in the event of a dead heat for first in the first daily double race or a scheduled starter in the second daily double race is excused so as to cause a consolation daily double pool, then posting of all possible payoffs shall not be mandatory, but the association shall make every effort to compute the daily double prices and advise the public of them by posting or public address announcement as soon as possible and before the running of the second daily double race.

§321.15. *Betting Explanation.* Each association shall cause to be published in the daily race program a general explanation of pari-mutuel betting and an explanation of each type of betting pool offered; the explanation also shall be posted in conspicuous places about the association grounds so as to adequately inform the public. The explanation shall be submitted to the commission for approval before publication so as to ensure an absence of conflict with these rules.

§321.17. *Prior Approval Required for Betting Pools.* Each association desiring to conduct other than 10 betting races on a single day, or desiring to offer daily double, trifecta, exacta, or quinella wagering, shall first apply in writing to the commission and obtain specific approval as to the number of betting races and type of wagering to be offered on a single day.

§321.19. *Pools Depend on Entries.*

(a) Unless the commission approves a prior written request from the association to alter wagering opportunities for

a specific race, each association shall offer win, place, and show wagering on all programmed races involving six or more betting interests.

(b) If horses or greyhounds representing five or fewer betting interests qualify to start in a race, then the association may prohibit show wagering on that race; if horses or greyhounds representing four or fewer betting interests qualify to start in a race, then the association may prohibit both place and show wagering on that race.

(c) If, by reason of a horse or greyhound being excused by the stewards or racing judges after wagering has begun or a horse or greyhound being prevented from racing because of failure of a starting gate door to open properly, the number of actual starters representing different betting interests is:

(1) reduced to five, then the association may cancel show wagering on that race and the entire show pool shall be refunded on presentation and surrender of show tickets thereon;

(2) reduced to four or fewer, then the association may cancel both place and show wagering on that race and the entire place and show pools shall be refunded on presentation and surrender of place and show tickets thereon.

§321.21. Pari-mutuel Ticket Sales.

(a) No pari-mutuel tickets shall be sold except by the association conducting the races on which such wagers are made, and the same shall be sold only at regular seller windows properly designated by signs showing the type and denomination of tickets to be sold at those windows if there are restrictions of any kind. No pari-mutuel ticket may be sold after the totalisator has been locked, and no association shall be responsible for ticket sales entered into but not completed by issuance of a ticket before the totalisator has been locked.

(b) Any claim by a person that he has been issued a ticket other than that which he requested must be made before the person leaves the seller window and before the totalisator is locked.

(c) After purchasing a ticket and after leaving a ticket window, a person shall not be entitled to enter for issuance an incorrect ticket, or claim refund or payment for tickets discarded, lost, destroyed, or mutilated beyond identification.

(d) A person who claims to be entitled to any part of a redistribution from a pari-mutuel pool shall:

(1) in the case of wagering on horses,

(A) claim the money due the person before the completion of the race meeting at which the pool was formed by presenting a valid winning ticket, to the licensed association for payment; or

(B) not later than the 60th day after the closing of the meeting, file the following information with the commission:

(i) a verified claim on a form prescribed by the commission; and

(ii) a substantial portion of the pari-mutuel.

(2) in the case of wagering on greyhounds, claim the money due the person before April 1 of the year following the year of his purchase by presenting a valid winning ticket to the licensed association for payment.

(e) Payment of valid pari-mutuel tickets shall be made on the basis of the order of finish as purposely posted on the infield results board and declared official by the stewards or racing judges; any subsequent change in such order of finish or award of purse money as may result from a subsequent ruling by the stewards, racing judges, or commission shall in no way affect the pari-mutuel payoff. Cashiers' windows shall remain open a reasonable length of time after the last race.

(f) The association shall be responsible for the correctness of all payoff prices posted as official on the infield results board. If an error is made in posting the payoff figures on the public board and ascertained before any tickets are cashed, then such posting error may be corrected, accompanied by a public address announcement, and only the correct amounts shall be used in the payoff, irrespective of the initial error on the public board.

(g) Before posting payoffs, the pari-mutuel manager shall require each of the computer printout sheets of such race to be proven and the winners verified. The proof shall show the amounts for commissions, breakage, and payoffs, which added together shall equal the total pool. All pay slips are to be checked with computer printout sheets as to winner and prices before being issued to cashiers, and all board prices are to be rechecked before released to the public.

(h) Whenever the recapitulation of the sales registered by each ticket-issuing machine subsequently proves that that actual amount in the pool is less than the amount used in calculating the payoff, the deficiency shall be deposited in the pool by the association. Should the recapitulation of sales prove that the actual amount in the pool is greater than the amount used in calculating the payoff due to an error of the totalisator, the error resulting in underpayment to the public, then the aggregate of the underpayments shall be paid into the corresponding pool of the next race or races in amounts as may be determined by the stewards or racing judges and the pari-mutuel manager. If any such error should occur in computing the daily double pool, the underpayment shall be added to

the daily double pool of the following day. Overpayments and underpayments subsequently discovered on recapitulation after the close of a meeting may be adjusted, and any underpayment resulting from such final adjustment shall be paid to the commission.

§321.23. Betting Interests Involving More Than One Horse or Greyhound. When two or more horses or greyhounds entered for the same race are determined by the stewards or racing judges to have common ties through ownership or training and are joined by the stewards or racing judges as a mutuel entry, that mutuel entry shall become a single betting interest, and a wager on one horse or greyhound in a mutuel entry shall be a wager on all horses or greyhounds in the same mutuel entry. When the number of horses or greyhounds competing in a race exceeds the numbering capacity of the totalisator, the racing secretary shall assign the highest pari-mutuel numbers to horses or greyhounds so that the highest numbered horse or greyhound within the numbering capacity of the totalisator, together with horses or greyhounds of higher numbers, shall be shown in the mutuel field as a single betting interest, and a wager on one horse or greyhound in the mutuel field shall be a wager on all horses or greyhounds in the same mutuel field.

§321.25. Emergency Situations. In the event any emergency arises in connection with the operation of the pari-mutuel department not provided for by these rules, the pari-mutuel manager shall make an immediate decision and render a full report to the commission.

§321.27. Totalisator Employees. Each employee of a totalisator company shall immediately report to the commission any irregularities or wrongdoings by any person involving pari-mutuel wagering.

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

Issued in Austin, Texas, on June 14, 1988

TRD-8806152

Nancy Fisher
Deputy Commissioner
Texas Racing Commission

Earliest possible date of adoption: July 22, 1988

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

Chapter 323. Compliance and Law Enforcement Provisions

Subchapter A. Violations of the Texas Racing Act, Commission Rules, and Commission Orders

- 16 TAC §§323.1, 323.3, 323.5, 323.7, 323.9, 323.11, 323.13, 323.15, 323.17.

The Texas Racing Commission proposes

new §§323.1, 323.3, 323.5, 323.7, 323.9, 323.11, 323.13, 323.15, and 323.17, concerning general, violation defined, violation reporting, violation complaint, commission action on complaint, show cause hearing, parties to show cause hearings, rules of procedure, and commission action. Under the proposed sections, situations which are considered by the commission to pose or have caused serious harm to the public, or cannot be readily resolved through voluntary compliance, will be disposed of by administrative, civil, or criminal proceedings as authorized by law.

Nancy Fisher, deputy secretary, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections, since the sections are adjudicative procedures for matters committed by law to the commission's jurisdiction. However, since the Texas Racing Commission is a new state agency, normal expenditures associated with setting up the agency are anticipated, including, but not limited to, hiring necessary employees and purchasing equipment.

At this time, the Texas Racing Commission is unable to establish a cost compliance comparison for small business with large businesses.

Ms. Fisher 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 to allow for an orderly and efficient procedure for administration of matters under the Texas Racing Commission's jurisdiction. 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 Nancy Fisher, deputy secretary, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 476-7223.

The new sections are proposed under the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which provide the Texas Racing Commission with the authority to adopt sections for conducting racing involving wagering, and the adoption of other sections to administer the Texas Racing Act.

§323.1. General. In carrying out its responsibilities to insure strict compliance with the enforcement of the Texas Racing Act, the commission will make inquiries into situations which allegedly violate or abridge the requirements of the Texas Racing Act and commission rules dealing with horse or greyhound racing or pari-mutuel wagering. Situations which are considered by the commission to pose or have caused serious harm to the public, or cannot be readily resolved through voluntary compliance, will be disposed of by administrative, civil, or criminal proceedings as authorized by law.

§323.3. Violation Defined. A person who commences development of a racetrack project or otherwise engages in any aspect of greyhound or horse racing without having appropriate license or authorization from the commission or violates a rule or a final and unappealable order of the commission

is in violation of the Texas Racing Act and commission rules.

§323.5. Violation Reporting. Any person may report an alleged violation of the Texas Racing Act, the rules of the commission, or a final and unappealable order of the commission by filing a written complaint with the commission.

§323.7. Violation Complaint. Except as provided in § 301.63 of this title (relating to Reporting of Violations), the written complaint of an alleged violation shall set forth the name and address of the person alleged to be violating the Texas Racing Act, commission rules, or a final and unappealable order of the commission, as well as facts and circumstances sufficient to acquaint the commission with the alleged violation. A person is not required to submit a fee with a written complaint. The written complaint shall be certified under penalty of perjury, as true and correct and within the personal knowledge of the complainant.

§323.9. Commission Action on Complaint. The executive secretary or his designee, within a reasonable period of time, shall notify the alleged violator of the complaint. The executive secretary or his designee may request a sworn written response to the complaint from the alleged violator.

§323.11. Show Cause Hearing. The executive secretary, on his own motion or upon review of a written complaint and sworn response to the complaint, if any, may order a show cause hearing to receive evidence relevant to the existence or non-existence of a violation of the Texas Racing Act, commission rules or a final and unappealable order of the commission. The executive secretary shall issue a written order directing the alleged violator to appear at a specific time, date, and place, and show cause why the alleged violator should not be found in violation of the Texas Racing Act or commission rules. The written order shall identify the alleged violation.

§323.13. Parties to Show Cause Hearings. A person filing a complaint that is the subject of a show cause hearing shall be treated as an interested person and have the right to present evidence at the show cause hearing. The complainant shall not have the rights of a party.

§323.15. Rules of Procedure. Proceedings shall be conducted in accordance with Chapter 305 of this title (relating to the Rules of Practice and Procedure).

§323.17. Commission Action. The commission may find, after review of the record developed at the show cause hearing and a review of the recommendation submitted by the assigned hearing officer, that a violation of the Texas Racing Act, the commission rules or a final and unappealable order of the commission has occurred. Upon finding that a violation has occurred, the commission shall issue a written order setting forth its decision, and the findings of fact and conclusions of law supporting the decision. Upon finding that a violation has occurred, the commission may issue a cease and desist order and, in addition, may request the

attorney general to institute legal action to enjoin the violation as provided in the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a §19A.

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

Issued in Austin, Texas, on June 15, 1988.

TRD-8806153

Nancy Fisher
Deputy Secretary
Texas Racing Commission

Earliest possible date of adoption: July 22, 1988

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

Subchapter B. Civil Remedies

• 16 TAC §§323.31, 323.33, 323.35, 323.37

The Texas Racing Commission proposes new §§323.31, 323.33, 323.35, and §323.37, concerning action by the attorney general, assistance to violators prohibited, licensure of violators prohibited, and civil penalties. All the proposed sections select procedures for compliance and law enforcement provisions.

Nancy Fisher, deputy secretary, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections, since the sections are adjudicative procedures for matters committed by law to the commission's jurisdiction. However, since the Texas Racing Commission is a new state agency, normal expenditures associated with setting up the agency are anticipated, including, but not limited to, hiring necessary employees and purchasing equipment.

At this time, the Texas Racing Commission is unable to establish a cost compliance comparison for small businesses with large businesses.

Ms. Fisher, 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 to allow for an orderly and efficient procedure for administration of matters under the Texas Racing Commission's jurisdiction. 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 Nancy Fisher, Deputy Secretary, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, (512) 476-7223.

The new sections are proposed under the authority of the Texas Racing Act, Texas Civil Statutes, Article 179e, §3.02, which provide the Texas Racing Commission with the authority to adopt sections for conducting racing involving wagering, and the adoption of other sections to administer the Texas Racing Act.

§323.31. Action by the Attorney General.
(a) If the commission or appropri-

ate section of the commission, issues an order pursuant to §323.17 of this title (relating to Commission Action) determine that a person is in violation of the Texas Racing Act, commission rules, or a final and unappealable order of the commission, the attorney general may institute, upon the request of the commission or appropriate section of the commission, a legal action to enjoin or restrain the continuation or commencement of the violation or to compel compliance with the Texas Racing Act, commission rule, or a final and unappealable order or decision of the commission or its section.

(b) If authorized by law, the attorney general may, at the instance of the commission as provided in this section, institute proceedings to recover civil penalties for the violation of the Texas Racing Act, commission rules or a final order or decision of the commission or its sections.

§323.33. Assistance to Violators Prohibited. No person may conspire with, or assist in any way an applicant or licensee to violate the Texas Racing Act, commission rules, or a final and unappealable order of the commission or its sections. A complaint may be filed, and a hearing had against a person covered by this section as provided in Subchapter A of this chapter, and is subject to the civil action as stated in §323.31 of this title (relating to Action by the Attorney General).

§323.35. Licensure of Violators Prohibited. No permit to build or license to operate a racetrack, or license to work or provide a service at a racetrack may be issued for a racetrack, or to a person in violation of the Texas Racing Act, commission rules, or a final and unappealable order of the commission or its section.

§323.37. Civil Penalties.

(a) If authorized by law, a person who violates the Texas Racing Act, a commission rule, or a final and unappealable order of the commission, or its sections is subject to a civil penalty for each violation and for each day of violation, as the court may deem proper, to be recovered in the manner provided in this subchapter. Such civil penalties assessed for judicially determined violations shall be deposited in the State Treasury to the order of the Texas Racing Fund and shall be expended by the commission for the administration and enforcement of the Texas Racing Act.

(b) A person who has been judicially determined to be in violation of the Texas Racing Act, a commission rule, or a final and unappealable order of the commission or its sections, and who has paid all civil penalties and has made application to the commission for a license or other appropriate authorization shall not be deemed to be in violation of the Texas Racing Act.

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

Issued in Austin, Texas, on June 15, 1988.

TRD-8806154

Nancy Fisher
Deputy Secretary
Texas Racing Commission

Earliest possible date of adoption: July 22, 1988

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

TITLE 28. INSURANCE

Part I. State Board of Insurance

Chapter 7. Corporate and Financial

Subchapter A. Examination and Corporate Custodian and Tax

• 28 TAC §7.56

The State Board of Insurance proposes new §7.56, concerning corporate and financial regulation. New §7.56 concerns forms and instructions for the preparation and filing of tax returns for insurers and other entities required to file tax returns with the State Board of Insurance for the 1987 calendar year or required to file quarterly premium tax returns with the board during the 1988 calendar year. Section 7.56 was adopted on an emergency basis and became effective on February 29, 1988. Notice of the emergency adoption appeared in the March 8, 1988, issue of the *Texas Register* (13 TexReg 1174).

The new section is necessary to provide insurers and other entities with forms and instructions for filing tax returns. Timely and accurate payment of the taxes is necessary for support of regulatory functions of the State Board of Insurance. The new section adopts forms and instructions which facilitate compliance with statutory requirements for reporting and payment of taxes to the State Board of Insurance. The annual gross premium tax return is required by statute to be filed either on or before March 1, 1988, or the date the annual statement for the carrier is required to be filed with the board. Quarterly tax returns are required to be filed four times per year: the first quarter is due and payable March 1, 1988, (or the date the annual statement for such carrier is required to be filed with the State Board of Insurance); the second quarter is due and payable May 15, 1988; the third quarter is due and payable August 15, 1988; and fourth quarter is due and payable November 15, 1988. The forms and instructions include requirements for information respecting gross premium taxes, maintenance taxes, and other taxes, and certain incidental fees, and provide a form to be used in determining and reporting the amount owed. Proposal of this section includes proposal for adoption by reference of forms and instructions. The board has filed copies of these forms and instructions with the Secretary of State's Office, Texas Register Section. Persons desiring copies of the forms and instructions can obtain copies from the Corporate Custodian and Tax Division of the State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

Olin B. Clemons, assistant director, corporate custodian and tax division, has determined that for the first five-year period the proposed section will be in effect there will be fiscal implications for small businesses as a result of enforcing or administering the section. The cost of compliance for small businesses will be the administrative cost in completing the forms and following the instructions. This cost will be at least partially offset because tax returns are statutorily required in some form in any case. There is no expected difference in cost of compliance between small and large businesses on a cost per hour of labor basis. There will be no effect on state or local government.

Mr. Clemons 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 adoption of appropriate forms and instructions to facilitate proper tax returns by insurers and other entities required to report and pay taxes to the State Board of Insurance. The anticipated economic cost to individuals who are required to comply with the proposed section will be the administrative cost in completing the forms and following the instructions. This cost will be at least partially offset because tax returns are statutorily required in some form in any case. The cost will depend on each company's record-keeping practices and type of operation.

Comments on the proposal may be submitted to Nicholas Murphy, Chief Clerk, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998

The section is proposed under the Insurance Code, Articles 1.04, 1.10, §9, 4.07, 4.10, 4.11, 5.12, 5.24, 5.49, 5.68, 9.46, 21.07-5, and 23.08; the Texas Health Maintenance Organization Act, §22 and §33; and Texas Civil Statutes, Articles 6252-13a, §4, and 8306, §28. The Insurance Code, Article 1.04, places original jurisdiction for the adoption of rules in the State Board of Insurance. Article 1.10, §9, requires the board to furnish, to companies required to report to the board, statement blanks for the statements required. Article 4.07 specifies the charges for certain fees. The Insurance Code, Articles 4.10 and 4.11; Texas Civil Statutes, Article 8306, §28; and The Texas Health Maintenance Organization Act, §33, require the payment of taxes on gross premiums by entities regulated by the board or on gross amounts of similar revenue by health maintenance organizations. The Insurance Code, Articles 5.12, 5.24, 5.49, 5.68, 9.46, 21.07-5 and 23.08, requires the payment of maintenance taxes by certain entities regulated by the board. The Insurance Code, Articles 4.10 and 4.11, gives the board rulemaking authority. The Texas Health Maintenance Organization Act, §22 gives the board rulemaking authority. Texas Civil Statutes, Article 6252-13a, §4, require and authorize the board to adopt rules of practice setting forth the nature and requirements of all procedures available.

§7.56. Preparation of 1987 Tax Returns. Forms and instructions for the preparation of tax returns and certain fees for insurance companies and other principals for the 1987 calendar year are adopted by reference. These instructions and forms are published by the State Board of Insurance and may be obtained from the Corpo-

rate Custodian and Tax Division of the State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998. Each insurer or other entity shall follow such instructions and use and report on such forms as are appropriate to its operation. The instructions and forms are more particularly identified as follows:

(1) a form identified as the 1987 general instructions for filing Texas annual tax returns for all Texas licensed insurance carriers;

(2) a form identified as the 1987 specific instructions for completing the Texas annual tax return, for domestic, foreign, and alien life, health and accident carriers;

(3) a form identified as the 1987 Texas annual tax return for domestic, foreign, and alien life, health and accident companies doing business in the State of Texas;

(4) a form identified as the 1987 specific instructions for completing the Texas annual tax return for domestic, foreign, and alien companies transacting fire and/or casualty or title business in Texas;

(5) a form identified as the 1987 Texas annual tax return for domestic, foreign, and alien companies, lloyds, reciprocals, and miscellaneous organizations in Texas;

(6) a form identified as the 1987 Texas specific instructions for completing the Texas annual tax return for health maintenance organizations;

(7) a form identified as the 1987 Texas annual tax return for health maintenance organizations;

(8) a form identified as the 1987 Texas annual tax return, including instructions, for nonprofit prepaid legal services corporation;

(9) A form identified as the 1987 Texas annual tax return, including instructions, for local mutual aid associations.

(10) a form identified as the 1988 specific instructions for preparing and filing Texas quarterly premium tax return for life, health, and accident business;

(11) a form identified as the 1988 Texas quarterly premium tax return for life, health, and accident business;

(12) a form identified as the 1988 specific instructions for preparing and filing Texas quarterly premium tax return for fire and casualty business;

(13) a form identified as the 1988 Texas quarterly premium tax return for fire and casualty business;

(14) a form identified as the 1988 specific instructions for preparing and filing Texas quarterly premium tax return form health maintenance organizations;

(15) a form identified as the 1988 Texas quarterly premium tax return for health maintenance organizations;

(16) a form identified as the 1988 specific instructions for preparing and filing Texas quarterly premium tax return for title business;

(17) a form identified as the 1988 Texas quarterly premium tax return for title business;

(18) a form identified as the 1988 general instructions for completing Texas annual tax return, for companies under the provisions of the Texas Insurance Code, Articles 3.25 and 3.59;

(19) a form identified as the 1987 Texas annual tax return, for companies under the provisions of the Texas Insurance Code, Articles 3.25 and 3.59;

(20) a form identified as the general instructions for filing the 1987 maintenance tax returns for third party administrators; and

(21) a form identified as the maintenance tax return for third party administrators (from September 1, 1987-December 31, 1987).

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

Issued in Austin, Texas, on June 14, 1988.

TRD-8806122

Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption: July 22, 1988

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

◆ ◆ ◆
**TITLE 31. NATURAL
RESOURCES AND
CONSERVATION**

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

Chapter 65. Wildlife

**Subchapter H. Type I Wildlife
Management Areas Hunting
and Fishing**

- 31 TAC §§65.190-65.199, 65.201-65.203, 65.205, 65.208-65.212, 65.215, 65.218-65.220, 65.225, 65.224, 65.229

The Texas Parks and Wildlife Commission proposes new §65.205 and amendments to §§65.190-65.199, 65.201-65.204, 65.208-65.212, 65.215, 65.218-65.220, 65.222, 65.224, 65.225, and 65.229, concerning the Type I Wildlife Management Areas Hunting and Fishing Proclamation. The proposed amendments add one new management area to the Type I wildlife management program,

delete 10 Type I areas and place them in the Type II wildlife management program, provide for a bighorn sheep hunt by permit, increase the quail bag limit to correspond with the uniform statewide bag limit, and increase the white-tailed deer bag limit on designated units of the state park system.

James E. Dickinson, Director of Finance, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Dickinson 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 to provide on a continuing basis, optimum public hunting opportunity based upon acknowledged wildlife resource management tenets. 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 Herb Kothmann, Program Leader for Public Hunts, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4770.

The sections are proposed under the Texas Parks and Wildlife Code, Chapter 81, Subchapter E, which provides the Texas Parks and Wildlife Commission with authority to regulate seasons, numbers, means, methods, and conditions for taking wildlife resources on wildlife management areas. With respect to designated state parks, the commission is acting under the Texas Parks and Wildlife Code, Chapter 62, Subchapter D, which provides authority to prescribe seasons, number, size, kind, sex, and the means and method of taking any wildlife.

§65.190. *Application.* The provisions of this subchapter apply to all of the wildlife resources in the following areas, except as restricted herein:

(1) Somerville Wildlife Management Area in Burleson and Lee Counties. [Eastern Wildlife Management Area:

(A) Dam B Unit (includes Angelina-Neches Scientific Area) in Jasper and Tyler Counties;

(B) Toledo Bend Unit in Shelby County;

(C) Granger Wildlife Management Unit in Williamson County;

(D) Pat Mayse Wildlife Management Unit in Lamar County;

(E) Somerville Wildlife Management Unit in Burleson and Lee Counties;

(2) Black Gap Wildlife Management Area in Brewster County;

(2)(3) Chaparral Wildlife Management Area in Dimmit and LaSalle Counties;

(3)[(4)] James E. Daughtrey Wildlife Management Area in Live Oak and McMullen Counties;

(4)[(5)] Sierra Diablo Wildlife Management Area in Culberson and Hudspeth Counties;

(5)[(6)] Gus Engeling Wildlife Management Area in Anderson County;

(6)[(7)] Gene Howe Wildlife Management Area in Hemphill County;

(7)[(8)] Kerr Wildlife Management Area in Kerr County;

(9) Matador Wildlife Management Area in Cottle County, except for quail and mourning dove;]

(8)[(10)] J. D. Murphree Wildlife Management Area in Jefferson County;

(9)[(11)] Las Palomas Wildlife Management Area:

(A)-(N) (No change.)

(10)[(12)] Sheldon Wildlife Management Area in Harris County;

(11)[(13)] Walter Buck Wildlife Management Area in Kimble County;

(14) Alabama Creek Wildlife Management Area in Trinity County, a National Forest Wildlife Management Area;

(15) Bannister Wildlife Management Area in San Augustine County, a National Forest Wildlife Management Area;]

(12)[(16)] Matagorda Island Wildlife Management Area in Calhoun County;

(17) Moore Plantation Wildlife Management Area in Sabine County, a National Forest Wildlife Management Area;

(18) Caddo Wildlife Management Area in Fannin County, a National Forest Wildlife Management Area;]

(13)[(19)] M. O. Neasloney Wildlife Management Area in Gonzales County;

(14)[(20)] Guadalupe Delta Wildlife Management Area in Calhoun County;

(15)[(21)] Honey Creek Natural [Wildlife Management] Area in Comal County;

(16)[(22)] Peach Point Wildlife Management Area in Brazoria County;

(17)[(23)] Elephant Mountain Wildlife Management Area in Brewster County;

(18)[(24)] Keechi Creek Wildlife Management Area in Leon County;

(19)[(25)] units of the State Park System of Texas designated by the executive director as having met the following criteria:

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

(20)[(26)] Lower Neches Wildlife Management Area in Orange County;

(21) Mad Island Wildlife Management Area in Matagorda County. *§65.191. Consent.*

(a) (No change.)

(b) None of the wildlife resources of the wildlife management areas may be taken except by holders of permits that have been issued by the Parks and Wildlife Department or by persons who have obtained permission by registration. No permit is required to hunt waterfowl in the designated marsh unit within the boundaries of the Matagorda Island Wildlife Management Area. No permit is required for taking fish except on the [Black Gap,] Kerr[, Pat Mayse, Matador,] and Engeling Wildlife Management Areas where permission by registration is required.

(c) (No change.)

(d) The fees for special and regular permits are:

(1)-(18) (No change.)

(19) **bighorn sheep—no charge.** *§65.192. Definitions.* The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

Designated road—[On National Forest Wildlife Management Areas, designated roads shall be as authorized by the U.S. Forest Service. On wildlife management areas other than NFWMAs, designated roads include any] A constructed roadway indicated as being open to the public either by signs posted to that effect, or by current maps and leaflets distributed at the area. Roads closed to the public may additionally be specified by signs posted to that effect.

[Forest Service or United States Forest Service—United States Department of Agriculture, Forest Service, or a specifically authorized employee of the Forest Service.]

[National Forest Wildlife Management Area (NFWMA)—Land in the National Forest system and managed for multiple use by the United States Forest Service under cooperative agreement with the Texas Parks and Wildlife Department.]

§65.193. General Regulations.

(a) Camping will be limited to authorized hunters, fishermen, and nonconsumptive users on designated campsites[, except as additionally provided for on NFWMAs. No permit or permission by registration is required to camp on NFWMAs. Camping is allowed anywhere on NFWMAs from February 1-September 30; from October 1-January 31, camping on NFWMAs is limited to designated camp-

sites. Camping on Dam B Unit (includes Angelina-Neches Scientific Area) of the Eastern Wildlife Management Area will be by permit only., permits may be obtained at the United States Corps of Engineers office at the reservoir site].

(b) All vehicles shall be restricted to designated roads[, except where authorized on NFWMAs by the United States Forest Service]. Parking will be permitted only in designated areas of [on] the [Granger and] Somerville [Units of the Eastern] Wildlife Management Area and on Units of the Las Palomas Wildlife Management Area. On other areas, parking is permitted on the shoulders of or immediately adjacent to designated roads as long as traffic is not blocked.

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

(i) Business concessions such as selling, renting, leasing, or peddling goods, merchandise, or services to the public may not be conducted on any area unless specifically authorized in writing by the executive director[, and the forest supervisor on NFWMAs].

(j)-(k) (No change.)

(1) Water skiing is prohibited except on those leased or licensed wildlife management areas when allowed by the leasing or licensing authority[, and on NFWMAs].

(m) Airboats are prohibited on designated units of the State Park System[, the Dam B Unit (includes Angelina-Neches Scientific Area)] and the J. O. Murphree Area, except in Big Hill Bayou, Blind Bayou, and Keith Lake.

(n) Boats, skiffs, or floating craft of any type may not be left overnight[, except by authorized campers on Dam B, and NFWMAs].

(o) Swimming is prohibited except on those leased or licensed wildlife management areas when allowed by the leasing or licensing authority[, and on NFWMAs].

(p) Only persons with valid permits will be allowed afield during hunts on wildlife management areas, except on those areas where no permits are required. [On NFWMAs, non-consumptive users will be allowed afield at all times.]

(q)-(t) (No change.) *§65.194. Firearms.*

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

(e) It is unlawful to use rimfire ammunition in taking or shooting deer or exotic mammals, javelina, prong-horned antelope, **desert bighorn sheep**, predatory animals, alligators, and turkey.

(f) On the Somerville Wildlife Management Area, [National Forest Wildlife Management Areas (Alabama Creek, Bannister, Caddo, and Moore Plantation) and the Eastern Wildlife Management Area

(Dam B, North Toledo Bend, Granger, Pat Mayse, and Somerville Units),] shotguns only with no larger than size #4 lead shot or size #2 non-toxic shot or bow and arrow must be used for hunting, except that rifles or shotguns with rifled slugs are the only legal firearms for taking deer or feral hogs during the regular season prescribed for deer[, and persons may use rifles with .22 caliber rimfire ammunition in hunting squirrels on National Forest Wildlife Management Areas].

(g) On the Gus Engeling, J. O. Murphree, Matagorda Island, Peach Point, Mad Island, and Guadalupe Delta Wildlife Management areas, and designated units of the State Park System, waterfowl hunters may possess only shotgun shells that contain nontoxic shot.

§65.195. Archery.

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

(e) It is unlawful to possess archery only hunts conducted under special or regular permit, except shotguns with shells having no larger than size #4 lead or #2 nontoxic shot may be possessed when hunting under permission by registration during concurrent periods of archery only hunts and firearms hunts, but may not be used to take species for which archery only hunts are being held[, and rifles with .22 caliber rimfire ammunition may be possessed when hunting under permission by registration on NFWMAs during concurrent periods of firearms hunts for squirrel and archery only hunts, but may not be used to take species for which archery only hunts are being held].

§65.196. Hunting with Dogs.

(a) It is unlawful to use a dog or dogs in hunting, pursuing, or taking deer, prong-horned antelope, desert bighorn sheep, predatory animals, javelina, or turkey[, except that dogs may be used in hunting coyotes and furbearers on the Dam B (includes Angelina-Neches Scientific Area), Granger, North Toledo Bend, and Pat Mayse Units of the Eastern Wildlife Management Area and Caddo Wildlife Management Area].

(b)-(e) (No change.)

§65.197. Hunting Permits.

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

(c) A special permit is required for the hunting of:

(1) deer and exotic mammals:

(A) during the regular season prescribed for deer on the Gene Howe, Walter Buck, Gus Engeling, James E. Daughtrey, [Matador,] Kerr, [Black Gap,] Sierra Diablo, Chaparral, [Honey Creek,] Elephant Mountain, Keechi Creek, [Alabama Creek, Bannister, Caddo, Moore Plantation,] Somerville, and Matagorda Island Wildlife Management Areas, [Pat Mayse and Somerville Units of the Eastern Wild-

life Management Area,] Honey Creek Natural Area, and designated units of the State Park System;

(B) during the archery only season prescribed for deer on the Walter Buck, Gus Engeling, [Black Gap,] Elephant Mountain, [Honey Creek, Matador,] Keechi Creek, Gene Howe, and James E. Daughtrey Wildlife Management Areas and Honey Creek Natural Area;

(2) javelina:

(A) during the regular season prescribed for javelina on the [Black Gap,] Elephant Mountain, Chaparral, and James E. Daughtrey Wildlife Management Areas;

(B) (No change.)

(3) (No change.)

(4) desert bighorn sheep during the season prescribed for desert bighorn sheep on the Sierra Diablo Wildlife Management Area and lands within a desert bighorn sheep cooperative unit;

(5)[(4)] feral hog during the regular season prescribed for feral hog on the Chaparral, Gus Engeling, Keechi Creek and Peach Point Wildlife Management Areas;

(6)[(5)] turkey during the season prescribed for turkey on the James E. Daughtrey, Gus Engeling, Gene Howe, Keechi Creek, Kerr, [Matador,] Honey Creek,] and Walter Buck Wildlife Management Areas and Honey Creek Natural Area;

(7)[(6)] alligators during the season prescribed for alligator on the J. O. Murphree and Mad Island Wildlife Management Areas [Area] and designated units of the State Park System.

(d) A regular permit (issued on a first come-first-served basis at the area) is required for the hunting of:

(1)-(6) (No change.)

(7) waterfowl during the season prescribed for waterfowl on the Guadalupe Delta, Peach Point, Keechi Creek, Gus Engeling, Mad Island, Matagorda Island, and J. D. Murphree Wildlife Management Areas and designated units of the State Park System;

(8) (No change.)

(9) king, clapper, sora, and Virginia rails during the seasons prescribed for king, clapper, sora, and Virginia rails on the J. D. Murphree, Mad Island, Peach Point, and Guadalupe Delta Wildlife Management Areas;

(10) gallinules during the season prescribed for gallinules on the Gus Engeling, Matagorda Island, J. D. Murphree, Mad Island, Keechi Creek, Peach Point, and Guadalupe Delta Wildlife

Management Areas; and

(11) coyotes during the season prescribed for coyote on the Chaparral and[, James E. Daughtrey[, and Matador] Wildlife Management Areas.

(e) Permission by registration is required of all hunters not required to have a special permit or regular permit, and for nonhunting visitors on management areas except that no permit is required to hunt waterfowl in the designated marsh unit within the boundaries of the Matagorda Island Wildlife Management Area[, and nonconsumptive users on NFWMAs are not required to have permission by registration].

§65.198. Checking Game, Entering, and Exiting Wildlife Management Areas. When approved for hunting under a special or regular permit, hunters are required to check in with management area personnel prior to hunting. Also, hunters are required to check out at management area check stations and allow inspection of the bag before leaving the area. When hunting under permission by registration, hunters must check in each day at a self-registration station and properly complete the registration procedures before initiation of hunting activities. All persons hunting or visiting on [the Gene Howe, Matador, Elephant Mountain and Black Gap] Wildlife Management Areas under permission by registration shall check out at the checking station or self-registration station and leave the completed permit before departing the area. Employees of the department may remove parts from specimens harvested on management areas for scientific investigation.

§65.199. Tagging of Game.

(a) The sex of deer, pronghorn, [antelope] desert bighorn sheep or turkey and definition of legal animals to be taken shall be determined at the time of the hunt and stipulated on the permit issued by the department to the hunter.

(b) The carcass of deer or turkey in possession of a person shall have attached to it a tag issued to the person from his or her valid hunting license; in addition, a special tag issued from the wildlife management area must be attached to each deer or turkey carcass before it is removed from the area, except no special tag is required for deer killed on the [Eastern Area (Dam B, North Toledo Bend, Pat Mayse, and] Somerville Wildlife Management Area [Units] or on NFWMAs] during the deer archery only season [or on the Dam B Unit during the regular gun season].

(c) No tag from the valid hunting license is required on exotic mammals, feral hogs, javelina, prong-horned antelope, desert bighorn sheep, or alligators; however, a special tag issued from the wildlife management area antelope, desert bighorn sheep, or alligator taken under special or regular permit before it is removed from the area. A tagging fee is assessed for desert bighorn sheep (see *§65.205(g)*).

§65.201. *Open Seasons: General Rules.*

(a) (No change.)

(c) Except for [hunting coyotes and furbearers on the Dam B (includes Angelina-Neches Scientific Area), Granger, North Toledo Bend, and Pat Mayse Units of the Eastern Wildlife Management Area and Caddo Wildlife Management Area and] fishing, seasons are closed during the hours between 1/2 hour after sunset and 1/2 hour before sunrise.

(d)-(e) (No change.)

§65.202. *Deer and Exotic Mammals.*

(a) General: by special permit only, except as provided in subsection [subsections] (b)(1) [and (c)(1)(A)] of this section.

(b) Archery only season—open season:

(1) [Eastern (Dam B Unit including Angelina-Neches Scientific Area, Pat Mayse,) Somerville[, and North Toledo Bend Units), Alabama Creek, Bannister, Moore Plantation, and Caddo] Wildlife Management Area [Areas] (permission by registration): during the period from the first Saturday in October for 30 consecutive days;

(2) Walter Buck, [Black Gap,] Elephant Mountain, [Honey Creek, Matador,] Keechi Creek, Gene Howe, Gus Engeling, and James E. Daughtrey Wildlife Management Areas and Honey Creek Natural Area (special permit): during the months of September, October, and November;

(3) (No change.)

(c) Regular season—open season:

(1) [Eastern Wildlife Management Area:

[(A) dam B Unit (includes Angelina-Neches Scientific Area) (permission by registration): during the period from the second Saturday in November through the first Sunday in January;

[(B) Pat Mayse and Somerville Units (special permit): during the period from October 1-January 31;

(2) Gus Engeling, Chaparral, James E. Daughtrey, Gene Howe, Kerr, Matagorda Island, Sierra Diablo, Walter Buck, [Honey Creek, Black Gap,] Elephant Mountain, Keechi Creek, and Somerville [Alabama Creek, Bannister, Moore Plantation, and Caddo] Wildlife Management Areas; Honey Creek Natural Area and designated units of the State Park System (special permit): during the period from October 1-February 15 [January 31].

(2)[(3)] other areas: no open season.

(d) Bag and possession limit: hunt categories include archery only, buck only

or either sex regular, and antlerless only regular.

(1) Bag and possession limits apply to individual areas within each hunt category. The cumulative bag for all areas and hunt categories may not exceed the number of appropriate carcass tags on the hunting license. Sex, definition of legal animal, and species will be determined at the time of the hunt.

(2) On designated units of the State Park System, the bag limit shall be two deer or exotic mammals per person.

(3) On the Kerr and Walter Buck Wildlife Management Areas and Honey Creek Natural Area, the bag limit shall be one white-tailed deer and one exotic mammal, or two exotic mammals per person.

(4) On all other areas, the bag limit shall be one deer or exotic mammal per person.

(5) Deer of either sex are legal during the deer archery season on the Somerville Wildlife Management Area.

[(1) on all areas for each hunt category, one deer or exotic mammal per person; sex, definition of legal animal, and species to be defined at time of the hunt, except that on the Kerr and Honey Creek Wildlife Management Areas and designated units of the State Park System the bag limit shall be two deer or exotic mammals, to include not more than one white-tailed deer;

[(2) buck deer only with a hardened antler protruding through the skin may be taken during the deer archery season on the North Toledo Bend Unit and during the regular deer season on the Dam B Unit;

[(3) deer of either sex are legal during the deer archery season on NFWMAS and on the Dam B (includes Angelina-Neches Scientific Area), Pat Mayse and Somerville Units.]

§65.203. *Javelina.*

(a) (No change.)

(b) Regular season—open seasons:

(1) [Black Gap,] Elephant Mountain, Chaparral, and James E. Daughtrey Wildlife Management Areas (special permit): during the months of January and February;

(2) (No change.)

(c)-(d) (No change.)

§65.205. *Desert Bighorn Sheep.*

(a) Season. There is no closed season, Legal hunting dates will be designated on the permit issued by the department to the hunter.

(b) Bag limit. The bag limit is one mature desert bighorn sheep ram by permit only. Any bighorn sheep taken must be certified by the accompanying department wildlife biologist as a harvestable animal

prior to the kill. The permit must be possessed while hunting.

(c) Legal weapons. Only centerfire rifles designed to shoot a bullet of at least .250" in diameter may be used. The firearm must be equipped with a telescopic sight capable of four power magnification or greater.

(d) Mode of hunting.

(1) All hunting shall be on foot or from horseback or mule.

(2) No motorized conveyance or aircraft of any type may be used to hunt, spot, herd, or harass desert bighorn sheep.

(3) No two-way radio communications may be used in hunting desert bighorn sheep.

(e) Tagging. Any bighorn sheep must be tagged immediately after being taken with a permanent tag issued and affixed in the horn by a designated representative of the department. The tag shall remain in the horn throughout the existence of the trophy.

(f) Hunter orientation. Each person receiving a bighorn sheep hunting permit is required to attend an orientation conducted by the department prior to the hunt.

(g) Tag fees.

(1) The tag fee is \$300 for each permittee selected by means of a random drawing.

(2) The tag fee is \$300 for each permittee selected by membership of a Desert Bighorn Sheep Cooperative Unit.

(3) The tag fee for each permittee selected by means of auction conducted by the Foundation for North American Wild Sheep is in the amount established by the Parks and Wildlife Commission.

(h) Permit issuance.

(1) Bighorn sheep hunting permits are authorized for issuance to persons selected by random drawing. Only residents of Texas who have purchased a Type II Wildlife Management-Public Hunting Lands permit are eligible to participate in the random drawing.

(2) Bighorn sheep hunting permits are authorized for issuance to persons selected by membership of a Desert Bighorn Sheep Cooperative Unit.

(3) Upon authorization of the Parks and Wildlife Commission, bighorn sheep hunting permits may be issued to persons selected by means of an auction conducted by the Foundation for North American Wild Sheep.

§65.208. *Squirrel.*

(a) Open season:

(1) [granger and] Somerville [Units of the Eastern] Wildlife Management Area (permission by registration): no closed

season, except no squirrel hunting allowed on days when hunting by special permit is conducted;

(2) [Dam B (includes Angelina-Neches Scientific Area) and North Toledo Bend Units of the Eastern Wildlife Management Area and] Gus Engeling Wildlife Management Area (permission by registration): during the periods of May 1-May 31 and October 1-January 15;

(3) Pat Mayse Unit of the Eastern Wildlife Management Area; Alabama Creek, Bannister, Caddo, and Moore Plantation Wildlife Management Areas (permission by registration): during the periods of May 1-May 31 and October 1-January 15, except no squirrel hunting allowed on days when hunting by special permit is conducted;]

(3)[(4)] Keechi Creek Wildlife Management Area (regular permit): during the periods of May 1-May 31 and October 1-January 15 [October 31] ;

(4)[(5)] other areas: no open season.

(b)-(c) (No change.)
§65.209. *Turkey.*

(a) Open season:

(1) James E. Daughtrey, Gus Engeling, Gene Howe, Keechi Creek, Kerr, [Matador, Honey Creek,] and Walter Buck Wildlife Management Areas and Honey Creek Natural Area (special permit): during the month of April;

(2) (No change.)

(b)-(c) (No change.)
§65.210. *Quail.*

(a) Open season:

(1) Dam B (includes Angelina-Neches Scientific Area) and North Toledo Bend Units of the Eastern Wildlife Management Area (permission by registration): during the period from the first Saturday in November through the last Sunday in February;

(2) granger unit of the Eastern Wildlife Management Area (permission by registration): during the period from the first Saturday in November through the last Sunday in February, except that only persons possessing a special permit may take quail on days when hunting by special permit is conducted;]

(1)[(3)] [Pat Mayse and] Somerville [Units of the Eastern] Wildlife Management Area[, Alabama Creek, Bannister, Moore Plantation, and Caddo Wildlife Management Areas] (permission by registration): during the period from the [first] Saturday nearest [in] November 1 through the last Sunday in February. No quail hunting will be allowed on days when hunting by special permit is conducted[, except on the Ladonia Unit of the Caddo Wildlife Management Area];

(2)[(4)] Black Gap], Elephant Mountain, and Gene Howe Wildlife Management Areas (permission by registration): during the period from October-February, except no quail hunting on days when hunting by special permit is conducted;

(3)[(5)] Chaparral, James E. Daughtrey, and Matagorda Island Wildlife Management Areas (regular permit): during the period from October- February;

(4)[(6)] other areas: no open season.

(b) bag limit: 15 [12] quail per day;

(c) possession limit: 45 [36] quail.
§65.211. *Pheasant.*

(a) Open season: no open season.

(1) granger (permission by registration): during the period from the first Saturday in November through the third Sunday in November;

(2) other areas: no open season.

(b) Bag Limit: two cocks per day; one foot must remain attached to carcass.

(c) Possession limit: four cocks, except that no more than two cocks may be possessed on the first day of the hunt.]
§65.212. *Chachalaca.*

(a) Open season:

(1) longoria Unit of the Las Palomas Wildlife Management Area (regular permit): during the period from the [first] Saturday nearest November 1 [in December] through the last Sunday in February [January];

(2) designated units of the Las Palomas Wildlife Management Area (permission by registration): during the period from the [first] Saturday nearest November 1 [in December] through the last Sunday in February [January].

(3) (No change.)

(b)-(c) (No change.)
§65.215. *Migratory Birds.*

(a) Mourning doves.

(1) Open season:

(A) [Dam B (includes Angelina-Neches Scientific Area), North Toledo Bend, Pat Mayse, and] Somerville, [Units of the Eastern Wildlife Management Area; Black Gap,] Elephant Mountain, and Gene Howe[, Alabama Creek, Bannister, Moore Plantation, and Caddo] Wildlife Management Areas (permission by registration): to correspond with the season as provided in the migratory game bird proclamation;

(B) granger Unit of the Eastern Wildlife Management Area (permission by registration): to correspond with the season as provided in the migratory game bird

proclamation.]

(B)[(C)] designated units of the Las Palomas Wildlife Management Area and Kerr Wildlife Management Area (permission by registration): during the season as provided in the migratory game bird proclamation, except that only persons possessing a regular [special] permit may take mourning doves on days when hunting by regular [special] permit is conducted.

(C)[(D)] Chaparral, James E. Daughtrey, and Matagorda Island Wildlife Management Areas (regular permit): during the season as provided in the migratory game bird proclamation.

(D)[(E)] other areas: no open season.

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

(b) White-winged doves and white-tipped doves.

(1) Open season:

[(A)] Black Gap (permission by registration): to correspond with the season as provided in the migratory game bird proclamation;]

(A)[(B)] designated units of the Las Palomas Area and designated units of the State Park System (regular permit): during the season as provided in the migratory bird proclamation;

(B)[(C)] other areas: no open season.

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

(c) Waterfowl.

(1) Open season:

(A) [Dam B (includes Angelina-Neches Scientific Area), Granger, Pat Mayse, North Toledo Bend, and] Somerville [Units of the Eastern Wildlife Management Area;] and James E. Daughtrey Wildlife Management Areas [Area] (permission by registration): to correspond with the season as provided in the migratory game bird proclamation;

[(B)] Alabama Creek, Bannister, Moore Plantation, and Caddo Wildlife Management Areas (permission by registration): to correspond with the season as provided in the migratory game bird proclamation. No waterfowl hunting will be allowed on days when hunting by special permit is conducted, except on the ladonia unit, Lake Davy Crockett and Coffee Mill Lake within the Caddo Wildlife Management Area;]

(B)[(C)] Guadalupe Delta, Peach Point, Keechi Creek, Gus Engeling, Mad Island, Matagorda Island, and J. D. Murphree Wildlife Management Areas and designated units of the State Park System (regular permit): during the season as provided in the migratory game bird proclamation;

(C)[(D)] other areas: no open season.

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

(5) Special regulation. On the Gus Engeling, J. D. Murphree, Mad Island, Matagorda Island, Peach Point and Guadalupe Delta Wildlife Management Areas and designated units of the State Park System, waterfowl hunters may possess only shotgun shells that contain non-toxic shot.

(d) (No change.)

(e) Woodcock.

(1) Open season:

(A) [Dam B (includes Angelina-Neches Scientific Area), Granger, North Toledo Bend, Pat Mayse and] Somerville [Units of the Eastern] Wildlife Management Area[; Alabama Creek, Bannister, Caddo, and Moore Plantation Wildlife Management Areas] (permission by registration): to correspond with the season as provided in the migratory game bird proclamation, except no woodcock hunting on days when hunting by special permit is conducted;

(B)-(C) (No change.)

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

(f) King and clapper rails.

(1) Open season:

(A) J. D. Murphree, Mad Island, Peach Point, and Guadalupe Delta Wildlife Management Areas (regular permit): during the season as provided in the migratory game bird proclamation;

(B) (No change.)

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

(g) Sora and Virginia rails.

(1) Open season:

(A) J. D. Murphree, Mad Island, Peach Point, and Guadalupe Delta Wildlife Management Areas (regular permit): during the season as provided in the migratory game bird proclamation;

(B) (No change.)

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

(h) Gallinules.

(1) Open season:

(A) [Dam B (includes Angelina-Neches Scientific Area), Granger, Pat Mayse, North Toledo Bend, and] Somerville [Units of the Eastern] Wildlife Management Area (permission by registration): to correspond with the season as provided in the migratory game bird proclamation;

[(B) Alabama Creek, Bannister, Moore Plantation, and Caddo Wildlife Management Areas (permission by registration): to correspond with the season as provided in the migratory game bird proclamation. No gallinule hunting will be allowed on days when hunting by special permit is conducted, except on the Ladonia Unit, Lake Davy Crockett, and Coffee Mill Lake within the Caddo Wildlife Management Area;]

(B)[(C)] Gus Engeling, Matagorda Island, Mad Island, J. D. Murphree, Peach Point, Keechi Creek, and Guadalupe Delta Wildlife Management Areas (regular permit): during the season as provided in the migratory game bird proclamation;

(C)[(D)] other areas: no open season.

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

(i) (No change.)

§65.218. Other Nonprotected Species: Rabbits and Hares.

[(a) Dam B (includes the Angelina-Neches Scientific Area) Granger, and North Toledo Bend Units of the Eastern Wildlife Management Area (permission by registration): no closed season and no bag or possession limit.]

(a)[(b) Pat Mayse and] Somerville [Units of the Eastern] Wildlife Management Area[; Alabama Creek, Bannister, Caddo, and Moore Plantation Wildlife Management Areas] (permission by registration): no closed season, except no rabbit or hare hunting allowed on days when hunting by special permit is conducted. There is no bag or possession limit.

(b)[(c)] On the [Black Gap,] Chaparral, James Daughtrey, [Matador,] Elephant Mountain, Gus Engeling, Gene Howe, Keechi Creek, and Kerr Wildlife Management Areas, rabbits and hares may be taken by permitted hunters during hunts conducted for quail, mourning dove, or squirrel. There is no bag or possession limit.

(c)-(d) other areas: no open season.
§65.219. Furbearing Animals.

[(a)] Open Season: no open season.

[(1) Dam B (includes Angelina-Neches Scientific Area), Granger, North Toledo Bend, and Pat Mayse Units of the

Eastern Wildlife Management Area and Caddo Wildlife Management Area (permission by registration): during the period from September 1-March 31, except on days when hunting by special permit is conducted;

[(2) other areas: no open season.

(b) Bag and possession limits: to conform to the bag and possession limits as provided in the statewide fur-bearing animal and trapping proclamation.]
§65.220. Predatory Animals.

(a) (No change.)

(b) Feral hogs, European wild boars, and crosses thereof.

(1) Archery only season—open season:

(A) [Dam B (includes Angelina-Neches Scientific Area), North Toledo Bend, Pat Mayse, and] Somerville [Units of the Eastern] Wildlife Management Area[; Alabama Creek, Bannister, Caddo, and Moore Plantation Wildlife Management Areas] (permission by registration): to correspond with the archery only season provided for taking deer;

(B) James E. Daughtrey (regular permit): during the months [month] of September and October;

(C) (No change.)

(2) Regular season—open season:

[(A) Dam B (includes Angelina-Neches Scientific Area) Unit of the Eastern Wildlife Management Area (permission by registration): to correspond with the regular season provided for taking deer;]

(A)[(B)] Chaparral Gus Engeling, Keechi Creek, and Peach Point Wildlife Management Areas (special permit): during the period from January 1-March 31.

(B)[(C)] other areas: no regular season.

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

(c) Coyotes.

(1) Regular season—open season:

[(A) Dam B (includes Angelina-Neches Scientific Area), Granger, North Toledo Bend and Pat Mayse Units of the Eastern Wildlife Management Area; Caddo Wildlife Management Area (permission by registration): during the period from September 1-March 31 on days other than when hunting by special permit is conducted;]

(A)[(B)] Chaparral and[,] James E. Daughtrey[, and Matador] Wildlife Management Areas (regular permit): during the period from September 1-August 31;

(B)[(C)] other areas: no regular season.

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

§65.222. *Fishing Permits.*

(a) (No change.)

(b) Permission by registration is required on the [Black Gap,] Kerr, Pat Mayse, Matador,] and Gus Engeling Wildlife Management Areas., except that person who fish from boats on open waters or reservoirs, creeks, bayous, or rivers within boundaries of these areas and do not enter or exit by land through the area are not required to obtain permission by registration.

(c) (No change.)

§65.224. *Fishing Seasons.*

(a) General: no closed season except [that the Black Gap Area will be closed from June 16 of each year through March 14 of the succeeding year, the Matador Area will be closed from September 1 of each year through April 30 of the succeeding year, and] there shall be no open season on the Chaparral, Gene Howe, Keechi Creek, Las Palomas, [Honey Creek,] Elephant Mountain, or Sierra Diablo Wildlife Management Areas or Honey Creek Natural Area.

[(b) Black Gap: impoundments are closed to fishing.]

(b)[(c)] J. D. Murphree:

(1) In that portion of Keith Lake which lies within the confines of the J. D. Murphree Wildlife Management Area, fishing is permitted year-round with no daylight restrictions.

(2) In that portion of Big Hill Bayou which lies within the J. D. Murphree Area fishing is permitted from the Monday following the closing of waterfowl season through October 31, both days inclusive, from 30 minutes before sunrise to 30 minutes after sunset.

(3) In the remainder of the area, fishing shall be permitted from March 1-August 31, both days inclusive, from 30 minutes before sunrise to 30 minutes after sunset, except that when required by the department for the proper management of waterfowl resources, compartments or outside borrow ditches may be closed to fishing for temporary periods of time.

(4) Powered skiffs, powered boats, or powered floating craft of any type with motor not to exceed 35 horsepower shall be permitted within compartments during the period from March 1-August 31.

(5) Boats, skiffs, or floating craft of any type are not permitted in the

ditches along the west boundary of compartments five-nine, and the north boundary of compartment 11, except for travel by permitted hunters.

(c)[(d)] Gus Engeling: no fishing is permitted on days when public hunts are conducted.

(e) Alabama Creek: no fishing permitted on days when hunting by special permit is conducted, except on Neches River.

(f) Barnister: no fishing permitted on days when hunting by special permit is conducted.

(g) Moore Plantation: no fishing permitted on days when hunting by special permit is conducted.

(h) Caddo: no fishing permitted on days when hunting by special permit is conducted, except that fishing shall be permitted at all times on Coffee Mill Lake, Lake Davy Crockett, and the ladonia unit.]

(d)[(i)] Sheldon: open for fishing from 5 a.m. to 9:30 p.m. each day.

(j) Matador: fishing permitted from 30 minutes before sunrise to 30 minutes after sunset. Fishermen are not allowed on the area before or after this period, except to camp at the designated campground. Boats, skiffs, or floating craft of any type are not permitted.]

§65.225. *Fishing: Means and Methods.*

(a) (No change.)

[(b) Black Gap: fishermen shall be required to use Maravillas Canyon and Horse Canyon Roads only while going to and from the Rio Grande on the Black Gap Wildlife Management Area. From this point where the Maravillas Canyon Road enters the Rio Grande Valley downstream to the area boundary, all fishermen shall be confined to the area between the road and the river. From the same point upstream to the area boundary, all fishermen shall be confined to an area within 300 yards of the river.]

(b)[(c)] J. O. Murphree:

(1) A person may take fish within compartment and borrow ditch areas only by means of rod and reel, and pole and line, except that garfish may be taken by means of bowfishing utilizing an arrow securely attached to the bow with a line.

(2) no fishing lines shall be left unattended at any time within compartment and borrow ditch areas.

(3) in that portion of Big Hill Bayou and Keith Lake which lies within the J. D. Murphree Area, jug lines and seines and nets other than 20-foot minnow seines are prohibited.

(c)[(d)] Sheldon:

(1) the use of handlines and trotlines is prohibited;

(2) fishing is closed to boat and wade fishermen between the period November 1-February 28, both days inclusive; and

(3) the use of boat motors over 10 horsepower is prohibited.

[(e) Matador: A person may take fish only by means of rod and reel, and pole and line. No fishing lines shall be left unattended at any time.]

§65.229. *Alligators.*

(a) Open season:

(1) J. D. Murphree and Mad Island Wildlife Management Areas [Area] and designated units of the State Park System (special permit): during the month of September;

(2) (No change.)

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

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

Issued in Austin, Texas, on June 14, 1988.

TRD-8806125

Boyd M. Johnson
General Counsel
Texas Parks and Wildlife
Department

Earliest possible date of adoption: July 22, 1988

For further information, please call: (512) 389-4770

Subchapter U. Type II. Wildlife Management Area- Public Hunting Lands

• 31 TAC §§65.701-65.706

The Texas Parks and Wildlife Department proposes amendments to §§65.701, -65.706, concerning the Type II Wildlife Management Area - Public Hunting Lands Proclamation. The amendments as proposed will incorporate additional lands into the low cost hunting public access program.

The commission proposes to incorporate selected Type I Wildlife Management Areas, private, and public agency lands into the Type II program which will increase acreage and access.

In addition to increasing hunting opportunity the amendments propose a reduced fee to access Type II areas. This reduced permit fee has been requested by numerous permittees who want to nonconsumptively use the Type II lands.

Wildlife resources that are highly sought after or in limited supply will continue to be allo-

cated by special permit through a random drawing. Additional proposed amendments are necessary to protect limited wildlife resources which is in compliance with Parks and Wildlife Code provisions.

The proposed amendments restrict motor vehicles to designated roads, including ATV's, requires camping in designated campsites, prohibits buckshot, requires all persons during deer seasons to wear hunter orange, and provides additional safeguards for species through limited seasons, periods of time, and closure of areas that are sensitive or to function as sanctuaries.

The incorporation of selected Type I areas into the Type II WMA program will increase cost effectiveness, efficiency of administering the program, and provide increased access by hunters and others who engage in outdoor recreation.

James E. Dickinson, director of finance, has determined that the first five-year period the proposed amendments will be in effect, there will not be fiscal implications for state or local governments or small business as a result of enforcing or administering the amendments.

Mr. Dickinson also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be to provide increased public access to public lands for hunting opportunities and other activities. There will be no economic cost to individuals who are required to comply with the amendments as proposed. A reduction of fees from \$35 to \$10 to engage in activities such as picnicking, hiking, birding, fishing, and camping should broaden public access to public lands owned or leased by the department.

Comments on the proposed amendments may be submitted to Phil Evans, Regulatory Coordinator, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, 512-389-4974 or 1-800-792-1112, extension 4974.

The amendments are proposed under the Texas Parks and Wildlife Code, Chapter 81, Subchapter E, which provides the Texas Parks and Wildlife Commission with authority to regulate seasons, numbers, means, methods, and conditions for taking wildlife resources on wildlife management areas.

§65.701. Application.

(a) This subchapter applies to the entering, hunting, and taking of wildlife resources and other activities under an annual permit on lands acquired by the department and identified by boundary markers as a Type II Wildlife Management Area. The executive director is authorized by the Parks and Wildlife Commission to designate land as a Type II Wildlife Management Area.

(b) The fee for the Type II Wildlife Management Area-Public Hunting lands permit is: \$35 and entitles the possessor to enter, hunt, fish, and take all wildlife resources during open seasons as provided by commission adopted regulations and engage in other activities. The fee for a duplicate (lost) permit is \$10.

(c) The fee for the Limited Use Type II Wildlife Management Area Permit is \$10 and entitles the possessor to enter Type II Wildlife Management Areas. Persons who possess a Limited Use Type II permit may not hunt or fish. The fee for a duplicate (lost) Limited Use permit is \$5.

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

Department—The Texas Parks and Wildlife Department or a specifically authorized employee of the department.

Designated campsite—An area identified by signs for camping and camping activities.

Designated road—A constructed and maintained road that may be negotiated by a conventional four wheeled motor vehicle and not identified as a closed road by signs, but does not include county or state roads or highways.

Executive Director—The Executive Director of the Texas Parks and Wildlife Department.

Exotic mammals—Nonindigenous wild mammals and feral goats, feral hogs, European wild hogs, and crosses thereof.

Paraplegic—An individual afflicted with paralysis of lower half of body without movement of both legs usually due to disease or injury to spinal cord.

Prescribed season—The period(s) of time when a wildlife resource and sex of the wildlife resource may be taken under commission adopted regulations for the county or special seasons provided by this proclamation.

Self registration—The completion of a self registration permit prior to initiating any activity that requires self registration and before departing the area leaving the completed self registration permit at the designated check station.

Special permit—A department permit issued to an applicant as the result of a random computer selection procedure or public drawing which allows the taking of a designated wildlife resource.

Type II permit—An annual permit, valid from September 1 or issuance date, whichever is later through August 31 of the following year, issued to an individual to allow the [entering,] hunting, and taking of wildlife resources and other activities on land designated as a Type II Wildlife Management Area in accordance with commis-

sion adopted regulations for the county where the Type II Wildlife Management Area is located.

Type II Wildlife Management Area—Land under the authority of the Type II Wildlife Management Area Proclamation which provides public hunting, and other activities under an annual permit.

Wildlife resources—Game animals, game birds, fur-bearing animals, alligators, frogs, exotic mammals, predatory animals (coyotes, mountain lions, bobcats), fish, rabbits and hares, and other wild fauna.

§65.703. Open Seasons, Bag and Possession Limits, and Means and Methods.

(a) (No change.)

(b) The executive director may close a Type II Wildlife Management Area or a portion of an area to protect wildlife resources if evidence is available to support the closure [the taking of a wildlife resource if surveys determine the wildlife resource is depleted or is being depleted].

(c) The executive director may close to public use a portion of an area to protect sensitive areas.

§65.704. Exceptions. The exceptions to commission adopted regulations provided by this section apply to [all] Type II Wildlife Management Areas.

(a) The use of a dog or dogs is permitted only for the hunting of fur-bearing animals, coyotes, rabbits and hares, squirrels, and game birds [when hunting deer or javelina is prohibited].

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

(d) Hunting from a vehicle is prohibited, except paraplegics and single or double amputees of the legs may hunt from a stationary vehicle provided the hunting is not conducted on a designated road. Paraplegics and single or double amputees are exempt from the restrictions of subsection (f) of this section, to the extent that they may drive directly to the hunting place and hunt from a stationary vehicle.

(e) Hunting from a designated road is prohibited, see §65.702 of this title (relating to Definitions). [For purposes of this subsection, a road is defined as a road that can be negotiated by a motor vehicle.]

(f) Motor vehicles including all-terrain vehicles, three-wheelers, four-wheelers, and dirt bikes may be used only on designated roads, see §65.702 of this title (relating to Definitions) [to travel to and from the hunting area by the most direct route].

(g)-(i) (No change.)

(j) All persons [Each hunter] must visibly wear a minimum of 400 square inches of hunter [daylight fluorescent] orange material with 144 square inches appearing on both the chest and back [when

hunting any wildlife resource] on a Type II Wildlife Management Area during times when the taking of deer is permitted, except that persons hunting fur-bearing animals and coyotes at night, sandhill cranes, waterfowl, and persons within vehicles or designated campsites [turkey] are exempt from this requirement.

(k) The executive director may establish additional restrictions on camping consistent with the type of hunting season and the environmental protection of the area.

(l) Camping and camp fires are restricted to areas identified as a designated camp site, see §65.702 of this title (relating to Definitions). The discharge of firearms, muzzle loading weapons, and bow and arrows is prohibited in designated campsites.

(m) It is unlawful for any person to not obey posted regulations, fail to comply with instructions on special permits and self registration permits, area leaflets, or refuse to follow directions given by department personnel in the discharge of official duties.

(n) Leaving or strewing refuse, litter, trash, or garbage is prohibited.

(o) Dogs in designated campsites must be confined or leashed.

(p) No person may cause, create, or contribute to excessive or disturbing sounds beyond the person's immediate campsite between the hours of 10 p.m. and 6 a.m.

(q) Department personnel may collect parts from hunter harvested wildlife resources for scientific investigation.

(r) Buckshot may not be possessed on a Type II Wildlife Management Area.

(s) Shotguns only may be used in taking turkey during spring gobbler seasons.

(t) Except as provided in §65.705(b) of this title (relating to Permit Required), a Type II Wildlife Management Area is closed to all other public use during the specific time period when the hunting of a wildlife resource is authorized by special permit only.

(u) Airboats are prohibited on Dam B Unit (includes Angelina-Neches Scientific Area).

(v) The taking of antlerless white-tailed deer is prohibited on Type II Wildlife Management Areas.

(w)[(1)] The restrictions listed in this subsection apply only to specific areas.

(1) On [the] General Land Office lands designated as Type II [Matador] Wildlife Management Areas[Area], entering, hunting, and taking of wildlife resources is limited to the period between

September 1-February 26 and no overnight camping is permitted [dove and quail and then only during the designated seasons]. The season on mule deer is closed on General Land Office lands.

(2) On the Gable tracts located in Castro and Deaf Smith Counties, the taking of wildlife resources is limited to mourning dove, pheasant, ducks, geese, and sandhill cranes during commission adopted seasons and bag limits for these species. Rabbits and hares may be taken only during dove, pheasant, duck, goose, and sandhill crane seasons. [On the Black Gap Wildlife Management Area, the hunting of mule deer is restricted by a random drawing of a limited number of mule deer permits.]

[(3) The Black Gap Wildlife Management Area is closed to all public use except a specially permitted mule deer hunters during the period November 23-December 6, 1987.

[(4) On the Black Gap Wildlife Management Area, hunting of javelina is permitted only during the period January 16-February 29, 1988.]

(3)[(5)] On the Black Gap and Ray Roberts Wildlife Management Areas [Area], fur-bearing animals and predators may not be taken.

(4)[(6)] On the Black Gap [and Matador] Wildlife Management Area, all persons [hunters] must self register at area headquarters immediately upon arrival, see §65.702 of this title (relating to Definitions).

(5)[(7)] On Granger Wildlife Management Area and that portion of the Richland Creek Wildlife Management Area[,] located north of U.S. Highway 287, only shotguns and bow and arrows are permitted.

(6) Ray Roberts: special exceptions.

(A) The only firearms permitted are shotguns with shot. The discharge of firearms except for hunting is prohibited.

(B) Overnight camping is prohibited.

(C) Fishing from the bank only is permitted.

(D) Use of boats powered by motors is prohibited.

(E) Hunting is limited to the period of September 1-February 26.

(7) On the Dixon, Formby, and Wall tracts located in the Panhandle, hunting is limited to pheasants, rabbits

and hares, and only during the prescribed 16 day pheasant season.

(8) Hunting and fishing regulations for wildlife resources on: Dam B, North Toledo Bend, Granger, Richland Creek, Pat Mayse, Black Gap, Alabama Creek, Bannister, Moore Plantation, Caddo, and Matador Type II Wildlife Management Areas.

(A) All persons must self-register to enter Type II Wildlife Management Areas listed in this section.

(B) Persons entering Black Gap and Pat Mayse Wildlife Management Areas by boat are not required to register.

(C) Persons entering Richland Creek Wildlife Management Area are not required to register.

(D) Regular seasons, bag and possession limits apply except special regulations listed in this subparagraph prevail.

(i) Exotic mammals, mountain lions, and bobcats may be taken only by persons authorized to hunt deer or by holders of permits to take exotic mammals, mountain lions, and bobcats.

(ii) A special permit is required to take mule deer or white-tailed deer on the Black Gap and Matador Wildlife Management Areas.

(iii) On Alabama Creek, Bannister, and Moore Plantation, white-tailed deer may only be taken from December 1, 1988, through January 1, 1989.

(iv) On Black Gap Wildlife Management Area javelina may be taken only January 14-February 26, 1989.

(v) On Black Gap Wildlife Management Area, rabbits and hares may only be taken during open seasons for javelina, quail, and mourning dove.

(vi) During seasons other than the early teal season, waterfowl may be hunted only on Tuesday, Thursday, and Saturday each week during the regular seasons.

(vii) Waterfowl hunters may possess only shotgun shells containing non-toxic shot.

(viii) Black Gap: Impoundments are closed to fishing and fishermen shall be required to use Maravillas Canyon and Horse Canyon Roads only while going to and from the Rio Grande on the Black Gap Wildlife Management Area. From this point where the Maravillas Canyon Road en-

ters the Rio Grande Valley downstream to the area boundary, all fishermen shall be confined to the area between the road and the river. From the same point upstream to the area boundary, all fishermen shall be confined to an area within 300 yards of the river.

§65.705. *Permit Required.*

(a) (No change.)

(b) Persons possessing a Limited Use Type II Wildlife Management Area Permit may enter any Type II Wildlife Management Area but may not hunt or fish.

(c)(b) The permits [permit] required under subsection (a) and (b) of this section are [is] not required for:

(1) persons who enter on United States Forest Service lands, including Caddo National Grassland, designated as a Type II Area for any purpose other than hunting white-tailed deer or who enter on Rita Blanca National Grasslands, and United States Army Corps of Engineers lands designated as a Type II area for purposes other than hunting;

(2) persons who are authorized by, and acting in an official capacity for the Department or the landowners of the Type II Areas; [and]

(3) persons participating in scheduled activities sponsored or sanctioned by the department with written approval;

(4)[(3)] persons owning or leasing land within the boundaries of a Type II Area while traveling to or from their property; and

(5) fishing access on the Black Gap Wildlife Management Area.

(d)(c) A person, by this signature on the permit, waives all liability towards the landowner (licensor) and Texas Parks and Wildlife Department (licensee). The text of the disclaimer of liability being: "This permit allows entry upon lands owned by licensor and licensed to Texas Parks and Wildlife Department. Neither licensor nor the Texas Parks and Wildlife Department know what type of conditions exist upon any of such lands, nor the number or proficiency of other participating hunters, and they specifically do not make any warranty or representation of any type, kind or character, whatsoever, as to existing conditions upon said lands or as to the suitability or nonsuitability of such lands for hunting purposes. Any persons entering upon such lands enters at his or her own risk, impliedly accepts such lands in the existing conditions, and recognize that all hunting is potentially dangerous because of the use of firearms by hunters of varying degrees of proficiency, and in consideration of being permitted to participate in this public hunting program, I, and as parent or guardian of any accompanying minor, unconditionally

release and holds harmless licensor and licensee against and for all liability, cost, expenses, claims and damages for which licensor and licensee might otherwise become liable by reason of any accidents, or injuries to or death of any persons, or damage to property, or both, in any manner arising or resulting from, caused by, connected with or related to the presence of any such person upon such land and premises, regardless of how, where, or when such injury, death or damage occurs even if caused by the negligence of licensor and licensee, its agents, servants or employees, or due to conditions on or defects in the premises. I, the permittee, have read this release and understand all its terms. I execute it voluntarily with full knowledge of its significance."

§65.706. *Permit Revocation.* Any person violating this subchapter (relating to Type II Wildlife Management Area-Public Hunting Lands) is subject to having their Type II Wildlife Management Area permit revoked under the authority of Texas Parks and Wildlife Code, Chapter 12, Subchapter F.

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

Issued in Austin, Texas, on June 14, 1988.

TRD-8806100 Boyd M. Johnson
General Counsel
Texas Parks and Wildlife
Department

Earliest possible date of adoption: June 22, 1988

For further information, please call: (512) 389-4974

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TITLE 40. SOCIAL
SERVICES AND
ASSISTANCE
Part III. Texas
Commission on Alcohol
and Drug Abuse
Chapter 141. General
Provisions

Continuity of Care of Inmates
With a History of Drug or
Alcohol Abuse

• 40 TAC §141.81

The Texas Commission on Alcohol and Drug Abuse (TCADA) proposes new §141. 81, concerning the continuity of care for inmates with a history of drug or alcohol abuse. The new section adopts by reference a Memorandum of Understanding between the commission and the Texas Department of Corrections (TDC), the Board of Pardons and Paroles (BPP), and the Texas Department of Mental Health and Mental Retardation (TDMHMR). The commission proposes the new section in order to comply with Senate

Bill 245, 70th Texas Legislature, 1987, enacting Texas Civil Statutes, Article 6203c-11, which require the commission to adopt the Memorandum of Understanding by rule. Specifically, the Memorandum of Understanding covers each named agency's role in identifying inmates with a history of drug or alcohol abuse; notification of BPP, TDMHMR, and TCADA by TDC as to when an inmate with a history of drug or alcohol abuse is to be released, and as to the inmate's release destination, identifying the services needed by the inmates with a history of drug or alcohol abuse to successfully reenter the community; and determining the manner in which each party to this memorandum can share information about inmates and use that information to provide continuity of care.

Larry Goodman, chief fiscal officer, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Goodman 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 coordination between the named state agencies in providing appropriate pre- and post-release chemical dependency programming for paroled inmates, and an increased likelihood of successful parole and adaption of released inmates to community life. 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 Patti Kubsch, Administrative Technician, Texas Commission on Alcohol and Drug Abuse, 1705 Guadalupe, Austin, Texas 78701.

The new section is proposed under Texas Civil Statutes, Article 6203c-11, which provide the Texas Commission on Alcohol and Drug Abuse with the authority to adopt by rule the Memorandum of Understanding between the named state agencies.

§141.81. *Continuity of Care of Inmates With a History of Drug or Alcohol Abuse.* The commission adopts the provisions of the Memorandum of Understanding dated April 19, 1988, which was signed by authorized representatives of the Texas Commission on Alcohol and Drug Abuse, Board of Pardons and Paroles, the Texas Department of Mental Health and Mental Retardation, and the Texas Department of Corrections, as amended or extended from time to time, by reference. A copy of the Memorandum of Understanding may be inspected at the office of the executive director.

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

Issued in Austin, Texas, on June 13, 1988.

TRD-8806086 Bob Dickson
Executive Director
Texas Commission on
Alcohol and Drug
Abuse

Earliest possible date of adoption: July 22,

1988

For further information, please call: (512)
463-5510



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 22. EXAMINING BOARDS

Part III. Texas Board of Chiropractic Examiners

Chapter 71. Applications and Applicants

• 22 TAC §71.8

The Texas Board of Chiropractic Examiners adopts an amendment to §71.8, with changes to the text as published in the April 26, 1988, issue of the *Texas Register* (13 TexReg 2019).

The amendment will provide for comprehensive testing, and more adequately examine the candidates for licensure. These examinations will be administered at the regularly scheduled examination times.

Physical Therapy Association feels that it is unnecessary to examine candidates for licensure in physiotherapy as required in subsection (a), and it also objects to using the word physiotherapy. No comments were received regarding subsection (c).

Those commenters opposing adoption of the proposal as written are Richard Combs and Lester Prieto, both of the Physical Therapy Association.

The Texas Board of Chiropractic Examiners disagrees with the comments, because candidates are taught physiotherapy in chiropractic college, and the National Board of Chiropractic Examiners offers physiotherapy as part of its examinations, and the agency will purchase these examinations from the national board.

The section is adopted under Texas Civil Statutes, Article 4512b, and Senate Bill 109, §5, 67th Legislature, 1981, which provides the Texas Board of Chiropractic Examiners with the authority to promulgate procedural rules as deemed necessary.

§71.8. *Practical and Theoretical Examinations.*

(a) The subjects on which an examinee shall be examined in the practical and

theoretical portion of the examination are x-ray diagnosis, orthopedic/neurological, clinical competence, and physiotherapy.

(b) (No change.)

(c) The board shall grant a license to an applicant that has successfully passed all parts of the National Board of Chiropractic Examiners examinations. The board shall require all applicants to successfully pass the x-ray written and x-ray interpretation portion of the practical examination as provided for in the Texas Chiropractic Act, §10(b) and §12.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 13, 1988.

TRD-8806093

Bobbye Ferris
Executive Director
Texas Board of
Chiropractic Examiners

Effective date: July 4, 1988

Proposal publication date: April 26, 1988

For further information, please call: (512) 835-2006

TITLE 28. INSURANCE

Part I. State Board of Insurance

Chapter 25. Insurance Premium Finance

Subchapter H. Annual Reports, Examinations, and Assessments

• 28 TAC §25.712

The State Board of Insurance adopts new §25.712, without changes to the proposed text as published in the April 29, 1988, issue of the *Texas Register* (13 TexReg 2074).

New §25.712 concerns assessment of insurance premium finance companies in 1988. This section is necessary to provide a rate of assessment sufficient to meet the expenses of performing the board's statutory responsibilities for examining, investigating, and regulating insurance premium finance companies.

New §25.712 records the rate of assessment which the State Board of Insurance has levied for 1988 to cover general administrative expense attributable to regulation of insurance premium finance companies. The board is collecting this assessment from each insurance premium finance company on the basis of a percentage of total loan dollar volume for the 1987 calendar year.

No comments were received regarding adoption of the new section.

The new section is adopted under the Insurance Code, Article 24.06, §(c), which provides that each insurance premium finance company licensed by the board shall pay an amount assessed by the board to cover the direct and indirect cost of examinations and investigations and a proportionate share of general administrative expense attributable to regulation of insurance premium finance companies, and Article 24.09, which authorizes the State Board of Insurance to adopt and enforce rules necessary to carry out provisions of the Insurance Code concerning the regulation of insurance premium finance companies.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 14, 1988.

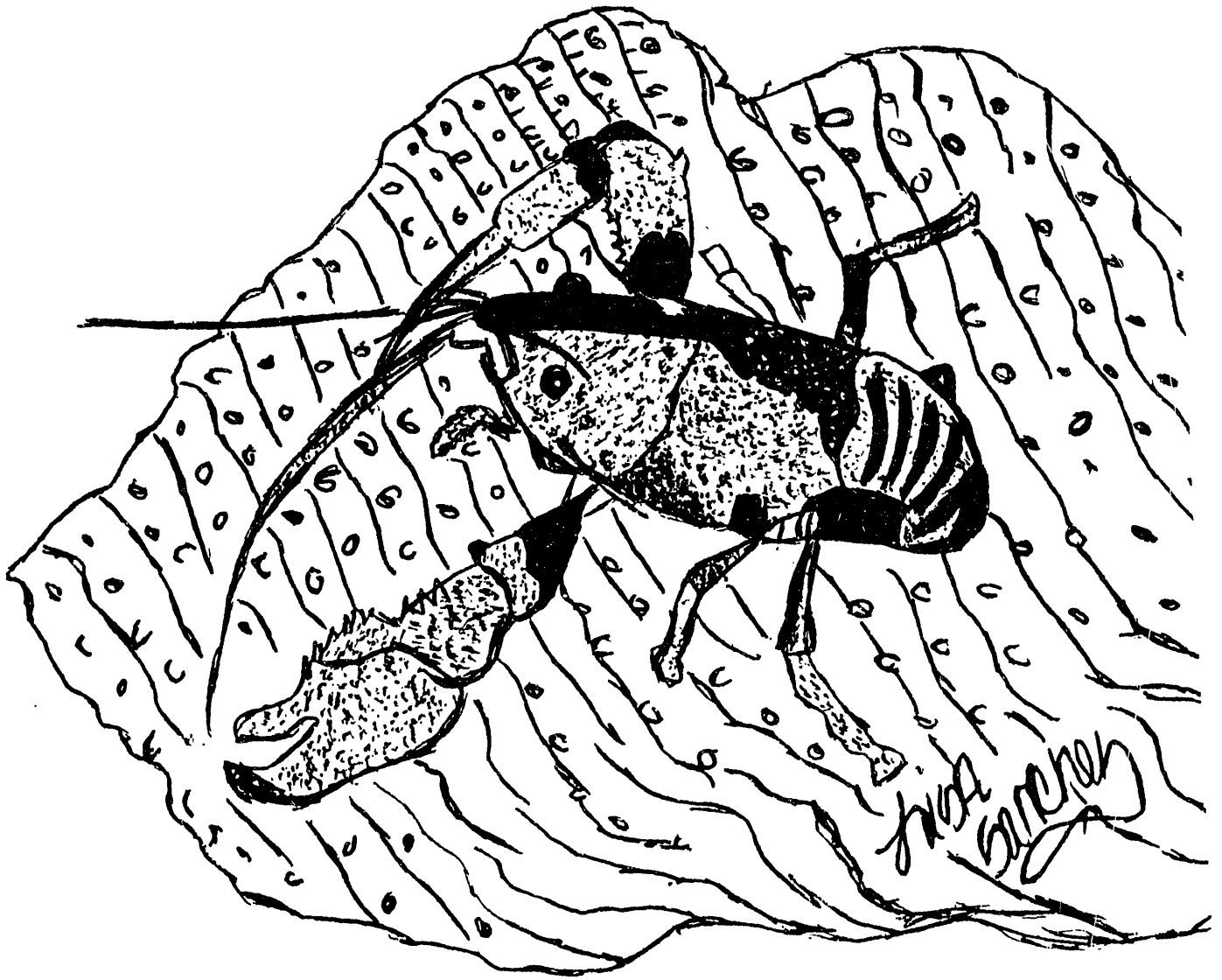
TRD-8806121

Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: July 5, 1988

Proposal publication date: April 29, 1988

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



Name: Lisa Sanchez

Grade: 8

School: T.H. McDonald Middle School, Mesquite

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 billeting board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register*.

Texas Department on Aging

Wednesday, July 6, 1988. The Texas Department on Aging will meet in the Sunflower and Marigold Rooms, Holiday Inn-Town Lake, 20 North IH 35, Austin. Times, agendas, and committees follow.

10 a.m. The Texas Board on Aging and State Citizens Advisory Council Joint Meeting will be held to approve minutes of the Texas Board on Aging, March 10, 1988, meeting; consider Citizens Advisory Council membership; call to order the council; approve minutes for the Citizens Advisory Council meeting, February 11, 1988; hear a report on the Citizens Advisory Council meeting of February 11, 1988; consider appropriations and other legislation; hear program reports; HCR 36; discuss computerized participant tracking system; and hear general announcements.

Contact: O.P. (Bob) Bobbitt, P.O. Box 12786, Austin, Texas 78711, (512) 444-2727.

Filed: June 14, 1988, 4:14 p.m.

TRD-8806124

3 p.m. (or upon adjournment of joint meeting of Texas Board on Aging and State Citizens Advisory Council meeting). The Texas Board on Aging Fundraising and Development Committee, will study fundraising and development for aging related matters.

Contact: O.P. (Bob) Bobbitt, P.O. Box 12786, Austin, Texas 78711, (512) 444-2727.

Filed: June 14, 1988, 4:14 p.m.

TRD-8806123

Joint Select Committee on State Air Transport Systems

Thursday, June 30, 1988, 9 a.m. The Legislature for the Joint Select Committee on State Air Transport Systems will meet in Room 102, John H. Reagan Building, 15th and Colorado Streets, Austin, rescheduled

from May 26, 1988. According to the agenda, the legislature will hear reports on the cost of self-managed aircraft in Texas, centralized travel, safety standards, and aircraft utilization, by LBB.

Contact: Jon R. Comola, Room 228, John H. Reagan Building, Austin, Texas, (512) 463-9998.

Filed: June 16, 1988, 9:20 a.m.

TRD-8806202

State Bar of Texas

Thursday, June 23, 1988, 9 a.m. The Executive Committee of the State Bar of Texas will meet in Room 206, Texas Law Center, 1414 Colorado Street, Austin. According to the agenda summary, the committee will hear reports of chairman, president, executive director, immediate past president, immediate chairman of the board, TYLA president, supreme court liaison, alone with considerations and approvals listed on agenda.

Contact: Paula Welch, 1414 Colorado Street, Austin, Texas 78701, (512) 463-1451.

Filed: June 15, 1988, 2:30 p.m.

TRD-8806172

Texas Department of Commerce

Friday, June 17, 1988, 9 a.m. The Strategic Economic Policy Commission for the Texas Department of Commerce met at One Bell Plaza, 208 South Akard, Dallas. According to the agenda, the commission discuss draft material prepared by the task forces working with the commission to review plans for the next month of its work. The emergency status was necessary as members schedules were unknown prior to this date.

Contact: Bob Farley, (512) 320-9667.

Filed: June 14, 1988, noon

TRD-8806106

Monday, June 27, 1988, 9:30 a.m. The Texas Literacy Council of the Texas Department of Commerce will meet in the Old Supreme Court Conference Room, 310 State Capitol, Austin. According to the agenda, the council will hear welcome remarks, approve minutes, schedule next meeting date, hear remarks by associate director of Workforce Development Division, public comment, marketing/media planning session, discuss planning guidelines, individual committee discussions at lunch, reports and strategic planning guidelines: finance, Data Base, Program Delivery, and Public Awareness Committees; discuss education testing service proposal, tentative briefing by Coordinating Board, and present and request for endorsement by council member.

Contact: Martha Alworth, 8317 Cross Park Drive, Austin, Texas, (512) 834-6291.

Filed: June 16, 1988, 9:45 a.m.

TRD-8806205

Tuesday, June 28, 1988, 1:15 p.m. The State Job Training Coordinating Council for the Texas Department of Commerce will meet in the Worthington Hotel, 200 Main Street, Fort Worth. According to the agenda, the Planning and Executive Committees will review and recommend to the governor a fiscal year 1988-1989 governor's coordination and special services plan for submission to the U.S. Department of Labor. The plan describes the state's policies and planned use of resources for programs under the federal Job Training Partnership Act.

Contact: Brenda Lovett, 8317 Cross Park Drive, Austin, Texas 78754, (512) 834-6312.

Filed: June 16, 1988, 9:46 a.m.

TRD-8806206

Texas Conservation Foundation

Monday, June 27, 1988, 9 a.m. The Board of Directors for the Texas Conservation Foundation will meet in Room 833, SFA

Building, 1700 North Congress Avenue, Austin. According to the agenda, the board will hear minutes of previous meeting; hear director's report; consider 1990-1991 budget request; and consider rule relating to contracts with corporations delinquent in franchise tax payments.

Contact: Alicia Reban, Room 80180, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-2196.

Filed: June 16, 1988, 9:39 a.m.

TRD-8806203

Consumer Credit Section of the Finance Commission

Thursday, June 16, 1988, 7:30 p.m. The Consumer Credit Section of the Finance Commission met in emergency session at 2601 North Lamar Boulevard, Austin. According to the agenda, the section discussed agency operation, budget, and personnel. The emergency status was necessary because the section needed to discuss their agenda prior to the meeting of the Finance Commission at 10 a.m., Friday, June 17, 1988. The original scheduling and posting of a meeting of this section was for 9 a.m., Friday, June 17, 1988, but it was felt that because of the recent appointment of a new member to the Consumer Credit Section, the meeting would not allow sufficient time for an in-depth discussion of the agenda, thus necessitating the preliminary meeting at which time no action was taken by the section.

Contact: Al Endsly, 2601 North Lamar Boulevard, Austin, Texas 78758, (512) 479-1280.

Filed: June 14, 1988, 3:34 p.m.

TRD-8806118

Texas Commission for the Deaf

Friday, June 24, 1988, 9 a.m. The Texas Commission for the Deaf will meet in the Caduceus Room, Sixth Floor, UTMB, 301 University Boulevard, Galveston. According to the agenda, the commission will welcome guests and approve previous minutes; hear chairman's report and public comment; hear final report on message relay from Eileen Alter; program presentation from Deaf Council of Greater Houston and Hear-Say; hear director and staff reports; hear a report from the board for evaluation of interpreters; and meet in executive session, if needed.

Contact: Larry D. Evans, 510 South Congress Avenue, Suite 300, Austin, Texas 78701, (512) 469-9891.

Filed: June 14, 1988, 3:58 p.m.

TRD-8806120

Texas State Board of Dental Examiners

Saturday, June 25, 1988, 9 a.m. The Texas State Board of Dental Examiners will meet at the Hershey Hotel, 900 North Shoreline Boulevard, Corpus Christi. According to the agenda, the board will review and reevaluate the 1988 dental and dental hygiene examinations and review of scheduling and criteria for 1989 examinations.

Contact: William S. Nail

Filed: June 15, 1988, 10:06 a.m.

TRD-8806162

Texas Employment Commission

Wednesday, June 22, 1988, 8:30 a.m. The Texas Employment Commission will meet in Room 644, TEC Building, 101 East 15th Street, Austin. Times and agendas follow.

8:30 a.m. The commission will consider prior meeting notes, internal procedures of commission appeals, consider and act on tax liability cases and higher level appeals in unemployment compensation cases listed on Commission Docket 25, and set a date for the next meeting.

Contact: Courtenay Browning, 101 East 15th Street, Austin, Texas 78778, (512) 463-2226.

Filed: June 14, 1988, 3:02 p.m.

TRD-8806114

2 p.m. The commission will receive public comment; consider TEC budget for state biennium 1989-1990, consider TEC strategic plan, and additional discussion as necessary.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: June 14, 1988, 3:01 p.m.

TRD-8806115

Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids

Thursday, June 23, 1988, 9 a.m. The Examination Committee for the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids will meet in Guest Quarters Suite Hotel, 303 West 15th Street, Austin. According to the agenda, the committee will review and revise the state examination.

Contact: Wanda F. Stewart, 4800 North

Lamar Boulevard, Suite 150, Austin, Texas 78756, (512) 459-1488.

Filed: June 15, 1988, 9:14 a.m.

TRD-8806129

Friday-Saturday, June 24-25, 1988, 8 a.m. The Board of the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids will meet in Guest Quarters Suite Hotel, 303 West 15th Street, Austin. According to the agenda, the board will hear comments in memory of Carl McGovern, prayer, approval of minutes, board action on examination, introduce new member (Wallace Hamill), ratify committee appointments, hear report on Radio Shack attorney general's opinion, final adoption of rule and regulation 141.37 on reciprocity, final adoption on amendment to rule and regulation 143.1-guidelines for a 30-day trial period, hear committee reports, appoint nominating committee, hear reports from executive director and president, and report on future meeting dates.

Contact: Wanda F. Stewart, 4800 North Lamar Boulevard, Suite 150, Austin, Texas 78756, (512) 459-1488.

Filed: June 15, 1988, 9:14 a.m.

TRD-8806130

Governor's Office

Thursday-Friday, June 23 and 24, 1988, 9 a.m. The Select Committee on Education, Student Performance Subcommittee for the Governor's Office, will meet in Room 104, John H. Reagan Building, Austin. According to the agenda on Thursday, the committee will discuss Odden June 1 paper; present staff development; discuss school improvement and local processes-David Marsh; and present state incentive programs-Terry Peterson. On Friday the committee will discuss localization of various programs; state policy implementation implications; and view TEA presentation on curriculum, accreditation, and special program options.

Contact: Margaret LaMontagne, Room 707, Sam Houston Building, Austin, Texas 78711, (512) 463-1834.

Filed: June 14, 1988, 10:23 a.m.

TRD-8806099

Texas Housing Agency

Wednesday, June 22, 1988, 8:30 a.m. The Programs Committee of the Texas Housing Agency will meet at the Holiday Inn Crowne Plaza, 2222 West Loop South, Houston. According to the agenda summary, the committee will consider and possibly act on the following: conversion of 1988 bond authority of \$92,000,000 to MCC program; single family prepayment refunding;

conversion of fixed rate on October 1, 1988, of Residential Mortgage Revenue Bond (1987B, C, D); REO refunding; multi-family refinancing of 1982 Series A loan to lenders (Westborough Crossing Apartments); revision of September minutes to clarify MCC builder set aside period; and report on revised MCC internal processing procedures.

Contact: Karen Cheney, P.O. Box 13941, Austin, Texas 78704, (512) 474-2974.

Filed: June 14, 1988, 5:22 p.m.

TRD-8806126

Wednesday, June 22, 1988, 10 a.m. The Board of Directors of the Texas Housing Agency will meet at the Holiday Inn Crowne Plaza, 2222 West Loop South, Houston. According to the agenda summary, the board will meet in executive session to discuss pending and contemplated litigation; interview candidates for executive administrator; and other personal items. The board will also consider and possibly act on the following: May 25, 1988, minutes; selection of executive administrator; expenses of executive administrator applicants; conversion of 1988 bond authority; single family prepayment refunding; conversion to fixed rate of residential mortgage revenue bonds (1987B, C, D); REO refunding; multi-family refinancing of 1982 series A loans to lender program; revision of September 1987 minutes; MCC internal processing procedures; minority bond counsel/co-counsel; senior manager/co-manager contract; statewide housing study contract; and report of trustee investments.

Contact: Karen Cheney, P.O. Box 13941, Austin, Texas 78704, (512) 474-2974.

Filed: June 14, 1988, 5:22 p.m.

TRD-8806127

Texas Commission on Human Rights

Thursday, June 23, 1988, 11 a.m. The Texas Commission on Human Rights will meet in the Old Supreme Court Room 310, State Capitol, Austin. According to the agenda summary, the commission will approve minutes of the previous meeting; hear administrative reports; consider EEOC charge resolution contract, biennium budget by state auditor's office, cash flow statement, status of EEO compliance training, status of sunset review, and 1990-1991 biennium budget proposal; hear report on governor's reorganization; consider special projects, commissioner issues, and unfinished business.

Contact: William M. Hale, 8100 Cameron Road, Suite 525, Austin, Texas 78753, (512) 837-8534.

Filed: June 14, 1988, 11:03 a.m.

TRD-8806105

Texas Department of Labor and Standards

Friday, June 24, 1988, 10 a.m. The Manufactured Homeowners Recovery Fund for the Texas Department of Labor and Standards met in the 11th Floor Conference Room, E.O. Thompson Building, 920 Colorado Street, Austin. According to the agenda, the fund will approve minutes; consider status of fund; claims pending; fund management agreement with treasury department; and select date, place, and time of next meeting.

Contact: Jennifer Mellett, E.O. Thompson Building, 920 Colorado Street, Austin, Texas 78711, (512) 463-3130.

Filed: June 16, 1988, 8:17 a.m.

TRD-8806185

The Labor, Licensing, and Enforcement Division for the Texas Department of Labor and Standards will meet at various locations to receive public comments on changes to Tow Truck rules. Times and dates follow.

Sunday, June 26, 1988, 2 p.m. The division will meet in Room 202, Lufkin City Hall Council Chambers, Ernest McKnight Clemons Office, Lufkin.

Contact: Joseph L. Huertas, P.O. Box 12157, Austin, Texas 78711, (512) 463-2906.

Filed: June 16, 1988, 8:18 a.m.

TRD-8806187

Monday, June 27, 1988, 1 p.m. The division will meet in the Big Caddo Room, Marshall Civic Center, Marshall.

Contact: Joseph L. Huertas, P.O. Box 12157, Austin, Texas 78711, (512) 463-2906.

Filed: June 16, 1988, 8:18 a.m.

TRD-8806191

Monday, June 27, 1988, 4 p.m. The division will meet in Representative Jerry Yost's district Office, Greggton Community Center, 3211 West Marshall Avenue, Highway 80, Longview.

Contact: Joseph L. Huertas, P.O. Box 12157, Austin, Texas 78711, (512) 463-2906.

Filed: June 16, 1988, 8:18 a.m.

TRD-8806187

Tuesday, June 28, 1988, 10 a.m. The division will meet in the Centennial Room, First National Bank Building, Amarillo.

Contact: Joseph L. Huertas, P.O. Box 12157, Austin, Texas 78711, (512) 463-2906.

Filed: June 16, 1988, 8:18 a.m.

TRD-8806189

Tuesday, June 28, 1988, 2 p.m. The division will meet in the City Council Chamber,

City Hall, Plainview.

Contact: Joseph L. Huertas, P.O. Box 12157, Austin, Texas 78711, (512) 463-2906.

Filed: June 16, 1988, 8:18 a.m.

TRD-8806190

Tuesday, June 28, 1988, 5 p.m. The division will meet at 918 Avenue J, Lubbock.

Contact: Joseph L. Huertas, P.O. Box 12157, Austin, Texas 78711, (512) 463-2906.

Filed: June 16, 1988, 8:18 a.m.

TRD-8806194

Wednesday, June 29, 1988, 9 a.m. The division can be contacted at P. O. Box 12157, Austin.

Contact: Joseph L. Huertas, P.O. Box 12157, Austin, Texas 78711, (512) 463-2906.

Filed: June 16, 1988, 8:18 a.m.

TRD-8806193

Wednesday, June 29, 1988, 7 p.m. The division will meet at 1221 West Nathan Lowe Road, Arlington.

Contact: Joseph L. Huertas, P.O. Box 12157, Austin, Texas 78711, (512) 463-2906.

Filed: June 16, 1988, 8:18 a.m.

TRD-8806186

Thursday, June 30, 1988, 9 a.m. The division will meet on the Fourth Floor, McClellan County Courthouse, Waco.

Contact: Joseph L. Huertas, P.O. Box 12157, Austin, Texas 78711, (512) 463-2906.

Filed: June 16, 1988, 8:18 a.m.

TRD-8806188

Texas State Library and Archives Commission

Tuesday-Wednesday, July 19-20, 1988, 1 p.m. and 9 a.m. The Library Systems Act Advisory Board for the Texas State Library and Archives Commission met in Room 314, Lorenzo de Zavala State Library and Archives Building, 1201 Brazos Street, Austin. According to the agenda, the board considered appeals by public libraries that may be denied memberships in the Texas Library System for fiscal year 1989, and consider requests for exceptions to the standard method of calculating the population served by the public library.

Contact: Edward Seidenberg, P.O. Box 12927, Austin, Texas 78711, (512) 463-5459.

Filed: June 15, 1988, 10:05 a.m.

TRD-8806161

Texas Low-Level Radioactive Waste Disposal Authority

Wednesday, June 29, 1988, 1 p.m. The Budget Committee for Texas Low-Level Waste Disposal Authority will meet in the Texas Medical Imaging Center, 3465 West Alabama, Houston. According to the agenda, the committee will review and approve fiscal year 1988 operating budget adjustments, and fiscal year 1990-1991 appropriations request.

Contact: L.R. Jacobi, Jr., P.E., 7703 North Lamar Boulevard, Suite 300, Austin, Texas 78752, (512) 451-5295.

Filed: June 14, 1988, 2:12 p.m.

TRD-8806110

Texas Peanut Producers Board

Friday, June 24, 1988, 2 p.m. The Texas Department of Agriculture for the Texas Peanut Producers Board will meet in the San Luis Hotel, 5222 Seawall Boulevard, Galveston. According to the agenda, the department will elect officers; new board members will take oath of office; discuss quality enhancement project; discuss marketing projects; and review promotion activities.

Contact: Mary Webb, P.O. Box 398, Gorman, Texas 76454, (817) 734-2853.

Filed: June 14, 1988, 2:03 p.m.

TRD-8806107

Texas State Board of Public Accountancy

The Texas State Board of Public Accountancy will meet in Suite 340, 1033 La Posada, Austin. Dates, times, and agendas follow.

Thursday, July 7, 1988, 9 a.m. The board will hear complaints 88-01-35L, 88-01-32L, 87-10-28L, 87-10-33L, 87-11-04L, and 87-07-56L.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: June 15, 1988, 1:43 p.m.

TRD-8806166

The Friday, July 8, 1988, 9 a.m. The board will hear complaints 87-10-25L, 87-10-35L, 87-10-09L, 87-10-10L, 87-12-20L, 87-12-17L, 87-07-32L, and 88-01-36L.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: June 15, 1988, 1:43 p.m.

TRD-8806167

Public Utility Commission of Texas

The Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. Dates, times, and agendas follow.

Tuesday, July 5, 1988, 10 a.m. The Hearings Division will consider Docket 8031-Petition of Guadalupe-Blanco River Authority to implement a new contract rate.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

Filed: June 14, 1988, 2:59 p.m.

TRD-8806116

Thursday, July 14, 1988, 10 a.m. The Hearings Division will consider Docket 8190-Petition of the general counsel of the commission for an inquiry into the reasonableness of the rates of Contel of Texas, Inc.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

Filed: June 15, 1988, 2:14 p.m.

TRD-8806165

Tuesday, October 18, 1988, 10 a.m. The Hearings Division will consider Docket 7577-Application of Gulf States Utilities Company for approval of the Lewis Creek Power Plant to GSG&T.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

Filed: June 14, 1988, 2:59 p.m.

TRD-8806117

State Purchasing and General Services Commission

Tuesday, June 21, 1988, 9 a.m. The State Purchasing and General Services Commission will meet for an emergency agenda revision in Room 1-111, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda, the commission will meet in executive session to consider the status of the potential purchase of real property pursuant to the provisions of Texas Civil Statutes, Article 601b, §5.34. The emergency status is necessary for the commission to meet its responsibilities under Texas Civil Statutes, Article 601b, §5.34 and potentially avoid substantial costs for the State of Texas.

Contact: John R. Neel, 111 East 17th Street, Austin, Texas 78701, (512) 463-3446.

Filed: June 15, 1988, 9:52 a.m.

TRD-8806163

Texas Rice Producers Board

Thursday, June 23, 1988, 10 a.m. The Texas Department of Agriculture for the Texas Rice Producers Board will meet in the Rice Council Conference Room, 6699 Rookin, Houston, rescheduled from June 22, 1988. According to the agenda, the department will hear minutes; financial discussion; consider administrative matters; and discuss other business.

Contact: Curtis Leonhardt, 6699 Rookin, Houston, Texas 77074, (713) 270-6699.

Filed: June 14, 1988, 2:03 p.m.

TRD-8806108

Statutorily Created Committee

Wednesday, June 22, 1988, 2 p.m. The Alcohol and Substances Abuse Oversight Committee of the Statutorily Created Committee will meet in Room 104, Reagan Building, Austin. According to the agenda, the committee will hear testimony from the Texas Department of Mental Health and Mental Retardation, the Texas Education Agency, the Texas Department of Health, and the Texas Rehabilitation Commission; and approve minutes.

Contact: Duke Millard, P.O. Box 12428, Austin, Texas 78711, (512) 463-1788.

Filed: June 14, 1988, 10:31 a.m.

TRD-8806103

Texas A&M University System

Tuesday, June 28, 1988, 10 a.m. The Audit Committee for the Texas A&M University System will meet in the MSC Annex, Texas A&M University, College Station. According to the agenda, the committee will meet with members of the state auditor's staff for an exit conference on the audit of Texas A&M University system.

Contact: Vickie Burt, Texas A&M University System, College Station, Texas 77843, (409) 845-9603.

Filed: June 15, 1988, 11:19 a.m.

TRD-8806160

Wednesday, July 13, 1988, 9 a.m. The Planning and Building Committee for the Texas A&M University System will meet in the MSC Annex, Texas A&M University, College Station. According to the agenda, the committee will hear the presentation of the university center expansion concept, and review the current and future requirements for parking and the movement of vehicular traffic on the campus.

Contact: Vickie Burt, Texas A&M University System, College Station, Texas 77843,

(409) 845-9603.

Filed: June 15, 1988, 11:19 a.m.

TRD-8806159

Texas Southern University

Wednesday, June 22, 1988, 2 p.m. The Board of Regents, Executive Committee for Texas Southern University will meet in Hannah Hall Room 117, 3100 Cleburne Avenue, Texas Southern University, Houston. According to the agenda, the board will consider and make recommendations to the full board action on the following matters: investments, annual service contracts, budget changes, and 1989-1990 budget request; changes in contracts: Health and Physical Education Building and information items.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: June 15, 1988, 1:44 p.m.

TRD-8806168

Texas Turnpike Authority

Thursday, June 23, 1988, 10 a.m. The Board of Directors of the Texas Turnpike Authority will meet at Dallas Marriott Quorum, Bent Tree I, II, and III, 14901 Dallas Parkway, Dallas, Texas 75240. According to the agenda, the board will approve minutes of the last meeting; in re Dallas North Tollway, award of contracts DNT-143 and DNT-154, acceptance of proposal pertaining to Extension Phase 2, and purchase of right-of-way parcels; in re Trinity Turnpike, presentation by local governmental agencies and supplemental proposal to contract FSF-6; acceptance of report on Southwest Turnpike; resolution supporting Texas Good Roads amendment; resolution from Galveston County Commissioners Court; staff legal counsel; authority's minority business enterprise policy; hear a progress report on TAG; and hold an executive session.

Contact: Harry Kabler, P.O. Box 190369, Dallas, Texas 75219, (214) 522-6200.

Filed: June 15, 1988, 11:08 a.m.

TRD-8806164

University Interscholastic League

Tuesday, June 21, 1988, 9 a.m. A three member panel of the Executive Committee for the University Interscholastic League will meet in Room 3.102, Thompson Conference Center, 26th and Red River Streets, UT Campus, Austin. According to the agenda, the league will hear alleged violations of UIL rules by school personnel.

Contact: Bonnie Northcutt, (512) 471-5883.

Filed: June 15, 1988, 4:20 p.m.

TRD-8806180

Texas Veterans Commission

Friday, July 22, 1988, 10 a.m. The Texas Veterans Commission will meet in Riviera Rooms 4 and 5, Corpus Christi Marriott Hotel, 707 North Shoreline Boulevard, Corpus Christi. According to the agenda, the commission will consider reports with activities of the commission and make decisions relative to the general administrative matters pertaining to Texas' veterans' programs.

Contact: Doug Brown, P.O. Box 12277, Austin, Texas 78711, (512) 463-5538.

Filed: June 14, 1988, 2:10 p.m.

TRD-8806112

Texas Water Commission

Thursday, July 7, 1988, 9 a.m. The Texas Water Commission will meet in Room 119, SFA Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission will consider executive director's preliminary report concerning General Portland, Inc., Permit 01730; City of Hearne, Permit 10046-02; City of Crocket, Permit 10154-02; and executive director's order finding substantial noncompliance and finding no further action is necessary of the City of Kendleton, Permit 10996-01.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 463-7909.

Filed: June 15, 1988, 3:52 p.m.

TRD-8806177

Thursday, July 7, 1988, 10 a.m. The Texas Water Commission will meet in Room 123, SFA Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission will consider executive director's report on agency administration, policy, budget procedures, and personnel matters.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 463-7909.

Filed: June 15, 1988, 3:52 p.m.

TRD-8806176

Texas Water Development Board

Thursday, June 16, 1988, 9:30 a.m. The Water Development Board met in Room 118, SFA Building, 1700 North Congress Avenue, Austin, for an emergency agenda

revision. According to the agenda, the board examined and approved budget recommendations to be transmitted to the Legislature. The emergency status was necessary to timely submit the boards biennium budget.

Contact: M. Reginald Arnold, II, P.O. Box 13231, Austin, Texas, (512) 463-7847.

Filed: June 15, 1988, 3:45 p.m.

TRD-8806174

Texas Water Resources Finance Authority

Thursday, June 16, 1988, 10 a.m. The Texas Water Resources Finance Authority met in Room 118, SFA Building, 1700 North Congress Avenue, Austin, for an emergency agenda revision. According to the agenda, the authority considered authorizing the executive administrator and the staff of the Texas Water Development Board to act as staff for the authority. The emergency status was necessary to allow the authority to proceed with items necessary for the bond purchase from the board.

Contact: M. Reginald Arnold, II, P.O. Box 13231, Austin, Texas, (512) 463-7847.

Filed: June 15, 1988, 3:45 p.m.

TRD-8806173

Regional Meetings

Meetings Filed June 14, 1988

The Austin-Travis County MHMR Center, Operation and Planning Committee, met in the Salvation Army, 501 Eighth Street, Austin, on June 17, 1988, at 7:30 a.m. Information may be obtained from Sharon Taylor, (512) 447-4141.

The Central Counties Center for MHMR Services, Board of Trustees, will meet at 304 South 22nd Street, Temple, on June 21, 1988, at 7:45 p.m. Information may be obtained from Micheal K. Muegge, 304 South 22nd Street, Temple, Texas.

The Cherokee County Appraisal District, Appraisal Review Board, met at 107 East Sixth Street, Rusk, on June 20, 1988, at 9 a.m. Information may be obtained from S.R. Danner, P.O. Box 494, Rusk, Texas 75785, (214) 683-2296.

The Ellis County Tax Appraisal District, met at 406 Sycamore Street, Waxahachie, on Monday June 20-28 and July 5-25, 1988, at 9 a.m. daily. Information may be obtained from Russell A. Garrison, P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552.

The Lubbock Regional MHMR Center, Board of Trustees, met at 3801 Avenue J, Lubbock, on June 20, 1988, at 11:30 a.m. Information may be obtained from Gene

Menefee, 1210 Texas Avenue, Lubbock, Texas 79401, (806) 766-0202.

TRD-8806104

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Meetings Filed June 15, 1988

The Education Service Center, Region VIII, Board of Directors, will meet in Mount Pleasant, on June 23, 1988, at 7 p.m. Information may be obtained from Scott Ferguson, P.O. Box 1894, Mount Pleasant, Texas 75455.

The Henderson County Appraisal District, Appraisal Review Board, met at 1751 Enterprise, Athens, on June 20-24, 1988, at 9 a.m. daily. Information may be obtained from Helen Marchbanks, 1751 Enterprise, Athens, Texas (214) 675-9296.

The Houston-Galveston Area Council, Projects Review Committee and Board of Directors, will meet in the Fourth Floor Conference Room, 3555 Timmons, Houston, on June 21, 1988, at 9 a.m. and 10 a.m., respectively. Information may be obtained from Rowena Ballas or Sallie Sosa, P.O. Box 22777, Houston, Texas 77227, (713) 627-3200.

The Panhandle Ground Water Conservation District, #3, Board of Directors, met at 300 South Omohundro, White Deer, on June 20, 1988, at 8 a.m. and 9 a.m. Information may be obtained from Gary L. Walker, P.O. Box 637, White Deer, Texas 79097, (806) 883-2501.

TRD-8806156

Meetings Filed June 16, 1988

The Education Service Center, Region V, Board of Directors, will meet at 2295 Delaware, Beaumont, on June 23, 1988, at 1:15 p.m. Information may be obtained from Fred J. Waddell, (409) 835-5212.

The Education Service Center, Region XVI, Board of Directors, will meet in the Texas Empire Room, Amarillo Club, 30th Floor, Texas American Bank Building, Seventh and Tyler Streets, Amarillo, on July 1, 1988, at 1 p.m. Information may be obtained from Dr. Kenneth M. Laycock, 1601 South Cleveland, Amarillo, Texas 79102, (806) 376-5521.

TRD-8806201

In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Air Control Board

Notice of Applications for Construction Permits

Notice is given by the Texas Air Control Board (TACB) of applications for construction permits received during the period of June 6, 1988-June 9, 1988.

Information relative to the applications listed following including projected emissions and the opportunity to comment or to request a hearing, may be obtained by contacting the office of the executive director at the central office of the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

A copy of all material submitted by the applicant is available for public inspection at the central office of the TACB at the address stated previously and at the regional office for the air quality control region within which the proposed facility will be located.

Sun Exploration and Production, Desdemona; gas processing facility; Desdemona, Eastland County; 18854; new

Anzon American, Inc., Laredo; additional furnace-antimony ox; Laredo, Webb County; 18861; new

North American Volcanic Products, New Braunfels; stucco and wall coating manufacturing factory; New Braunfels, Comal County; 18869; new

Chevron USA, Wickett; CO2 flood facilities; Wickett, Ward County; 18870; new

North American Cabinet Corporation, Marshall; cabinet manufacturing factory; Marshall, Harrison County; 18887; new

El Paso Refining, El Paso; sulfur recovery unit; El Paso, El Paso County; 18897; new

Mobil Chemical, Beaumont; polyethylene plant; Beaumont, Jefferson County; 18898; new

Quantum Chemical, La Porte; polyalphaolefufus unit B; La Porte, Harris County; 18899; new

W. B. Parker, III, Linden; fiberglass boat manufacturing factory; Linden, Cass County; 18901; new

Arkla Energy Resources, Waskom; comp. station; Waskom, Harrison County; 18902; new

Enterprise Products Company, Mount Belvieu; propane/propylene fractionation; Mount Belvieu, Chambers County; 18904; new

Issued in Austin, Texas, on June 13, 1988.

TRD-8806109 Bill Ehret
Director of Hearing
Texas Air Control Board

Filed: June 14, 1988

For further information, please call (512) 451-5711, ext. 354.

State Banking Board

Notice of Hearing Cancellation

The application for change of domicile for the Community Bank, Katy, has been withdrawn. Therefore, the hearing scheduled for June 21, 1988, at 9 a.m., has been cancelled.

Issued in Austin, Texas on June 13, 1988.

TRD-8806111 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: June 14, 1988

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

Texas Department of Commerce

Weekly Report on the 1988 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 1988 is \$834,100,000.

State legislation, Senate Bill 1382, Chapter 1092, Acts of the 70th Legislature, (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 \$278,033,300, with \$185,355,500 available to the local housing authorities and \$92,677,800 available to the Texas Housing Agency. The aggregate amount for state-voted issues is \$208,525,000 and the amount for all other bonds requiring an allocation is \$347,541,700.

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, June 6, 1988-June 10, 1988.

Weekly report on the 1988 allocation of the state ceiling on certain private activity bonds as pursuant to Senate Bill 1382.

Total amount of state ceiling remaining unreserved for the \$278,033,300 subceiling for qualified mortgage bonds under the Act as of June 10, 1988: \$212, 953,300

Total amount of state ceiling remaining unreserved for the \$208,525,000 subceiling for state-voted issues under the Act as of June 10, 1988: \$208,525, 000

Total amount of state ceiling remaining unreserved for the \$347,541,700 subceiling for all other bonds under the Act as of June 10, 1988: \$41,700

Total amount of the \$834,100,000 state ceiling remaining unreserved as of June 10, 1988: \$421,520,000.

Comprehensive listing of bond issues which have received a reservation date pursuant to the Act from June 6, 1988-June 10, 1988: none

Comprehensive listing of bonds issued and delivered as pursuant to the Act from June 6, 1988-June 10, 1988: None.

Issued in Austin, Texas, on June 13, 1988.

TRD-8808101

J. William Lauderback
Executive Director
Texas Department of Commerce

Filed: June 14, 1988

For further information, please call (512) 472-5059



**Office of Consumer Credit
Commissioner**

Notice of Rate Ceilings

The consumer credit commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

<u>Type of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer⁽³⁾/Agri- cultural/Commercial⁽⁴⁾ thru \$250,000</u>	<u>Commercial⁽⁴⁾ over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	06/20/88-06/26/88	18.00%	18.00%
Monthly Rate ⁽¹⁾ Art. 1.04(c)	06/01/88-06/30/88	18.00%	18.00%
Standard Quarterly Rate - Art. 1.04(a)(2)	07/01/88-09/30/88	18.00%	18.00%
Retail Credit Card Quarterly Rate - Art. 1.11 ⁽³⁾	07/01/88-09/30/88	18.00%	N.A.
Lender Credit Card Quar- terly Rate - Art. 15.02(d) ⁽³⁾	07/01/88-09/30/88	14.00%	N.A.
Standard Annual Rate - Art. 1.04(a)(2) ⁽²⁾	07/01/88-09/30/88	18.00%	18.00%
Retail Credit Card Annual Rate - Art. 1.11 ⁽³⁾	07/01/88-09/30/88	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:	07/01/88-09/30/88	18.00%	N.A.
Judgment Rate - Art. 1.05, Section 2	06/01/88-06/30/88	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 June 13, 1988.

TRD-8806155 Al Endsley
Consumer Credit Commissioner

Filed: June 15, 1988

For further information, please call: (512) 479-1280

◆ ◆ ◆
Texas Education Agency
Consultant Proposal Request

The Texas Education Agency is requesting proposals to assist the agency's division of services for the deaf. The request is filed in compliance with provisions of Texas Civil Statutes, Article 6252-11c. This division is charged with the responsibility to develop and administer a state-wide program of educational services for deaf students, in the refinement and continued implementation of an objective data-based accountability system for measuring educational outcomes within the regional day school programs for the deaf. The system must include the revision or design of data collection instruments which will, when data so collected has been entered on computer, provide ready access to individual and composite pupil profiles. Pupil data to be collected may include, but shall not be limited to the following: name, sex, date of birth, address, audiological findings, cause of hearing loss, age at onset of hearing loss, additional handicapping conditions, ethnic background, and results of standardized achievement tests. A plan for output products and data analyses appropriate to local, regional, state, and national levels will be required.

Continuation of Service Previously Performed. This is a continuation of a service previously performed by the Center for Assessment and Demographic Studies, Gallaudet University, Washington D.C. This agency intends to award a contract to Gallaudet University unless a better offer is submitted.

Procedure for Selecting Consultant. The organization demonstrating the broadest and deepest knowledge of demographic and educational performance data analysis of the deaf will be selected for cost and contract negotiations.

Date of Contract. The beginning date of the contract is September 1, 1988, and the ending date of the contract is August 31, 1989.

Amount of Contract. The amount of the contract shall not exceed \$38,500.

Contact. Further information may be obtained by writing or calling Gary A. Curtis, Director, Division of Services for the Deaf, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9424.

Deadline. Proposals must be received at the agency no later than July 15, 1988.

Issued in Austin, Texas on June 6, 1988.

TRD-8806062 W. N. Kirby
Commissioner of Education

Filed: June 13, 1988

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

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Employees Retirement System of Texas Consultant Contract Award

The award of this contract for management audit consultative services is filed under the provisions of Texas Civil Statutes, Article 6252-11c. The Employees Retirement System of Texas (ERS) published a request for proposal in the March 29, 1988, issue of the *Texas Register* (13 TexReg 1509), to obtain a private consultant to assist in determining the proper organizational structure and staffing levels necessary to implement the ERS Information Systems Plan recommendations, and to operate effectively and efficiently after the plan recommendations have been implemented.

The proposal selected was that of Arthur Andersen and Company, 816 Congress Avenue, Suite 1500, Austin, Texas 78701.

The contract will have a beginning date of June 1, 1988, and an ending date of November 30, 1988, for a total value not to exceed \$97,500.

The key deliverables will be a comprehensive management report that documents project findings and recommendations, and a manual containing position descriptions and performance standards for all of the positions of ERS.

Issued in Austin, Texas on June 13, 1988.

TRD-8806098 Clayton T. Garrison
Executive Director
Employees Retirement System of Texas

Filed: June 14, 1988

For further information, please call (512) 476-6431, Ext. 178

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State Department of Highways and Public Transportation Public Hearing Notice

Pursuant to the Texas Coastal Waterway Act of 1975, Texas Civil Statutes, Article 5415e-2, §6(g), the State Highway and Public Transportation Commission conducted a public hearing on April 27, 1988, for the purpose of receiving data, evidence, comments, views, and/or testimony concerning the proposed acquisition by donation, lease, or purchase of five tracts of land in Matagorda County, for use as disposal sites for materials dredged from the main channel of the Gulf Intracoastal Waterway. During its regular open meeting on May 16, 1988, the commission considered the results of that hearing, and, based upon the record, approved acquisition of three of those sites and deferred action on the remaining two described as follows. On its own motion and on request of certain interested parties, the commission then ordered the public hearing record be held open as to the two remaining sites, pending receipt of certain additional information.

Notice is hereby given that the commission will therefore reconvene its public hearing on Tuesday, June 28, 1988, for the express limited purpose of allowing those interested parties, Herff Cornelieus and Mignon Matthews of Bay City, and Janice M. Lang and James D. Lang of Houston, to complete their verbal presentations for the record concerning acquisition and use of the following sites situated in Matagorda County: approximately 200 acres, referred to as DA101A, is adjacent to and on the north side of the Gulf Intracoastal Waterway and west of Caney Creek. The site is also identified by the United States Army Corps of Engineers as between their station

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numbers 347+000 and 347+000; approximately 60 acres, referred to as DA104A Extension, is adjacent to and on the north side of the Gulf Intracoastal Waterway and west of Live Oak Bayou. The site is also identified by the United States Army Corps of Engineers as between their station numbers 383+000 and 386+900.

The public hearing will be held at 10 a.m., First Floor Meeting Room, Dewitt C. Greer State Highway Building, 11th and Brazos Streets, Austin. Any written documents or other materials intended to be utilized by the named interested parties in their respective presentations, or for purposes of the record must be filed with and received by the person listed as follows at the specified address no later than 4 p.m., Monday, June 17, 1988.

For further information, please contact Alvin R. Luedecke, Jr., State Transportation Planning Engineer, P.O. Box 5051, Austin, Texas 78763-5051, (512) 465-7346; or Marcus L. Yancey, Deputy Director, Planning Policy, (512) 463-8627.

Issued in Austin, Texas on June 14, 1988.

TRD-8806119 Diane L. Northam
 Administrative Technician
 State Department of Highways and Public
 Transportation

Filed: June 14

For further information, please call (512) 463-8630

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

Correction of Error

The Texas Department of Mental Health and Mental Retardation submitted proposed new sections which contained errors as submitted by the department in the May

24, 1988, issue of the *Texas Register* (13 TexReg 2436).

Section 401.42, should read: "*§401.42. Application.* This subchapter applies to the facilities of the Texas Department of Mental Health and Mental Retardation, including the Central Office, and to community mental health and mental retardation centers, as defined in each memorandum of understanding.

In §401.43, the definition to TCADA should read: "TCADA—Texas Commission on Alcohol and Drug Abuse.

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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 the City of Smiley on June 8, 1988, assessing stipulated penalties.

Information concerning any aspect of this order may be obtained by contacting Patricia Barnhard, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on June 13, 1988.

TRD-8806082 Gloria A. Vasquez
 Notices Coordinator
 Texas Water Commission

Filed: June 13, 1988

For further information, please call (512) 463-8069.