

# Texas Register

Volume 18, Number 8, January 29, 1993

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## Texas Register



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## How to Use the Texas Register

**Information Available:** The 10 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.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**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**Withdrawn Sections** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the **Texas Register** six months after the proposal publication date.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 cumulative 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 the 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 18 (1993) is cited as follows: 18 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 "18 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 18 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the **Texas Register** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using **Texas Register** indexes, the **Texas Administrative Code**, section numbers, or TRD number.

### Texas Administrative Code

The **Texas Administrative Code (TAC)** is the official compilation of all final state agency rules published in the **Texas Register**. Following its effective date, a rule is entered into the **Texas Administrative Code**. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the **TAC**. West Publishing Company, the official publisher of the **TAC**, releases cumulative supplements to each printed volume of the **TAC** twice each year.

The **TAC** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals).

The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency. The **Official TAC** also is available on WESTLAW, West's computerized legal research service, in the TX-ADC database.

To purchase printed volumes of the **TAC** or to inquire about WESTLAW access to the **TAC** call West: 1-800-328-9352.

The Titles of the **TAC**, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the **TAC** scheme, each 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 the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the **Texas Administrative Code**, please look at the **Table of TAC Titles Affected**. The table is published cumulatively in the blue-cover quarterly indexes to the **Texas Register** (January 22, April 16, July 13, and October 12, 1993). In its second issue each month the **Texas Register** contains a cumulative **Table of TAC Titles Affected** for the preceding month. If a rule has changed during the time period covered by the table, the rule's **TAC** number will be printed with one or more **Texas Register** page numbers, as shown in the following example.

**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**  
**Part I. Texas Department of Human Services**  
40 TAC §3.704.....950, 1820

The **Table of TAC Titles Affected** is cumulative for each volume of the **Texas Register** (calendar year).

**Update by FAX:** An up-to-date **Table of TAC Titles Affected** is available by FAX upon request. Please specify the state agency and the **TAC** number(s) you wish to update. This service is free to **Texas Register** subscribers. Please have your subscription number ready when you make your request. For non-subscribers there will be a fee of \$2.00 per page (VISA, MasterCard). (512) 463-5561.

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# CORRECTION

This Document  
Has Been Rephotographed  
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# Texas Ethics Commission

The Texas Ethics Commission is authorized by Texas Civil Statutes, Article 6252-9d.1, §1.29, to issue advisory opinions in regard to the following statutes: Texas Civil Statutes, Article 6252-9b; the Government Code, Chapter 302; the Government Code, Chapter 305; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

## Opinion Requests

**AOR-144.** The Texas Ethics Commission has been asked to consider questions about a political committee that hires a lobbyist to work on legislative matters. The first question is whether funds given to the committee to defray the cost of hiring a lobbyist must be reported as political contributions under Title 15 of the Election Code. The second question is whether the political committee would be required to register as a lobbyist if it hired a lobbyist, if its directors incurred costs in communicating with legislators, or if the committee itself incurred postage expenses to communicate to its supporters about legislative matters.

**AOR-145.** The Texas Ethics Commission has been asked to consider whether a state legislator may work for a city as a paid lobbyist.

**AOR-146.** The Texas Ethics Commission has been asked to consider the following questions about the application of the Election Code, §252.003(d), to an unincorporated association that is a general-purpose political committee.

1. Is it permissible for the [association] to use corporate contributions to pay the expenses (i.e., meeting space and food) associated with its forum programs or, in the alternative, can corporations sponsor and

pay the meeting facility directly for the expenses associated with [the associations] forum programs?

2. Does [the association] have to include in its name the name of each corporation that makes a contribution to the committee or sponsors and pays directly for a program forum for the committee's membership?

3. If the name of a corporation that contributes to a general-purpose committee must be included in the name of the committee, for what period of time does the committee's name have to include the name of the corporation? The calendar year in which the contribution was received? One year following the date of the contribution? Forever?

4. Does the [the association] have to include in its name the name of [a corporation if the corporation] designates individuals to serve on the Board of Trustees of the [association] regardless of the fact that the [association] designated trustees do not constitute a majority of the total Board of Trustees of the [association]?

5. What does "directly control" mean in the context of Title 15, Election Code, §252.003(d)?

**AOR-147.** The Texas Ethics Commission has been asked whether a state repre-

sentative may use political contributions to reimburse himself for a condominium purchased in Austin in 1991.

**AOR-148.** The Texas Ethics Commission has been asked to consider whether a newly-elected judge may use political contributions to cover the cost of moving from the his home city to the city in which the court sits. The commission has also been asked to consider whether the judge may use political contributions to pay commuting and lodging expenses during the period before the judge and his family move to the city in which the court sits.

**AOR-149.** The Texas Ethics Commission has been asked to clarify Ethics Advisory Opinion Number 95 (1992) in regard to use of credit cards by state employees. Specifically, the commission has been asked to consider whether it is permissible for a state employee to use a state-issued credit card to pay for a hotel bill, even if the total bill exceeds the amount reimbursable by the state.

Issued in Austin, Texas, on January 22, 1993.

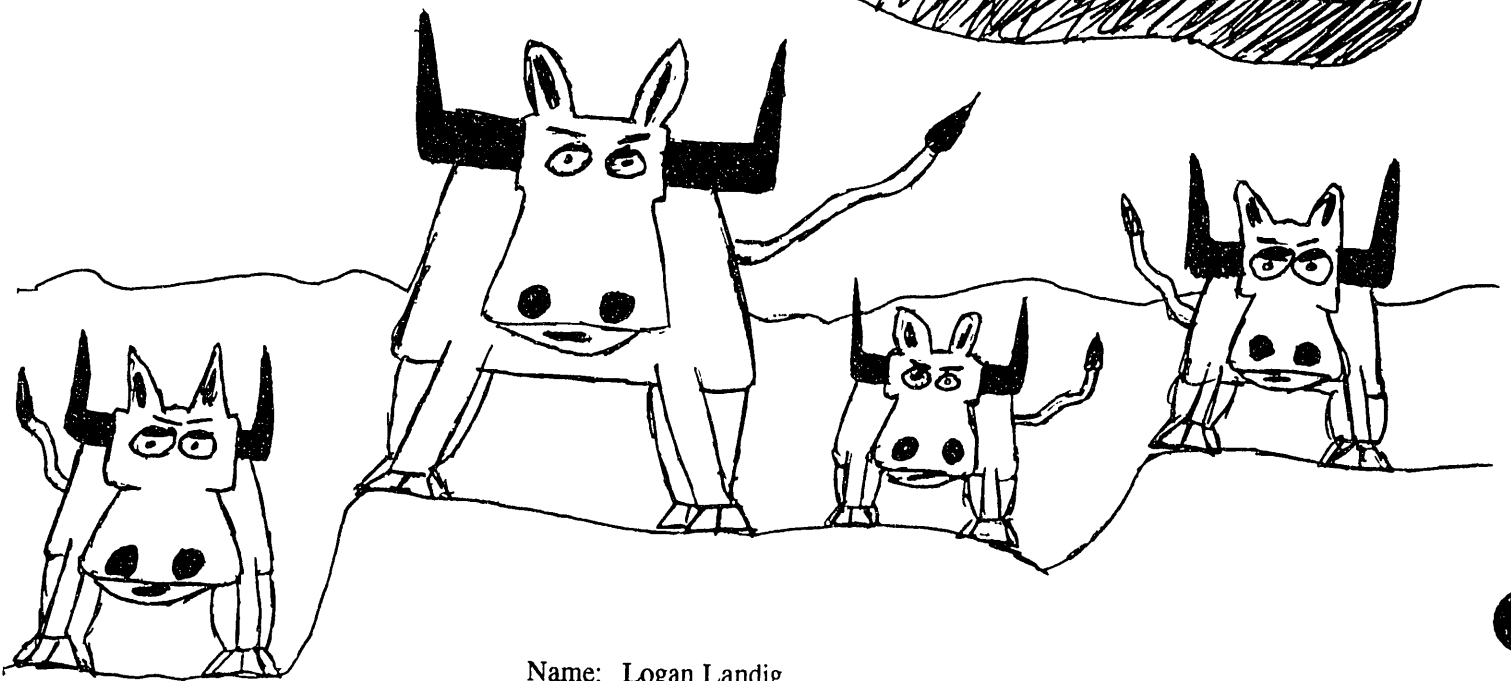
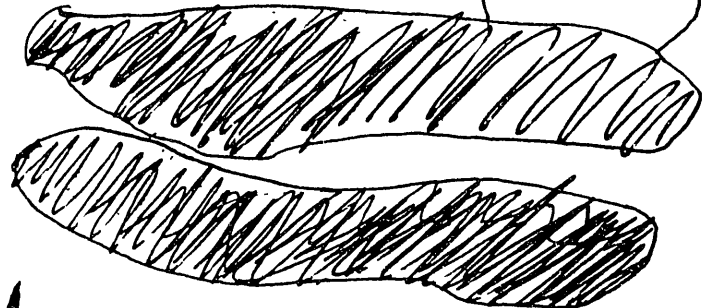
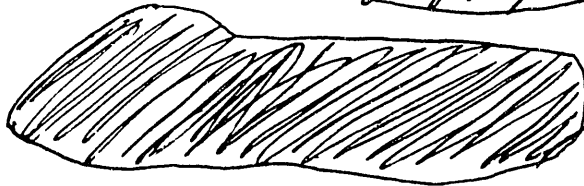
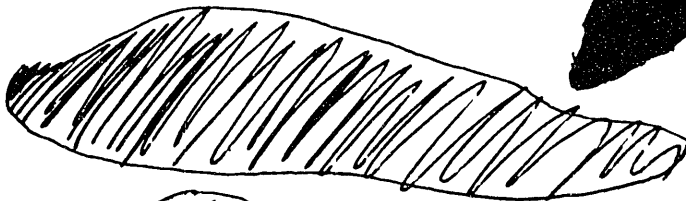
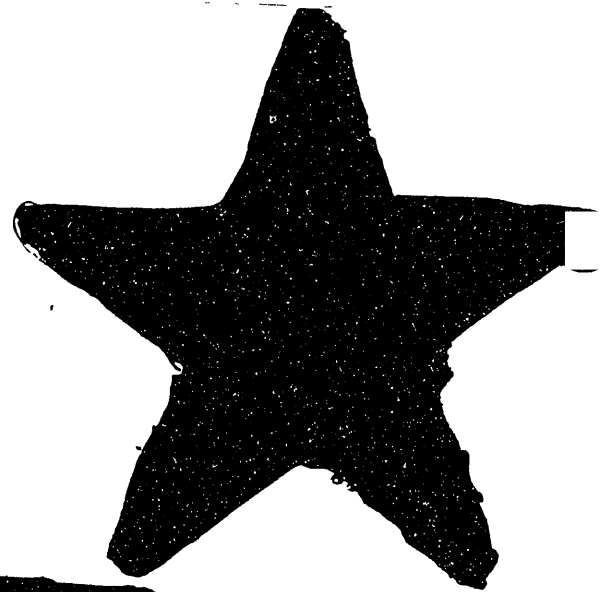
TRD-9318085

Sarah Woelk  
Director, Advisory Opinions  
Texas Ethics Commission

Filed: January 22, 1993

For further information, please call: (512) 463-5800

◆ ◆ ◆



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*Logan Landig*

# 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 31. NATURAL RESOURCES AND CONSERVATION

### Part IX. Texas Water Commission

#### Chapter 334. Underground and Aboveground Storage Tanks

##### Subchapter K. Storage, Treatment, and Reuse Procedures for Petroleum-Substance Contaminated Media

###### • 31 TAC §§334.481-334.506

The Texas Water Commission is renewing the effectiveness of the emergency adoption of the repeals §§334.481-334.506, for a 60-day period effective January 23, 1993. The text of the repeals §§334.481-334.506 was originally published in the October 2, 1992, issue of the *Texas Register* (17 TexReg 6715).

Issued in Austin, Texas, on January 20, 1993.

TRD-9317959 Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

Effective date: January 23, 1993

Expiration date: March 24, 1993

For further information, please call: (512) 463-8069

◆ ◆ ◆  
The Texas Water Commission is renewing the effectiveness of the emergency adoption of the new §§334.481-334.506, for a 60-day period effective January 23, 1993. The text of the new §§334.481-334.506 was originally published in the October 2, 1992, issue of the *Texas Register* (17 TexReg 6714).

Issued in Austin, Texas, on January 20, 1993.

TRD-9317857 Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

Effective date: January 23, 1993

Expiration date: March 24, 1993

For further information, please call: (512) 463-8069

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### Part VI. Texas Department of Criminal Justice

#### Chapter 163. Standards

##### Subchapter C. Programs and Services

###### • 37 TAC §163.55

The Texas Department of Criminal Justice-Community Justice Assistance Division (TDCJ-CJAD) adopts on an emergency basis the repeal of §163.55, concerning residential services. Section 163.55 has been revised and resubmitted as a proposed action under §163.39 of this chapter.

This repeal is being adopted on an emergency basis because the rule revision to provide for Community Corrections Facilities (CCF) is needed immediately to relieve overcrowding in the Harris County Jail. CCFs are established and provided for under the new proposed §163.39, Residential Services.

The Board of Criminal Justice is authorized to adopt rules and standards for community corrections facilities under Vernon's Annotated Code of Criminal Procedures, Article 42.13 §2(a) and 3(a), which provides TDCJ-CJAD with the authority to: establish minimum standards for programs, facilities, equipment and other aspects of the operation of departments; establish an application process and procedures for funding community corrections facilities; establish a format for community justice plans; and to require community supervision and corrections departments to: keep financial and statistical records; submit a community justice plan; and submit periodic financial audits and statistical reports to TDCJ-CJAD.

###### §163.55. Residential Services.

Issued in Austin, Texas, on January 21, 1993.

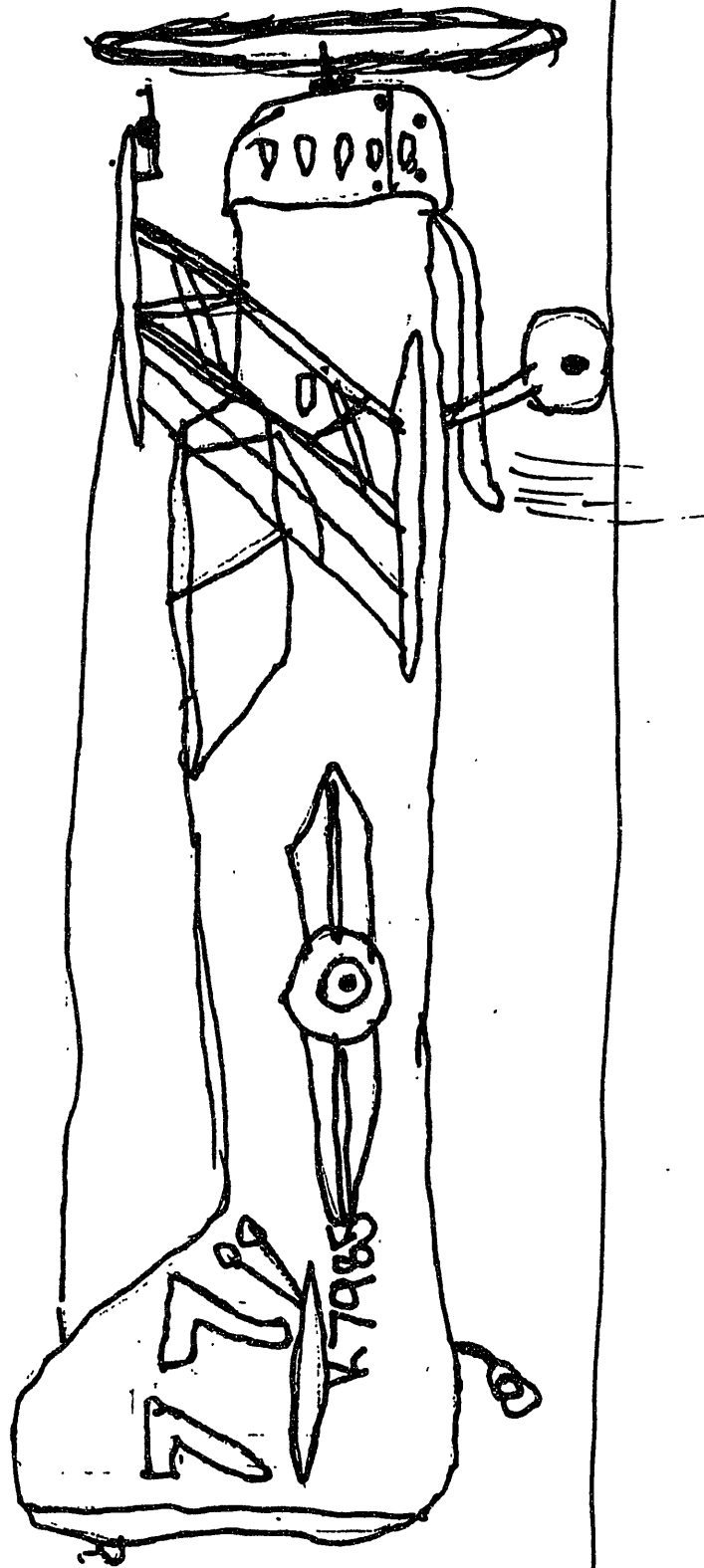
TRD-9318102 Jackie Cox  
General Counsel  
Texas Department of  
Criminal Justice

Effective date: January 22, 1993

Expiration date: April 12, 1993

For further information, please call: (512) 475-3250

Glenn Gladi



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# Proposed Sections

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

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

## TITLE 16. ECONOMIC REGULATION

### Part III. Texas Alcoholic Beverage Commission

#### Chapter 55. Bingo Regulation and Tax

##### • 16 TAC §55.542

The Texas Alcoholic Beverage Commission proposes an amendment to §55.542, concerning investigation of applicants for licenses. The amendment amends subsection (c) to allow commissioned peace officers to use criminal history information received by the commission from law enforcement agencies.

Thomas L. Byrd, director of auditing and tax reporting, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Byrd 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 a clearer understanding of who has access to criminal history information received by the Commission. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jeannene Fox, Director, Bingo Division, P.O. Box 13127, Austin, Texas 78711, (512) 206-3276.

The amendment is proposed under Texas Civil Statutes, Article 179d, Bingo Enabling Act, §13e(f) and §16(a), which require the commission to adopt rules governing the custody and use of criminal history information and authorize the Commission to adopt rules relating to the enforcement and administration of the Bingo Enabling Act.

**§55.542. Investigation of Applicants for Licenses.**

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

(c) Information received from the Texas Department of Public Safety, the Federal Bureau of Investigation, or any other law enforcement agency may be used only by the Director of the Bingo Division, an employee of that division authorized in

writing by the director, a commissioned peace officer, or someone who exercises supervisory authority over the director. Criminal history information shall be kept under lock and key when not actually in use, and shall be destroyed by shredding or some other confidential method when no longer needed.

(d)-(e) (No change.)

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

Issued in Austin, Texas, on January 20, 1993.

TRD-9317907

Gayle Gordon  
General Counsel  
Texas Alcoholic Beverage  
Commission

Earliest possible date of adoption: March 1, 1993

For further information, please call: (512) 206-3204

##### • 16 TAC §55.543

The Texas Alcoholic Beverage Commission proposes an amendment to §55.543, concerning denials; suspensions; revocations; hearings. The amendment amends subsection (a) to specify that if an applicant does not request a hearing within 30 days of the denial of his application he waives his opportunity for a hearing. The amendment amends subsection (c) to delete references to when a hearing shall be held and when a suspension begins, since the Commission no longer conducts its own hearings; to delete a reference to the issuance of a temporary license, since a licensee generally may continue its activities under Texas Civil Statutes, Article 6252-13a, §18(b); to provide that a suspension should specify the number of occasions suspended, and to provide that a suspended lessor's license or license to conduct bingo may not be amended in certain respects.

Thomas L. Byrd, director of auditing and tax reporting, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Byrd also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarification of the hearing and suspension procedure to re-

flect changes which have occurred since the Commission no longer conducts its own hearings. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposal.

Comments on the proposal may be submitted to Jeannene Fox, Director, Bingo Division, P.O. Box 13127, Austin, Texas 78711, (512) 206-3276.

The amendment is proposed under Texas Civil Statutes, Article 179d, Bingo Enabling Act, §16(a), which authorize the Commission to adopt rules relating to the enforcement and administration of the Bingo Enabling Act.

**§55.543. Denials; Suspensions; Revocations; Hearings.**

(a) Denial of application. If the Texas Alcoholic Beverage Commission (Commission) determines that an applicant is not eligible for a license, or that the license should be denied on grounds which would justify suspension or revocation of an existing license, it will notify the applicant in writing that the application has been denied and will state the reason for the denial. If the applicant desires to contest the denial, the applicant must, within 30 days of the date of the notice of denial, make a written request for a hearing to contest the denial. If the applicant does not request a hearing within 30 days after the date of the notice of denial, the opportunity for a hearing is waived and a notice that the denial has become final will be issued.

(b) (No change.)

(c) Hearings.

(1) (No change.)

(2) After a notice of proposed suspension or revocation has been served, the licensee or holder will have an opportunity for a hearing. [The hearing may be held within 20 days from the date the Commission receives the request.] If the licensee or holder does not request a hearing within 30 days after the date of the notice of proposed suspension or revocation, the opportunity for a hearing is waived and a final order will be issued.

(3) After a hearing on the alleged violation and upon finding that a violation did occur, the Commission may suspend a license or temporary authoriza-

tion for a period not to exceed one year or may revoke a license or temporary authorization. In a case involving a licensed authorized organization or a commercial lessor, any suspension should specify the number of occasions for which the license is suspended. Once a final order of suspension has been signed, the Commission may not process any amendment changing the playing days or times, the location of the games, or providing for a different commercial lessor until the suspension has been served. [The period of a suspension begins on the date of the order invoking the suspension, or the date of the order overruling the motion for rehearing, if one was filed.]

[(4) In the event a licensee has requested an administrative hearing and has made timely and sufficient application for renewal of its license, the licensee may be issued a temporary authorization to conduct bingo and continue to act pursuant to said authorization until the Commission issues a final decision, regardless of whether said license has expired during the hearing process.]

(d)-(e) (No change.)

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

Issued in Austin, Texas, on January 20, 1993.

TRD-9317908

Gayle Gordon  
General Counsel  
Texas Alcoholic Beverage  
Commission

Earliest possible date of adoption: March 1, 1993

For further information, please call: (512) 206-3204

## ◆ ◆ ◆ • 16 TAC §55.544

The Texas Alcoholic Beverage Commission proposes an amendment to §55.544, concerning definitions. The amendment amends the definition of "Bingo equipment and supplies" to delete markers and blotters, and to exclude cash registers, computers, and office equipment, amends the definition of "Charitable purposes" to include donations to community organizations in the examples of charitable purposes, amends the definition of "Location, premises, or place" to describe it in terms of a continuous attached structure and as including certain adjacent parking areas, clarifies the definition of "Operator" and amends the definition of "Sale" to delete a reference to markers and blotters. The amendment also adds definitions of "Member or membership," "Officer," and "Organizing instrument."

Thomas L. Byrd, director of auditing and tax reporting, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Byrd also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clearer understanding of the Bingo Enabling Act and Rules resulting from more exact definitions of Terms used therein. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposal.

Comments on the proposal may be submitted to Jeannene Fox, Director, Bingo Division, P.O. Box 13127, Austin, Texas 78711, (512) 206-3276.

The amendment is proposed under Texas Civil Statutes, Article 179d, Bingo Enabling Act, §16(a) which authorize the Commission to adopt rules relating to the enforcement and administration of the Bingo Enabling Act.

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

Bingo equipment and supplies—Items used, made, or sold for use in bingo games.

(A) Bingo equipment and supplies include:

(i)-(ii) (No change.)

(iii) bingo cards, boards, sheets, [markers,] pads, [blotters,] and other supplies; and

(iv) (No change.)

(B) Bingo equipment does not include a bingo game set that is:

(i) (No change.)

(ii) sold for a retail price of \$20 or less; [and]

(iii) (No change.)

(C)-(D) (No change.)

(E) Bingo equipment and supplies also do not include cash registers, computers, and office equipment.

Charitable purposes—one or more of the following activities:

(A)-(D) (No change.)

(E) Some examples of charitable purposes include the following:

(i) Charitable. Donations to recognized organizations such as Cerebral Palsy, Muscular Dystrophy, the Heart Fund, American Cancer Society, and other nationally or locally recognized charities in Texas including community organizations whose primary purpose is to assist in matters of sexual and physical abuse,

family economic support, or health care assistance;

(ii)-(iv) (No change.)

Location, premises, or place—All the area in a continuous attached [under the exterior roof of any building and/or] structure, and any parking area adjacent to the structure and leased under the same lease or purchased under the same deed. Separate structures which share the same parking area are not one premises. [regardless of whether title or leasehold interest in all or any part of such building and/or structure may be in the name of one or more persons.] For all purposes of licensing and regulation of the lease of bingo premises and/or the conduct of bingo, the terms "location," "premises," and "place" shall each have this meaning. The fact that the United States postal service or a local political subdivision has assigned or may assign separate mailing addresses or subaddresses to areas within the [building and/or] structure, the fact that internal walls may have been erected, or the fact that areas within a [building or] structure have separate utility connections or property tax listings, will not operate to subdivide a [building or] structure so as to create more than one location, premise, or place for the conduct of bingo. This provision as amended applies to all initial applications for commercial lessor licenses submitted after the effective date of this amendment. The provisions of this rule in effect before the effective date of this amendment apply to all initial applications for commercial lessor licenses received before that date and after May 4, 1987.

Member or membership—The natural person or persons designated in an organization's organizing instrument as being the active members of the organization. Honorary members or individuals who have joined the organization for the purpose assisting in the conduct of its bingo games are not members. Since the commission realizes that a nonprofit organization's organizing instruments are frequently inaccurate in describing how the organization actually operates, if an applicant proves that it has actually had persons carrying on all of the activities usually carried on by members, that applicant may amend its organizing instruments to correspond to the way it is actually organized. If the applicant is a nonprofit organization whose officers must be elected as provided in Texas Civil Statutes, Article 179d, §2(3)(B)(i), the commission will consider only those members who have voting rights in electing the officers or in electing the delegates who elect them as being the only members of the applicant organization, since the alternative would be to deny the application.

Officer—Those persons designated as officers in an organization's organizing

ing instrument. The term includes, but is not limited to, an organization's president, vice president, secretary, treasurer, directors, and trustees or persons performing the same duties with a different title, such as commander or potentate.

**Organizing instrument**—A document by virtue of which an organization is formed or operates and which specifies its organizational structure, membership, and purposes. The organizing instruments of a corporation are its Articles of Incorporation and its By-laws. The organizing instrument of an unincorporated association is its constitution or by-laws.

**Operator**—The active bona fide member or members of a licensed organization designated as the person or persons in charge of and primarily responsible for each bingo occasion. The operator whether it be the primary operator or an alternate operator must supervise all activities and be responsible for the conduct of all bingo games on the occasion of which he or she is in charge. He or she must be present on the premises continually during the occasion.

**Sale**—For the purposes of the Bingo Enabling Act, §11(o) and §13c(i), the term "sale" includes installment plan purchases by licensed authorized organizations or exempt entities under the Bingo Enabling Act, §39(b)(3) or (4), of bingo equipment other than bingo cards, boards, sheets, [markers,] or pads[, or blotters]. The due date of each installment payment is considered the date of actual delivery.

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 20, 1993.

TRD-9317909

Gayle Gordon  
General Counsel  
Texas Alcoholic Beverage  
Commission

Earliest possible date of adoption: March 1, 1993

For further information, please call: (512) 206-3204

## ♦ ♦ ♦ • 16 TAC §55.545

The Texas Alcoholic Beverage Commission proposes an amendment to §55.545, concerning licenses, fees, and bonds for conduct of bingo and commercial lessor. The amendment amends subsection (a) to require the Commission to notify applicants of pending administrative action involving their proposed location, to give the Commission discretion concerning the revocation of bonds, to specify what factors the Commission shall consider in reviewing an application of an organization to move from one commercial hall to another, and to provide a procedure for placing on inactive status the license of an organization which has voluntarily surrendered possession of the licensed premises. The amendment amends subsection (b) to

delete the requirement for a bond of \$99 or less and to give the Commission discretion concerning the revocation of bonds. The amendment amends subsection (c) to allow applications for temporary licenses on a different form approved by the Commission, amends subsection (f) to delete a reference to payment of a cash bond and to specify the manner in which the fee on an original application must be paid, amends subsection (l) to require notification of changes in the information in an application within 10 days, and amends subsection (m) to allow only operators or officers of a licensed organization or officers or a designated business contact of a commercial lessor to act as representatives of that organization or lessor. The amendment also adds a new subsection (n) requiring that a licensed organization or applicant may use only its primary business address as its mailing address.

Thomas L. Byrd, director of auditing and tax reporting, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Mr. Byrd also has determined that for each of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be an expedited licensing process resulting from clarification of current procedures and prevention of recurring litigation by providing a method of placing licenses in inactive status. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposal.

Comments on the proposal may be submitted to Jeannene Fox, Director, Bingo Division, P.O. Box 13127, Austin, Texas 78711, (512) 206-3276.

The amendment is proposed under Texas Civil Statutes, Article 179d, Bingo Enabling Act, §16(a), which authorize the Commission to adopt rules relating to the enforcement and administration of the Bingo Enabling Act.

### §55.545. Licenses, Fees, and Bonds for Conduct of Bingo and Commercial Lessor.

(a) Annual license to conduct bingo games.

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

(3) License.

(A)-(D) (No change.)

(E) If an applicant is applying to conduct bingo at a location where administrative action is pending against the commercial lessor or any of the organizations conducting bingo there, the Commission shall notify the applicant of the pending action and its possible effects on the applicant.

(4) Bond or other security. Each application for an annual license to conduct bingo must be accompanied by a bond or other security equal to the applicant's esti-

mated quarterly tax liability. If the amount is estimated to be less than \$1,900, no bond or other security will be required, unless the Commission determines a bond or other security is necessary based on the applicant's history at recordkeeping, reporting, and payment of tax. No new bond will be required upon renewal if the licensee would be eligible to have an existing bond released under subparagraph (D) of this paragraph. If a bond or other form of security is required, no license will be issued until such bond or other security has been posted.

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

(C) Forfeiture. If a licensee pays less than the amount of tax due under the Act, the Commission may [will] notify both the licensee and any surety of the delinquency by jeopardy or deficiency determination. If payment is not made by the demand date stated in the notice, the Commission may [will] forfeit the bond or security or any part of the bond or security necessary to pay the proper amount of tax. Failure to pay any delinquency when due is grounds for suspension or revocation of the licensed organization's right to conduct bingo.

(D)-(E) (No change.)

(5) Application to conduct bingo at premises of a commercial lessor.

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

(C) If an organization that is licensed to conduct bingo applies to amend its license to move to the premises of another commercial lessor, the Commission, in determining whether or not to amend the license shall consider the following factors:

(i) will the rent be increased or decreased;

(ii) will the new facilities be in a better or more desirable location;

(iii) have there been problems concerning lessor involvement or lessor violations of the lease at either location; and

(iv) has the organization been making or losing money at the old location and how do those receipts and expenses compare to those of other organizations already conducting bingo at the new location.

(6) Inactive status.

(A) If an organization holding an annual license to conduct bingo



voluntarily surrenders possession of the licensed premises to a licensed commercial lessor that lessee or that lessor may request in writing that the lessee's license be placed in inactive status. The lessor shall include with its request a copy of its termination notice to the lessee which complies with the notice requirements of the lease (except under subparagraph (B)(iii) of this paragraph) and an affidavit that the lessee has voluntarily surrendered possession of the premises. The purposes of this action are to allow the lessee to retain its license while seeking another location, to allow the lessor to lease to another licensed organization to replace the inactive lessee, and to prevent loss of bingo receipts to any organization playing bingo at that location on the same day as the inactive lessee is licensed to conduct bingo.

(B) A lessee will be considered to have voluntarily surrendered possession of the licensed premises in any of the following three situations:

(i) when the lessee has received a written termination notice for a certain date, surrenders the premises, and removes substantially all of its property from the premises;

(ii) when the lessee surrenders possession of the premises in writing after having received a written termination notice for a certain date; or

(iii) when the lessee abandons the premises, removes substantially all of its property, fails to conduct bingo for three consecutive occasions, and has not paid any rent for any period after those three occasion dates.

(C) Upon receipt of a request by a lessor to place a lessee's license in inactive status, the Commission shall give notice to the lessee of its intent to do so. If, within 10 days after the mailing of that notice by certified mail return receipt requested the lessee has not requested a hearing on whether or not its license should be placed in inactive status, the Commission shall then place the license in inactive status.

(D) Upon receiving a request from a lessee to place its license in inactive status, the Commission shall do so.

(E) A lessee may contest the placing of its license in inactive status on the ground that it did not voluntarily surrender possession of the premises.

(F) If a lessee requests a hearing, the Commission shall request

that the case be set on the docket for hearing.

(G) The placing of a license in inactive status does not preclude the taking of administrative action to revoke or suspend that license.

(b) Commercial license to lease bingo premises.

(1) (No change.)

(2) Fee. An application for a license to lease bingo premises must be accompanied by a license fee which is based upon the annual gross rentals from licensed organizations. [For the purposes of this section "gross rentals from licensed organizations" means the total receipts, regardless of how they are denominated, from the licensed organizations, including, but not limited to, building rental, payments for utilities, fixtures, security services, etc.] The fee that must accompany the application must be made in accordance with the Bingo Enabling Act, Texas Civil Statutes, Article 179d, 13.

(3) (No change.)

(4) Bond or other security. Each application for an annual license to lease bingo premises must be accompanied by a bond or security equal to the applicant's estimated quarterly tax liability. No new bond will be required upon renewal if the licensee would be eligible to have an existing bond released under subparagraph (D) of this paragraph. If the bond amount is \$99 or less, no bond will be required. If a bond or other form of security is required, no license will be issued until such bond or other security has been posted.

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

(C) Forfeiture. If a licensee pays less than the amount of bingo rental tax due under the Act, the Commission may [will] notify both the licensee and any surety of the delinquency by jeopardy or deficiency determination. If payment is not made by the demand date stated in the notice, the Commission may [will] forfeit the bond or security or any part of the bond or security necessary to pay the proper amount of tax. Failure to pay any delinquency when due is grounds for suspension or revocation of the licensed commercial lessor's right to lease bingo premises.

(D)-(E) (No change.)

(c) Temporary license to conduct bingo games.

(1) Application. Any organization which desires to conduct bingo on a limited basis must apply to the Commission for a temporary license. The application

must be made on a form prescribed by the Commission [contain the same information and be made on the same form used by applicants for an annual license]. The complete application with required attachments should be filed with the Commission at least 30 days in advance of the first bingo game that will be played under the temporary license.

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

(d)-(e) (No change.)

(f) Payment of fees. The proper license fee must accompany each application. License fees will not be prorated. The fee accompanying an original application [and any cash bond] must be in the form of cash, cashier's check, money order, or check made payable to the State Treasurer. After the filing of the application, fee, and any required bond, the Commission will promptly investigate the qualifications of the applicant and either:

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

(g)-(k) (No change.)

(l) Notification of changes. Each licensee has a continuing responsibility to promptly notify the Commission within 10 days in writing of any changes to information in a filed application, when information filed with the Commission becomes inaccurate in any way, or when additions or deletions are necessary to reflect changes in circumstances of the licensee. Examples of such changes include the name of the organizational officers, the amount of rent charged for leased premises, the name of a member responsible for the conduct of games or the name of an individual connected with a commercial lessor that would affect its eligibility to hold a license and, in the case of lessors, the name of a new, authorized organization that intends to lease premises from it for the purpose of conducting bingo.

(m) Representation; personal receipt of documents. Only a designated operator or officer of a licensed organization or applicant for a license to conduct bingo or officer or designated business contact of a commercial lessor or applicant for a lessor's license may [For purposes of this subsection, an individual shall] be recognized by the Commission with respect to [as an applicant's or licensee's authorized representative only if the Commission has on file written authorization in the form of a resolution of the applicant's or licensee's governing body, that such individual has the authority to act on behalf of the applicant or licensee, and the extent of such authority. Written authorization furnished by an applicant or licensee under this rule shall apply only to the specific individuals listed in the authorization. Agents or employees of an authorized representative are not authorized

representatives of the applicant or licensee unless specifically named in the written authorization on file with the Commission. Only the applicant, licensee, or those individuals specifically named in the applicant's or licensee's resolution as authorized representatives shall be recognized by the Commission concerning any matter relating to the licensing process of that applicant or licensee or any corrective measures to be taken after an audit or field investigation of that applicant or licensee. [Only the applicant or its authorized representative may personally receive from the Commission documents relating to an applicant's license.]

(n) Mailing address. The required mailing address of an organization applying for or holding a license to conduct bingo must be the primary business address of that applicant or licensee.

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 20, 1993.

TRD-9317910 Gayle Gordon  
General Counsel  
Texas Alcoholic Beverage  
Commission

Earliest possible date of adoption: March 1, 1993

For further information, please call: (512) 206-3204

#### • 16 TAC §55.546

The Texas Alcoholic Beverage Commission proposes an amendment to §55.546, concerning exemptions from licensing requirements. The amendment adds a new subsection (c) specifying what information and documents an entity applying for exemption from licensing must provide to the commission.

Thomas L. Byrd, director of auditing and tax reporting, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Byrd 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 a clearer understanding of the information and documentation necessary to receive an exemption from licensing under the Bingo Enabling Act. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jeanne Fox, Director, Bingo Division, P.O. Box 13127, Austin, Texas 78711, (512) 206-3276.

The amendment is proposed under Texas Civil Statutes, Article 179d, Bingo Enabling

Act, §16(a), which authorize the Commission to adopt rules relating to the enforcement and administration of the Bingo Enabling Act.

#### §55.546. Exemptions from Licensing Requirements.

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

(c) Any organization requesting exemption must state in its letter that the games are for prizes of \$10 or less and that the games will be limited to members of the senior citizens' association, patients in the hospital or nursing home, or residents of the retirement home. A senior citizens' association shall also send with its letter a copy of its organizing instrument, a list of its officers, and a list of its members showing their ages. A retirement home shall send with its letter a copy of a brochure or a certificate from a state agency showing that it is a retirement home. A nursing home shall send with its letter a copy of its certificate to operate a nursing home from the Texas Department of Health. A hospital shall send with its letter proof that it is a hospital.

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 20, 1993.

TRD-9317911 Gayle Gordon  
General Counsel  
Texas Alcoholic Beverage  
Commission

Earliest possible date of adoption: March 1, 1993

For further information, please call: (512) 206-3204

#### • 16 TAC §55.547

The Texas Alcoholic Beverage Commission proposes an amendment to §55.547, concerning books and records-bingo licensees. The amendment amends subsection (a) to require an officer or operator to be on a licensed authorized organization's signature card and sign its checks, to require the keeping of a Daily Floor Sales Summary, to clarify how records of different price sales must be kept, to require written permission of the Commission for any different method of recording sales, to require more detailed information on payroll checks and lease payment checks, and to require monthly inventories of bingo supplies. The amendment amends subsection (d) to require notification of inability to make a timely loan payment, to provide for restructuring of the loan repayment schedule, to prohibit approving loans to meet the minimum charitable distribution requirement, and to change how loan proceeds and loan payments are reported. The amendment amends subsection (e)(3) to include rental receipts of a lessor also licensed to conduct bingo in computing the minimum charitable distribution of that organization. The amendment

also adds new subsections (g) and (h) to provide for the removal of records during an audit or investigation and to adopt sample record-keeping forms.

Thomas L. Byrd, director of auditing and tax reporting, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Byrd also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be more funds available for charitable contributions as a result of better internal control of operations. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jeannene Fox, Director, Bingo Division, P.O. Box 13127, Austin, Texas 78711, (512) 206-3276.

The amendment is proposed under Texas Civil Statutes, Article 179d, Bingo Enabling Act, §16(a), which authorize the Commission to adopt rules relating to the enforcement and administration of the Bingo Enabling Act.

#### §55.547. Books and Records-Bingo Licensees.

(a) This rule sets minimum standards for recordkeeping for licensees that conduct bingo or, where specified, that lease bingo premises. Where the Texas Alcoholic Beverage Commission (Commission) provides forms for recordkeeping, licensees may use those forms or forms of their own choosing which contain the same information, except as otherwise provided in paragraph (1)(D) of this subsection.

(1) Cash receipt records. The records required to document cash receipts consist of the following.

(A) (No change.)

(B) Bingo bank account. A licensed authorized organization must establish and maintain one regular checking account designated the bingo account and may also maintain an interest-bearing savings account designated the bingo savings account, as provided in the Bingo Enabling Act, Texas Civil Statutes, Article 179d, §19a(a). A licensed organization may have on its bingo account's signature card only active members of the organization except that one bookkeeper or accountant who is not a member may be on the signature card. At least one officer or operator [active member] of the licensed organization must be on the signature card. An operator or officer of the organization must also sign all checks. A licensed organization must keep validated deposit slips. Any interest income earned from the bingo savings account must

be accounted for as part of the net proceeds available for charitable distribution. Prize fees collected at a bingo occasion shall be deposited in the bingo checking account with the proceeds from that occasion.

(C) (No change.)

(D) Documenting daily receipts. A licensed organization shall substantiate the contents of these cash receipt records by use of a Disposable Card Sales Summary on a form prescribed by the Commission, a Daily Floor Sales By Usher and the use of a cash register. In using a cash register, the following directions apply.

(i) (No change.)

(ii) Each different sales price for hard cards, disposable paper cards, and instant bingo cards [Various types of sales] must [each] be recorded on [with] a separate key. Income from various types of sales must be separately recorded and the cash register must be able to provide a total for each type of sale recorded. The total of floor sales for each type of sale must be recorded at the conclusion of the organization's sales for the occasion.

(iii) (No change.)

(iv) Any method of recording sales different from that specified in clause (ii) of this subparagraph is in violation of this section unless written permission has been obtained from the commission for that alternate method of recording sales.

(2) Cash disbursement records. The records to document cash disbursements consist of the following:

(A) Bingo bank account. Funds from the bingo account must be withdrawn by checks or withdrawal slips as provided in the Bingo Enabling Act, Texas Civil Statutes, Article 179d, §19a(b). Checks written for lease payments must also show the periods for which payments are made and payments for payroll must also show the worker's function and the periods for which payments are made.

(B)-(D) (No change.)

(3) Inventory Records. Each licensed authorized organization must

take an inventory of its bingo supplies at the end of each month, reflecting the following information:

(A) the date of the inventory;

(B) the full description and quantity of each type of ups pad, by series number;

(C) the full description and quantity of each type of single sheets by series number; and

(D) the full description and quantity of each type of instant bingo cards by series number;

(E) the balance of inventory per the Disposable Card Sales summaries for each type of ups pad and single sheet;

(F) the difference between the balance per the Disposable Card Sales Summary and actual count of cards on hand for each series of ups pads and single sheets.

(4) The inventory of bingo supplies required by paragraph (3) of this subsection must be signed by person conducting the inventory and kept at the licensed location or at a location authorized in writing by the commission.

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

(d) Loans to the bingo account.

(1) A licensed authorized organization or an organization applying for a license to conduct bingo may loan money to its bingo account from its general fund if:

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

(C) If an organization is unable to make a loan payment pursuant to its repayment schedule, it shall, prior to the renewal of its license, notify the commission to determine whether the loan repayment schedule should be restructured. At the commission's discretion, the loan repayment schedule may be

amended once to extend it for a period not to exceed 12 months.

(D) The commission may not approve loans to meet the 35% minimum charitable distribution requirement under Texas Civil Statutes, Article 179d, Bingo Enabling Act, §19a(k).

(2) (No change.)

(3) The loan transaction must be reported on the quarterly reports as follows:

(A) loan proceeds must be reported as approved loan proceeds [interest earned] for the quarter in which they are received; and

(B) loan payments must be reported as repayment of approved loans [expenses] for the quarter in which they are paid.

(4)-(5) (No change.)

(e) Commercial lessors licensed to conduct bingo.

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

(3) Rental payments required by this subsection to be deposited in the bingo bank account are not part of gross receipts for purposes of the bingo gross receipts tax. Such rental payments are [not] considered in computing adjusted gross receipts under §55.555 of this title (relating to Minimum Charitable Distribution). Distributions for charitable purposes of such funds from the bingo checking account will be considered as part of the disbursements toward meeting that minimum charitable distribution requirement under §55.555 of this title.

(f) (No change.)

(g) Records kept. The Commission, with the consent of an operator or officer of a licensed authorized organization or of an owner, operator, officer, or business contact of a licensed commercial lessor may remove any records kept pursuant to this section or §55.554, concerning instant bingo, for audit purposes or for the purposes of any investigation.

(h) Sample forms. As provided in subsection (a) if this section, the commission adopts the following sample forms.

**DAILY CASH REPORT**

DATE: \_\_\_\_\_ ATTENDANCE: \_\_\_\_\_  
 ORGANIZATION NAME: \_\_\_\_\_ LICENSE NO: \_\_\_\_\_

DESCRIPTION OF RECEIPTS	GROSS RECEIPTS	GROSS CASH PRIZES PAID	NET RECEIPTS
REGULAR BINGO	\$		
SUBTOTAL FOR REGULAR BINGO	\$	\$	\$
INSTANT BINGO	\$		
SUBTOTAL INSTANT BINGO	\$	\$	\$
TOTAL REGULAR & INSTANT BINGO	\$	\$	\$

- 1) Net Receipts Regular and Instant Bingo \$
- 2) Petty Cash Fund (beginning) \_\_\_\_\_
- 3) Prize Fees Withheld \_\_\_\_\_
- 4) Total (Items 1 through 3) \$
- Less:
- 5) Total Cash on Hand at the close of the Session \$
- 6) Equals: Cash Over/(Short) (4-5) \_\_\_\_\_
- 7) Petty Cash Fund (ending) \_\_\_\_\_
- 8) Net Deposit (Item 5 minus Item 7) \$

Prepared By \_\_\_\_\_ Date \_\_\_\_\_

Approved By \_\_\_\_\_ Date \_\_\_\_\_

Documentation for the *Daily Cash Report* must include:

1. *Daily Schedule of Prizes*
2. a copy of the *Daily Floor Sales by Usher*
3. the cash register "Z" tape which will show totals for each type of sale.

[illegible]

### DAILY SCHEDULE OF PRIZES

DATE: \_\_\_\_\_

ORGANIZATION  
NAME: \_\_\_\_\_

**LICENSE NO:** \_\_\_\_\_

[illegible]

# DAILY FLOOR SALES BY USHER

DATE \_\_\_\_\_ PAGE \_\_\_\_\_ OF \_\_\_\_\_

ORGANIZATION NAME: \_\_\_\_\_ LICENSE NO: \_\_\_\_\_

USHER NAME	CARD COUNTS	GAME #1	GAME #2	GAME #3	GAME #4	GAME #5	GAME #6	TOTAL ALL GAMES
	ISSUED							
	RETURNED							
	SOLD							
TOTAL SALES VALUE								
TOTAL CASH RECEIVED								
CASH OVER / (SHORT)								
	ISSUED							
	RETURNED							
	SOLD							
TOTAL SALES VALUE								
TOTAL CASH RECEIVED								
CASH OVER / (SHORT)								
	ISSUED							
	RETURNED							
	SOLD							
TOTAL SALES VALUE								
TOTAL CASH RECEIVED								
CASH OVER / (SHORT)								
GAME TOTALS ALL USHERS	TOTAL CARDS SOLD							
	TOTAL SALES VALUE							
	TOTAL CASH RECEIVED							
	CASH OVER / (SHORT)							

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## SALES JOURNAL

ORGANIZATION  
NAME: \_\_\_\_\_

**LICENSE NO:**

[illegible]

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ORGANIZATION  
NAME: \_\_\_\_\_

[illegible]

25 20 15 10 5

ORGANIZATION  
NAME: \_\_\_\_\_

**LICENSE NO:**

[illegible]

**\_\_ LICENSE NO:**

18 TexReg 536 January 29, 1993 Texas Register ♦

PREPARED NAME \_\_\_\_\_

♦ *Proposed Sections*     *January 29, 1993*     *18 TexReg 537*

## LESSOR RECEIPTS JOURNAL

LESSOR NAME \_\_\_\_\_ LICENSE NUMBER \_\_\_\_\_

BINGO HALL \_\_\_\_\_ BINGO HALL  
NAME \_\_\_\_\_ ADDRESS \_\_\_\_\_

[illegible]

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**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 20, 1993.**

**TRD-9317912**

Gayle Gordon  
General Counsel  
Texas Alcoholic Beverage  
Commission

**Earliest possible date of adoption: March 1, 1993**

**For further information, please call: (512) 206-3204**

- **16 TAC §55.548**

**The Texas Alcoholic Beverage Commission proposes an amendment to §55. 548, concerning general restrictions on the conduct of**

bingo. The amendment substantially amends subsection (a) to restrict or prohibit involvement by lessors, their agents or employees, and first degree relations of those persons in the conduct of bingo, to state examples of what will be considered prohibited involvement, and to specify when delinquency in rent will and will not be considered prohibited involvement. The amendment also amends subsection (b) to clarify that an organization leasing from a commercial lessor must be leasing from a separate entity with a lessor's license and to allow two affiliated organizations to conduct bingo at premises that they jointly own. The amendment also amends subsection (d) to prohibit advertising of out-of-state bingo games and to require that advertisements must contain the name of the licensed authorized organization as it appears on its license but need not include its license number. The amendment also amends subsection (k) and (l) to allow the commission to require the repair or replacement of any defective bingo equipment and to

clarify at what location a winning card must be verified by other players.

Thomas L. Byrd, director of auditing and tax reporting, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Byrd 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 increased compliance with the Bingo Enabling Act and Rules resulting from clarification of what constitutes illegal involvement and of various other requirements regarding the conduct of bingo. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jeannene Fox, Director, Bingo Division.

P.O. Box 13127, Austin, Texas 78711, (512) 208-3276.

The amendment is proposed under Texas Civil Statutes, Article 179d, Bingo Enabling Act, 16(a), which authorize the Commission to adopt rules relating to the enforcement and administration of the Bingo Enabling Act.

**§55.548. General Restrictions on the Conduct of Bingo.**

(a) Who may conduct bingo.

(1) (No change.)

(2) All callers, cashiers, ushers, bookkeepers, and accountants who assist in conducting, promoting, or administering bingo games must be members of the authorized organization or hired by and acting under the supervision of the authorized organization.

[(A) Except as provided hereafter, neither a commercial lessor nor any person having an interest in a commercial lessor, nor any employee or agent of any of them shall operate, manage, conduct, advise, or assist in the operating, managing, conducting, promoting, or administering of bingo. The term "assist" as used in this rule includes, but is not limited to, the payment of any expense of a licensed bingo organization by a commercial lessor, whether such payment be by loan or otherwise. This prohibition does not apply to a person whose employment by or business relationship with a commercial lessor is unrelated to the leasing of bingo premises and who is not acting in the capacity of operator.

[(B) A commercial lessor which is an organization licensed to conduct bingo and which leases premises it owns or occupies to another authorized organization may assist in the conduct of bingo games by that organization except that a member, employee, or agent of the lessor may not act as an operator for the lessee organization.

[(C) A commercial lessor who has been an active bona fide member of the licensed organization for at least three years actively engaged in carrying out the purposes of the organization may assist that organization in the conduct of bingo at the lessor's premises but may not receive compensation for so assisting and may not act in the capacity of operator.]

(3) Neither a commercial lessor or any person having an interest in a commercial lessor, nor any employee or agent of a commercial lessor, nor any person related in the first degree by consanguinity or affinity to any such person may directly or indirectly operate, manage, conduct, advise, or assist in the operating, managing, conducting, promoting,

or administering of bingo. This prohibition includes, but is not limited to, the following actions:

(A) hiring or firing bingo workers or bookkeepers;

(B) suggesting which workers, bookkeepers, janitorial services, or security services should be hired or fired;

(C) suggesting game schedules and/or prize amounts;

(D) paying, either directly or through a loan, any expense of a licensed authorized organization or applicant for a license to conduct bingo including advertising, purchase of bingo equipment, license fees or taxes, payment of bingo workers or bookkeepers, or any other expense related to the conducting of bingo;

(E) having access to or control of any bank account held by the licensed authorized organization; and

(F) requiring the use of any particular distributor, supplier, or service provider by the licensed authorized organization.

(4) If a commercial lessor is an organization whose sole purpose is to hold title to real property used by a particular licensed authorized organization, such as a Columbus Club owning property used by a chapter of the Knights of Columbus, a member of the lessor organization who has been an active bona fide member of the particular licensed authorized organization for at least three years actively engaged in carrying out the purposes of the organization may assist that organization in the conduct of bingo at the lessor's premises but may not receive compensation for so assisting.

(5) A commercial lessor, which is also an organization licensed to conduct bingo and which leases the premises it owns or occupies to another licensed authorized organization, may assist in the conduct of bingo games by that organization except that a member, employee, or agent of the lessor may not act as an operator for the lessee organization.

(b) Location. Bingo may be conducted by a licensed organization only on premises, as that term is defined in Rule §55.544 of this title (relating to Definitions), which are:

(1) (No change.)

(2) owned jointly in equal 50% shares by the licensed organization and another authorized organization with which it is affiliated and at which no organization other than those two affiliated organizations conducts bingo;

(3)[(2)] owned by a governmental agency;

(4)[(3)] leased, or used only by the holder of a temporary license; or

(5)[(4)] owned or leased by the licensed organization from a separate entity which is [by] a licensed commercial lessor.

(c) Limit on rent. The payment of rent shall be limited as follows, subject to the exceptions specified in the Bingo Enabling Act, §11a(c).

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

(3) All lease payments made by the licensed authorized organization must be paid on a monthly, weekly, or per occasion basis, and the lease must so specify, unless otherwise authorized in writing by the Commission.

(4) The fact that a licensed authorized organization is delinquent in its rent is not considered lessor involvement if either of the following two conditions are met:

(A) the delinquent rent does not exceed an amount equivalent to the rent due for all occasions during a three-month period; or

(B) within 15 days of the date on which the delinquent rent exceeds the amount specified in subparagraph (A) of this paragraph either:

(i) the commercial lessor forgives the rent by a written release signed by the lessor and an operator or officer of the lessee organization; or

(ii) the commercial lessor and the lessee organization renegotiate the lease for a lesser amount by a lease amendment approved by the commission, both as to the form of the amendment and to the reduction in rent being a bona fide attempt to solve the rental problem.

(d) Advertising. All advertisements for bingo games, whether in newspapers, fliers, pamphlets, brochures, or other circulars, billboards, signs, or recordings, must clearly identify the name of the licensed authorized organization exactly as it appears on its license [its bingo license number], and the days and times of the occasions it will operate. Only a licensed authorized organization may advertise or

promote bingo. The advertisement of out-of-state bingo games in separate fliers, brochures, or posters is prohibited except as specifically allowed by Indian tribal games by Federal law. A licensed authorized organization may not allow any such advertisement for out-of-state games, including those for tribal games to be distributed at a licensed location. No licensed authorized organization may include in any advertisement or promotion the amount of a prize or prizes offered at a bingo occasion. A reference to the prize limits allowed by the Bingo Enabling Act, so long as no specific amount is mentioned, is allowed.

(e)-(j) (No change.)

(k) Inspection of equipment, tampering prohibited. All bingo equipment, including blowers, flashboards, balls, and bingo cards, are subject to inspection at any time by any representative of the Commission and the Commission may require the repair or replacement of any equipment which is not in proper working order. An authorized organization conducting bingo shall replace the bingo balls in use with a complete new set at least each six months or after each 50 occasions, whichever occurs later, and shall replace the balls at any time upon order of the Commission or its representative. No person may tamper with or modify any bingo equipment in any manner which would affect the randomness of numbers chosen or which changes the numbers or symbols appearing on the face of a bingo card. A licensed authorized organization has a continuing responsibility to ensure that all bingo equipment used by it is in proper working condition.

(l) Verification.

(1) Verification of winning cards. The numbers appearing on the winning card must be verified at the time the winner is determined and prior to prize(s) being awarded in order to insure that the numbers on the card in fact have been drawn from the receptacle. This verification shall be done in the immediate presence of one or more players at a table [or location] other than the winner's. Each winning disposable paper card shall be displayed on any television monitors in use. Each winning disposable paper card shall also be posted on the licensed premises where it may be viewed in detail by the players until at least 30 minutes after the completion of the last bingo game of that organization's occasion.

(2) (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 January 20, 1993.

TRD-9317913

Gayle Gordon  
General Counsel  
Texas Alcoholic Beverage  
Commission

Earliest possible date of adoption: March 1, 1993

For further information, please call: (512) 206-3204

### • 16 TAC §55.549

The Texas Alcoholic Beverage Commission proposes an amendment to §55.549, concerning allowable expenditures of receipts for bingo. The amendment amends subsection (e) and adds a new subsection (g) to require that any disallowed expenditures must be replaced by funds unrelated to bingo proceeds and to allow the commission to disallow expenditures which are unreasonable in price or in the number of persons employed.

Thomas J. Byrd, director of auditing and tax reporting, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Byrd 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 increased funds available for charitable purposes resulting from clarification of the source of funds to be used to replace monies utilized for improper expenses. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jeannene Fox, Director, Bingo Division, P.O. Box 13127, Austin, Texas 78711, (512) 206-3276.

The amendment is proposed under Texas Civil Statutes, Article 179d, Bingo Enabling Act, §16(a), which authorize the Commission to adopt rules relating to the enforcement and administration of the Bingo Enabling Act.

*§55.549. Allowable Expenditures of Receipts from Bingo.*

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

(c) If the Commission disallows all or any portion of an expense or charitable distribution shown on a licensee's quarterly report, the licensee must immediately transfer from other funds not related to bingo proceeds an amount into its bingo account equal to the amount of disallowed expense or charitable distribution.

(d)-(f) (No change.)

(g) The commission may disallow, in whole or in part, any expense claimed by a licensed authorized organization if the commission determines that the expense is excessive relative to comparative market value or is for the employment of an unreasonable number of persons in a

particular capacity.

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 20, 1993.

TRD-9317914

Gayle Gordon  
General Counsel  
Texas Alcoholic Beverage  
Commission

Earliest possible date of adoption: March 1, 1993

For further information, please call: (512) 206-3204

### • 16 TAC §55.552

The Texas Alcoholic Beverage Commission proposes an amendment to §55.552, concerning licenses, fees, and bonds for manufacturers and distributors. The amendment amends subsection (c) to authorize investigation fees for investigation of original or additional facilities of licensees as well as of applicants for a license.

Thomas L. Byrd, director of auditing and tax reporting, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Byrd 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 a clearer understanding of who is required to pay investigative fees regarding investigations of facilities of licensees or applicants. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jeannene Fox, Director, Bingo Division, P.O. Box 13127, Austin, Texas 78711, (512) 206-3276.

The amendment is proposed under Texas Civil Statutes, Article 179d, Bingo Enabling Act, §16(a), which authorize the Commission to adopt rules relating to the enforcement and administration of the Bingo Enabling Act.

*§55.552. Licenses, Fees, and Bonds for Manufacturers and Distributors.*

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

(c) Investigation fee. The Commission may require an applicant or licensee to pay an additional fee in an amount equal to the cost of a background investigation, including the inspection of applicant's or licensee's plants and other facilities. If the Commission intends to impose the investigation fee, it will notify the applicant or licensee in writing prior to starting the investigation that the fee will be imposed and will supply an estimate of the amount of the fee. If the applicant or licensee does

not wish to pay the investigation fee, it may withdraw the application or notification of additional plants or other facilities and the basic fee will be refunded. The persons making the inspection shall submit travel vouchers and supporting documents to the Commission and shall receive reimbursement or a travel advance from the Commission in the same manner as for other state travel, as provided in the State Employees Travel Allowance Guide, as most recently revised and issued by the Comptroller. The Commission shall send to the applicant or licensee copies of the vouchers and supporting documents together with a statement for the fee, in the same amount as was paid by the Commission on account of the inspection. The applicant or licensee shall reimburse the Commission, within 30 days of the date of the statement for the amount shown in the statement.

(d)-(f) (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 January 20, 1993.

TRD-9317915

Gayle Gordon  
General Counsel  
Texas Alcoholic Beverage  
Commission

Earliest possible date of adoption: March 1, 1993

For further information, please call: (512) 206-3204

◆ ◆ ◆  
• 16 TAC §55.553

The Texas Alcoholic Beverage Commission proposes an amendment to §55.553, con-

cerning books and records—distributors and manufacturers. The amendment adds a new subsection (a)(1)(B)(ix) requiring that invoices include the serial numbers of disposable paper cards sold, changes the form adopted by present subsection (d) accordingly, adds new subsections (c) and (d) requiring the labeling of boxes of supplies to show the names of the purchasing licensed organization and the serial numbers of disposable paper cards, and reletters the present subsections (c) and (d).

Thomas L. Byrd, director of auditing and tax reporting, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Byrd 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 increased funds for charitable purposes resulting from better control of licensees' inventories. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jeannene Fox, Director, Bingo Division, P.O. Box 13127, Austin, Texas 78711. The telephone number is (512) 206-3276.

The amendment is proposed under Texas Civil Statutes, Article 179d, Bingo Enabling Act, §16(a), which authorize the Commission to adopt rules relating to the enforcement and administration of the Bingo Enabling Act.

§55.553. *Books and Records—Distributors and Manufacturers.*

(a) Every licensed distributor and manufacturer must maintain a complete set of records including, but not limited to, the following.

(1) Sales invoices.

(A) (No change.)

(B) Each licensee must use a general sales invoice which sets out the following information:

(i)-(viii) (No change.)

(ix) the serial numbers of disposable paper cards sold. The requirement to include serial numbers on the sales invoice becomes effective 90 days after the effective date of the amendment to this section.

(2)-(5) (No change.)

(b) (No change.)

(c) A licensee who holds a distributor's license must attach the name of the licensed authorized organization on the outside of each box containing bingo supplies sold to that licensed authorized organization.

(d) A licensee who holds a manufacturer's license must show the serial numbers of disposable paper cards sold on the outside of sealed boxes. A distributor who repackages disposable paper cards shall show the serial numbers of the disposable paper cards on the outside of sealed boxes. The requirement to show serial numbers on the outside of sealed boxes becomes effective 90 days after the effective date of the amendment to this section.

(e)[(c)] Records required by this rule must be maintained for at least four years.

(f)[(d)] The Commission adopts the following sample general sales invoice.



BINGO PAPER, INC.  
11843 FIRST AVENUE  
ANY TOWN, TEXAS 77711  
PHONE (777) 651-1231  
LIC. NO. 16620111119

DATE  
12/31/91

INVOICE  
NO.  
117732

SOLD TO:  
BINGO CHARITY  
12 CENTER STREET  
ANY TOWN, TEXAS 77733  
LIC. NO. 1222011111E

SHIPPED TO:  
BIG BINGO HALL  
1183 HALL AVENUE  
ANY TOWN, TEXAS 77733

SHIPPED VIA:  
RAPID MARINE FREIGHT

QUANTITY		DESCRIPTION	NUMBER OF FACES	SERIAL NUMBER	UNIT	PRICE PER UNIT	TOTAL
PADS	SHEETS						
3,000		3 ON 4 UP PADS	36,000	123456	1	\$79.95	\$79.95
3,000		3 ON 5 UP PADS	45,000	123457	1	99.95	99.95
1,000		9 ON 5 UP PADS	45,000	231456	1	100.25	100.25
1,000		9 ON 8 UP PADS	72,000	456789	1	62.50	62.50
1,000		9 ON 8 UP PADS	72,000	456790	1	62.50	62.50
	3,000	3 ON SINGLE SHEETS	9,000	121212	1	10.00	10.00
		MAGICBLOW AUTOMATIC BLOWER		M10846	1	4,995.00	4,995.00
9,000	3,000		279,000			SUBTOTAL	\$5,410.15
						SALES TAX	422.81
						TOTAL DUE	\$5,842.96

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 20, 1993.

TRD-9317916 Gayle Gordon  
General Counsel  
Texas Alcoholic Beverage  
Commission

Earliest possible date of adoption: March 1, 1993

For further information, please call: (512) 206-3204

#### • 16 TAC §55.554.

The Texas Alcoholic Beverage Commission proposes an amendment to §55.554, concerning instant bingo. The amendment amends subsection (d) by amending paragraph (3)(A) to clarify when instant bingo cards may be sold, by amending paragraph (6) to clarify the prohibition against commingling deals of instant bingo cards, and by adding paragraph (8) providing that unsold cards must be kept by the licensed organization or destroyed by the commission to verify that the cards have not been sold. The amendment also amends subsection (g) by amending paragraph (1) to include the date cards are sold, adding a new paragraph (5) and renumbering the present paragraph (5),

and to require manufacturers and distributors to maintain complete records of all transactions concerning instant bingo cards approved for sale in Texas and to furnish to the commission on request records concerning distribution of those cards outside of Texas.

Thomas L. Byrd, director of auditing and tax reporting, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Byrd also has determined that for each of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be increase compliance resulting from clarification of requirement concerning unsold bingo cards and from closer control over instant bingo cards brought into the state through improper channels. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to Jeannene Fox, Director, Bingo Division, P.O. Box 13127, Austin, Texas 78711, (512) 206-3276.

The amendment is proposed under Texas Civil Statutes, Article 179d, Bingo Enabling Act, §16(a), which authorize the Commission to adopt rules relating to the enforcement and administration of the Bingo Enabling Act.

#### §55.554. Instant Bingo.

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

(d) Prizes, costs, sales, percentages.

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

(3) All sales of instant bingo cards must be performed under the same conditions and in the same manner as sales of regular and paper special bingo cards. Thus, a licensed organization may sell instant bingo cards on the premises specified in its license and where regular or paper special bingo cards are sold prior to its licensed times. They may be redeemed for cash or other cards only:

(A) during the times that that organization bingo cards are being sold;

(B)-(C) (No change.)

(4)-(5) (No change.)

(6) A licensed organization may not commingle different deals of instant bingo cards being sold. Instant bingo cards may not be commingled between licensed organizations and cards removed from one deal may not be commingled with cards removed from sale from another deal.

(7) (No change.)

(8) Incomplete deals that have been removed from sale must be kept by the licensed organization for a period of four years or be destroyed by the Commission in order to verify sale of less than the complete deal.

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

(g) Records.

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

(5) A manufacturer or distributor shall make and maintain complete records of all of its transactions relating to any series of instant bingo cards which have been approved for use in Texas and upon request by the commission, shall furnish to the commission those records relating to the distribution of those series outside of Texas.

(6)[(5)] These records must be retained for a period of four years.

(h) (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 January 20, 1993.

TRD-9317917

Gayle Gordon  
General Counsel  
Texas Alcoholic Beverage  
Commission

Earliest possible date of adoption: March 1, 1993

For further information, please call: (512) 206-3204

◆ ◆ ◆  
• 16 TAC §55.558

The Texas Alcoholic Beverage Commission proposes an amendment to §55.558, concerning seal required on disposable bingo cards. The amendment adds a new subsection (e) and reletters the present subsections (e) and (f). The new subsection requires manufacturers and distributors to maintain records of all transactions relating to disposable cards approved for use in Texas and to furnish to the commission on request any records relating to the distribution of those cards outside of Texas.

Thomas L. Byrd, director of auditing and tax reporting, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Byrd 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 increased compliance resulting from stricter control over disposable bingo cards brought in to the state illegally. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jeannene Fox, Director, Bingo Division, P.O. Box 13127, Austin, Texas 78711, (512) 206-3278.

The amendment is proposed under Texas Civil Statutes, Article 179d, Bingo Enabling Act, §16(a), which authorize the Commission to adopt rules relating to the enforcement and administration of the Bingo Enabling Act.

§55.558. Seal Required on Disposable Bingo Cards.

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

(e) A manufacturer or distributor shall make and maintain complete records of all of its transactions relating to disposable bingo cards which have been approved for use in Texas under this section and upon request by the commission, shall furnish to the commission those records relating to the distribution outside of Texas of those approved cards.

(f)[(e)] In addition to the restrictions contained in the Bingo Enabling Act, §11(n)-(u) and §13c(i), the following restrictions apply to the sale or purchase of disposable cards.

(1) A manufacturer shall not sell or otherwise furnish unapproved disposable cards to distributors for use in this state. This requirement shall also apply to any manufacturer who assembles and collates disposable cards for sale in Texas even though such cards have been previously submitted for approval by the original manufacturer. In addition, any licensed manufacturer who collates another manufacturer's disposable cards for sale in Texas must purchase all card sheets to be used in collating such cards from a licensed manufacturer.

(2) A distributor shall not purchase or otherwise obtain unapproved disposable cards for use in this state.

(3) A licensed organization shall not purchase or otherwise obtain unapproved disposable cards for use in this state. A licensed organization shall not use in this state unapproved disposable cards.

(g)[(f)] The requirements that all cards have printed on the face of the card the seal of the Texas Alcoholic Beverage Commission and the name of the manufacturer, a trade name, or a trademark shall be implemented according to the following schedule.

(1) A manufacturer shall not sell or otherwise furnish disposable cards not bearing the seal of the Texas Alcoholic Beverage Commission and the manufacturer's name, trade name, or trademark, to distributors for use in this state after December 31, 1989. This requirement also applies to any manufacturer who assembles and collates disposable cards for sale in

Texas, but only the name, trade name, or trademark of the original manufacturer who printed the card face shall be printed on the card face.

(2) A distributor shall not purchase disposable cards which do not bear the seal of the Texas Alcoholic Beverage Commission and the name, trade name, or trademark of the manufacturer after December 31, 1989, for use in this state. A distributor may continue to sell cards which bear the Comptroller's seal and do or do not bear the manufacturer's name, trade name, or trademark, to licensed organizations in this state until March 31, 1990.

(3) A licensed organization shall not purchase or otherwise obtain unapproved disposable cards which do not bear the seal of the Texas Alcoholic Beverage Commission and the manufacturer's name, trade name, or trademark for use in this state after March 31, 1990. A licensed organization shall not use in this state disposable cards which do not bear the seal of the Texas Alcoholic Beverage Commission and the manufacturer's name after June 30, 1990.

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 20, 1993.

TRD-9317918

Gayle Gordon  
General Counsel  
Texas Alcoholic Beverage  
Commission

Earliest possible date of adoption: March 1, 1993

For further information, please call: (512) 206-3204

◆ ◆ ◆  
• 16 TAC §55.561

The Texas Alcoholic Beverage Commission proposes an amendment to §55.561, concerning interview requirements. The amendment designates the present rule as subsection (a) and authorizes the commission to determine who may be present at an interview. The amendment also adds a new subsection (b) providing for a conference relating to corrective measures after an audit or field investigation and authorizing the commission to compel attendance by designated persons.

Thomas L. Byrd, director of auditing and tax reporting, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Byrd 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 increased compliance resulting from a closer involvement of all levels of management in the various aspects of the bingo licensing and audit

process. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jeannene Fox, Director, Bingo Division, P.O. Box 13127, Austin, Texas 78711, (512) 206-3276.

The amendment is proposed under Texas Civil Statutes, Article 179d, Bingo Enabling Act, §16(a), which authorize the Commission to adopt rules relating to the enforcement and administration of the Bingo Enabling Act.

#### **§55.561. Interview and Conference Requirements.**

(a) Interview. Each applicant for a bingo license or the renewal of an existing license, whether as a conducting organization, lessor, manufacturer, or distributor may be required to be interviewed by a representative of the Texas Alcoholic Beverage Commission (Commission). The Commission may specify the persons required or permitted to be present and the time and location of the interview. The interview will ensure the applicant's awareness and understanding of requirements of the Bingo Enabling Act and the Rules and Regulations promulgated thereunder. The applicant will assure the Commission that all operations by the applicant relating to bingo will be conducted according to the Act and the Rules and Regulations promulgated thereunder. The Commission may refuse to issue or renew an annual license based on the conclusions resulting from the interview.

(b) Conference. The Commission may require that a designated operator and/or officer of a licensee be in attendance at any conference relating to corrective measures to be taken after an audit or field investigation.

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

Issued in Austin, Texas, on January 20, 1993.

TRD-9317919

Gayle Gordon  
General Counsel  
Texas Alcoholic Beverage  
Commission

Earliest possible date of adoption: March 1, 1993

For further information, please call: (512) 206-3204

#### **• 16 TAC §55.562**

The Texas Alcoholic Beverage Commission proposes an amendment to §55.562, concerning unauthorized prizes. The amendment adds a new subsection (d) allowing licensed authorized organizations to give away food and beverage items of a certain value to all persons attending a bingo occasion.

Thomas L. Byrd, director of auditing and tax reporting, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Byrd 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 increased funds for charitable purposes resulting from low cost promotions utilized to attract patrons. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jeannene Fox, Director, Bingo Division, P.O. Box 13127, Austin, Texas 78711, (512) 206-3276.

The amendment is proposed under Texas Civil Statutes, Article 179d, Bingo Enabling Act, §16(a), which authorize the Commission to adopt rules relating to the enforcement and administration of the Bingo Enabling Act.

#### **§55.562. Unauthorized Prizes.**

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

(d) Organization's expenditures. Subsection (c) of this section does not prohibit a licensed authorized organization for offering, free of charge, food and beverage items to all persons in attendance at a bingo occasion. An organization's expenditures for these items must not exceed an amount equal to \$1.50 per person in attendance and are an allowable promotional expense of the organization. A commercial lessor which is not licensed to conduct bingo, may not pay any part of that expense.

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 20, 1993.

TRD-9317920

Gayle Gordon  
General Counsel  
Texas Alcoholic Beverage  
Commission

Earliest possible date of adoption: March 1, 1993

For further information, please call: (512) 206-3204

#### **• 16 TAC §55.565**

The Texas Alcoholic Beverage Commission proposes new §55.565, concerning partial pay agreement. The section specifies the conditions under which a partial pay agreement to pay tax liability in installments may be agreed to and specifies requirements which must be met by a licensed authorized organization after an agreement has been entered into.

Thomas L. Byrd, director of auditing and tax reporting, has determined that for the first

five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Byrd 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 specify when a partial payment agreement may be used and what the requirements of that agreement may be. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jeannene Fox, Director, Bingo Division, P.O. Box 13127, Austin, Texas 78711, (512) 206-3276.

The new section is proposed under Texas Civil Statutes, Article 179d, Bingo Enabling Act, §16(a), which authorize the Commission to adopt rules relating to the enforcement and administration of the Bingo Enabling Act.

#### **§55.565. Partial Pay Agreement.**

(a) A partial pay agreement is a contract between a licensed authorized organization and the Texas Alcoholic Beverage Commission which allows the organization to pay in installments the full amount of bingo gross receipts tax liability, penalty, and interest.

(b) The Commission may enter into a partial pay agreement with an organization only if the following requirements are met:

(1) the organization is unable to pay the liability in one lump sum from its bingo account and its general fund;

(2) the organization furnishes letters from at least two financial institutions refusing to loan the organization the full amount of the liability, one of which letters must be from the bank where the organization maintains bingo accounts;

(3) the organization's bingo receipts and expenses, including current taxes, and required charitable distribution indicate that the organization will be able to pay the tax liability within a time period of not more than 24 months;

(4) the organization has posted or posts an adequate bond; and

(5) the organization makes a down payment of at least 25% of the liability covered by the agreement, unless a lesser amount is approved by the Commission.

(c) After the partial pay agreement has been entered into, the organization must meet the following requirements:

(1) the organization must remain current in its payment of all taxes coming due after the execution of the agreement, and failure of the organization to do so is grounds for cancellation of the agreement;

(2) the organization may not amend the agreement to add additional liabilities; and

(3) the organization may not enter into more than one partial pay agreement until the provisions of the first partial pay agreement have been fulfilled.

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 20, 1993.

TRD-9317921

Gayle Gordon  
General Counsel  
Texas Alcoholic Beverage  
Commission

Earliest possible date of adoption: March 1, 1993

For further information, please call: (512) 206-3204

## Part VIII. Texas Racing Commission

### Chapter 301. Definitions

#### • 16 TAC §301.1

The Texas Racing Commission proposes an amendment to §301.1, concerning definitions. The amendment adds a definition for reasonable belief.

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

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that the rules of the commission are consistent with state law and are easily understood by its licensees. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted on or before March 1, 1993, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

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

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

**Reasonable belief**—A belief that would be held by an ordinary and prudent person in the same circumstances as the actor.

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 15, 1993.

TRD-9318095

Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: March 1, 1993

For further information, please call: (512) 794-8461

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

#### Subchapter C. Alcohol and Drug Testing

##### Drugs

#### • 16 TAC §311.201

The Texas Racing Commission proposes an amendment to §311.201, concerning use prohibited. The amendment prohibits a licensee from having a dangerous drug or controlled substance in his or her system while on the grounds of a pari-mutuel racetrack.

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

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing is safe for the licensees and is conducted with utmost integrity. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted on or before March 1, 1993, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, and §14.03, which authorizes the commission to adopt rules prohibiting the illegal influence of a race.

#### §311.201. Possession and Use Prohibited.

(a) Except as otherwise provided by this section, an individual licensee may not, while performing duties required of the licensee, have present in his or her system [be under the influence of] a dangerous

drug as defined by the Health and Safety Code, Chapter 483 [Texas Dangerous Drugs Act, Texas Civil Statutes, Article 4476-14], or a controlled substance, as defined by the Texas Controlled Substances Act, Health and Safety Code, Chapter 481 [Texas Civil Statutes, Article 4476-15].

(b) Except as otherwise provided by this section, an individual licensee may not possess, while on association grounds, a dangerous drug as defined by the Health and Safety Code, Chapter 483 [Texas Dangerous Drugs Act, Texas Civil Statutes, Article 4476-14], or a controlled substance as defined by the Texas Controlled Substances Act, Health and Safety Code, Chapter 481 [Texas Civil Statutes, Article 4476-15]. This subsection does not apply to a veterinarian licensed by the commission who has obtained permission to possess a controlled substance or dangerous drug under §319.14 of this title (relating to Possession of Controlled Substances).

(c) (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 January 15, 1993.

TRD-9318094

Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: March 1, 1993

For further information, please call: (512) 794-8461

#### • 16 TAC §311.202

The Texas Racing Commission proposes an amendment to §311.202, concerning subject to testing. The amendment establishes the penalty for a licensee's refusal to submit to a drug test.

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

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing is safe for the licensees and is conducted with utmost integrity. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted on or before March 1, 1993, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, and §14.03, which authorizes the commission to adopt rules prohibiting the illegal influence of a race.

**§311.202. Subject to Testing.**

(a) (No change.)

(b) A licensee who fails to submit to such a test when requested to do so by the stewards or racing judges shall be suspended for at least 30 days and referred to the commission [is subject to discipline by the stewards or racing judges or the commission]. A licensee who fails to submit to a test for the second time shall be suspended by the stewards or racing judges for at least six months and referred to the commission. A licensee who fails to submit to a test for a third or subsequent time shall be suspended by the stewards or racing judges for one year and referred 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 January 15, 1993.

TRD-9318093      Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: March 1, 1993

For further information, please call: (512) 794-8461

◆ ◆ ◆  
**• 16 TAC §311.203**

The Texas Racing Commission proposes an amendment to §311.203, concerning method of selection. The amendment clarifies the method of selection for drug testing.

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

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing is safe for the licensees and is conducted with utmost integrity. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted on or before March 1, 1993, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, and §14.03, which authorizes the commission to adopt rules prohibiting the illegal influence of a race.

**§311.203. Method of Selection.**

(a) (No change.)

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

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 15, 1993.

TRD-9318092      Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: March 1, 1993

For further information, please call: (512) 794-8461

◆ ◆ ◆  
**• 16 TAC §311.206**

The Texas Racing Commission proposes an amendment to §311.206, concerning medical review officer. The amendment clarifies the procedure for evaluating drug test results, including the duties and requirements for the selection of the medical review officer.

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

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing is safe for the licensees and is conducted with utmost integrity. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted on or before March 1, 1993, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, and §14.03, which authorizes the commission to adopt rules prohibiting the illegal influence of a race.

**§311.206. Medical Review Officer [Positive Test Results].**

(a) The executive secretary shall select a medical review officer to assist the commission in the evaluation of licensees tested under this subchapter. A medical review officer must be professionally trained to evaluate substance and alcohol abuse. In the performance of his or her duties under this subchapter, the medical review officer may designate other persons in the same general locations as the various licensed racetracks to evaluate licensees. To be designated by the medical review officer, a person must be professionally trained to evaluate substance and alcohol abuse.

(b) [(a)] The [director of a] laboratory at which a specimen obtained [conducting an analysis] under this subchapter is analyzed shall report all test results in writing to the medical review officer [executive secretary or a designee of the executive secretary].

(c)[(b)] The medical review officer shall review each test result received and determine whether the result constitutes a prima facie violation of the commission's rules. The medical review officer shall then notify the commission in writing of each prima facie violation. Not later than five days after receipt of written notice from the medical review officer of a prima facie violation, [laboratory that a specimen has been found positive for a prohibited substance, the executive secretary shall notify] the tested licensee shall be notified [.] in writing[.] of the alleged violation [test result].

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 15, 1993.

TRD-9318091      Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: March 1, 1993

For further information, please call: (512) 794-8461

◆ ◆ ◆  
**• 16 TAC §311.208**

The Texas Racing Commission proposes an amendment to §311.208, concerning penalties. The amendment outlines the penalties for an individual licensee who has been tested for drugs.

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

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing is safe for the licensees and is conducted with utmost integrity. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted on or before March 1, 1993, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, and §14.03, which authorizes the commission to adopt rules prohibiting the illegal influence of a race.

#### §311.208. Penalties.

(a) (No change.)

(b) If the stewards or racing judges require a licensee to submit to testing under §311.202 of this title (relating to Subject to Testing) for reasonable belief [cause], the stewards or racing judges may prohibit the licensee from participating in racing for the remainder of that race day, on the recommendation of a physician who has examined the licensee.

(c) For a first violation, the stewards or racing judges shall [may:]

(1) suspend the licensee for at least 30 days; and

(2) [(1)] prohibit the licensee from participating in racing until:

(A) the licensee's condition has been evaluated by the medical review officer or a person designated by the medical review officer under §311.206 of this title (relating to Medical Review Officer) [a person approved by the commission who is professionally trained to evaluate substance abuse]; and

(B) the licensee has produced a negative test result.

[(2) impose a fine in accordance with Chapter 307 of this title (relating to Practice and Procedure).]

[(d) If the person evaluating a licensee determines the licensee's condition is nonaddictive or not detrimental to the best interest of racing, the stewards or racing judges shall permit the licensee to participate in racing, provided the licensee:

[(1) produces a negative test result; and

[(2) agrees to further testing to verify continued unimpairment.]

[(e) If the person evaluating a licensee determines the licensee's condition is addictive and detrimental to the best interest of racing, the stewards or racing judges shall prohibit the licensee from participating in racing until the licensee:

[(1) produces a negative test result;

[(2) provides proof that the licensee has satisfactorily completed a certified substance abuse rehabilitation program approved by the commission; and

[(3) agrees to further testing to verify continued unimpairment.]

(d)[(f)] For a second [or subsequent] violation, the stewards or racing judges shall:

(1) suspend the licensee's license for at least six months; and

(2) prohibit the licensee from participating in racing until:

(A) the licensee has satisfactorily completed a certified substance abuse rehabilitation program approved by the commission; and

(B) produces a negative test result.

(e) For a third or subsequent violation, the stewards or racing judges shall suspend the licensee for one year and refer the licensee to the commission.

(f)After a suspended [the] licensee has satisfactorily completed a certified substance abuse rehabilitation program approved by the commission, the licensee may apply to have the license reinstated. The commission may reinstate the license if the commission determines the licensee poses no danger to other licensees or race animals and that reinstatement is in the best interest of racing. On reinstatement, the stewards or racing judges shall require the licensee to submit to further drug testing to verify continued unimpairment.

(g) (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 January 15, 1993.

TRD-9318089

Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: March 1, 1993

For further information, please call: (512) 794-8461

## Alcohol

### • 16 TAC §311.222

The Texas Racing Commission proposes an amendment to §311.222, concerning breathalyzer or other test. The amendment clarifies the selection process for licensees to submit to a breathalyzer or other testing while on association grounds.

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

Ms. Carter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing is safe for the licensees and is conducted with utmost integrity. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted on or before March 1, 1993, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, and §14.03, which authorizes the commission to adopt rules prohibiting the illegal influence of a race.

#### §311.222. Breathalyzer or Other Test.

(a) The stewards for racing judges may require a licensee to submit to a breathalyzer test or other noninvasive test at any time while on association grounds. An individual licensee may be selected for testing by a method of random selection prescribed by the commission. The method may be changed from time to time, and it is not an indication of unfairness if a licensee is selected more frequently than any other, providing there is no manipulation of the selection process. An individual licensee may be selected for testing at any time while on association grounds on the basis of reasonable belief.

(b)-(c) (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 January 15, 1993.

TRD-9318089

Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: March 1, 1993

For further information, please call: (512) 794-8461

◆ ◆ ◆  
• 16 TAC §311.223

The Texas Racing Commission proposes an amendment to §311.223, concerning penalties. The amendment outlines the penalties for an individual licensee who has been tested for alcohol.

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

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the assurance that pari-mutuel racing is safe for the licensees and is conducted with utmost integrity. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted on or before March 1, 1993, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179a, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, and §14.03, which authorizes the commission to adopt rules prohibiting the illegal influence of a race.

§311.223. Penalties.

(a) For a first violation under §311.221 (relating to Prohibited Conduct) or §311.222 (relating to Breathalyzer or Other Test), the stewards or racing judges shall prohibit the licensee from participating in racing for the remainder of that race day. In addition, the stewards or race judges may:

(1) prohibit the licensee from participating in racing until the licensee's condition has been evaluated by the medical review officer or a person designated by the medical review officer under §311.206 of this title (relating to Medical Review Officer) [a person approved by the commission who is professionally trained to evaluate alcohol abuse]; and [or]

(2) (No change.)

(b) If the person evaluating a licensee determines the licensee's condition is [nonaddictive or] not detrimental to the best interest of racing, the stewards or racing judges shall permit the licensee to participate in racing, provided the licensee:

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

(c) If the person evaluating a licensee determines the licensee's condition is addictive or [and] detrimental to the best interest of racing, the stewards or racing judges shall prohibit the licensee from participating in racing until the licensee:

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

(d)-(e) (No change.)

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

Issued in Austin, Texas, on January 15, 1993.

TRD-9318088

Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: March 1, 1993

For further information, please call: (512) 794-8461

◆ ◆ ◆  
TITLE 22. EXAMINING  
BOARDS

Part XI. Board of Nurse  
Examiners

Chapter 217. Licensure and  
Practice

• 22 TAC §217.1, §217.6

The Board of Nurse Examiners proposes amendments to §217.1 and §217.6, concerning Definitions and Temporary Permits. The Nurse Practice Act, Article 4523(b) states that the board may issue a permit to graduate nurse (GN) of an approved educational program and that the GN must work under the direct supervision of an RN. However, direct supervision has not previously been defined. The agency received many inquiries as to the board's interpretation of direct supervision. Therefore, the board is proposing amendments to §217.6 as well as adding a definition to §217.1.

Louise Waddill, Ph.D., R.N., executive director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Waddill 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 that GNs and employers of GNs will know the type of supervision that is appropriate for the GNs practice, thus ensuring the public's protection by providing that experienced RNs are available to supervise the GN. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Louise Waddill, Ph.D., R.N., Executive Director, Board of Nurse Examiners, P.O. Box 140466, Austin, Texas 78714 through March

1, 1993. A public hearing will be scheduled during the regular meeting of the Board on March 23, 1993 at 2 p.m.

The amendments are proposed under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

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

**Direct supervision**—Requires a registered professional nurse to be working on the same unit and readily available to provide consultation and assistance.

§217.6. *Temporary Permit.*

(a) Examination candidates eligible for temporary permits.

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

(4) A candidate holding a temporary permit to practice professional nursing as a graduate (GN) must work under the direct supervision of a registered professional nurse[,] who is working on the same unit and is readily available to the GN for consultation and assistance. The GN shall not be placed in a charge position or work in independent practice settings.

(5) (No change.)

(b) (No change.)

(c)-(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 January 22, 1993.

TRD-9318087

Louise Waddill, Ph.D., R.N.  
Executive Director  
Board of Nurse Examiners

Earliest possible date of adoption: March 23, 1993

For further information, please call: (512) 835-8650



# TITLE 25. Health Services

## Part II. Texas Department of Mental Health and Mental Retardation

### Chapter 402. Client Assignment and Continuity of Services

#### Subchapter H. Placement Appeals Procedures-Mental Retardation Services

##### • 25 TAC §§402.281-402.301

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Mental Health and Mental Retardation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes the repeal of §§402.281-402.301, concerning placement appeals procedures-mental retardation services. The sections would be replaced by new §§402.281-402.298, relating to placement appeals procedures-mental retardation services, which are proposed contemporaneously for public comment in this issue of the *Texas Register*.

The sections are being repealed to allow for the adoption of new procedures which would implement provisions of the settlement agreement in *Lelsz v Kavanagh* which require the department to simplify the placement appeals process and to describe that process in a simply worded and easily understood format.

Leilani Rose, director, Financial Services, has determined that for the first five-year period the repeals are in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the repeals. There is no significant local impact anticipated. There is no significant local economic impact anticipated.

Jaylon Fincannon, deputy commissioner, Mental Retardation Services, has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be the replacement of complex, hard-to-understand, and burdensome procedures with streamlined, simplified, and easily followed procedures for appealing decisions regarding community placement of individuals who are residents of mental retardation facilities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Written comments on the proposal may be sent to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

The sections are proposed for repeal under the Health and Safety Code, Title 7,

§532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

§402.281. Purpose.

§402.282. Application.

§402.283. Definitions.

§402.284. Recommendation for Residential Placement.

§402.285. Recommendation for Residential Placement Appeals Process-Special Interdisciplinary Team.

§402.286. Alternative Community Residential Placement Staffing Process.

§402.287. Residential Placement Appeals Process-Administrative Hearing.

§402.288. Appointment of a Hearing Officer.

§402.289. Access to Records.

§402.290. Prehearing Conference.

§402.291. Standard and Burden of Proof.

§402.292. Notice of Filing; Service of Notices; Certificate of Service.

§402.293. Representation of Parties.

§402.294. Notice of Hearing.

§402.295. Setting a Time and Place for the Administrative Hearing.

§402.296. Rules of Evidence; Official Notice; Witnesses; Transcription.

§402.297. Final Decisions.

§402.298. Residential Placement Appeals Process-Abbreviated Letter Review.

§402.299. Exhibits.

§402.300. Distribution.

§402.301. References.

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 25, 1993.

TRD-9318125

Ann Utley  
Chairman  
Texas Board of Mental  
Health and Mental  
Retardation

Earliest possible date of adoption: March 1, 1993

For further information, please call: (512) 465-4670

##### • 25 TAC §§402.281-402.298

The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes new §§402.281-402.298, concerning placement appeals procedures-mental retardation services. The new sections would replace existing Chapter 402, Subchapter H of this title, relating to placement appeals procedures-mental retardation services, which is proposed contemporaneously for repeal in this issue of the *Texas Register*.

The proposed new sections implement provisions of the settlement agreement in *Lelsz v Kavanagh* which require the department to simplify the placement appeals process and to describe that process in a simply worded and easily understood format.

The proposed sections describe a process which requires that the interdisciplinary team (IDT) arrive at a consensus recommendation regarding placement and provides for an automatic appeal to a placement review team (formerly the special IDT). The individual or parent may request an administrative hearing if the team recommends that the current placement be continued and that recommendation is objectionable. The process further requires that the IDT arrive at a consensus recommendation regarding a specific alternate placement and provides for an automatic appeal to an administrative hearing when consensus is not forthcoming.

Other new provisions include: the burden of proof is placed on facility staff to prove that a proposed alternate setting is of significant benefit to the individual and meets the right of the individual to live in the least restrictive environment; training in consensus-building is to be provided to all members of the IDT, with a recommendation that each IDT session be opened with just-in-time training; a one-page summary of the placement appeals process is to be included with each notice to the individual or parent; emphasis on the individual's right to be involved in the process and to have his or her desires and aspirations given careful consideration; a requirement that appropriate communication devices and techniques be utilized to ensure that the individual is involved in the process.

The sections adopt by reference an operating instruction which restates the policies set forth in the subchapter and, through language and format, provides an easy-to-follow and comprehensive accounting of the procedures required to implement the policies. Also adopted by reference is the one-page summary.



Leilani Rose, director, Financial Services Department, has determined that for the first five-year period the sections are in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the sections. There is no significant local economic impact anticipated.

Jaylon Fincannon, deputy commissioner, Mental Retardation Services, 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 streamlined, simplified, and easily followed procedures for appealing placement recommendations concerning individuals who are residents of mental retardation facilities. In addition, the new sections would be in compliance with the lawsuit settlement agreement. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Written comments on the proposal may be sent to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

A public hearing will be held to accept testimony on the sections as proposed. The hearing will be Thursday, March 4, 1993, at 1:30 p.m., in the TXMHMR Central Office Auditorium at 909 West 45th Street, Austin, Texas 78756. If interpreters for the hearing impaired are required, please notify Ms. Logan 72 hours prior to the hearing by calling (512) 465-4670.

The new sections are proposed under the Health and Safety Code, Title 7, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

**§402.281. Purpose.** The purpose of this subchapter is to describe the policies and procedures concerning the review and appeal of placement recommendations involving individuals receiving residential services in mental retardation facilities.

**§402.282. Application.** The provisions of this subchapter apply to all facilities of the Texas Department of Mental Health and Mental Retardation which provide residential mental retardation services.

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

**Competent**—As determined by the interdisciplinary team, and consistent with the Health and Safety Code, Title 7, Chapters 591-596 (formerly Persons with Mental Retardation Act, Vernon's Civil Statutes, Article 5547-300), a term used to designate the ability to give legally adequate consent,

which means consent given by an individual when each of the following conditions has been met:

(A) **legal capacity**: The individual giving the consent is of the minimum legal age and has not been adjudicated incompetent to manage personal affairs by an appropriate court of law;

(B) **comprehension of information**: The individual giving the consent has been informed of and comprehends the nature, purpose, consequences, risks, and benefits of and alternatives to the procedure, and the fact that withholding or withdrawal of consent shall not prejudice the future provision of care and services to the individual with mental retardation; and

(C) **voluntariness**: The consent has been given voluntarily and free from coercion and undue influence.

**Commissioner**—The commissioner of the Texas Department of Mental Health and Mental Retardation.

**Consensus**—A negotiated agreement that all team members can and will support in implementation. The negotiation process involves the open discussion of ideas with all parties encouraged to express opinions.

**Department**—The Texas Department of Mental Health and Mental Retardation.

**Deputy commissioner**—The deputy commissioner for Mental Retardation Services.

**Facility**—Any state school or state center of the department which provides residential mental retardation services.

**Guardian**—A plenary guardian of the person of an individual with mental retardation.

**Head of the facility**—The superintendent or director of a facility.

**Hearing officer**—Any person designated or appointed by the deputy commissioner to conduct hearings pursuant to this subchapter.

**Incompetent**—As determined by the interdisciplinary team, and consistent with the Health and Safety Code, Title 7, Chapters 591-596 (formerly the Persons with Mental Retardation Act, Vernon's Civil Statutes, Article 5547-300), a term used to designate the inability to give legally adequate consent, which means consent given by an individual when each of the following conditions has been met:

(A) **legal capacity**: The individual giving the consent is of the minimum legal age and has not been adjudicated incompetent to manage personal affairs by an appropriate court of law;

(B) **comprehension of information**: The individual giving the consent has been informed of and comprehends the

nature, purpose, consequences, risks, and benefits of and alternatives to the procedure, and the fact that withholding or withdrawal of consent shall not prejudice the future provision of care and services to the individual with mental retardation; and

(C) **voluntariness**: The consent has been given voluntarily and free from coercion and undue influence.

**Individual**—A person receiving residential mental retardation services provided by a facility. This does not include a person in the community receiving services provided through a facility's community-based services program.

**Interdisciplinary team (IDT)**—A group of persons functioning as a team to include:

(A) the individual and the parent, unless the competent individual has requested that the parent be excluded;

(B) as specified by the facility, persons who are professionally qualified, certified, or both, in various professions with special training and experience in the diagnosis, management, needs, and treatment of individuals with mental retardation;

(C) persons who are directly involved in the delivery of mental retardation services to the individual;

(D) representative(s) of the appropriate mental retardation authority; and

(E) member(s) of the facility's public responsibility committee (PRC), if requested by the PRC, the competent individual, or parent of the incompetent individual.

**Mental retardation authority (MRA)**—The entity designated by the commissioner to direct, operate, facilitate, and/or coordinate services to individuals with mental retardation in a particular various service area of the state as are required to be performed at the local level by state law and the department.

**Parent**—

(A) the natural or adoptive mother or father of the individual, but not a mother or father whose parent-child relationship has been legally terminated;

(B) a family member or advocate who acts in behalf of the individual instead of the natural or adoptive mother or father and is listed as the primary correspondent for the individual. An individual

may choose to have an advocate in addition to a family member, and facility staff shall assist the individual in obtaining an advocate;

(C) a legally appointed guardian of the individual; or

(D) a legally appointed managing conservator of the individual.

Placement review team—A group of persons appointed by the head of the facility to review placement options for an individual when the individual's IDT is unable to arrive at a consensus recommendation regarding placement. None of the persons shall have served on the IDT. Included on the committee will be:

(A) representatives of the professional disciplines (psychology, social work, and medical or nursing);

(B) a mental retardation professional with knowledge of community programs; and

(C) a member of the facility human rights committee and/or the public responsibility committee.

Pleadings—Written statements filed by participants concerning their respective positions, claims, and rights in administrative hearings.

Preponderance of the evidence—The body of evidence which, when fairly considered, produces the stronger impression. The superiority of weight of testimony is determined by the opportunity for knowledge, the information possessed, and the manner of testifying, rather than by the greater number of witnesses.

Public Responsibility Committee (PRC)—An independent, impartial third-party mechanism, the functions, duties, and responsibilities of which are described in Chapter 410, Subchapter A relating to Public Responsibility Committees. Each facility must have a PRC.

**§402.284. Adoption by Reference of Specific Procedures.** This subchapter set forth general policy guidelines for the review and appeals process concerning placement recommendations. Specific procedures are described in detail in Operating Instruction (OI) 402-H, governing Placement Appeals Procedures, which is herein adopted by reference as Exhibit A.

**§402.285. General Provisions.**

(a) The individual always has the right to be present and to participate in IDT meetings and administrative hearings. The desires and aspirations of the individual

shall be given careful consideration when recommendations are made concerning placement.

(b) Communication devices and techniques (including the use of sign language) shall be utilized, as appropriate, to facilitate the individual's involvement in the placement process and to ensure that the individual is able to make those desires and aspirations known.

(c) Recommendations shall be based on the determination of the least restrictive environment as outlined in Chapter 402, Subchapter G of this title (relating to Determination of the Least Restrictive Environment—Mental Retardation Services.)

(d) The competent individual has the right to exclude the parent from participation in:

(1) meetings of the interdisciplinary team (IDT) at which placement is to be discussed; and

(2) all review and appeal procedures.

(e) If the competent individual wishes to include the parent, facility staff shall encourage attendance and participation by the parent. Every reasonable attempt shall be made to schedule meetings at a time that is convenient for the parent.

(f) The burden of proof in an administrative hearing lies with facility staff on the IDT to prove by the preponderance of the evidence that a potentially appropriate setting is of significant benefit to the individual and meets the right of the individual to live in the least restrictive environment as guaranteed in the Health and Safety Code, Title 7, Subtitle D, §592.013 and §592.032.

(g) Recommendations by the IDT and the placement review team, as well as the final decision by the hearing officer in an administrative hearing, shall be documented in the record of the individual.

(h) Any placement recommendations under appeal as of the effective date of this new subchapter and OI shall be completed under the provisions of the old subchapter.

(i) Notices to either the competent individual or the parent of the incompetent individual shall be:

(1) in that person's primary language;

(2) accompanied by a copy of Summary of Placement Appeals Process, which is herein adopted by reference as Exhibit B; and

(3) delivered either in person or by certified mail, return receipt requested.

**§402.286. Placement Recommendation by Interdisciplinary Team.**

(a) During the annual planning meeting or during a special planning meeting held to consider the placement of an individual residing in a facility, the IDT shall determine by consensus whether the current placement constitutes the least restrictive environment.

(b) The IDT shall make a recommendation for:

(1) continuation of the current placement;

(2) alternate placement in another facility; or

(3) alternate placement in a community setting.

(c) A summary of the discussion is prepared by a designated facility employee serving on the IDT which includes a fair and accurate recounting of all viewpoints expressed during the meeting. The summary is provided to the competent individual or parent of the incompetent individual within 14 days of the meeting.

(d) If there is no consensus, a placement review team shall be named by the head of the facility.

**§402.287. Appeal to the Placement Review Team.**

(a) The placement review team shall meet within 14 days of the IDT and review the summary prepared by the designated IDT member and the record of the individual and make a recommendation for:

(1) continuation of the current placement;

(2) alternate placement in another facility; or

(3) alternate placement in a community setting.

(b) In arriving at its recommendation, the team also may interview the:

(1) individual;

(2) parent of the individual, unless the competent individual has excluded the parent from participation in the placement process;

(3) other members of the IDT; or

(4) other facility staff.

(c) If the team's recommendation is for continuation of the current placement and the competent individual or parent of the incompetent individual objects, an administrative hearing shall be held.

**§402.288. Specific Alternate Placement Recommendation by IDT.**

(a) The IDT shall be convened when a potentially appropriate setting becomes available for an individual recommended for alternate placement in the community or in another facility.

(b) A facility employee serving on the IDT who personally knows the individual shall visit the proposed setting prior to the meeting. The individual and parent-if the competent individual wants the parent to be involved-shall be encouraged to visit the proposed setting prior to the meeting.

(c) The IDT shall determine by consensus whether the setting is the most appropriate placement for the individual and shall make a recommendation for:

(1) continuation of the current placement; or

(2) the alternate placement.

(d) If there is no consensus, an administrative hearing shall be held.

**§402.289. Initiating the Administrative Hearing Process.**

(a) Within one day of learning of the need for an administrative hearing, the head of the facility shall notify the deputy commissioner. Within five working days of receiving the notice, the deputy commissioner shall appoint a hearing officer.

(b) When feasible, the hearing officer shall be an attorney who is not an employee of the department. If this is not feasible, the person appointed shall:

(1) not be permanently employed at the facility where the individual who is to be the subject of the hearing is a resident;

(2) not have participated in any aspect of the care and treatment of the individual who is to be the subject of the hearing; and

(3) be selected in the manner most economical to the department.

(c) The hearing shall be held not less than 14 calendar days but not more than 30 calendar days from the date the deputy commissioner received the request for the hearing.

(d) The hearing officer may set a time outside regular business hours and a place away from the facility where the individual resides if a timely request is made by the competent individual or parent of the incompetent individual and the hearing officer determines good cause exists for such a determination. The location selected must be accessible to the handicapped.

(e) Notice of the hearing shall be served on all participants no less than seven working days in advance of the hearing date.

(f) The hearing officer shall ensure that written notice of the hearing is served personally or by certified mail, return receipt requested.

(g) The hearing officer may postpone or continue the hearing until a later date if, in the officer's sound judgment and discretion, there is good cause to do so. Good cause includes, but is not limited to, a finding that a later date would:

(1) result in a more just determination of the issues; and

(2) not endanger the welfare of the individual.

(h) The hearing officer may designate one or more employees of the department or other knowledgeable persons to assist in the evaluation of evidence presented at the hearing.

(i) At any time before final judgment is rendered, another hearing officer shall be appointed by the deputy commissioner to perform any remaining functions without having to repeat the previous proceedings, in the case if the first hearing officer should die, become disabled, withdraw or be removed from employment, or withdraw or be removed from the proceeding.

**§402.290. Representation of Parties During an Administrative Hearing.**

(a) The individual, whether competent or incompetent, and all other participants are entitled to be present at the hearing and to be represented or accompanied by legal counsel and/or lay representatives. The competent individual may choose to be represented independently of a parent.

(b) The facility or hearing officer may assist the competent individual or parent of the incompetent individual in obtaining representation.

**§402.291. Preparing for an Administrative Hearing.**

(a) A prehearing conference involving all participants may be called by the hearing officer acting independently or at the request of any of the participants. If all participants consent, the meeting may be conducted by conference call.

(b) All participants and their legal and/or lay representatives will have reasonable access to any records concerning the individual who is the subject of the administrative hearing.

(c) Whenever any participant files any pleading or motion, a copy of such pleading or motion shall be served on the other participants or their representatives.

Notices will be served personally or by certified mail, return receipt requested.

**§402.292. Conducting an Administrative Hearing.**

(a) The burden of proof in an administrative hearing lies with facility staff on the IDT to prove by the preponderance of the evidence that a potentially appropriate setting will benefit the individual and meets the right of the individual to live in the least restrictive environment as guaranteed in the Health and Safety Code, Title 7, Subtitle D, §592.013 and §592.032 (formerly the Persons with Mental Retardation Act, Vernon's Civil Statutes, Article 5547-300).

(b) The administrative hearing shall be closed to the public unless the competent individual or the parent of the incompetent individual requests a hearing open to the public.

(c) The facility shall provide language interpreters and/or an interpreter for the hearing-impaired upon timely request made by a competent individual or the parent of the incompetent individual, legal counsel or lay representative, or upon order of the hearing officer.

**§402.293. Final Decision.**

(a) The hearing officer must issue a final written decision within five working days of the conclusion of the administrative hearing.

(b) Within five working days following the decision by the hearing officer, written notice must be delivered personally or by certified mail, return receipt requested, to:

(1) all participants or their legal representatives; and

(2) the head of the facility.

(c) There is no further administrative appeal from the final decision of the hearing officer; however, this does not preclude the exercise of rights to appeal through the county court granted under the Health and Safety Code, Title 7, §594.017 (formerly the Persons with Mental Retardation Act, Vernon's Civil Statutes, Article 5547-300, §43.)

**§402.294. Briefing of Staff on Policy.** A briefing on the purpose of and major issues addressed in the subchapter and operating instruction shall be provided within 60 days of the effective date to all facility staff who serve or may serve on an IDT or a placement review team, and/or are involved in community placement activities.

§402.295. *Training.* Training shall be provided for all members of an IDT in negotiation and consensus building. Just-in-time training on consensus building as the first order of business for each IDT meeting will set the tone for a cooperative and productive meeting.

§402.296. *Exhibits.*

(a) Exhibit A-Operating Instruction (OI) 402-H, governing Placement Appeals Procedures.

(b) Exhibit B-Summary of Placement Appeals Process.

§402.297. *References.* Reference is made to the following statutes and rules of the department:

(1) Health and Safety Code, Title 7, Chapters 591-596 (formerly the Persons with Mental Retardation Act, Vernon's Civil Statutes, Article 5547-300);

(2) Chapter 402, Subchapter G of this title, relating to Determination of Least Restrictive Environment-Mental Retardation Services;

(3) Chapter 403, Subchapter K of this title, relating to Client-Identifying Information;

(4) Chapter 405, Subchapter AA of this title, relating to Practice and Procedure with Respect to Administrative Hearings at the Department Arising Under the Mentally Retarded Persons Act of 1977;

(5) Chapter 410, Subchapter A of this title, relating to Public Responsibility Committees; and

(6) Operating Instruction 401-1, relating to Inspection of Department Records.

§402.298. *Distribution.*

(a) The provisions of this subchapter shall be distributed to members of the Texas Board of Mental Health and Mental Retardation, deputy commissioners, associate deputy commissioners, assistant deputy commissioners, directors and section chiefs of Central Office, superintendents and directors of all department facilities, and board chairpersons and executive directors of all community mental health and mental retardation centers.

(b) The superintendent, director, or executive director shall ensure distribution of this subchapter to appropriate staff.

(c) A copy of this subchapter shall be made available upon request to any staff member; any individual with mental retardation; the individual's parent; counsel of record of any individual with mental retardation; or to any interested party.

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 25, 1993.

TRD-9318126

Ann Utley  
Chairman  
Texas Board of Mental  
Health and Mental  
Retardation

Earliest possible date of adoption: March 1, 1993

For further information, please call: (512) 465-4670

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### Part IX. Texas Water Commission

#### Chapter 334. Underground and Aboveground Storage Tanks

##### Subchapter K. Storage, Treatment, and Reuse Procedures for Petroleum Substance Contaminated Media

###### • 31 TAC §§334.481-334.506

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

The Texas Water Commission proposes the repeal of §§334.481 and §334.482 and new §§334.481-334.510 concerning storage, treatment, and reuse procedures for petroleum-substance contaminated soils. This subchapter will provide rules for registering storage and treatment facilities for petroleum-substance contaminated soils.

The new rules will replace the current Subchapter K which was adopted as an emergency rule and published in the October 2, 1992, issue of the *Texas Register* (17 TexReg 6714). The new rules will provide guidance for persons responsible for soil contamination resulting from underground and aboveground storage tanks, as well as for persons who are in the business of operating soil treatment, storage, and recycling facilities. Subchapter K establishes criteria for the registration of such facilities, and prescribes minimum operating standards for the facilities.

These rules are proposed under authority of the Texas Water Code, Chapter 26 et seq (Vernon Pamphlet 1992) ("Code"). They were prompted by three concerns. There is a growing problem statewide concerning the ultimate disposition of the contaminated soils when a responsible party performs corrective action at a leaking petroleum storage tank site. Soil surrounding an underground tank or

aboveground tank is almost always contaminated. TWC rules normally require cleanup of contaminated soils. If cleanup cannot be accomplished by treating the contaminated soil in place, then the soil is usually hauled to a landfill. But merely taking the problem from point A to point B is no solution. Not only are the costs of hauling soil to landfills increasing, once at the landfill, the contaminated soil is not treated. Thus the environmental hazard remains. Subchapter K provides a mechanism for reducing the environmental hazard by allowing responsible parties to clean the contaminated soil.

This subchapter is intended to allow public input into the process by which soil treatment, storage and recycling facilities are registered. Members of the public have legitimate concerns about the location of soil treatment facilities and the standards to which such facilities must adhere. The new Subchapter K rules require persons who apply for registration certificates for soil treatment facilities to hold public meetings prior to commission consideration of their applications. The purpose of the public meeting is twofold: it is informational, intending to give interested individuals background on the nature of the problem associated with petroleum contaminated soils, and a description of the proposed solution; and, the public meeting is also an open forum, where citizens may voice their concerns about the applicant's facility, including the treatment standards, and the impact of the facility on their community.

Stephen Minick, Budget and Planning Division, has determined that for the first five years these sections are in effect there will be fiscal implications as a result of enforcement and administration of the sections. Costs to state government are estimated to be approximately \$200,000 per year. These costs, however, will be met from existing resources and will require no additional expenditures of state funds. There are no effects on local governments anticipated. These rules will have some effects on businesses operating facilities for the treatment or storage of petroleum-substance contaminated media. Costs will be incurred in the process of making application for facility registration, participation in public hearing processes, and compliance with additional recordkeeping requirements. These costs for most operators are not anticipated to be significant and in no event are anticipated to exceed \$3,000 annually.

Mr. Minick also has determined that for the first five years these sections will be in effect the public benefit anticipated as a result of enforcement of and compliance with these sections will be improvements in the following: management of state environmental remediation funds and the petroleum storage tank reimbursement program, protection of groundwater resources from the threat of contamination from petroleum product contamination and public participation in the siting and operation of treatment and storage facilities for petroleum-substance contaminated media. Any potential costs to small businesses would be equal to those of a larger concern and would vary proportionately with the size and number of treatment or storage facilities operated. There are no additional costs anticipated for persons required to comply with these sections as proposed.

Comments on the proposal may be submitted to Raymond Winter, Staff Attorney, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087. Comments will be accepted until 5 p.m. on the day 30 days following the date of this publication.

The repeals are proposed under the Texas Water Code, §§26.341-26.359, as enacted by Senate Bill 779, 70th Legislature, 1987, and as amended by House Bill 1588, 71st Legislature, 1989, and House Bill 1214, 72nd Legislature, 1991, which provides the Texas Water Commission with the authority to establish a program to regulate underground and aboveground storage tanks and to assess and collect fees for deposit to the storage tank fund, and under the Texas Water Code, §§5.103 and 5.105, which authorizes the Texas Water Commission to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve any general policy of the commission.

**§334.481. Definitions.**

**§334.482. General Prohibitions.**

**§334.483. Disposal by Generator.**

**§334.484. Registration Required for Petroleum-Substance Waste Storage or Treatment Facilities.**

**§334.485. Authorization for Class C and Class D Facilities.**

**§334.486. Exemptions.**

**§334.487. Notification and Mobilization Requirements for Class B Facilities. §334.488. Effect on Existing Facilities.**

**§334.489. Public Notice.**

**§334.490. Public Meetings.**

**§334.491. Closure and Facility Expansion.**

**§334.492. Location Standards for Class A Petroleum-Substance Waste Storage or Treatment Facilities.**

**§334.493. Shipping Procedures Applicable to Generators of Petroleum-Substance Waste.**

**§334.494. Recordkeeping and Reporting Procedures Applicable to Generators.**

**§334.495. Shipping Requirements for Transporters of Petroleum-Substance Waste.**

**§334.496. Shipping Requirements Applicable to Owners or Operators of Storage or Treatment Facilities.**

**§334.497. Recordkeeping Requirements Applicable to Owners or Operators of Storage or Treatment Facilities.**

**§334.498. Additional Reports.**

**§334.499. Design and Operating Requirements of Stockpiles and Land Surface Treatment Units.**

**§334.500. Reuse of Petroleum-Substance Waste**

**§334.501. Contaminant Assessment Program and Corrective Action.**

**§334.502. Security.**

**§334.503. Contingency Plan.**

**§334.504. Emergency Procedures.**

**§334.505. Closure for Class A and Class B Facilities.**

**§334.506. Financial Assurance.**

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 20, 1993.

TRD-9317960

Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

Earliest possible date of adoption: March 1, 1993

For further information, please call: (512) 463-8069

**• 31 TAC §§334.481-334.510**

The new sections are proposed under the Texas Water Code, §§26.341-26.359, as enacted by Senate Bill 779, 70th Legislature, 1987, and as amended by House Bill 1588, 71st Legislature, 1989, and House Bill 1214, 72nd Legislature, 1991, which provides the Texas Water Commission with the authority to establish a program to regulate underground and aboveground storage tanks and to assess and collect fees for deposit to the storage tank fund, and under §§5.103 and 5.105, Texas Water Code, which authorizes the Texas Water Commission to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve any general policy of the commission.

**§334.481. Definitions.** Except as provided in this subsection, the following words and terms, when used in this subchapter, shall have the following meanings prescribed in §334.2 of this title (relating to Definitions), unless the word or term is redefined in this subchapter or unless the context clearly indicates otherwise.

**Aboveground storage tank**—A nonvehicular device (including any associated piping) that is made of nonearthen materials; located on or above the surface of the ground, or on or above the surface of the floor of a structure below ground, such as a mineworking, basement, or vault; and designed to contain an accumulation of petroleum products.

**Active life**—The period from the initial receipt of waste at the facility until the executive director receives certification of final closure.

**Active portion**—That portion of a facility where treatment, or storage operations are being or have been conducted and which is not a closed portion. (See also "closed portion" and "inactive portion.")

**Activities associated with the exploration, development, and production of oil or gas or geothermal resources**—Activities associated with:

(A) the drilling of exploratory wells, oil wells, gas wells, or geothermal resource wells;

(B) the production of oil or gas or geothermal resources, including:

(i) activities associated with the drilling of injection water source wells that penetrate the base of usable quality water;

(ii) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the commission to regulate the production of oil or gas or geothermal resources;

(iii) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(iv) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in the Texas Natural Resources Code, §91.173;

(v) activities associated with any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in the

Texas Natural Resources Code, §91.173; and

(vi) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;

(C) the operation, abandonment, and proper plugging of wells subject to the jurisdiction of the Texas Railroad Commission to regulate the exploration, development, and production of oil or gas or geothermal resources; and

(D) the discharge, storage, handling, transportation, reclamation, or disposal of waste or any other substance or material associated with any activity listed in subparagraphs (A)-(C) of this paragraph, except for waste generated in connection with activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants if that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency pursuant to the Federal Solid Waste Disposal Act, as amended (42 United States Code, §6901 et seq.)

**Active geologic processes**—Any natural process which alters the surface and/or subsurface of the earth, including, but not limited to, erosion (including shoreline erosion along the coast), submergence, subsidence, faulting, karst formation, flooding in alluvial flood wash zones, meandering river bank cutting, and earthquakes.

**Manifest**—The petroleum-substance waste manifest form furnished by the executive director to accompany shipments of petroleum-substance waste in order to track the movement and transference of petroleum-substance waste.

**Application**—Commission forms or other commission-approved writing on which an executive director registration is requested.

**Aquifer**—A geologic formation, group of formations, or part of a formation capable of yielding groundwater to wells or springs.

**Area subject to active shoreline erosion**—A coastal area where shoreline erosion has been documented within historic time.

**Areal expansion of an existing facility**—The enlargement of a land surface area of an existing petroleum-substance waste management facility from that described in a petroleum-substance waste registration.

**Areas of direct drainage**—Those land areas from which surface water runoff could flow into a lake or other surface water used to supply public drinking water.

**Authorized**—Allowed in writing, by executive director registration, by order, by permit, by license, or by rule.

**Authorized Representative**—The person designated by the owner or operator to represent the facility or the person designated by the waste generator as the generator's representative.

**Class A facility**—A facility which will at any time store or treat petroleum-substance contaminated soils generated from more than one LPST site.

**Class B facility**—A mobile treatment unit which will treat petroleum-substance waste from only one LPST site at a time at that LPST site. The petroleum-substance wastes treated at that site shall have originated from that site.

**Class C facility**—A facility located elsewhere than the LPST site but which will store or treat petroleum-substance waste generated from only that one LPST site.

**Class D facility**—A facility located at the LPST site which will store or treat the petroleum-substance waste generated from only that site.

**Closed portion**—That portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (See also "active portion" and "inactive portion.")

**Contingency plan**—A document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of waste or waste constituents which could threaten human health and safety or the environment.

**Critical habitat of an endangered species**—An area that is determined by the United States Fish and Wildlife Service to be a critical habitat for an endangered species.

**Designated facility**—The authorized storage, treatment, or disposal facility that has been designated on the petroleum-substance waste affidavit by the generator.

**Discharge**—The accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of waste into or on any land or water.

**Disposal**—The discharge, deposit, injection, dumping, spilling, leaking, or placing of any waste (whether containerized or noncontainerized) into or on any land or water so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into or adjacent to any waters, including groundwater.

**Disposal facility**—A facility or part of a facility at which waste is intentionally placed into or on any land or water or adjacent to any water, and at which such waste will remain.

**Effective substitute**—A substance which may be used in the place of another substance for the same purpose without creating adverse environmental conditions.

**Erosion**—The group of natural processes, including weathering, deterioration, detachment, dissolution, abrasion, corrosion, wearing away, and transportation, by which earthen or rock material is removed from any part of the earth's surface.

**Existing portion**—That land surface area of an existing waste management unit, on which wastes have been placed prior to the issuance of a registration.

**Existing facility**—Any petroleum storage, treatment, or recycling facility regulated by the TWC or subject to regulation prior to the effective date of this subchapter.

**Facility**—Includes structures, other appurtenances, and improvements on the land for storing or treating petroleum-substance waste. A facility may consist of several storage or treatment operational units. A facility may also be a mobile treatment unit.

**Facility operator**—The person responsible for the overall operation of a facility or an operation unit (i.e., part of facility), e.g., the plant manager, superintendent, or person of equivalent responsibility for the regulated activity.

**Facility owner**—The person who owns a facility or part of a facility.

**Final closure**—The closure of all waste management units at the facility in accordance with all applicable closure requirements so that waste management activities are no longer conducted at the facility unless subject to the provisions of this title.

**Generator**—Any person who produces petroleum-substance waste; any person who stores or treats petroleum-substance waste; any person who possesses petroleum-substance waste to be shipped to any other person; or any person whose act first causes the petroleum-substance waste to become subject to regulation under this subchapter.

**Groundwater**—Water below the land surface in a zone of saturation.

**Hazardous waste**—Any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency (EPA) pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code 6901 et seq. as amended.

**Inactive portion**—That portion of a facility which is not operated. (See also "active portion" and "closed portion".)

**In operation**—Refers to a facility which is treating or storing petroleum-substance waste.

**In-situ treatment**—The reduction of contaminant levels in soil or groundwater which is conducted without removing the contaminated media from the ground.

**Interim registration**—Authorization for a storage or treatment facility received by the facility up to September 25, 1992.

**Land disposal facility**—Any landfill, surface impoundment, waste pile, injection



well, or other facility at which waste is finally disposed.

**Land surface treatment facility**—A facility, unit, or part of a facility at which waste is applied onto a liner on the soil surface during treatment.

**Leaking petroleum storage tank (LPST) site**—A site at which a confirmed release of a petroleum substance from an underground or aboveground storage tank has occurred. Petroleum-substance contamination which results from multiple sources may be deemed as one LPST site by the executive director.

**Liner**—A continuous layer of man-made materials, beneath and on the sides of a surface area which restricts the downward and lateral escape of waste, waste constituents, or leachate.

**Management**—The systematic control of the collection, storage, transportation, processing, reuse, treatment, recovery, and disposal of waste.

**New petroleum-substance waste management facility**—Any facility to be used for the storage or treatment of petroleum-substance waste and which is not an existing petroleum substance waste management facility.

**One hundred-year floodplain**—Any land area which is subject to a 1.0% or greater chance of flooding in any given year from any source.

**On-site**—The same or geographically contiguous property which may be divided by public or private rights-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which that person controls and to which the public does not have access, is also considered on-site property.

**Operator**—Any person in control of or having responsibility for, the daily operation of, an underground or aboveground storage tank system.

**Owner**—Any person who currently holds legal possession or ownership of a total or partial interest in the underground storage tank system. For the purposes of this chapter, where the actual ownership of an UST system is either uncertain, unknown, or in dispute, the fee simple owner of the surface estate where the UST is located shall be considered the UST system owner, unless the owner of the surface estate can demonstrate by appropriate documentation (deed reservation, invoice, bill of sale, etc.) or by other legally-acceptable means that the UST system is owned by others. "Owner" does not include a person who holds an interest in an UST system solely for financial security purposes unless, through foreclosure or other related actions, the holder of such security interest has taken legal possession of the UST system.

**Partial closure**—The closure of a petroleum-substance waste management unit in accordance with the applicable closure requirements at a facility that contains

other active petroleum-substance waste management units.

**Person**—Any individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

**Personnel or facility personnel**—All persons who work at or oversee the operations of a waste management facility, and whose actions or failure to act may result in noncompliance with the requirements of this subchapter.

**Petroleum substance**—A crude oil or any refined or unrefined fraction or derivative or crude oil which is liquid at standard conditions of temperature and pressure. For the purposes of this subchapter, a "petroleum substance" shall be limited to one or a combination of the substances or mixtures in the following list except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 United States Code, §6921, et seq.).

(A) Basic petroleum substances—Crude oils, crude oil fractions, petroleum feedstocks, and petroleum fractions.

(B) Motor fuels—See definition for "motor fuel" in §334.2 of this chapter (relating to Definitions).

(C) Aviation gasolines—Grade 80, Grade 100, and Grade 100-LL.

(D) Aviation jet fuels—Jet A, Jet A-1, Jet B, JP-4, JP-5, and JP-8.

(E) Distillate fuel oils—Number 1-D, Number 1, Number 2-D, and Number 2.

(F) Residual fuel oils—Number 4-D, Number 4-light, Number 4, Number 5-light, Number 5-heavy, and Number 6.

(G) Gas-turbine fuel oils—Grade O-GT, Grade 1-GT, Grade 2-GT, Grade 3-GT, and Grade 4-GT.

(H) Illuminating oils—Kerosene, mineral seal oil, longtime burning oils, 300 oil, and mineral colza oil.

(I) Solvents—Stoddard solvent, petroleum spirits, mineral spirits, petroleum ether, varnish makers' and painters' naphthas, petroleum extender oils, and commercial hexane.

(J) Lubricants—Automotive and industrial lubricants.

(K) Building materials—Liquid asphalt and dust-laying oils.

(L) Insulating and waterproofing materials—Transformer oils and cable oils.

(M) Used oils—See definition for "used oil" in §334.2 of this chapter (relating to Definitions).

(N) Any other petroleum-based material having physical and chemical properties similar to the above materials and receiving approval by the executive director for designation as a petroleum substance.

**Petroleum substance waste**—Any waste, excluding hazardous waste and liquid wastes, which is generated as a result of a release of a petroleum substance from an underground storage tank or a petroleum product from an aboveground storage tank regulated by the commission pursuant to the Texas Water Code, Chapter 26, Subchapter I.

**Public water system**—A system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly services an average of at least 25 individuals daily at least 60 days out of the year.

**Registration**—Written authorization issued by the executive director, which, by its conditions, may authorize the registrant to construct, install, modify, or operate a petroleum-substance waste storage or treatment facility or unit in accordance with specified limitations.

**Representative sample**—A sample of a universe or whole (e. g., waste pile, groundwater) which can be expected to exhibit the average properties of the universe or whole.

**Reuse of petroleum-substance wastes**—The process by which a petroleum-substance waste is utilized as an effective substitute for a commercial product, such as the proper use as a component of stabilized road base or use as fill for LPST tankholds.

**Run-off**—Any rainwater, leachate, or other liquid that drains over or into land from any part of a facility, land surface treatment unit, or stockpile.

**Run-on**—Any rainwater, leachate, or other liquid that drains over land onto or into any part of a facility, land surface treatment unit, or stockpile.

**Saturated zone or zone of saturation**—That part of the earth's crust in which all voids are filled with water.

**Secondary containment**—A system designed and constructed to collect rainfall run-on and to contain spills, leaks, or discharges within the facility until such waste can be removed.

**Shipment**—Any action involving the conveyance of petroleum-substance waste by any means off-site from the generating site.

**Sole-source aquifer**—An aquifer designated pursuant to the Safe Drinking Water Act of 1974, §1424(e) which solely or principally supplies drinking water to an area, and which, if contaminated, would create a significant hazard to public health. The Edwards Aquifer has been designated a sole-source aquifer by the United States Environmental Protection Agency. The Edwards Aquifer Recharge and Transition Zones are specifically those areas delineated on maps in the offices of the executive director.

**Spill**—The spilling, leaking, pumping, emitting, emptying, or dumping of wastes or materials which, when spilled, become wastes into or on any land or water.

**Storage**—The holding of petroleum-substance waste for a temporary period, prior to the final treatment, disposal of, reuse, or storing of the waste elsewhere.

**Stockpile**—A soil storage area from which all petroleum-substance wastes are removed for treatment or final disposition and from which all wastes are removed at the time of closure of the facility.

**Thermal treatment unit**—An enclosed device using controlled flame combustion, microwave, UV, infrared, or other thermal treatment process.

**Treatment**—Methods which are designed to change, by physical, chemical, or biological means, the levels of contamination of the waste in order to render the waste suitable for reuse or disposal. The term treatment does not include the reduction of contaminant levels by dilution.

**Treatment facility**—A facility or unit which treats or reuses petroleum-substance wastes.

**Transporter**—Any person who conveys or transports petroleum-substance waste by truck, ship, pipeline, or other means.

**Underground storage tank**—Any one or combination of underground tanks and any connecting underground pipes used to contain an accumulation of regulated substances, the volume of which, including the volume of the connecting underground pipes, is ten percent or more beneath the surface of the ground.

**Unsaturated zone or zone of aeration**—The zone between the land surface and the water table.

**Uppermost aquifer**—The geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected within the facility's property boundary.

**Waste management area**—Any area on which one or more waste management units resides.

**Waste management unit**—A contiguous area of land on or in which waste is placed, or a structure or machine used to

store or treat waste. Examples of waste management units include a waste stockpile, a land surface treatment area, a thermal treatment unit, a stockpile, a tank and its associated piping and underlying containment system, and a container storage area.

**Wetlands**—Those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

#### §334.482. General Prohibitions.

(a) No person may cause, suffer, allow, or permit the storage, treatment, or disposal of petroleum-substance waste in such a manner so as to cause:

(1) the discharge or potential threat of discharge into or adjacent to the waters in the state without obtaining specific written authorization for such discharge from the Texas Water Commission;

(2) the creation and maintenance of a nuisance;

(3) unauthorized releases of contaminants to the air; or

(4) the endangerment of the public health and welfare.

(b) No person may conduct storage or treatment of contaminated media that is not a petroleum-substance waste at a Class A or Class B facility except as authorized by the executive director or by other appropriate regulations. Any wastes accepted at the facility pursuant to the appropriate authorization shall be managed, stored, and treated separately from the petroleum-substance wastes.

§334.483. *Disposal by Generator.* A generator of petroleum-substance waste may not finally dispose of petroleum-substance waste at a site or facility unless the site or facility is authorized to receive such wastes pursuant to one of the following:

(1) permit issued by the commission pursuant to Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste) or Chapter 330 (relating to Municipal Solid Waste Management);

(2) authorization issued jointly by the Texas Railroad Commission and the commission for a facility currently permitted by the Railroad Commission; or

(3) Section 334.501 of this title (relating to Reuse of Petroleum-Substance Waste)

#### §334.484. *Registration Required for Petroleum-Substance Waste Storage or Treatment Facilities.*

(a) A person shall submit the required application and receive the appropriate registration issued after the effective date of these rules prior to storing or treating petroleum-substance wastes at a new Class A facility or treating soil utilizing a new Class B waste management facility.

(b) A person may not commence physical construction of a new Class A or utilize a Class B petroleum-substance waste management facility without first having submitted the required application and received the appropriate registration unless otherwise authorized by the executive director.

(c) Any person who intends to store or treat petroleum-substance waste at a Class A or Class B facility after the effective date of this subchapter shall submit an application for registration on a form approved by the executive director. Such person shall submit information to the executive director which is sufficiently detailed and complete to enable the commission to determine whether such storage or treatment is compliant with the terms of this subchapter. Such information shall include, at a minimum:

(1) information concerning the location of the facility;

(2) identification of the facility owner, facility operator, and landowner;

(3) the job descriptions of all key operating personnel;

(4) documentation on the proposed access routes to the facility, proposed daily volumes of traffic associated with the facility, and confirmation on the suitability of roads leading to the facility;

(5) waste storage, management, handling, and shipping methods;

(6) waste treatment methods;

(7) waste sampling and analytical methods;

(8) disposition or reuse documentation;

(9) recordkeeping requirements;

(10) security and emergency procedures;

(11) facility closure specifications;

(12) facility plans and specifications;

(13) site maps and vicinity maps;



(14) documentation on the land use in the vicinity of the facility;

(15) identification of all potential contaminant receptors in the vicinity, including any water wells within 1,000 feet;

(16) documentation on the financial assurance required;

(17) documentation on all required restrictive easements;

(18) the geology and hydrogeology where the facility is located;

(19) documentation on the effectiveness of the treatment method;

(20) documentation of the receipt of any additional authorization required by any other federal, state, or local regulatory agency; and

(21) any other information as the executive director may deem necessary to determine whether the facility and operation thereof will comply with the requirements of this subchapter.

(d) If the applicant is other than an individual, the application shall be signed by the owner or operator of the facility, the president or chief executive officer of the company, or all the partners of the company.

(e) Any person who stores or treats petroleum-substance waste shall have the continuing obligation to immediately provide written notice to the executive director of any changes or additional information concerning the information submitted to the commission or activities authorized in any registration within 15 days of the change or from the date the additional information was acquired.

(f) Any information provided under this subsection shall be submitted to the executive director's office in Austin and to the appropriate district office.

(g) A registration under this subchapter shall expire five years from the date of issuance.

(h) The facility owner or operator shall submit a renewal application at least 60 days prior to the end of the five-year registration period on forms approved by the executive director.

(i) The registration is not transferable to any other facility or facility owner. Any transfer of ownership shall require a change in registration of the facility. However, a change in registration of a facility shall not relieve the transferor of any liability. Which may have been incurred prior to the change in registration.

**§334.485. Authorization for Class C and Class D Facilities.** Authorization for Class C and Class D facilities is issued by

the executive director when the LPST site is subject to a corrective action plan involving storage and treatment activities pursuant to §334.81 of this title (relating to Corrective Action Plan). Executive director approval of the corrective action plan for the storage or treatment activities shall constitute authorization for the Class C or Class D facility. A Class C or Class D storage or treatment facility shall remain in operation only as long as is necessary to store or treat the soil from that one LPST site and it shall not accept soil from any other site at any time. The underground or aboveground storage tank owner or operator shall ensure that the approved storage and treatment activities comply with the following applicable provisions of this title: §334.482 of this title (relating to General Prohibitions); §334.483 of this title (relating to Disposal by Generator); §334.487 of this title (relating to Notification and Mobilization Requirements for Class B Facilities); §334.492 of this title (relating to Closure and Facility Expansion); §334.494 of this title (relating to Shipping Procedures Applicable to Generators of Petroleum-Substance Waste); §334.495 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators); §334.496 of this title (relating to Shipping Requirements for Transporters of Petroleum-Substance Waste); §334.497 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage or Treatment Facilities); §334.498 of this title (relating to Recordkeeping Requirements Applicable to Owners or Operators of Storage or Treatment Facilities); §334.499 of this title (relating to Additional Reports); §334.500 of this title (relating to Design and Operating Requirements of Stockpiles and Land Surface Treatment Units); §334.501 of this title (relating to Reuse of Petroleum-Substance Waste); §334.503 of this title (relating to Security); §334.504 (relating to Contingency Plan); and §334.505 of this title (relating to Emergency Procedures).

**§334.486. Exemptions.** The following are exempt from the requirements of this subchapter:

(1) facilities which operate under the jurisdiction of the Texas Railroad Commission or for the purpose of disposal, facilities permitted or regulated by rules promulgated under the Solid Waste Disposal Act, Chapter 361, Texas Health and Safety Code (Vernon Supplement); and

(2) LPST sites which treat petroleum-substance contaminated media if the media is treated in-situ in accordance with the provisions of Subchapter D of this chapter (relating to Release Reporting and Corrective Action.) Such sites, however, are not exempt from the provisions of §334.482 of this title (relating to General Prohibitions).

**§334.487. Notification and Mobilization Requirements for Class B Facilities.** In addition to the required registration pursuant to §334.484 (relating to Registration Required for Petroleum-Substance Waste Storage and Treatment Facilities).

(1) The owner or operator of a Class B facility shall notify the appropriate commission district field office at 48 hours in advance of moving the treatment unit to the LPST site.

(2) The owner or operator of the Class B facility shall notify the local fire marshal or other appropriate fire official at least 48 hours in advance of moving the treatment unit to the LPST site.

(3) The owner or operator of the underground or aboveground storage tank who intends to utilize a Class B facility at a particular LPST site shall obtain executive director approval pursuant to §334.81 of this title (relating to Corrective Action Plan).

(4) The Class B facility shall remain at the LPST site for only the time period necessary to complete the treatment, but no longer than 30 days unless written authorization is obtained from the executive director.

(5) The facility owner or operator shall provide notice to the public by means of posting signs at the LPST site at least 14 days prior to moving the treatment unit onto the LPST site or within another timeframe as approved by the executive director. The signs shall be legible from a distance of at least 25 feet and shall be posted at all entrances to the facility. The signs shall state "Public Notice of Petroleum-Substance Contaminated Soil Treatment", the name and phone number of the treatment facility owner, the name and phone number of the tank owner or operator, the registration number of the treatment facility, the type of soil treatment to be conducted, and the date(s) the treatment will be conducted.

(6) The facility owner or operator shall produce upon demand the registration certificate issued by the TWC under this subchapter as well as any other permit or authorization required by law.

**§334.488. Effect on Existing Facilities.** Any Class A or Class B facility which has submitted a registration application between September 25, 1992 (pursuant to the Emergency 31 TAC 334, Subchapter K effective on that date) and the effective date of these rules, is not required to register as a new facility under these rules. Any facility which has not submitted an application for registration between September 25, 1992, and the effective date of these rules shall apply for registration as a new facility.

**§334.489. Notice to Owners or Operators.**

(a) Written notice shall be provided in accordance with this section to any person, including the tank owner and operator, with any offer to perform any services of storage, treatment or reuse of petroleum-substance contaminated soil proposed after the effective date of these rules.

(b) The notice shall contain the following:

(1) the facility registration number issued pursuant to this subchapter's registration requirements;

(2) the following disclaimer reproduced in its entirety: "The registration of a storage or treatment facility by the Texas Water Commission does not constitute endorsement, licensing, or promotion of any storage or treatment facility. Registration does not imply that the Texas Water Commission guarantees the quality of the work performed or that the cost of the work will be reimbursed".

**§334.490. Public Notice.** The facility owner or operator shall provide notice to the general public regarding the location, construction, operation, and potential impacts of the storage or treatment facility.

(1) The facility owner or operator shall provide notice of the facility to the general public by means of a notice by publication and a notice by mail.

(2) The notice shall contain, at a minimum, the following information in accordance with forms approved by the executive director:

(A) the name, address, phone number, and contact person for the owner of the facility;

(B) the name, address, phone number, and contact person for the operator of the facility;

(C) the name, address, phone number, and contact person for the landowner (if different from the facility owner);

(D) the address and the legal description for the location of the facility;

(E) the date, time, and location of the public meeting to be held pursuant to §334.491 of this title (relating to Public Meetings);

(F) notice that an application for registration has been filed with the Texas Water Commission and notice of the

application for any necessary permits or exemptions with the Texas Air Control Board or its successor agency;

(G) a complete description of the activities which will be conducted at the facility, including details on the construction of the facility, the soil storage methods, the soil treatment methods, the final disposition of the treated soils, and documentation on any points of discharge;

(H) the method for obtaining additional information on the facility.

(3) The notice by publication shall be published in a newspaper published daily, if available, and generally circulated in the county or area where the proposed facility is to be located and within each county or area wherein persons reside who would be affected by the facility. The notice shall be published at least 10 calendar days prior to the public meeting utilizing the form provided by the executive director.

(4) The notice by certified mail, return receipt requested, shall be sent to the following persons at least 10 calendar days prior to the public meeting:

(A) all adjacent landowners and all owners of property within 1,000 feet of the facility;

(B) the mayor and health authorities of the city in which the facility will be located, if applicable;

(C) the county judge and county health authority of the county in which the facility will be located;

(D) the appropriate state senator and representative for the area encompassing the facility;

(E) the Executive Director of the Air Control Board (effective until September 1, 1993); and

(F) all persons or organizations who have requested the notice or expressed interest in the facility. The executive director may designate persons or organizations in addition to those specified by the facility owner or operator.

(5) The facility owner or operator shall provide copies of each notice sent by mail, copies of the published notice, and copies of the signed affidavits for the notices to the commission's Austin office and to the appropriate commission district field office within two calendar days of publication and mailing.

**§334.491. Public Meetings.** The facility owner or operator, at their expense, shall schedule and hold a public meeting at a time and place which are convenient for the general public affected by the facility. The forum chosen for the meeting shall be accessible to persons who are mobility impaired. Prior to scheduling of the meeting, the applicant shall coordinate the scheduling of the meeting with commission personnel to ensure the availability of commission personnel for the meeting. The applicant shall confirm with the executive director the date, time and location of the meeting not less than 15 days prior to the meeting. The meeting shall be open to the public to provide information on the proposed facility and to allow for comments by the public. The executive director will consider all comments relating to the requirements of this subchapter when determining the outcome of the registration application. The applicant shall again confirm with the executive director on the time and place of the meeting at least 72 hours prior to the meeting.

**§334.492. Closure and Facility Expansion.** A person who stores or treats petroleum-substance waste at a Class A or B facility shall notify the executive director in writing of any closure activity or facility expansion not specifically stated in the original application for registration at least 30 days prior to conducting such activity. Such person shall submit to the executive director upon request such information as may reasonably be required to enable the executive director to determine whether such activity is compliant with this subchapter and whether additional public notice should be conducted. Any information provided under this subsection shall be submitted to the executive director's office in Austin and to the appropriate district field office.

**§334.493. Location Standards for Class A Petroleum-Substance Waste Storage or Treatment Facilities.**

(a) The commission shall not issue a registration for a Class A petroleum-substance waste management facility unless it finds that the proposed site, when evaluated in light of proposed design, construction, and operational features, reasonably minimizes possible contamination of surface water and groundwater. In making this determination, the commission shall consider the following factors:

(1) flooding or active geologic processes such as erosion, subsidence, submergence and faulting;

(2) groundwater conditions such as groundwater flow rate, groundwater quality, length of flow path to points of

discharge and aquifer recharge, or discharge conditions;

(3) soil conditions such as stratigraphic profile, stratigraphic complexity, and hydraulic conductivity of strata;

(4) separation distance from the facility to the aquifer and to points of discharge to surface water; and

(5) climatological conditions.

(b) Class A storage or treatment facilities shall not be located:

(1) in the 100-year floodplain;

(2) in wetlands;

(3) on the recharge or transition zone of a sole-source aquifer;

(4) within 1,000 feet of an established residence, church, hospital, school, licensed day-care center, or dedicated public park;

(5) within 1,000 feet of any property owned by a person other than the facility owner unless a restrictive easement is obtained by the facility owner on the adjacent property to ensure that no residences, schools, churches, hospitals, licensed day-care centers, or dedicated public parks will be constructed within the easement;

(6) in areas of direct drainage within one-half mile of any surface water if the surface water is used to supply public drinking water through a public water system, unless it is designed, constructed, operated, and maintained to prevent any releases of contaminants from the facility;

(7) in the critical habitat of an endangered species of plant or animal;

(8) in an area where the roads leading to the facility which will be utilized to transport soil are not adequate to handle the anticipated traffic volume and load; or

(9) in an area where the roads leading to the facility are not designated public roads.

(c) The executive director shall determine whether the provisions of this subsection have been met. Nothing in this subchapter shall be construed to require the executive director to issue a registration notwithstanding a finding that the proposed facility would satisfy the requirement of §334.493 of this title (relating to Location Standards for Class A Petroleum-Substance Waste Storage or Treatment Facilities) and notwithstanding the absence of site characteristics which would disqualify the site from registration under this section.

(d) The executive director may, in his discretion, grant a variance of the requirements of subsection (b) of this section, relating to location requirements for Class

A Facilities. Before the executive director may issue a variance under this subsection, he shall require the applicant to demonstrate that the provisions of subsection (b) are not necessary to ensure adequate protection of human health and the environment.

#### *§334.494. Shipping Procedures Applicable to Generators of Petroleum-Substance Waste.*

(a) No generator shall transport petroleum-substance waste from the generating site unless the waste has been properly sampled in order to determine the levels of all possible contaminants in the waste. Necessary documentation shall, at a minimum, consist of documentation, on the sampling, handling, chain-of-custody documentation and copies of signed laboratory reports on samples collected from the specified wastes that contain results of analysis for:

(1) the major components of the petroleum-substance waste such as benzene, toluene, ethylbenzene, total xylenes, and total petroleum hydrocarbons or the major components of total petroleum hydrocarbons; and

(2) any other contaminants as specified by the executive director based on specific conditions of the generating site.

(b) No generator of petroleum-substance waste within the State of Texas shall allow the transport of such wastes to an off-site waste storage, treatment, reuse, or disposal facility unless the following requirements are met:

(1) a Texas Water Commission (TWC) petroleum-substance affidavit is initiated, to include all applicable information, by the generator;

(2) the generator designates on the affidavit at least one facility or area legally authorized to receive the waste. A generator may also designate one alternate facility or area which is legally authorized to receive the waste in the event an emergency prevents delivery of the waste to the primary designated facility. If the transporter is unable to deliver the waste to either the designated facility or the alternate facility, the generator shall either immediately designate another facility for receipt or instruct the transporter to immediately return the waste. Upon such redesignation by the generator, the generator shall immediately prepare an amended waste affidavit.

(c) No generator of petroleum-substance waste from outside of the State of Texas shall allow transport of waste into the State of Texas unless the following requirements are met:

(1) a TWC petroleum-substance affidavit is initiated by the generator to include all applicable information;

(2) the affidavit shall accompany the waste to the receiving facility;

(3) the waste is classified as nonhazardous by the state in which it is generated.

(d) At the time of waste transfer, the generator or generator's authorized representative shall:

(1) sign the affidavit by hand;

(2) obtain the handwritten signature of the initial transporter and date of acceptance on the affidavit;

(3) retain one copy, in accordance with §334.495 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators); and

(4) give the transporter the remaining copies of the affidavit.

#### *§334.495. Recordkeeping and Reporting Procedures Applicable to Generators.* Each generator, excluding transporters and shippers, of petroleum-substance waste shall comply with the following:

(1) the generator shall keep records of all petroleum-substance waste activities regarding the quantities generated and shipped off-site for storage, treatment, or disposal and which, at a minimum, includes the information described in paragraphs (1)-(5) of this section. The maintained records shall be retrievable, legible, and immediately available for inspection and copying by commission personnel. The required records shall be sufficiently detailed and complete to support any contentions or claims made by the generator with respect to the following:

(A) the description, character and classification of each waste;

(B) the quantity of waste and the date(s) it was generated;

(C) identification of the generating location and the tank owner or operator;

(D) the methods of storage, treatment, or disposal;

(E) the quantity and date(s) the waste was shipped off-site for storage, treatment, or disposal including the name, address and location of each off-site facility and transporter receiving shipments.

(2) The generator shall retain a legible copy of each waste affidavit required by §334.494 of this title (relating to Shipping Procedures Applicable to Generators).

ators of Petroleum-Substance Waste) for a minimum of five years from the date of shipment by the generator.

(3) A generator of petroleum-substance waste shall keep records of all test results, waste analyses, or other determinations made for at least five years from the date that the waste was last sent to an off-site storage, treatment, disposal, or reuse area or facility.

(4) A generator who does not receive a copy of the affidavit with the handwritten signature of the owner or operator of the designated facility within 35 days from the date the waste was accepted by the initial transporter shall contact the transporter and/or the owner or operator of the designated facility to determine the status of the petroleum-substance waste.

(5) A generator shall submit an exception report to the executive director if the generator has not received a copy of the affidavit with the handwritten signature of the owner or operator of the designated facility within 45 days of the date that the waste was accepted by the initial transporter. The exception report shall be retained by the generator for at least five years from the date the waste was accepted by the initial transporter and shall include:

(A) a legible copy of the affidavit for which the generator does not have confirmation of delivery; and

(B) a legible copy of a letter signed by the generator or his authorized representative explaining the efforts taken to locate the waste and the results of those efforts.

(6) The periods of record retention required by this subsection may be extended by the executive director during the course of any unresolved enforcement action regarding the regulated activity.

**§334.496. Shipping Requirements Applicable to Transporters of Petroleum-Substance Waste.**

(a) No transporter shall ship petroleum-substance waste to an off-site storage, treatment, or disposal facility, unless the transporter:

(1) obtains an affidavit initiated by the generator in accordance with §334.494 of this title (relating to Shipping Procedures Applicable to Generators of Petroleum-Substance Waste); and

(2) upon receipt and prior to shipment, signs, and dates the affidavit acknowledging the acceptance of waste from the generator where appropriate;

(b) The transporter shall ensure that the affidavit accompanies the petroleum-substance waste.

(c) No transporter shall deliver a shipment of petroleum-substance waste to another transporter designated on the affidavit, unless the delivering transporter:

(1) obtains the date of delivery and the handwritten signature of the accepting transporter on the affidavit; and

(2) gives the legible copies of the affidavit to the accepting transporter;

(d) No transporter shall deliver a shipment of petroleum-substance waste to a storage, treatment, or disposal facility, unless the transporter:

(1) obtains the date of delivery and the handwritten signature on the affidavit of the owner or operator of the facility designated on the affidavit; and

(2) gives the copies of the affidavit to the owner or operator of the storage, treatment or disposal facility designated on the affidavit.

(e) The transporter shall deliver the entire quantity of petroleum-substance waste which the transporter has accepted from a generator or a transporter to:

(1) the designated facility listed on the affidavit;

(2) the alternate designated facility if the waste cannot be delivered to the designated facility because an emergency prevents delivery; or

(3) the next designated transporter.

(f) If the transporter cannot deliver the waste in accordance with subsection (e) of this section, the transporter shall immediately contact the generator for further directions and shall revise the affidavit according to the generator's instructions.

**§334.497. Shipping Requirements Applicable to Owners or Operators of Storage, Treatment, or Disposal Facilities.**

(a) No owner or operator of a storage, treatment or disposal facility may accept delivery of petroleum-substance waste for storage, treatment, or disposal unless:

(1) a PST-waste affidavit accompanies the shipment which designates that facility to receive the waste;

(2) the facility owner or operator signs the affidavit and immediately gives at least one copy of the signed affidavit to the transporter;

(3) retains one copy of the affidavit in accordance with §334.498 of this title (relating to Recordkeeping Requirements Applicable to Owners or Operators of Storage, Treatment or Disposal Facilities); and

(4) within 30 days after receipt of the waste, sends a copy of the affidavit to the generator;

(b) When a facility or reuse area receives petroleum-substance waste accompanied by an affidavit, the facility owner or operator, or his agent, or the owner or operator of the property designated for the reuse area shall note any significant discrepancies on each copy of the affidavit.

(1) Significant discrepancies are differences between the quantity or type of waste designated on the affidavit and the quantity or type of waste a facility actually received. Significant discrepancies in type of waste are obvious differences which can be discovered by inspection or waste analysis.

(2) Upon discovering a significant discrepancy, the facility owner or operator shall attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the facility owner or operator shall, within five days, submit to the executive director a letter describing the discrepancy and attempts to reconcile it, and a copy of the affidavit at issue. The facility owner or operator shall ensure that the waste is a petroleum-substance waste eligible for acceptance by the facility pursuant to this subchapter and shall report any unreconciled discrepancies discovered during any analyses or evaluation.

(c) No owner or operator of a storage, treatment, or disposal facility in Texas shall accept wastes from an out-of-state generator or location unless the following requirements are met:

(1) the waste is accompanied by legible copies of the signed TWC waste affidavits for all wastes received pursuant to §334.494 (relating to Shipping Procedures Applicable to Generators of Petroleum-Substance Wastes);

(2) the facility owner or operator obtains documentation that the wastes contain only petroleum-substance contamination, have been generated from an underground or aboveground storage tank as defined in this chapter, and are classified as nonhazardous in the state where generated. This documentation shall consist of documentation on the sampling methods, sample handling, chain-of-custody documents, and legible copies of signed laboratory reports on samples collected from the specified wastes. The number of samples shall be sufficient to characterize the entire quantity of wastes. The analyses shall include:

(A) volatiles and Semi-Volatiles by EPA Methods 8240 and 8250;

(B) TC-listed constituents as specified in 40 Code of Federal Regulations, Part 261;

(C) organichlorine pesticides and PCBs by EPA Method 8080; and

(D) any other analyses necessary to characterize the wastes or as specified by the executive director; and

(3) the facility owner or operator obtains documentation from the appropriate governing agency in the originating jurisdiction that the wastes are classified as nonhazardous and meet the definition of petroleum-substance wastes, (as such wastes are defined in §334.2 of this chapter relating to definitions).

(d) The facility owner or operator shall not accept any wastes for storage, treatment, or disposal from an in-state generator or location which contain any contaminants above natural background levels other than petroleum substances as defined in this subchapter, unless otherwise approved by the executive director. Documentation of the contaminants in the waste shall consist of a sufficient number of samples to characterize the waste and the samples shall be analyzed for all constituents that may occur in that waste.

**§334.498. Recordkeeping Requirements Applicable to Owners or Operators of Storage, Treatment, or Disposal Facilities.**

(a) All records required by this subchapter shall be retained by the facility owner or operator for a minimum of five years from the date of receipt of the waste. The records shall be maintained in a secure location on the premises of the storage, treatment, or disposal facility and shall be immediately accessible by the facility owner and operator. In the event that copies of the required records cannot reasonably be maintained on the premises of the facility, then such records may be maintained at a readily-accessible alternate site, provided that the following conditions are met.

(1) If the facility is in operation, the records shall be readily accessible for reference by the facility owner and operator.

(2) The records shall be readily accessible and available for inspection and copying upon request by commission personnel.

(3) The facility owner or operator shall provide the following information in writing to the executive director and to the commission's appropriate district office:

(A) the specific location where the required records are maintained; and

(B) the name, address, and telephone number of the authorized custodian of the records.

(4) The written information required in paragraph (3) of this subparagraph shall be submitted with the application for registration and within 15 days after the records are moved to an alternate site from that specified in the registration.

(b) For facilities which have completed the closure requirements and are no longer in service, the facility owner may submit the appropriate records required by this subchapter to the executive director in lieu of maintaining the records on the premises or at an alternate site, provided that the following conditions are met.

(1) The facility owner shall provide written justification adequate to explain why the records cannot be maintained at a readily-accessible alternate site, and

(2) The records shall be submitted at one time in one package for each facility, and the records shall be appropriately labeled with the facility identification number and location information.

(c) A facility owner or operator who initiates a shipment of petroleum-substance waste from a treatment or storage facility shall comply with the generator standards contained in §334.494 of this title (relating to Shipping Procedures Applicable to Generators of Petroleum-Substance Waste) and §334.495 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators) and this subsection.

(d) The periods of record retention required by this subsection may be extended by the executive director during the course of any unresolved enforcement action regarding the regulated activity.

(e) The following information, at a minimum, shall be maintained by the facility owner or operator:

(1) documentation on all shipments of contaminated media received at the facility as specified on the waste affidavit;

(2) the method(s) of storage or treatment for all media received;

(3) the method of reuse or disposal of all wastes removed from the facility including:

(A) the location of final disposition;

(B) the quantity and contaminant levels of wastes placed at any and every location;

(C) the name, work address, and work phone number of the authorized representative for the receiving facility or location. If the receiving facility cannot be identified by street address, then other specifics shall be included to adequately identify the exact location;

(D) the name, work address, and work phone number of the authorized representative for the landowner at the receiving location;

(E) documentation on the soil sampling and analytical methods, chain-of-custody, and all analytical results for the soil received at the facility and transported off-site or reused on-site;

(F) a detailed description of the reuse methods;

(G) the date(s) of transport off-site and the dates of reuse;

(H) legible copies of the authorization from the landowner at the receiving location pursuant to §334.501 of this title (relating to Reuse of Petroleum-Substance Waste);

(4) documentation on the operations at the facility, including:

(A) information on the actual treatment efficiency of the unit;

(B) documentation on the results of all air emissions monitoring;

(C) any changes in the operations at the facility;

(D) documentation on any releases, fires, or explosions and the measures taken to abate the situation;

(5) monitoring data under §334.502 of this title (relating to Contaminant Assessment Program and Corrective Action) when required;

(6) a summary of the types and volumes of any petroleum-substance waste received without affidavits. This documentation shall include the following information:

(A) the dates the facility received the wastes;

(B) the LPST or other identification number of the generating facility, and the names and addresses of the tank owner or operator and the transporter, if available;

(C) a description and the quantity of each petroleum-substance waste the facility received which was not accompanied by a PST-waste affidavit;

(D) the method of storage and/or treatment for each petroleum-substance waste;

(7) any other information deemed necessary by the executive director.

**§334.499. Additional Reports.** The owner or operator of a Class A or Class B facility shall report to the executive director within twenty-four hours of the occurrence any releases, fires, explosions, breakdowns, shutdowns, releases, or spills which result or may result in the discharge of any contaminants to the ground, surface water, or groundwater.

**§334.500. Design and Operating Requirements of Stockpiles and Land Surface Treatment Units.**

(a) A stockpile or land surface treatment unit located at any storage or treatment facility or at any LPST site shall have an appropriate means of preventing any discharge or release of petroleum-substance waste or petroleum-substance waste constituents into any media. This shall be accomplished with:

(1) a synthetic, impermeable liner that is designed, constructed, and installed to prevent any migration of petroleum-substance wastes out of the stockpile or land surface treatment unit into the adjacent subsurface soil, groundwater, or surface water at any time during the active life (including the closure period) of the stockpile, or land surface treatment unit. The liner shall be constructed of materials that do not allow petroleum-substance waste or petroleum-substance waste constituents to migrate into the liner itself or into the adjacent subsurface soil, groundwater, or surface water during the active life of the facility. The liner shall:

(A) be constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the hydrocarbons or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operations;

(B) be placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, tearing or uplift;

(C) be installed to cover all surrounding earth likely to be in contact with the petroleum-substance waste or leachate; and

(D) contain a leachate collection and removal system immediately above the liner that is designed, constructed, maintained, and operated to collect and remove leachate and rainwater from the stockpile or land surface treatment unit. The facility owner and operator shall specify the design and operating conditions which will ensure that the leachate depth over the liner does not exceed the depth of soil on the liner. The leachate collection and removal system shall be constructed of materials that are:

(i) chemically resistant to the hydrocarbons managed in the pile and the leachate expected to be generated; and

(ii) of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying petroleum-substance wastes, petroleum-substance waste cover materials, and any equipment used at the stockpile or treatment unit; and

(iii) designed and operated to function without clogging through the scheduled life of the stockpile or land surface treatment unit; or

(2) An alternate design or operating practice that is effective in preventing any release or discharge and is approved by the executive director. The facility owner or operator shall demonstrate that the alternate design or operating practices, together with location characteristics, will prevent the migration of any petroleum-substance waste constituents into the soil, groundwater or surface water at any future time. In deciding whether to approve the alternate design, the executive director will consider:

(A) the nature and quantity of the wastes;

(B) the proposed alternate design and operation;

(C) the hydrogeologic setting of the facility, including a tentative capacity and thickness of the liners and soils present between the stockpile or land surface treatment unit and groundwater or surface water; and

(D) all other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to soil, groundwater or surface water.

(b) The facility owner or operator shall design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the stockpile or land surface treatment unit.

(c) The facility owner or operator shall design, construct, operate, and maintain a run-off management system to prevent flow from a stockpile or land surface treatment unit.

(d) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems shall be emptied and managed expeditiously in accordance with applicable state and federal requirements after storms to maintain design capacity of the system.

(e) If the stockpile or land surface treatment unit contains any particulate matter which may be subject to wind dispersal, the facility owner or operator shall cover or otherwise manage the stockpile or land surface treatment unit to control wind dispersal.

(f) The executive director may specify other design and operating practices that may be necessary to ensure that the requirements of this subsection are satisfied.

(g) The facility owner or operator shall ensure that treatment is initiated on stockpiled soil within 90 days from the date of receipt at the facility and that the treated soil is removed from the facility for final disposition within 90 days after completing treatment.

(h) In addition to the requirements specified in subsections (a)-(g) of this section, the facility owner or operator shall design, construct, operate, and maintain the land surface treatment unit to maximize the degradation, transformation, or immobilization of petroleum-substance waste constituents in the treatment area. At a minimum, the facility owner or operator shall specify the following items, if applicable, in the facility registration application:

(1) the rate and method of petroleum-substance waste application to the treatment area;

(2) measures to control soil Ph;

(3) measures to enhance microbial or chemical reactions (e.g., fertilization); and

(4) measures to control the moisture content of the treatment area.

(i) The facility owner or operator shall inspect the unit weekly and after storms to detect evidence of:



(1) deterioration, malfunctions, or improper operation of run-on and run-off control systems; and

(2) improper functioning of wind dispersal control measures.

**§334.501. Reuse of Petroleum-Substance Waste.**

(a) Wastes that are intended for reuse are subject to all the applicable provisions of this subchapter, including but not limited to the following requirements: §334.482. of this title (relating to General Prohibitions), §334.494 of this title (relating to Shipping Procedures Applicable to Generators of Petroleum-Substance Waste), §334.495 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators), §334.496 of this title (relating to Shipping Requirements for Transporters of Petroleum-Substance Waste), §334.497 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Treatment, or Disposal Facilities), §334.498 of this title (relating to Recordkeeping Requirements Applicable to Owners or Operators of Storage, Treatment, or Disposal Facilities), and §334.500 of this title (relating to Design and Operating Requirements of Stockpiles and Land Surface Treatment Units).

(b) Recordkeeping and reporting requirements for any person who intends to reuse petroleum-substance wastes shall require that person to maintain records and provide to the executive director when requested such information deemed necessary by the executive director to ensure compliance with the requirements of this subsection. This information may include, but is not limited to:

(1) identification, address, and name of the authorized representative of the generating facility;

(2) identification, address, and name of the authorized representative for the receiving facility or location;

(3) identification of the landowner of the receiving location or facility;

(4) the quantity, type, and contaminant levels of the reused wastes;

(5) documentation of the reuse methods and dates of reuse;

(6) documentation that asphalt mix or roadbase mix meets the specifications required by the final user;

(7) documentation that the landowner of the receiving location has approved the use of the reused wastes on his property;

(c) Reuse requirements.

(1) Any person who intends to utilize petroleum-substance wastes for reuse

shall obtain written approval from the landowner of the land on which the wastes will be placed.

(2) Petroleum-substance wastes shall be reused only in manners which are in accordance with §334.482 (relating to General Prohibitions) and at contaminant levels as specified by the executive director.

(3) Petroleum-substance wastes may be reused under the following conditions.

(A) Petroleum-substance wastes may be utilized in cold-mix emulsion bituminous paving at a cold-mix asphalt-producing facility registered under the terms of this subchapter. The petroleum-substance waste shall be mixed with aggregate or other suitable materials at a rate which will result in a mixture meeting or exceeding the specifications required by the final user. The petroleum-substance waste shall contain less than 0.5 mg/kg for each component of benzene, toluene, ethylbenzene, and total xylenes prior to mixing. Authorization for the facility shall also be obtained from all other appropriate federal, state, or local governing agencies. Authorization from the owner of the road or other area where the asphalt is to be utilized shall be obtained prior to laying the asphalt.

(B) Petroleum-substance wastes with nonhazardous contaminant levels may be utilized in asphalt mix at hot-mix asphalt-producing facilities registered under this subchapter. The petroleum-substance waste shall contain less than 0.5 mg/kg for each component of benzene, toluene, ethylbenzene, and total xylenes prior to mixing. The petroleum-substance waste shall be mixed with aggregate at a rate which will result in a mixture meeting or exceeding the specifications required by the final user. Authorization for the facility shall also be obtained from all other appropriate federal, state, or local governing agencies. Authorization from the owner of the road or other area where the asphalt is to be utilized shall be obtained prior to laying the asphalt.

(C) Petroleum-substance wastes may be utilized in roadbase or parking lot stabilized base when the base will be covered with concrete or asphalt if the contaminant levels of the soil prior to mixing into the stabilized base are less than 0.5 mg/kg for each component of benzene, toluene, ethylbenzene, and total xylenes, and less than 500.0 mg/kg total petroleum hydrocarbons or at contaminant levels otherwise specified by the executive director. The base shall be mixed according to the specifications required by the final user. Soil which is not mixed into stabilized

roadbase shall meet the criteria for clean soil as specified by the executive director in order to be spread on a road or parking lot. The generator shall obtain prior written consent for the placement of the soil from the owner of the road (if different from the landowner).

(D) Petroleum-substance wastes may be utilized in roadbase or parking lot stabilized base when the base will not be covered with asphalt or concrete if the contaminant levels are less than 0.5 mg/kg for each component of benzene, toluene, ethylbenzene, and total xylenes, and less than 200 mg/kg of total petroleum hydrocarbons or at contaminant levels otherwise specified by the executive director. The base shall be mixed according to the specifications required by the final user. The base shall be professionally mixed by a facility registered under the terms of this subchapter. Soil which is not mixed into stabilized roadbase shall meet the criteria for clean soil in order to be spread on a road or parking lot. The generator shall obtain prior written consent for the placement of the soil from the owner of the road (if different from the landowner).

(E) Petroleum-substance wastes may be used as fill in another LPST site tankhold if the contaminant levels do not exceed 0.5 mg/kg for each component of benzene, toluene, ethylbenzene, and total xylenes, and 10.0 mg/kg total petroleum hydrocarbons. Other contaminant levels may be considered by the executive director if documentation indicates that there is no threat to public health or safety and if there is no threat of groundwater contamination at the receiving site. The owner of the underground storage tanks at the receiving facility, and the landowner (if different from the tank owner) shall give written consent for this activity. The soil shall not be utilized in a tankhold in which a new tank installation will occur.

(F) Petroleum-substance waste may be reused by alternative methods or contaminant levels deemed appropriate and as authorized by the executive director. The generator shall obtain authorization, including authorization pursuant to the requirements of this subchapter, from the executive director prior to reusing the waste by alternative methods.

**§334.502. Contaminant Assessment Program and Corrective Action.**

(a) The facility owner or operator shall conduct an assessment when, in the opinion of the executive director, there exists a possibility of migration of contaminants into or adjacent to waters in the state.

The assessment shall be capable of determining:

(1) whether petroleum-substance waste or petroleum-substance waste constituents have entered the groundwater, surface water, or soils;

(2) the rate and extent of migration of any petroleum-substance waste or petroleum-substance waste constituents in the soil, groundwater, or surface water; and

(3) the concentrations of petroleum-substance waste or petroleum-substance waste constituents in the soil, groundwater, or surface water.

(b) The owner or operator of the facility shall conduct corrective action at the facility when, in the opinion of the executive director, petroleum-substance waste constituents exist in the soil, groundwater, or nearby surface water at levels which are harmful to human health and safety or the environment.

(c) The corrective action program shall be capable of preventing the migration of contaminants and shall prevent the contaminants from exceeding the levels determined by the executive director.

(d) The facility owner or operator shall ensure that the corrective action measures under this subsection shall be initiated and completed within a reasonable period of time as determined by the executive director considering the extent of contamination. The executive director may issue additional directives should the corrective action activities prove to not be effective in reducing the contaminant levels at a sufficient rate.

(e) The facility owner or operator shall report in writing to the executive director the effectiveness of the corrective action program. The facility owner or operator shall submit these reports to the commission's Austin office and to the appropriate commission district office upon request by the executive director.

#### **§334.503. Security.**

(a) The facility owner or operator shall prevent unauthorized entry by persons or animals onto the facility.

(b) A facility shall have:

(1) a 24-hour surveillance system (e.g., television monitoring or surveillance by guards or facility personnel) which continuously monitors and controls entry onto the active portion of the facility; or

(2) an artificial or natural barrier (e.g., a fence in good repair or a fence combined with a cliff), which completely surrounds the active portion of the facility; and

(3) a means to control entry, at all times, through the gates or other entrances to the active portion of the facility

(e.g., an attendant, television monitors, locked entrance, or controlled roadway access to the facility).

(c) A sign with the legend, "Caution-Unauthorized Personnel Keep Out" shall be posted at each entrance to the active portion of a facility, and at other locations, in sufficient numbers to be seen from any approach to the active portion. The legend shall be written in English and in any other language predominant in the area surrounding the facility, and shall be legible from a distance of at least 25 feet. Existing signs with a legend other than "Caution-Unauthorized Personnel Keep Out" may be used if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion, and that entry onto the active portion can be dangerous.

(d) The owner or operator of the facility shall submit details of the proposed security measures in the application for registration.

#### **§334.504. Contingency Plan.**

(a) Each facility owner or operator shall have a contingency plan for each facility. The contingency plan shall be designed to minimize hazards to human health or the environment from fires, explosions, or any release of petroleum-substance waste or petroleum-substance waste constituents to air, soil, groundwater, or surface water.

(b) The provisions of the plan shall be carried out immediately whenever there is a fire, explosion, or release of petroleum-substance waste or petroleum-substance waste constituents which could threaten human health or the environment.

(c) The contingency plan shall describe the actions facility personnel shall take in order to respond to fires, explosions, or any release of petroleum-substance waste or petroleum-substance waste constituents to air, soil, or surface water at the facility.

(d) The plan shall list names, addresses, and phone numbers (office and home) of all persons qualified to act as facility emergency coordinators and this list shall be kept up to date. Where more than one person is listed, one shall be named as primary emergency coordinator and others shall be listed in the order in which they will assume responsibility as alternates.

(e) The plan shall include a list of all emergency equipment at the facility, such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external). This list shall be kept up to date. In addition, the plan shall include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(f) The plan shall include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan shall describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by release of petroleum-substance waste or fires).

(g) A legible copy of the contingency plan and all revisions to the plan shall be:

(1) submitted to the executive director with the application for registration;

(2) maintained at the facility; and

(3) submitted to all local fire departments or emergency response officials that may be called upon to provide emergency services.

(h) The contingency plan shall be reviewed, and immediately amended, if necessary, whenever:

(1) the facility registration is revised;

(2) the plan fails in an emergency;

(3) the facility changes its design, construction, operations, maintenance, or other circumstances in a way that materially increases the potential for fires, explosions, or release of petroleum-substance waste or petroleum-substance waste constituents, or changes the response necessary in an emergency;

(4) the list of emergency coordinators changes; or

(5) the list of emergency equipment changes.

#### **§334.505. Emergency Procedures.**

(a) At all times, there shall be at least one employee either on the facility premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures. This emergency coordinator shall be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person shall have the authority to commit the resources needed to carry out the contingency plan.

(b) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or his designee when the emergency coordinator is on call) shall immediately:



(1) activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(2) notify appropriate state or local agencies with designed response roles if their help is needed.

(c) Whenever there is a release, fire, or explosion, the emergency coordinator shall immediately identify the character, exact source, amount, and areal extent of any released materials. The emergency coordinator may do this by observation or review of facility records or affidavits, and, if necessary, by chemical analysis.

(d) Concurrently, the emergency coordinator shall assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment shall consider both direct and indirect effects of the release, fire, or explosion (e.g., the effects of any toxic, irritating, or asphyxiating gases that re-generated, or the effects of any surface water run-off from water or chemical agents used to control fire and heat-induced explosions).

(e) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health or the environment outside the facility, the emergency coordinator shall report his findings as follows:

(1) if the emergency coordinator's assessment indicates that evacuation of local areas may be advisable, the emergency coordinator shall immediately notify appropriate local authorities. The emergency coordinator shall be available to help appropriate officials decide whether local areas should be evacuated; and

(2) the emergency coordinator shall immediately notify either the government official designated as the on-scene coordinator for that geographical area, the Texas Emergency Response Center at (512) 463-7727, or the National Response Center (using their 24-hour toll free number (800) 424-8802). The report shall include:

(A) name and telephone number of reporter;

(B) name and address of facility;

(C) time and type of incident (e.g., release, fire);

(D) name and quantity of material(s) involved, to the extent known; and

(E) the possible hazards to human health or the environment outside the facility.

(f) During an emergency, the emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other petroleum-substance waste at the facility. These measures shall include, where applicable, stopping processes and operations, collecting and containing released waste, and removing or isolating containers.

(g) If the facility stops operations in response to a fire, explosion, or release, the emergency coordinator shall monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(h) Immediately after an emergency, the emergency coordinator shall provide for treating, storing, and/or disposing of recovered water, contaminated soil and surface water, and any other material that results from a release, fire or explosion at the facility.

(i) The emergency coordinator shall ensure that, in the affected area(s) of the facility, all emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(j) The facility owner or operator shall notify the executive director and appropriate State and local authorities that the facility is in compliance with subsection (h) of this section before operations are resumed in the affected areas(s) of the facility.

(k) The facility owner or operator shall note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, the facility owner or operator shall submit a written report on the incident to the executive director. The report shall include:

(1) name, address, and telephone number of the facility owner or operator;

(2) name, address, and telephone number of the facility;

(3) the facility's registration number;

(4) date, time, and type of incident (e.g. fire, explosion);

(5) name and quantity of material(s) involved;

(6) the extent of injuries, if any;

(7) an assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(8) estimated quantity and disposition of recovered material that resulted from the incident.

*§334.506. Closure Requirements Applicable to Class A and Class B Facilities.*

(a) Except as provided in this subsection, the facility owner or operator shall submit his closure plan to the executive director for approval with the application for registration.

(b) In the closure plan the facility owner or operator shall address the following objectives and indicate how they will be achieved:

(1) removal and decontamination of all structures, equipment, or improvements which will no longer be utilized at the facility;

(2) removal and proper disposal or treatment and reuse of all petroleum-substance wastes from the facility; and

(3) removal or treatment of any petroleum-substance waste and petroleum-substance waste constituents which exist above the established cleanup levels that have been released from the facility into the soil, groundwater, or surface water.

(c) During the closure period the facility owner or operator of a petroleum-substance treatment facility shall:

(1) continue the contaminant assessment or corrective action at the facility as directed by the executive director;

(2) maintain the run-on and run-off control systems required under §334.500 of this title (relating to Design and Operating Requirements of Stockpiles and Land Surface Treatment Units);

(3) control wind dispersal of particular matter which may be subject to wind dispersal.

(d) When closure is completed the facility owner or operator shall submit to the executive director for approval certification both by the facility owner or operator and by an independent qualified hydrogeologist, geologist, or an independent registered professional engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

(e) The facility owner or operator shall prepare a written estimate, in current dollars, of the cost of closing the facility in accordance with the closure plan as specified in §334.507 of this title (relating to General Requirements for Financial Assurance). The closure cost estimate shall equal the cost of closing at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure

plan. The closure cost estimate shall be based on the costs to the facility owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary for the facility owner or operator. Notwithstanding other closure costs, such estimate shall also include the costs associated with third party removal, shipment off-site, and treatment or disposal off-site of the following wastes to an authorized storage, treatment, or disposal facility:

- (1) maximum inventory of wastes in storage and/or treatment units;
- (2) any contaminated soils, groundwater, or surface water generated as a result of releases at the site;
- (3) wastes generated as a result of closure activities;
- (4) contaminated stormwater or leachate.

(f) The closure cost estimate may not incorporate any salvage value that may be realized by the sale of petroleum-substance wastes, facility structures or equipment, land, or other facility assets at the time of partial or final closures. The facility owner or operator may not incorporate a zero cost for petroleum-substance waste that might have economic value.

(g) The facility owner or operator shall adjust the closure cost estimate for inflation within 30 days after each anniversary of the date on which the first closure cost estimate was prepared. The adjustment shall be made as specified in paragraphs (1) and (2) of this subsection, using an inflation factor derived from the most recent Implicit Price Deflator for Gross National Product published by the United States Department of Commerce in its *Survey of Current Business*. The inflation factor is the result of dividing the latest published annual Deflator by the Deflator for the previous year.

(1) The first adjustment is made by multiplying the closure cost estimate by the inflation factor. The result is the adjusted closure cost estimate.

(2) Subsequent adjustments are made by multiplying the latest adjusted closure cost estimate by the latest inflation factor.

(h) The facility owner or operator shall revise the closure cost estimate whenever a change in the closure plan increases the cost of closure. The revised closure cost estimate shall be adjusted for inflation as specified in this subsection.

(i) The facility owner or operator shall keep the following at the facility during the operating life of the facility: the latest closure cost estimate prepared in accordance with subsections (e) and (f) of this section and, when this estimate has been

adjusted in accordance with subsection (g) of this section, the latest adjusted closure cost estimate.

**§334.507. General Requirements for Financial Assurance.** An owner or operator of a Class A or B petroleum-substance waste storage or treatment facility shall establish financial assurance for the closure of each Class A or B facility.

(1) The financial assurance shall be in the amount specified in the cost estimate for closure pursuant to §334.506 of this title (relating to Closure Requirements Applicable to Class A and Class B Facilities).

(2) The financial assurance shall consist of one or more of the mechanisms pursuant to §334.508 of this title (relating to Financial Assurance Mechanisms).

(3) An owner or operator of an existing Class A or Class B facility shall submit documentation of the effective financial assurance within 60 days of the effective date of this subchapter. An owner or operator of a new Class A or Class B facility shall submit documentation of financial assurance with the application for registration pursuant to §334.484 of this title (relating to Registration Required for Petroleum-Substance Waste Storage or Treatment Facilities).

(4) All mechanisms for financial assurance shall be prepared on forms, or utilize wording, approved by the executive director.

(5) Whenever the current closure cost estimate changes, the owner or operator shall compare the new estimate with the amount in the financial assurance mechanism. If the value of the mechanism is less than the amount of the new estimate, the owner or operator, within 60 days after the change in the cost estimate, shall either increase the amount in the mechanism so that its value after the increase at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in this section to cover the difference. The owner or operator shall submit evidence of such increase to the executive director. Whenever the current cost estimate decreases, the value of the mechanism may be reduced to the amount of the current closure estimate following written approval by the executive director.

(6) If the value of the financial assurance mechanism is greater than the total amount of the current closure cost estimate, or if an owner or operator substitutes another financial assurance mechanism as specified in this section for all or part of the initial mechanism, the owner or operator may submit a written request to the executive director to decrease the amount of the

mechanism to the current closure cost estimate. The owner or operator shall obtain written approval from the executive director for the decrease.

(7) An owner or operator who utilizes a surety bond guaranteeing payment into a closure trust fund, a surety bond guaranteeing performance of a closure, or a closure letter of credit, shall also establish a standby trust fund. Under the terms of the mechanism, all payments made thereunder will be deposited by the surety directly into the standby trust fund in accordance with instructions from the executive director. This standby trust fund shall meet the wording specified on forms approved by the executive director except that:

(A) an originally signed duplicate of the trust agreement shall be submitted to the executive director with the surety bond; and

(B) until the standby trust fund is funded pursuant to the requirements of this section, the following are not required by these regulations:

(i) payments into the trust fund as specified in this section;

(ii) annual valuations as required by the trust agreement; and

(iii) notices of nonpayment as required by the trust agreement.

(8) The executive director will give written consent to termination of the financial assurance mechanism when:

(A) an owner or operator substitutes and receives approval from the executive director for alternate financial assurance as specified in this section; or

(B) the executive director releases the owner or operator from the requirements of this section in accordance with §334.507(8) of this title (relating to General Requirements for Financial Assurance).

(9) Following a determination that the owner or operator has failed to perform final closure in accordance with the closure plan and other regulatory requirements when required to do so, the executive director shall utilize the mechanism to complete the site closure.

(10) Within 60 days after receiving certifications from the owner or operator and an independent qualified hydrogeologist, geologist, or independent registered professional engineer, that closure has been accomplished in accordance with the closure plan, the executive director will notify the owner or operator in writing

that he is no longer required by this section to maintain financial assurance for closure of the facility, unless the executive director has reason to believe that closure has not been in accordance with the closure plan.

**§334.508. Mechanisms for Financial Assurance.** A facility owner or operator shall utilize one or more of the following mechanisms for financial assurance.

(1) Closure trust fund. For the use of a closure trust fund, the following items apply in addition to the requirements pursuant to §334.507 of this title (relating to General Requirements for Financial Assurance).

(A) The trustee of the fund shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(B) After beginning final closure, an owner or operator or any other person authorized to perform closure may request reimbursement for closure expenditures by submitting itemized bills to the executive director. Within 60 days after receiving bills for closure activities, the executive director will determine whether the closure expenditures are in accordance with the closure plan or otherwise justified, and if so, will instruct the trustee to make reimbursement in such amounts as the executive director specifies in writing. If the executive director has reason to believe that the cost of closure will be significantly greater than the value of the trust fund, the executive director may withhold reimbursement of such amounts as deemed prudent until it is determined, in accordance with §334.507 of this title (relating to General Requirements for Financial Assurance), that the owner or operator is no longer required to maintain financial assurance for closure.

(2) Surety bond guaranteeing payment into a closure trust fund. For the use of a surety bond guaranteeing payment into a closure fund, the following items apply in addition to the requirements pursuant to §334.507 of this title (relating to General Requirements for Financial Assurance).

(A) The bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the United States Department of Treasury.

(B) The bond shall guarantee that the owner or operator will:

(i) fund the standby trust fund in an amount equal to the penal sum of the bond before beginning closure of the facility; or

(ii) fund the standby trust fund in an amount equal to the penal sum within 15 days after an order to begin closure is issued by the executive director or a United States district court or other court of competent jurisdiction; or

(iii) within 90 days after receipt by both the owner or operator and the executive director of a notice of cancellation of the bond from the surety, provide alternate financial assurance as specified in this section, and obtain the executive director's written approval of the assurance provided.

(C) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(D) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the executive director. Cancellation may not occur, however, during 120 days beginning on the date of the receipt of the notice of cancellation by both owner or operator and the executive director as evidenced by the returned receipts.

(E) The owner or operator may cancel the bond if the executive director has given prior written consent based on his receipt of evidence of alternate financial assurance as specified in this section.

(3) Surety bond guaranteeing performance of closure. For the use of a surety bond guaranteeing performance of closure, the following items apply in addition to the requirements pursuant to §334.507 (relating to General Requirements for Financial Assurance).

(A) The bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the United States Department of Treasury.

(B) The bond shall guarantee that the owner or operator will:

(i) perform closure in accordance with the closure plan and other requirements of the registration for the facility whenever required to do so; or

(ii) within 90 days after receipt by both the owner or operator and the executive director of a notice of cancellation of the bond from the surety, provide alternate financial assurance as specified in this section, and obtain the executive director's written approval of the assurance provided;

(iii) become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

Following a determination by the executive director that the owner or operator has failed to perform closure in accordance with the closure plan and other registration requirements when required to do so, under terms of the bond the surety will perform closure as guaranteed by the bond or will deposit the amount of the penal sum into the standby trust fund;

(iv) may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the executive director. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the executive director, as evidenced by the return receipts;

(v) will not be liable for deficiencies in the performance of closure by the owner or operator after the executive director releases the owner or operator from the requirements of this section in accordance with §334.507(h) of this title (relating to General Requirements for Financial Assurance).

(4) Closure letter of credit. For the use of a Closure letter of credit, the following items apply in addition to the requirements pursuant to §334.507 of this title (relating to General Requirements for Financial Assurance).

(A) The issuing institution shall be an entity which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.

(B) The letter of credit shall be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: the TWC facility identification number, name, and address of the facility, and the amount of funds assured for closure of the facility by the letter of credit.

(C) The letter of credit shall be irrevocable and issued for a period of at least one year. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the executive director by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the executive director have received the notice, as evidenced by the return receipts.

(D) If the owner or operator does not establish alternate financial assurance as specified in this section and obtain written approval of such alternate assurance from the executive director within 90 days after receipt by both the owner or operator and the executive director of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the executive director will draw on the letter of credit. The executive director may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension, the executive director will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this section and obtain written approval of such assurance from the executive director.

(5) Closure insurance. For the use of closure insurance, the following items apply in addition to the requirements pursuant to §334.507 of this title (relating to General Requirements for Financial Assurance).

(A) At a minimum, the insurer shall be chartered and licensed in at least one state and authorized to engage in the business of insurance.

(B) The closure insurance policy shall be issued for a face amount at least equal to the current closure estimate, except as provided in §334.508(g) of this section. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(C) The closure insurance policy shall guarantee that funds will be available whenever final closure occurs. The policy shall also guarantee that once closure begins, the issuer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the executive director, to such party or parties as the executive director specifies.

(D) After beginning closure, an owner or operator or any other person authorized to perform closure may request reimbursement for closure expenditures by submitting itemized bills to the executive director. Within 60 days after receiving bills for closure activities, the executive director will determine whether the closure expenditures are in accordance with the closure plan or otherwise justified, and if so, he will instruct the insurer to make reimbursement in such amounts as the executive director

specifies in writing. If the executive director has reason to believe that the cost of closure will be significantly greater than the face amount of the policy, he may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with §334.507 of this title (relating to General Requirements for Financial Assurance), that the owner or operator is no longer required to maintain financial assurance for closure of the facility.

(E) The owner or operator shall maintain the policy in full force and effect until the executive director consents to termination of the policy by the owner or operator as specified in §334.507(f) of this title (relating to General Requirements for Financial Assurance). Failure to pay the premium, without substitution of alternate financial assurance as specified in this section, will constitute a significant violation of these regulations, warranting such remedy as the executive director deems necessary. Such violation will be deemed to begin upon receipt by the executive director of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration.

(F) The policy shall provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the executive director. Cancellation, termination, or failure to renew may not occur, however, during 120 days beginning with date of receipt of the notice by both the executive director and the owner or operator, as evidenced by the return of receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

(i) the executive director deems the facility abandoned; or

(ii) the registration is terminated or revoked or a new registration is denied; or

(iii) closure is ordered by the executive director or a United States district court or other court of competent jurisdiction; or

(iv) the owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code; or

(v) the premium due is paid.

(6) Financial test and corporate guarantee for closure. For the use of a financial test and corporate guarantee for closure, the following items apply in addition to the requirements pursuant to §334.507 of this title.

(A) To pass this test the owner or operator shall meet the either of the following criteria:

(i) the owner or operator shall have:

(I) two of the following three ratios. A ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

(II) net working capital and tangible net worth each at least six times the sum of the current closure cost estimate and liability coverage requirements for petroleum-substance waste facilities and any other financial assurance obligations under other EPA or state environmental regulations assured by a financial test; and

(III) tangible net worth of at least \$10 million; and

(IV) assets in the United States amounting to at least 90% of the owner's or operator's total assets or at least six times the sum of the current closure cost estimate and liability coverage requirements for petroleum-substance waste facilities and any other financial assurance obligations under other EPA or state environmental regulations assured by a financial test;

(ii) the owner or operator shall have:

(I) a current rating for his most recent bond issuance of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

(II) tangible net worth at least six times the sum of the current closure cost estimate and liability coverage requirements for petroleum-substance waste facilities and any other financial assurance obligations under other EPA or state environmental regulations assured by a financial test; and

(III) tangible net worth of at least \$10 million; and

(IV) assets located in the United States amounting to at least 90 percent of the owner's or operator's total assets or at least six times the sum of the current closure cost estimates and liability coverage requirements for petroleum-substance waste facilities and any other financial assurance obligations under other EPA or state environmental regulations assured by a financial test.

(B) To demonstrate that he meets this test, the owner or operator shall submit the following items to the executive director:

(i) a letter signed by the owner's or operator's chief financial officer and worded as specified in forms approved by the executive director; and

(ii) a copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(iii) special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(I) he has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(II) in connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(C) After the initial submission of items specified in subparagraph (B) of this section, the owner or operator shall send updated information to the executive director within 90 days after the close of each succeeding fiscal year. This information shall consist of all items specified in subparagraph (B) of this section.

(D) If the owner or operator no longer meets the requirements of paragraph (2) of this section, he shall send notice to the executive director of intent to establish alternate financial assurance as specified in this section. The notice shall be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the require-

ments. The owner or operator shall provide the alternate financial assurance within 120 days after the end of such fiscal year.

(E) The executive director may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subparagraph (B) of this section, require reports of financial condition at any time from the owner or operator in addition to those specified in subparagraph (B) of this section. If the executive director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subparagraph (B) of this section, the owner or operator shall provide alternate financial assurance as specified in this section within 30 days after notification of such a finding.

(F) The executive director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements. An adverse opinion or disclaimer of opinion will be cause for disallowance. The executive director will evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in this section within 30 days after notification of the disallowance.

(G) An owner or operator may meet the requirements of this section by obtaining a written guarantee, hereafter referred to as "corporate guarantee." The guarantee shall be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantee shall meet the requirements for owners or operators in paragraphs (6)(A)-(E) of this section and shall comply with the terms of the corporate guarantee. The wording of the corporate guarantee shall be on forms approved by the executive director. The corporate guarantee shall accompany the items sent to the executive director as specified in paragraph (6)(B) of this section, and if the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, the letter shall describe this "substantial business relationship" and the value received in consideration of this corporate guarantee. The terms of the corporate guarantee shall provide that:

(i) if the owner or operator fails to perform closure of the facility

covered by the corporate guarantee in accordance with the closure plan and other registration requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in the name of the owner or operator;

(ii) the corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and the executive director, as evidenced by the return receipts. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the executive director, as evidenced by the return receipts;

(iii) if the owner or operator fails to provide alternate financial assurance as specified in this section and obtain the written approval of such alternate assurance from the executive director within 90 days after receipt by both the owner or operator and the executive director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the owner or operator.

(7) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per facility. These mechanisms are limited to trust funds, surety bonds, letters of credit, and insurance. The mechanisms shall be as specified in paragraphs (1), (2), (4), and (5), of this section, except that it is the combination of mechanisms, rather than the single mechanism, which shall provide financial assurance for an amount at least equal to the adjusted closure cost. If an owner or operator uses a trust fund in combination with a surety bond or letter of credit, the owner or operator may use that trust fund as the standby trust fund for the other mechanisms. A single standby trust may be established for two or more mechanisms. The executive director may invoke any or all of the mechanisms to provide for closure of the facility.

(8) Use of a financial mechanism for multiple facilities. An owner or operator may use a financial assurance mechanism specified in this section to meet the requirements of this section for more than one facility. Evidence of financial assurance submitted to the executive director shall include a list showing, for each facility, the TWC Identification Number, name, address, and the amount of funds for closure assured by the mechanism. The amount of funds available through the mechanism shall be no less than the sum of funds that would be available if a separate mechanism had been established and maintained for each facility. In directing funds available through the mechanism for closure of any

of the facilities covered by the mechanism, the executive director may direct only the amount of funds designated for that facility, unless the owner or operator agrees to use additional funds available under the mechanism.

**§334.509. Liability Requirements for Class A and B Facilities.**

(a) An owner or operator of a Class A or B petroleum-substance waste facility shall establish financial assurance for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator shall have and maintain liability coverage for sudden accidental occurrences in the amount of at least \$1 million per occurrence with an annual aggregate of at least \$2 million, exclusive of legal defense costs. For new petroleum-substance waste storage or treatment facilities, documentation of the required financial security shall be submitted with the application for registration. The owners or operators of existing authorized facilities shall obtain and submit to the executive director financial assurance within 60 days of the effective date of these rules. The owner or operator shall choose from the options as specified in subsections (d)(1)-(6) of this section.

(b) An owner or operator shall notify the executive director in writing within 30 days:

(1) whenever a claim for bodily injury or property damages caused by the operation of a petroleum-substance waste storage or treatment facility is made against the owner or operator or an instrument providing financial assurance for liability coverage under this section; and

(2) whenever the amount of financial assurance for liability coverage under this section provided by a financial instrument authorized by paragraphs (d)(1)-(6) of this section is reduced.

(c) Within 60 days after receiving certifications from the owner or operator and an independent qualified hydrogeologist, geologist, or an independent registered professional engineer, that final closure has been completed in accordance with the approved closure plan, the executive director will notify the owner or operator in writing that he is no longer required by this section to maintain liability coverage for that facility, unless the executive director has reason to believe that closure has not been in accordance with the approved closure plan.

(d) Acceptable mechanisms for liability coverage.

(1) Trust fund for liability coverage.

(A) An owner or operator may satisfy the requirements of this section by establishing a trust fund which conforms to the requirements of this paragraph and submitting an originally signed duplicate of the trust agreement to the executive director.

(B) The trustee shall be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(C) The trust fund for liability coverage shall be funded for the full amount of the liability coverage to be provided by the trust fund before it may be relied upon to satisfy the requirements of this section. If at any time after the trust fund is created the amount of funds in the trust fund is reduced below the full amount of the liability coverage to be provided, the owner or operator, by the anniversary date of the establishment of the fund, shall either add sufficient funds to the trust fund to cause its value to equal the full amount of liability coverage to be provided, or obtain other financial assurance as specified in this section to cover the difference. For purposes of this paragraph, "the full amount of liability coverage to be provided" means the amount of coverage for sudden occurrences required to be provided less the amount of liability coverage being provided by other financial assurance mechanisms being used to demonstrate financial assurance by the owner or operator.

(D) The wording of the trust fund shall be on forms approved by the executive director.

(2) Surety bond for liability coverage.

(A) An owner or operator may satisfy the requirements of this section by establishing a surety bond which conforms to the requirements of this paragraph and submitting a copy of the bond to the executive director.

(B) The surety company issuing the bond shall be among those listed as acceptable sureties on Federal bonds in the most recent Circular 570 of the United States Department of the Treasury.

(3) Letter of credit for liability coverage.

(A) An owner or operator may satisfy the requirements of this section by establishing an irrevocable standby letter

of credit which conforms to the requirements of this paragraph and submitting a copy of the letter of credit to the executive director.

(B) The financial institution issuing the letter of credit shall be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a federal or state agency.

(C) The wording of the letter of credit shall be on forms approved by the executive director.

(4) Financial test for liability coverage.

(A) An owner or operator may satisfy the requirements of this section by demonstrating that he passes a financial test as specified in this paragraph. To meet this test the owner or operator shall meet the criteria of clause (i) or (ii) of this subparagraph:

(i) the owner or operator shall have:

(I) two of the following three ratios: A ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

(II) net working capital and tangible net worth each at least six times the sum of the current closure cost estimate and liability coverage requirements for petroleum-substance waste facilities and any other financial assurance obligations under other EPA or state environmental regulations assured by a financial test; and

(III) tangible net worth of at least \$10 million; and

(IV) assets in the United States amounting to at least 90% of his total assets or at least six times the sum of the current closure cost estimate and liability coverage requirements for petroleum-substance waste facilities and any other financial assurance obligations under other EPA or state environmental regulations assured by a financial test;

(ii) the owner or operator shall have:

(I) a current rating for the owner's or operator's most recent bond issuance of AAA, AA, A, or BBB as issued



by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and

(II) tangible net worth at least six times the sum of the current closure cost estimate and liability coverage requirements for petroleum-substance waste facilities and any other financial assurance obligations under other EPA or state environmental regulations assured by a financial test; and

(III) tangible net worth of at least \$10 million; and

(IV) assets located in the United States amounting to at least 90% of the owner's or operator's total assets or at least six times the sum of the current closure cost estimates and liability coverage requirements for petroleum-substance waste facilities and any other financial assurance obligations under other EPA or state environmental regulations assured by a financial test.

(B) To demonstrate that the owner or operator meets this test, the owner or operator shall submit the following items to the executive director:

(i) a letter signed by the owner's or operator's chief financial officer and worded as specified in forms approved by the executive director; and

(ii) a copy of the independent certified public accountant's report on examination of the owner's or operator's financial statements for the latest completed fiscal year; and

(iii) a special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(I) he has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(II) in connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(C) After the initial submission of items specified in subparagraph (B) of this paragraph, the owner or operator shall send updated information to the executive director within 90 days after the close of each succeeding fiscal year. This information shall consist of all three items specified in subparagraph (B) of this paragraph.

(D) If the owner or operator no longer meets the requirements of subparagraph (A) of this paragraph, he shall send notice to the executive director of intent to establish alternate financial assurance as specified in this section. The notice shall be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator shall provide the alternate financial assurance within 120 days after the end of such fiscal year.

(E) The executive director may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subparagraph (A) of this paragraph, require reports of financial condition at any time from the owner or operator in addition to those specified in subparagraph (B) of this paragraph. If the executive director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of subparagraph (A) of this paragraph, the owner or operator shall provide alternate financial assurance as specified in this section within 30 days after notification of such a finding.

(F) The executive director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements. An adverse opinion or disclaimer of opinion will be cause for disallowance. The executive director will evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in this section within 30 days after notification of the disallowance.

(G) The owner or operator is no longer required to submit the items specified in subparagraph (B) of this paragraph when:

(i) an owner or operator substitutes alternate financial assurance as specified in this section; or

(ii) the executive director releases the owner or operator from the requirements of this section in accordance with §334.509(c) of this title (relating to Liability Requirements for Class A and Class B Facilities).

(5) Guarantee for liability coverage.

(A) An owner or operator may meet the requirements of this section

by obtaining a written guarantee, hereafter referred to as "corporate guarantee." The guarantor shall be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship" with the owner or operator. The guarantee shall meet the requirements for owners or operators in paragraph (4) (A)-(G) of this section and shall comply with the terms of the corporate guarantee.

(B) The wording of the corporate guarantee shall be on forms approved by the executive director. The corporate guarantee shall accompany the items sent to the executive director as specified in paragraph (4)(B) of this section. If the guarantor's parent corporation is also the parent corporation of the owner or operator, this letter shall describe the value received in consideration of the guarantee. If the guarantor is a firm with a "substantial business relationship" with the owner or operator, this letter shall describe this "substantial business relationship" and the value received in consideration of this corporate guarantee. The terms of the corporate guarantee shall provide the following.

(i) If the owner or operator fails to satisfy a judgement based on a determination of liability for bodily injury or property damage to third parties caused by sudden or nonsudden accidental occurrences (or both as the case may be), arising from the operation of facilities covered by this corporate guarantee, or fails to pay an amount agreed to in settlement of claims arising from or alleged to arise from such injury or damage, the guarantor will do so up to the limits of coverage.

(ii) If the owner or operator fails to provide alternate financial assurance as specified in this section and obtain the written approval of such alternate assurance from the executive director within 90 days after receipt by both the owner or operator and the executive director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the owner or operator.

(6) Insurance for liability coverage.

(A) An owner or operator may satisfy the requirements of this section by obtaining insurance which conforms to the requirements of this paragraph and submitting a copy of the certificate or endorsement to the executive director.

(B) Each policy shall be amended by attachment of the Petroleum-Substance Waste Facility Liability Endorse-

ment or evidenced by a Certificate of Liability Insurance. The owner or operator shall submit a signed duplicate original of the endorsement or certificate of insurance to the executive director. If requested by the executive director, the owner or operator shall provide a signed duplicate original of the insurance policy.

(C) The wording of the endorsement and the certificate of insurance shall be on forms approved by the executive director.

(D) Each insurance policy shall be issued by an insurer that at a minimum, shall be chartered and licensed in at least one state and authorized to engage in the business of insurance.

(7) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism. The required liability coverage may be demonstrated through the use of combinations of insurance, financial test, guarantee, letter of credit, surety bond, and trust fund, except that the owner or operator may not combine a financial test covering part of the liability coverage requirement with a guarantee unless the financial statement of the owner or operator is not consolidated with the financial statement of the guarantor. The amounts of coverage demonstrated shall total at least the minimum amount required by this section. If the owner or operator demonstrates the required coverage through the use of a combination of financial assurances under this paragraph, the owner or operator shall specify at least one such assurance as "primary" coverage and shall specify other assurance as "excess".

*§334.510. Incapacity of Owners or Operators, Guarantors, or Financial Institutions.*

(a) An owner or operator shall notify the executive director by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code, naming the owner or operator as debtor, within 10 business days after the commencement of the proceeding. A guarantor of a corporate guarantee as specified in §334.507(f) and §334.508(d)(5) of this title (relating to General Requirements for Financial Assurance and Liability Requirements for Class A and Class B Facilities) shall make such a notification if he is named as debtor, as required under the terms of the guarantee.

(b) An owner or operator who fulfills the requirements of §334.507 or §334.508 of this title (relating to General Requirements for Financial Assurance; Mechanisms for Financial Assurance) by obtaining a letter of credit, surety bond, or

insurance policy will be deemed to be without the required financial assurance or liability coverage in the event of bankruptcy, insolvency, or a suspension or revocation of the license or charter of the issuing institution. The owner or operator shall establish other financial assurance or liability coverage within 60 days after such an event.

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 20, 1993.

TRD-9317359

Mary Ruth Holder  
Legal Division  
Texas Water Commission

Earliest possible date of adoption: March 1, 1993

For further information, please call: (512) 463-8069

◆ ◆ ◆  
**Title 34. Public Finance**  
**Part I. Comptroller of**  
**Public Accounts**  
**Chapter 3. Tax Administration**  
**Subchapter V. Franchise Tax**  
• 34 TAC §3.572

The Comptroller of Public Accounts proposes an amendment to §3.572, concerning 1992 transition. The subsection concerning mergers, reorganizations, or transfers of assets occurring after August 13, 1991, and on or before December 31, 1991, has been deleted.

Tom Plaut, chief revenue estimator, has determined that for the first five-year period the section is in effect there will be no significant revenue impact on the state or local government.

Dr. Plaut also has determined that for each year of the first five years the section is in effect there would be no significant public cost or benefit. This section is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed section.

Comments on the proposal may be submitted to Charles C. Johnstone, Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

*§3.572. 1992 Transition.*

(a) Definition. "Beginning date" means:

(1) for a Texas corporation, the date the charter is effective [date]; and

(2) for a foreign corporation, the earlier of:

(A) the date the certificate of authority is effective [date]; or

(B) (No change.)

[(b) Mergers, reorganizations, and transfers of assets.

[(1) A corporation, including a limited liability company and a state or federal savings and loan association as provided in the Tax Code, §171.001(a)(2), which is the surviving corporation in any merger, reorganization or transfer of assets occurring after August 13, 1991, and on or before December 31, 1991, will be subject to tax on the net taxable earned surplus of the nonsurviving corporation which is earned from the day after the date upon which the nonsurviving corporation's previous franchise tax report was based through the date of the merger, reorganization, or transfer of assets from the nonsurviving corporation to the surviving corporation if the principal purpose of the merger, reorganization, or transfer of assets was the evasion or avoidance of franchise tax.

[(A) The provisions of this paragraph will not apply to a corporation which merged, reorganized, or transferred assets pursuant to a binding contract entered into prior to August 13, 1991. For these purposes, a contract is binding if it is in writing, fully executed, and legally enforceable.

[(B) If the beginning date of the nonsurviving corporation is after October 3, 1990, and before December 31, 1991, the tax will be based on the net taxable earned surplus earned by the nonsurviving corporation from its beginning date through the date of the merger, reorganization, or transfer of assets to the surviving corporation.

[(2) The phrase "evasion or avoidance" is not limited to cases involving criminal penalties, or civil penalties for fraud. Further, if the purpose to evade or avoid franchise tax exceeds in importance any other purpose, it will be considered to be the principal purpose. The determination of the principal purpose of a merger, reorganization, or transfer of assets will be based upon the facts and circumstances of the entire transaction, including any series of steps in the course of conduct of the surviving and nonsurviving corporations which are interrelated. Transactions which are determined to have been undertaken for the principal purpose of evasion or avoidance of franchise tax will be disregarded as shams.



[(3) Facts and circumstances which will, in the absence of additional evidence to the contrary, indicate that the principal purpose of the merger, reorganization, or transfer of assets was the evasion or avoidance of franchise tax will include, but not be limited to, the following:

[(A) mere change in identity, form or place of organization of the nonsurviving corporation, however effected; or

[(B) continuation by the surviving corporation immediately following the merger, reorganization, or transfer of assets of:

[(i) substantially the same trade or business in this state as conducted by the nonsurviving corporation immediately prior to the merger, reorganization, or transfer of assets; and

[(ii) substantially the same ownership of the stock or assets of the nonsurviving corporation as that owned immediately prior to the merger, reorganization or transfer of assets.

[(4) In determining whether a corporation has continued to carry on a trade or business substantially the same as that conducted before the merger, reorganization, or transfer of assets, all the facts and circumstances of the transactions occurring between the nonsurviving corporation and the surviving corporation and any affiliated entities of either involved in the transactions will be taken into account. Among the relevant factors to be taken into account will be changes in the corporation's employees, plant, equipment, product, location, customers, and any other items that are significant in determining whether there has been a continuation of the trade or business of the nonsurviving corporation.

[(5) In determining whether a continuation of ownership has occurred, all the facts and circumstances of the transactions occurring between the shareholders of the nonsurviving corporation and the surviving corporation or its shareholders and any affiliated entities or the shareholders of affiliated entities involved in the transactions will be taken into account. A continuation of ownership will be deemed to have occurred only if immediately following the merger, reorganization, or transfer of assets, the surviving corporation owns, directly or indirectly, 80% or more in value of the stock or assets previously held by the nonsurviving corporation immediately prior to the merger, reorganization, or transfer of assets. The constructive ownership rules of the Internal Revenue Code of 1986, 318, as amended, will be applied in determining whether stock is owned directly or indi-

rectly by a shareholder, except that the references to 50% in the Internal Revenue Code, §318(a)(2)(C) and (3)(C), will be read as 80%.

[(6) The tax due from the surviving corporation in a merger, reorganization, or transfer of assets under paragraph (1) of this subsection is due May 15, 1992, on a form specified by the comptroller. If the amount of tax due is less than \$100, no tax will be due. The tax will be due from the surviving corporation as though no merger, reorganization, or transfer of assets had occurred. For example, if an existing regular annual reporting corporation with a December 31 year end was merged into a new corporation on December 1, 1991, the new corporation would be required to file a regular franchise tax report on May 15, 1992, which would reflect all taxable capital of the surviving corporation as of December 31, 1991, and the taxable earned surplus of the nonsurviving corporation from January 1, 1991, through December 1, 1991, combined with the taxable earned surplus of the surviving corporation from December 1, 1991, through December 31, 1991.

[(7) The surviving corporation of a merger, reorganization, or transfer of assets which was not undertaken for the principal purpose of evasion or avoidance of franchise tax may file a disclosure statement on or before May 15, 1992, on a form specified by the comptroller. A surviving corporation which files a disclosure statement no later than May 15, 1992, will not be required to file a regular annual report on May 15, 1992. No penalties will accrue on any franchise tax liability finally determined if a disclosure statement is timely filed under this paragraph. On or before July 1, 1992, the comptroller will notify each surviving corporation which has filed a disclosure statement of whether the transaction has been determined to have been undertaken for the principal purpose of evasion or avoidance of franchise tax.

[(A) If the early determination of the comptroller is that the principal purpose of the transaction was not the evasion or avoidance of franchise tax, the nonsurviving corporation will not be liable for franchise tax for the franchise tax year 1992 and, unless a redetermination based on fraud or misrepresentation of fact is made by the comptroller, the surviving corporation will not be liable for any franchise tax liability based on the earned surplus of the nonsurviving corporation other than as a transferee.

[(B) If the early determination of the comptroller is that the principal purpose of the transaction was the evasion or avoidance of tax, by August 1, 1992, the surviving corporation must either:

[(i) file the franchise tax annual report in the manner described in paragraph (6) of this subsection; or

[(ii) submit to the comptroller such additional information as it deems necessary or appropriate concerning the facts and circumstances of the transactions between the surviving corporation and the nonsurviving corporation and all affiliated entities. Penalties will be assessed on all franchise tax due under subparagraph (B) of this paragraph after August 1, 1992, unless additional information is submitted by August 1, 1992.

[(C) All early determination notices issued by the comptroller will be subject to change upon audit in the event of fraud or misrepresentation of fact in the information submitted to the comptroller in the disclosure statement or any additional information submitted to the comptroller in connection with issuing the early determination.]

[(b) [(c)] Shortened privilege periods. All second and regular annual privilege periods which would have ended April 30, 1992, except for changes made by the legislature during 1991, will now end December 31, 1991.

[(c) [(d)] Tax rates.

(1) The tax rate for the regular annual privilege period beginning May 1, 1991, and ending December 31, 1991, will be \$5.25 for each \$1,000 or fraction of \$1,000 of taxable capital allocated to this state.

(2) The tax rate for corporations with a beginning date after April 30, 1990, but before October 4, 1990, will be \$5.25 for each \$1,000 or fraction of \$1,000 of taxable capital allocated to this state per year of privilege period.

(3) The [Except for a corporation which is the nonsurvivor of a merger, reorganization, or transfer of assets occurring after August 13, 1991, and before January 1, 1992, the] tax rate for corporations with a beginning date after October 3, 1990, is 0.25% per year of privilege period of net taxable capital and 4.5% of net taxable earned surplus for the entire initial report.

(4) The [In addition to the supplemental tax provided for in this rule, the] tax rate for a corporation with a beginning date after October 3, 1990, which ceases to exist before January 1, 1992, will be \$5.25 for each \$1,000 or fraction of \$1,000 of taxable capital allocated to this state per year of privilege period.

[(d) [(e)] Loss of nexus before end of privilege period. If a corporation has nexus for one day of a privilege period, it must pay for the entire privilege period.

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 20, 1993.

TRD-9317924      Martin Cherry  
Chief, General Law  
Section  
Comptroller of Public  
Accounts

Earliest possible date of adoption: March 1, 1993

For further information, please call: (512) 463-4028

## TITLE 37. PUBLIC SAFETY AND CORREC- TIONS

### Part VI. Texas Department of Criminal Justice

#### Chapter 163. Standards

##### Subchapter B. Local Depart- ments

###### • 37 TAC §163.29

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

The Texas Department of Criminal Justice-Community Justice Assistance Division (TDCJ-CJAD) proposes the repeal of §163.29, concerning community justice councils.

Section 163.29, Community Justice Councils, is being repealed and revised in its entirety. It has been resubmitted for proposed adoption under §163.23 of this chapter.

Bob Young, Director, Austin Budget Office, TDCJ Finance Administration Division, has determined that there will be no fiscal implications resulting from this proposed repeal and recodification process.

Mr. Young determined that, regarding the public benefit and cost, this repeal represents an effort to consolidate, reorganize, and clarify current sections on existing statutory programs.

Mr. Young also determined that the repeal of this section will not have any fiscal implications over those currently required in existing provisions. As a result, there should not be any additional cost imposed on state or local governments over the next five years and being the section concern only requirements placed on local governments, councils and community supervision and corrections departments, there should be no effect on small businesses. Also, it is not anticipated that any increase in economic cost to persons will occur as a result of this repeal.

Comments on the proposed action may be submitted to Nancy Bartlett, Director of Pro-

gram Audits and Operations, at 8100 Cameron Road, B-450, Austin, Texas 78753. Written comments should be submitted within 30 days after the date of the publication of this action in the *Texas Register*.

The repeal is proposed under the Code of Criminal Procedures, Article 42.13, §2(a) and §3(a), which provides the TDCJ-CJAD with the authority to establish minimum standards for programs, facilities, equipment, and other aspects of the operation of departments; establish an application process and procedures for funding community corrections facilities; establish a format for community justice plans; and to require community supervision and corrections departments to keep financial and statistical records; submit a community justice plan; and submit periodic financial audits and statistical reports to TDCJ-CJAD.

###### §163.29. Community Justice Councils.

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 18, 1993.

TRD-9317967      Jackee Cox  
General Counsel  
Texas Department of  
Criminal Justice

Proposed date of adoption: March 1, 1993

For further information, please call: (512) 463-9988

##### Subchapter C. Programs and Services

###### • 37 TAC §163.55

*(Editor's Note: The Texas Department of Criminal Justice proposes for permanent adoption the repeal section it adopts on an emergency basis in this issue. The text of the repeal section is in the Emergency Rules section of this issue.)*

The Texas Department of Criminal Justice-Community Justice Assistance Division (TDCJ-CJAD) proposes the repeal of §163.55, concerning residential services.

Section 163.55, Residential Services, is being repealed and revised in its entirety. It has been resubmitted for proposed adoption under §163.39 of this chapter.

Bob Young, Director, Austin Budget Office, TDCJ Finance Administration Division, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Young also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be an effort to consolidate, reorganize, and clarify current sections on existing statutory programs.

Mr. Young also determined that the repeal of this section will not have any fiscal implications over those currently required in existing

provisions. As a result, there should not be any additional cost imposed on state or local governments over the next five years and being the section concerns only requirements placed on local governments, councils, and community supervision and corrections departments, there should be no effect on small businesses. Also, it is not anticipated that any increase in economic costs to persons will occur as a result of this repeal.

Comments on the proposed action may be submitted to Nancy Bartlett, Director of Program Audits and Operations, at 8100 Cameron Road, B-450, Austin, Texas 78753. Written comments should be submitted within 30 days after the date of the publication of this action in the *Texas Register*.

The repeal is proposed under Vernon's Annotated Code of Criminal Procedures, Article 42.13, §2(a) and §3(a), which provides the TDCJ-CJAD with the authority to establish minimum standards for programs, facilities, equipment, and other aspects of the operation of departments; establish an application process and procedures for funding community corrections facilities; establish a format for community justice plans; and to require community supervision and corrections departments to keep financial and statistical records; submit a community justice plan; and submit periodic financial audits and statistical reports to TDCJ-CJAD.

###### §163.55. Residential Services.

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

Issued in Austin, Texas, on January 21, 1993.

TRD-9318103      Jackee Cox  
General Counsel  
Texas Department of  
Criminal Justice

Proposed date of adoption: April 13, 1993

For further information, please call: (512) 463-9988

## Chapter 325. Agency Procedures

###### • 37 TAC §§325.1-325.5, 325.7-325.11

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

The Texas Department of Criminal Justice-Community Justice Assistance Division (TDCJ-CJAD) proposes the repeal of §§325.1-325.5 and §§325.7-325.11, concerning the agency procedures of the Texas Adult Probation Commission.

The sections are being repealed as part of the recodification process required by the reorganization of the Texas Department of Criminal Justice (TDCJ) under which the

Texas Adult Probation Commission (TAPC) became the TDCJ-CJAD.

Bob Young, Director, Austin Budget Office, TDCJ Finance Administration Division, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications resulting from these proposed repeals and recodification process.

Mr. Young determined that, regarding the public benefit and cost, the repeals represent an effort to consolidate, reorganize, and clarify current sections on existing statutory programs.

Mr. Young also determined that the repeals of these sections will not have any fiscal implications over those currently required in existing provisions. As a result, there should not be any additional cost imposed on state or local governments over the next five years and being the sections concern only requirements placed on local governments, councils, and community supervision and corrections departments, there should be no effect on small businesses. Also, it is not anticipated that any increase in economic costs to persons will occur as a result of these repeals.

Comments on this proposed action may be submitted to Nancy Bartlett, Director of Pro-

gram Audits and Operations, at 8100 Cameron Road, B-450, Austin, Texas 78753. Written comments should be submitted within 30 days after the date of the publication of this action in the *Texas Register*.

The repeals are proposed under the Code of Criminal Procedures, Article 42. 13, §2(a) and §3(a), which provides the TDCJ-CJAD with the authority to establish minimum standards for programs, facilities, equipment, and other aspects of the operation of departments; establish an application process and procedures for funding community corrections facilities; establish a format for community justice plans; and to require community supervision and corrections departments to keep financial and statistical records; submit a community justice plan; and submit periodic financial audits and statistical reports to TDCJ-CJAD.

§325.1. *Texas Adult Probation Commission.*

§325.2. *Meetings.*

§325.3. *Committees.*

§325.4. *Division of Responsibilities.*

§325.5. *Delegation of Authority.*

§325.7. *Executive Director, Employees.*

§325.8. *Public Information.*

§325.9. *Complaints.*

§325.10. *Annual Reports.*

§325.11. *Intergovernmental Cooperation.*

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 22, 1993.

TRD-9318104

Jackee Cox  
General Counsel  
Texas Department of  
Criminal Justice

Proposed date of adoption: April 13, 1993

For further information, please call: (512) 463-9988

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# Adopted Sections

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

## TITLE 1. ADMINISTRATION

### Part I. Office of the Governor

#### Chapter 5. Energy Office

##### Subchapter C. Energy Conservation Design Standard

###### • 1 TAC §5.301

The Governor's Energy Office adopts an amendment to §5.301, with changes to the proposed text as published in the July 31, 1992, issue of the *Texas Register* (17 TexReg 5315).

The amendment is adopted in order to update the current design standard for new construction and major renovation projects. The change to the amendment is to include a table in the Design Standard of minimum performance ratings for gas fired absorption water chilling packages. No performance ratings for absorption equipment were included in earlier versions of the standard because industry consensus standards were in the process of being updated by the American Refrigeration Institute (ARI), the industry standards making body for air conditioning and refrigeration equipment.

The Governor's Energy Office received one response from Southern Union Gas on the proposed amendment during the public review period which ended on August 31, 1992.

Comments were received regarding an inadvertent bias for electric technologies and against gas technologies in the standard. One comment recommended a requirement to consider engine driven refrigeration systems, either in addition to variable speed (electric motor driven) compressors or as an alternative form of variable speed compression. Another comment suggested a change in efficiency measurement to COP's rather than EER's and urged the use of source BTU's rather than site BTU's to account for inefficiencies of average electrical production, transmission, and distribution systems. The Governor's Energy Office responded by soliciting comments on proposed minimum performance ratings for absorption water chilling packages from all of the known absorption chiller manufacturers, and will include this table in the next publication of the Design Standard. The revised standard will no longer require that electrically-driven variable speed compressors be considered for building cooling; instead, it will require that whatever equipment is used, minimum performance values given in the standard must be met. No

action was taken on the issue of source versus site BTU's. The issue does not apply to Section 10 of the standard since it is component based and addresses only equipment efficiency ratings. However, this issue does apply to §13, the Building Energy Cost Budget Method, where the energy cost rather than site energy use is used to determine a design's compliance with the standard. Through energy pricing, this implicitly accounts for the inefficiencies of electrical production, transmission, and distribution.

The amendment is adopted under Title 4, the Government Code, §447.004, which provides the Governor's Energy Office with the authority to adopt, publish and revise energy conservation standards for all new state buildings and major renovations.

###### §5.301. *Energy Conservation Design Standards for New State Buildings.*

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 21, 1993.

TRD-9318026

Harris E. Worcester  
Director  
Governor's Energy Office

Effective date: February 11, 1993

Proposal publication date: July 31, 1993

For further information, please call: (512) 463-1931

## TITLE 4. AGRICULTURE

### Part I. Texas Department of Agriculture

#### Chapter 11. Herbicide Regulations

###### • 4 TAC §§11.3-11.10

The Texas Department of Agriculture (the department) adopts amendments to §11.3 and new §§11.4-11.5 and 11.7-11.10. Sections 11.4, 11.7, and 11.8 are adopted with changes to the proposed text as published in the November 10, 1992, issue of the *Texas Register* (17 TexReg 7831). Sections 11.3, 11.5, 11.6, 11.9, and 11.10 are adopted without changes and will not be republished.

The amendments and new sections are adopted to clarify provisions relating to the application of regulated herbicides, licensing

and recordkeeping requirements for dealers and users of regulated herbicides, and requirements for inspection and licensing of application equipment used to apply regulated herbicides. In addition, new §11.7 provides new recordkeeping requirements for dealers, new §11.8 changes the permit fee for applying regulated herbicides, and new §11.9 adds requirements for special county provisions.

Section 11.4 is adopted with changes. The definition of dealer has been corrected to be consistent with the definition of a dealer in the Texas Agriculture Code, Chapter 75. Section 11.7 is adopted with changes. The information required to be maintained by dealers concerning distribution of regulated herbicides has been changed to be consistent with the recordkeeping requirements for dealers required to be licensed under the Texas Agriculture Code, Chapter 76. Further language has been changed to clarify that dealers are no longer required to report all sales of regulated herbicides. Section 11.8 has been adopted with changes. The government employee exemption has been moved to subsection (d) as governmental employees are generally not licensed as commercial applicators. In addition, other changes have been made to this section for the purpose of further clarifying the general requirements pertaining to applicators of regulated herbicides, to make the recordkeeping requirements for applicators consistent with the requirements of the Texas Agriculture Code, Chapter 76, to clarify equipment requirements, and to better distinguish between the general requirements for commercial applicators and those for other persons.

General comments of support for the regulations, as proposed were submitted by the Texas Farm Bureau, the Texas Vegetation Management Association, the Texas Agricultural Experiment Station, the State Alliance for Food and the Environment, Burlington Northern Railroad, Dupont Vegetation Management, and several individuals. The Texas Agricultural Aviation Association (TAAA) also submitted comments generally in support of the proposed regulations. In addition, TAAA submitted comments regarding some specific provisions.

In regard to §11.3, TAAA commented that making the distance restrictions apply to all other directions is too restrictive and will unnecessarily prohibit the use of herbicides on many acres of land in need of its use. The department disagrees that this language should be changed. The department feels that consideration of the distance to susceptible vegetation in all other directions is consistent with the intent of this chapter, which is to prevent a hazard to desirable vegetation

through drift or uncontrolled application. The department does not believe that this will restrict the use of herbicides, but will prevent the possibility of susceptible vegetation from being adversely affected in marginal situations. Further, the department feels this requirement is necessary to prevent potential adverse effects on susceptible vegetation close to treated areas.

In regard to §11.8(a)(1), TAAA requested clarification so that this section will not be interpreted to prohibit the use of a turbine powered aircraft. The department agrees and has changed the language to clarify that only the use of turbine or blower-type ground equipment to spray regulated herbicides is prohibited.

In regard to adopted §11.8(b)(3)(B), the department has made a change in language requiring reinspection after reinstallation at the request of TAAA, and to conform with statutory requirements. The subsection as adopted correctly states that reinspection after reinstallation is only required if a period of more than 30 days has lapsed.

The amendments and new sections are adopted under the Texas Agriculture Code, §74.004, which provides the department with the authority to set by rule and collect a fee for a herbicide dealers license; §75.005, which authorizes the department to adopt rules prescribing information to be requested of dealers and allows the department to request submission of such records by a licensee; §75.006, which authorizes the department to set the cost of spray permit fees and to allow exemptions from the permit requirement and payment of permit fees; §75.012, which authorizes the department to adopt rules for the application of regulated herbicides; §75.013, which authorizes the department to adopt rules prescribing the information to be kept by applicators; §75.014, which authorizes the department to require a showing of proof of financial responsibility by commercial applicators; §75.016, which authorizes the department to collect a fee for inspection and licensing of application equipment; §75.017, which authorizes the department to regulate the use of application equipment; and §75.018, which authorizes the department to consider requests for the revision of a rule, exemption from a requirement of Chapter 75, or prohibition of the spraying of a regulated herbicide in an area, and to adopt rules regarding such requests, as appropriate.

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

**Applicator**—An applier of regulated herbicides; any person applying regulated herbicides in this state by aircraft, ground, or hand spraying equipment who has been licensed or certified in accordance with the Texas Agriculture Code, Chapter 76, and regulations adopted thereunder.

**Commercial applicator**—A custom applier; an applicator of regulated herbicides licensed in accordance with the re-

quirements of the Texas Agriculture Code, §76.108 and §7.13 of this title (relating to Commercial Applicator License.)

**Commissioner**—The commissioner of agriculture of the State of Texas, or his designee.

**Dealer**—Any person who sells, wholesales, distributes, offers or exposes for sale, exchanges, barter, or gives away within or into this state any regulated herbicides in a container having a net capacity of more than 16 fluid ounces, unless such container has a capacity not to exceed one gallon, contains a substance with a concentration of regulated herbicides not exceeding 10% by volume, and bears a label with the statement "for lawn use only".

**Department**—Texas Department of Agriculture.

**Equipment**—Any type of ground, aquatic, or aerial equipment or device employing motorized, mechanical, or pressurized power and used to apply a regulated herbicide to land or to anything that may be inhabiting or growing on the land. The term does not include a pressurized hand-sized apparatus used to apply a regulated herbicide or any equipment or device for which the person applying the regulated herbicide is the source of power or energy used in making the application.

**Formulation**—The mixture of active and inert ingredients for practical use as a pesticide, such as wettable powder, granular and emulsifiable concentrate.

**Person**—Any individual, firm, partnership, association, corporation, company, joint stock association, or body politic, or any organized group of persons whether incorporated or not; including any trustee, receiver, assignee, or similar representative thereof.

**Pesticide**—A substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, including, but not limited, to fungicides, herbicides, insecticides, nematocides, rodenticides, desiccants, defoliants, or plant growth regulators.

**Regulated herbicide**—All herbicide products containing the active ingredients 2,4-dichlorophenoxyacetic acid (2,4-D), 2,4,5-trichlorophenoxyacetic acid (2,4,5-T), 2-methyl-4-chlorophenoxyacetic acid (MCPA), 2-(2,4,5-trichlorophenoxy) propionic acid (Silvex), polychlorinated benzoic acids, either alone or in mixtures, and such other substances used for weed control as the commissioner shall from time to time determine after public hearing to present a hazard to desirable vegetation through drift or other uncontrolled applications.

**Volatility**—The tendency of a substance to change from a liquid or solid to a gaseous state. It is the movement of a pesticide in a gaseous state in the air from surface water, soil, or vegetation. For example, the volatility of different types of regulated herbicides under comparable environmental conditions is as follows:

(A) sodium and ammonium salts. These are generally not considered as volatile, and are usually water-soluble. The ammonium salts are rarely found on the market while the sodium salts are marketed for use by homeowners and on asparagus;

(B) amine salts. These are generally not considered as volatile. The alkylamines include monomethylamine, dimethylamine, isopropylamine, triethylamine, and others. The alkylanolamines include diethanolamine, triethanolamine, and mixed isopropanolamines;

(C) highly volatile esters. These include methyl, ethyl, butyl, isopropyl, octylamyl, and pentyl esters containing various concentrations expressed in pounds of acid equivalent per gallon; and

(D) low-volatility esters. These contain esters that suppress volatility. Formulations include butoxyethanol, propylene glycol, tetrahydrofurfuryl, propylene glycol butyl ether, butoxy propyl, ethylhexyl, and isooctyl ester. These contain various pounds of acid equivalent per gallon.

**Weed**—Any plant growing where not wanted.

#### *§11.7. Dealers.*

(a) Requirements. Sales by retailers, distributors, wholesalers, warehouse agents, and manufacturers of regulated herbicides, require the dealer to hold a valid dealer's license before any such sales are made.

(b) License. Any dealer distributing or selling regulated herbicides in this state, or out-of-state dealers distributing or selling regulated herbicides in this state, must have a dealer's license and record all sales, regardless of whether or not the regulated herbicides sold or distributed are to be used in a regulated or unregulated county.

(c) Multiple business locations. In the event a person operates a business at more than one location in the State of Texas under the same firm name, a separate dealer's license shall be required for each location, unless the applicant's principal office keeps and reports satisfactory records for all subsidiary offices, in which case, the applicant shall pay one fee.

(d) Sales records. All dealers are required to make and retain for a period of two years from the date of sale, a record of distribution or sale of regulated herbicides. Such records of each sale shall consist of the following information:

(1) the name, address, licensed or certified applicator number, or dealer license number of the person to whom the regulated herbicide was sold or distributed;

(2) the date of distribution;

(3) the brand name and EPA registration number;

(4) the quantity of regulated herbicide distributed; and

(5) if the distribution is made to a nonlicensed person acting under the authorization of a certified or licensed applicator:

(A) the name of the nonlicensed person to whom the regulated herbicide is made available and the address of the residence or principal place of business of that person as stated on a valid driver's license or other current state, county, or tribal identification document issued to the nonlicensed person; and

(B) verification that the regulated herbicide is made available to a nonlicensed person. This verification shall be accomplished by a statement signed by the licensed or certified applicator that the nonlicensed person is the duly authorized representative of the licensed or certified applicator and that the regulated herbicide made available to the nonlicensed person will only be used by a certified or licensed applicator or under the direct supervision of the licensed applicator. This statement may be made on a form prescribed by the department.

(e) Sales record to the department. Upon written request by the department, a licensed dealer shall submit records of sales or distribution of regulated herbicides.

(f) Fees for a dealer's license. All dealers, as defined in §11.4 of this title (relating to Definitions), shall pay a fee of \$100 upon submitting an application for a dealer's license.

#### *§11.8. Applicators.*

(a) General requirements. The following requirements are applicable to all persons applying regulated herbicides.

(1) The use of any turbine or blower-type ground equipment to spray regulated herbicides is prohibited.

(2) The applicator shall keep the following records for a period of two years:

(A) the date and time of day each application started;

(B) the name of the person for whom the application was made (owner or lessee);

(C) the location of the land where the application was made, stated in a manner that would permit inspection by authorized parties;

(D) the regulated herbicide applied, including:

(i) product name;

(ii) its EPA registration number;

(iii) rate of product per unit; and

(iv) total volume of spray mix, dust, granules, or other materials applied per unit;

(E) the name of the pest for which it was used;

(F) the site treated (for example: name of crop, kind of animal, etc.);

(G) total acres or volume of area treated;

(H) wind direction, velocity, and air temperature;

(I) the FAA "N" number of aerial application equipment, or identification number of other types of application equipment, or decal number affixed to the application unit; and

(J) the name and department license number of the applicator.

(b) Commercial applicators.

(1) Spray permits. No person shall apply regulated herbicides as a commercial applicator to a total of more than 10 acres in any one calendar year without first obtaining a permit for such application. A blanket permit may be issued to a licensed or certified applicator who shall submit to the department a supplemental report of each regulated herbicide application within seven days following such application.

(2) Permit fees. A permit fee for acreage intended to be sprayed shall be submitted with an application for a spraying permit. The permit fee shall be \$1.00 for any amount of land up to 100 acres and an additional \$1.00 for each increment of 100 acres, or fraction thereof.

(3) Equipment licensing and inspection. Equipment license decals must be attached in a conspicuous place to each piece of equipment used to spray regulated herbicides.

(A) Equipment license. All equipment used to spray regulated herbicides for hire must be licensed by the department before such equipment is used to spray regulated herbicides. A license will not be issued until the proof of financial responsibility has been filed with the department as required by the Texas Agriculture Code, §75.014.

(B) Inspection. All ground equipment used to spray regulated herbicides for hire must be inspected by the department each year before the equipment is used. All equipment used on any aircraft in the application of regulated herbicides must be inspected every 30 days when installed upon said aircraft and must be inspected before use after reinstallation, if a period of more than 30 days has lapsed since the last inspection. An inspection fee of \$20 for each piece of equipment shall be paid to the department upon each inspection.

(C) All persons engaged in the application of regulated herbicides for hire must be licensed by the department under §7.13 of this title (relating to Commercial Applicator License) and meet the requirements of financial responsibility under §7.14 of this title (relating to Commercial Applicator Proof of Financial Responsibility) or of the Structural Pest Control Board as provided by the Structural Pest Control Act, Texas Civil Statutes (Article 135b-6).

(c) Persons other than commercial applicators.

(1) Permits.

(A) Permits or fees are not required if a person does not spray a total of more than 10 acres during any one calendar year.

(B) All persons, except those applying to lawns, who apply regulated herbicides to less than 10 acres in any one calendar year must give notice of each application to the department prior to such application.

(2) Permit fees. Except as otherwise provided in paragraph (1) of this subsection, a permit fee of \$1.00 for any amount of land up to 100 acres and an additional \$1.00 for each increment of 100 acres, or fraction thereof, must be paid before a permit for spraying will be issued.

(3) Equipment. Ground application equipment used by persons other than commercial applicators need not be inspected or licensed. Aircraft equipment used by persons other than commercial applicators must be inspected and licensed but

proof of financial responsibility is not required for the equipment or the person.

(d) Government employee spray permit fee exemption. Employees of governmental entities that apply regulated herbicides as part of their official duties are exempted from spray permit fees.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 22, 1993.

TRD-9318100      Dolores Alvarado Hibbs  
Chief Administrative Law  
Judge  
Texas Department of  
Agriculture

Effective date: February 12, 1993

Proposal publication date: November 10, 1992

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

#### • 4 TAC §§11.4-11.5, 11.7-11.10

The Texas Department of Agriculture (the department) adopts the repeal of §11.4, 11.5, 11.7-11.10, without changes to the proposed text as published in the November 10, 1992, issue of the *Texas Register*. The department, in a separate submission, has adopted new sections to replace those repealed.

The repeal is adopted to allow the department to replace the repealed sections with new sections more clearly setting out requirements for application of regulated herbicides, licensing requirements for dealers of regulated herbicides, and requirements for inspection and licensing of application equipment used to apply regulated herbicides. The sections are also repealed to adopt new recordkeeping and permit requirements and to eliminate requirements that are no longer necessary due to changes in use requirements for certain herbicides.

The repeal deletes the sections in Chapter 11 concerning definitions, general requirements, dealers, applicators, special requirements for mistblowers, and penalties in order to replace them with new sections as previously stated.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Agriculture Code, §74.004, which provides the department with the authority to set by rule and collect a fee for a herbicide dealers license; §75.005, which authorizes the department to adopt rules prescribing information to be requested of dealers and allows the department to request submission of such records by a licensee; §75.006, which authorizes the department to set the cost of spray permit fees and to allow exemptions from the permit requirement and payment of permit fees; §75.012, which authorizes the department to adopt rules for the application of regulated herbicides; §75.013, which authorizes the department to adopt rules prescribing

the information to be kept by applicators; §75.014 which authorizes the department to require a showing of proof of financial responsibility by commercial applicators; §75.016, which authorizes the department to collect a fee for inspection and licensing of application equipment; §75.017, which authorizes the department to regulate the use of application equipment; and §75.018, which authorizes the department to consider requests for the revision of a rule, exemption from a requirement of Chapter 75, or prohibition of the spraying of a regulated herbicide in an area, and to adopt rules regarding such requests, as appropriate.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 22, 1993.

TRD-9318099      Dolores Alvarado Hibbs  
Chief Administrative Law  
Judge  
Texas Department of  
Agriculture

Effective date: February 12, 1993

Proposal publication date: November 10, 1992

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

## Part II. Texas Animal Health Commission

### Chapter 35. Brucellosis

#### • 4 TAC §35.4

The Texas Animal Health Commission adopts an amendment to §35.4, concerning entry and change of ownership, without changes to the proposed text as published in the December 4, 1992, issue of the *Texas Register* (17 TexReg 8369).

The amendment is necessary to allow non-vaccinated female cattle to enter Texas and be vaccinated on arrival at a premise in Texas.

Non-vaccinated female cattle between four and 12 months of age entering Texas from other states from a premise of origin, have the option of being vaccinated on arrival at a premise in Texas provided the animals are vaccinated at no expense to the state and the vaccination is done within five days after the cattle arrive at their Texas destination.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 163, which provides the Commission with authority to adopt rules and sets forth the duties of this Commission to control disease.

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 January 22, 1993.

TRD-9318115

Terry Beals, DVM  
Executive Director  
Texas Animal Health  
Commission

Effective date: February 16, 1993

Proposal publication date: December 4, 1993

For further information, please call: (512) 479-6697

### Chapter 41. Fever Ticks

#### • 4 TAC §41.1

The Texas Animal Health Commission adopts amendments to §41.1 without changes to the proposed text as published in the December 4, 1992 issue of the *Texas Register* (17 TexReg 8369).

The amendment is necessary to clarify defined regulatory language.

The terms defined in this rule provides the public with regulations that are written more clearly and in more understandable language.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 167. These statute provides the Commission with authority to adopt rules and sets forth the duties of this Commission to control disease.

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 January 22, 1993.

TRD-9318116      Terry Beals, DVM  
Executive Director  
Texas Animal Health  
Commission

Effective date: February 16, 1993

Proposal publication date: December 4, 1992

For further information, please call: (512) 479-6697

#### • 4 TAC §41.2

The Texas Animal Health Commission adopts an amendment to §41.2, concerning quarantine line; defining and establish eradication areas, without changes to the proposed text as published in the November 27, 1992, issue of the *Texas Register* (17 TexReg 8259).

The amendment is necessary to clarify regulatory language.

The rule clarifies how livestock, that are located within the fever tick quarantined area can be moved by the owner.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 167, which provides the Commission with authority to adopt rules and sets forth the duties of this Commission to control disease.



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 January 22, 1993.

TRD-9318117

Terry Beale, DVM  
Executive Director  
Texas Animal Health  
Commission

Effective date: February 16, 1993

Proposal publication date: November 27, 1992

For further information, please call: (512) 479-6897

## Chapter 55. Swine

### • 4 TAC §55.9

The Texas Animal Health Commission adopts an amendment to §55.9, concerning feral swine, without changes to the proposed text as published in the November 27, 1992, issue of the *Texas Register* (17 TexReg 8259).

The amendment is necessary to provide a means for a trapper to move trapped feral swine to a holding pen awaiting movement to slaughter.

Feral swine trappers will have an additional alternative for movement of feral swine after trapping by allowing them to be moved to a holding facility before movement to slaughter.

One comment was received from a rancher regarding adoption of the amendment.

The commenter believes it will benefit the trappers to have an additional alternative to move feral swine to a holding facility prior to slaughter.

The agency does not disagree with the comment.

The amendment is adopted under the Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the Commission with authority to adopt rules and sets forth the duties of this Commission to control disease.

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 January 22, 1993.

TRD-9318118

Terry Beale, DVM  
Executive Director  
Texas Animal Health  
Commission

Effective date: February 16, 1993

Proposal publication date: November 27, 1992

For further information, please call: (512) 479-6897

## TITLE 7. BANKING AND SECURITIES

### Part VI. Credit Union Department

#### Chapter 95. Texas Share Guaranty Credit Union

##### Finance and Accounts

###### • 7 TAC §95.304

The Credit Union Commission adopts the repeal of §95.304, concerning conversion from other guaranty programs, without changes to the proposed text as published in the November 24, 1992, issue of the *Texas Register* (17 TexReg 8225).

Texas Share Guaranty Credit Union (TSGCU) can no longer provide share insurance to credit unions in Texas; therefore, this rule which permitted credit unions to convert from other guaranty programs to TSGCU's share insurance program is not necessary.

This rule was no longer required; therefore, it will neither be amended nor replaced.

One comment was received on this rule from United Credit Union which did not provide any specific rationale as to why the credit union was against its adoption.

The repeal is adopted under Texas Civil Statutes, Article 2461-11.07, which provide the Credit Union Commission with the authority to adopt reasonable rules necessary for the administration of the Texas Credit Union Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 15, 1993.

TRD-9317928

John R. Hale  
Commissioner  
Credit Union Department

Effective date: February 10, 1993

Proposal publication date: November 24, 1992

For further information, please call: (512) 837-9236

## TITLE 13. CULTURAL RESOURCES

### Part IV. Texas Antiquities Committee

#### Chapter 41. Practice and Procedure

##### Memoranda of Understanding

###### • 13 TAC §41.15

The Texas Antiquities Committee (Committee or TAC) adopts new §41.15, concerning Memoranda of Understanding, with changes to the proposed text as published in the October 23, 1992, issue of the *Texas Register* (17 TexReg 7502).

The new section allows for the appropriate placement in committee rules concerning practice and procedure of a memorandum of agreement between the committee and the Texas Department of Transportation (TxDOT). The new section is also required by the provisions of Texas Civil Statutes, Article 6673g, enacted by Senate Bill 352, 72nd Legislature, 1991. Article 6673g directs the Texas Department of Transportation (TxDOT) to adopt memoranda of understanding (MOU) with applicable environmental resources agencies, including the Committee. Article 6673g further directs each of the environmental agencies to adopt the MOU and all revisions to the memorandum.

The MOU provides, for the review of TxDOT projects which have the potential to affect historic properties and cultural resources within the jurisdiction of the Committee. The intent of the MOU is for the Committee to assist TxDOT in making environmentally sound decisions and to develop an information system regarding cultural resources. Increased coordination ensures that historic properties and archeological sites are given full consideration in a uniform and timely manner.

A joint public hearing was held by TxDOT and the Committee September 14, 1992. A representative of the Lone Star Chapter of the Sierra Club attended the hearing, presented oral testimony concerning the MOU, and submitted written comments following the public hearing. No other comments were received. The organization supports the improved communication between the agencies and believes that the MOU is an improvement, in that respect. However, the group expressed concerns for enforcement of the agreement and the need to ensure that it is properly implemented. Three specific recommendations made by the Sierra Club and the Committee's responses follow.

First, the Sierra Club requests modifications to the definition of the term "Project development". The requested modifications expand the definition to include all project studies prior to right-of-way designation or acquisition. The TxDOT and the Committee disagree. It is the intention of TxDOT to complete all studies and surveys necessary to properly evaluate the impact of a project on natural and cultural resources early in the planning process. TxDOT and the Committee, however, believe that the definition of the term "project development" included in the MOU is appropriate since under certain circumstances studies cannot be completed or performed prior to acquisition of right-of-way as authorized by federal law and denial of access by property owner. When a property owner denies access to his or her property, TxDOT's ability to perform early studies can be significantly hampered.

Second, the group recommends changes to subclause §15.7(b)(1)(D)(i)(v) of this title, concerning archeological sites found after award of contract. This recommendation requires TxDOT and the review agency to prepare a plan of action for reroute alternatives and terminated projects. The Committee and TxDOT disagree with their comment. Should an archeological site be found during the



course of construction, all feasible measures to minimize harm will be considered. However, once construction has commenced, the feasibility of selecting an alternative route canceling the project is greatly reduced.

Third, the Sierra Club further suggests the addition of a new subclause to be named "Failure to report." Paraphrased, the suggested subclause states that the review agency shall give notice to TxDOT and the highway project shall cease until inadequacies are corrected. In the organization's opinion, the addition clarifies the Committee's authority to require timely and adequate testing and reporting data from TxDOT.

To address these concerns, a new clause is included in the MOU. The final adoption, therefore, is made with changes in the form of a new clause §15. 7(b)(1)(D)(iv) of this title, concerning resolution of objections. The clause provides for reviewing agency to timely object to plans submitted for review, or proposed actions, and for TxDOT and the reviewing agency to enter in consultation to resolve the objection. If the objection cannot be resolved, the reviewing agency may terminate consultation and invoke Dispute Resolution proceedings.

The new section is adopted under the Natural Resources Code, Title 9, Chapter 191 (revised by Senate Bill 231, 68th Legislature, 1983, and by House Bill 2056, 70th Legislature, 1987), §191.052, which provides the Texas Antiquities Committee with the authority to promulgate rules and require contract or permits conditions to reasonably effect the purposes of Chapter 191.

#### *§41.15. Memoranda of Understanding.*

(a) Introduction. It is the public policy and in the interest of the State of Texas to locate, protect, and preserve archeological sites and historic properties, situated on public lands. Furthermore, it is in the public interest to enter into agreements to provide for timely and efficient construction of transportation facilities, reservoirs, public buildings, parks, and infrastructure. Memoranda of understanding are formal agreements which provide for the preservation of the environment and cultural resources; wise, productive use of the cultural and natural resources; good stewardship of publicly owned historic landmarks; and protection of public and private investment in historic properties.

(b) Memoranda of understanding. Memoranda of understanding are mutual agreements entered into in order to better implement programs and policies for the preservation of historical and archeological resources. A memoranda of understanding (MOU) is a formal mechanism which fosters the joint review of the impact of public projects and the improved management of State Archeological Landmarks (SALs). Increased coordination and communication between agencies and political subdivisions ensures that historical properties and

archeological sites are given full consideration in a uniform and timely manner.

(1) Texas Department of Transportation (TxDOT).

(A) Need for agreement.

(i) It is the practice of the TxDOT to:

(I) investigate fully the environmental impacts of TxDOT transportation projects, coordinate these projects with applicable state and federal agencies, and reflect these investigations and coordinations in the environmental documentation for each project;

(II) base project decisions on a balanced consideration of the need for a safe, efficient, economical, and environmentally sound transportation system;

(III) complete public involvement and a systematic interdisciplinary approach as essential parts of the development process for transportation projects; and

(IV) mitigate project impacts to provide environmentally sound roadway projects where such mitigation is feasible and prudent and where such mitigation is agreed upon by appropriate agencies.

(ii) In order to pursue this policy, TxDOT, the Texas Historical Commission (THC), and the Texas Antiquities Committee (Committee) have agreed to develop the MOU, which will supersede TxDOT's MOU with the Committee which became effective on January 5, 1972.

(iii) Senate Bill 352, enacted by the 72nd Legislature, directs TxDOT to adopt a memoranda of understanding with applicable environmental resources agencies.

(iv) The rules for coordination of state-assisted transportation projects developed by the TxDOT, and published in the June 11, 1991, issue of the *Texas Register* (16 TexReg 3197) underline the need for and importance of comprehensive environmental coordination for all transportation projects.

(v) It is the intent of this MOU to provide a formal mechanism by which the THC and the Committee may review TxDOT projects which have the potential to affect historic properties (cultural resources) within the jurisdiction of THC and the Committee, and to develop a system by which information held by TxDOT, THC, and the Committee may be exchanged to their mutual benefit.

(vi) This memorandum supersedes that memorandum of understanding executed by TxDOT, THC, and the Committee on January 31, 1992, and that memorandum of understanding is of no further force of effect.

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

(i) Antiquities Code of Texas (ACT)—Designates the Committee as the legal custodian of all cultural resources, historic and prehistoric, within the public domain of the State of Texas, and the body which issues antiquities permits, in accordance with Chapter 41 of this title (relating to Practice and Procedure) and as provided in ACT §191.054 and §§191.091-191.098.

(ii) Antiquities permit—A permit issued by the Committee in order to regulate site destruction, archeological testing, and archeological excavation.

(iii) Archeological excavation (data recovery)—Use of field techniques, including those of archeological testing, but with the goal of addressing specific research issues identified with the site's historic context. Excavation (data recovery) is conducted under an approved data recovery plan developed in consultation with the state historic preservation officer and the Advisory Council on Historic Preservation, following the procedure set forth under 36 Code of Federal Regulation 800, for federal undertakings; or in consultation with the Committee for non-federal undertakings, in accordance with Chapter 41 of this title.

(iv) Archeological monitoring—Use of a professional archeologist present on-project when clearing and grubbing or other construction activities are being conducted. Should evidence of archeological remains be encountered, TxDOT will ensure that clearing and grubbing or other construction activities shall cease in the area of the archeological remains until these remains can be assessed and evaluated in accordance with appropriate state and federal laws and regulations.

(v) Archeological resource/site—Locations where prehistoric or historic remains are found in a primary deposit, excluding extant standing structures dating from the historic time period. Note that archeological sites can be associated with a historic structure and historic structural ruins can be designated as archeological sites §41.5 of this title (relating to Definitions). However, an extant standing structure itself (as contrasted to a historic structural ruin) does not constitute an archeological site in the absence of other

associated remains. Prehistoric ruins are considered to be archeological sites.

(vi) Archeological survey—Archeological field methods used to locate archeological remains, including on-foot examination of the surface, shovel testing, and subsurface trenching by mechanical means where appropriate.

(vii) Archeological testing—Use of field techniques including excavation of holes larger or deeper than those of a shovel test, and including mechanical trenching and removal of artifacts. Archeological field research limited to determination of eligibility for the National Register of Historic Places (NRHP) for federal undertakings, as defined in 36 Code of Federal Regulations 800, or determination of significance for non-federal undertakings, as defined in Chapters 41, 43, and 45 of this title (relating to Practice and Procedure; Procedure; and State Archeological Landmarks). The review agency will determine what level of testing is appropriate under the MOU. The Committee will determine when test phase investigations warrant an antiquities permit.

(viii) Committee—The Texas Antiquities Committee.

(ix) Cultural resources—A general term synonymous with "historic properties".

(x) Eligibility—A site's eligibility for the NRHP as set forth in 36 Code of Federal Regulations 800.

(xi) Environmental documents—Decision-making documents which incorporate the results of environmental studies, coordination and consultation efforts, and engineering elements. Types of documents include categorical exclusion assessments, environmental assessments, and environmental impact statements.

(xii) Historic property—Any prehistoric or historic district, site building, structure, or object included in, or eligible for inclusion in the NRHP, as defined in 36 Code of Federal Regulations 800.2.

(xiii) Historic resource—A feature of the built environment which is potentially eligible for listing in the NRHP as defined in 36 Code of Federal Regulations 60.

(xiv) Historic resource survey—Examination of the project for the presence of historic resources.

(xv) Mechanical testing—Excavation with backhoe, Gradall, or other heavy equipment in order to locate archeological remains.

(xvi) Project development—The planning process of a highway

project, which includes engineering design as well as environmental studies and public involvement procedures. Project development generally includes all studies of a project prior to actual construction.

(xvii) Review agency—The appropriate review agency for each particular circumstance. THC has jurisdiction over federal undertakings, as defined in 36 Code of Federal Regulations 800, and the Committee has jurisdiction over non-federal undertakings and the issuing of antiquities permits, as provided in ACT, §§191.054 and §191.098.

(xviii) Right-of-way—The land provided for a highway, usually including the roadway itself, shoulders, and areas between the roadway and adjacent properties.

(xix) Shovel testing—Excavation of test holes which shall measure at least 35 centimeters in diameter and shall be excavated to a basal horizon or bedrock, or to a depth of at least one meter if a basal horizon or bedrock is not reached. This technique is used both in areas where surface visibility is low and in areas where the potential for archeological remains is high. Shovel testing is also used when surface indications of archeological remains are encountered in order to provide a preliminary determination of the depth of the cultural deposits.

(xx) State Archeological Landmark—Archeological and historic properties as defined in the ACT, Subchapter D, and identified in accordance with Chapters 41 and 45 of this title.

(xxi) Subsurface survey—Mechanical or hand-dug probing of a site or project area during the survey phase to record or examine subsurface deposits, for the collection of archeological or geomorphic data.

#### (C) Responsibilities.

##### (i) TxDOT.

(I) The responsibilities of the TxDOT pertain to its functions as a transportation agency, and include the following:

(-a-) planning and designing safe, efficient, cost-effective, and environmentally sound transportation facilities, and avoiding, minimizing, or compensating for environmental impacts as far as practicable when they are anticipated to occur;

(-b-) the timely and efficient construction of transportation facilities, executed in a manner consistent with approved plans or agreements which have been entered into by the department for the protection of the natural environment and cultural sites; and

(-c-) the ongoing maintenance of these facilities to provide safe, efficient, and environmentally sound transportation facilities for the traveling public, and dedication to the protection of natural and cultural resources within the jurisdiction of the TxDOT;

(-d-) a commitment to the preservation and enhancement of the human environment.

(II) Senate Bill 352 which became effective on September 1, 1991, directs TxDOT to adopt an MOU with each state agency that has responsibilities for the protection of the natural environment or for the preservation of historic and archeological resources.

(ii) THC. THC, through the Office of the State Historic Preservation Officer (SHPO), regulates the disposition and management of historic properties which are affected by federal undertakings, as described in the National Historic Preservation Act, §106, and in 36 Code of Federal Regulations 800.

##### (iii) The Committee.

(I) The Committee regulates the disposition and management of archeological landmarks which are affected by non-federal undertakings, as described in the ACT and Chapter 41 of this title.

(II) The Committee issues permits for the taking, excavation, restoration, or study of state archeological landmarks as provided in ACT, §§191.054 and §§191.091-191.098.

#### (D) Provisions.

(i) Procedures for coordination regarding archeological resources.

(I) Initial coordination phase.

(-a-) TxDOT may combine the initial coordination phase with the archeological survey phase in order to expedite project coordination. In these cases, the review agency will be afforded an opportunity to comment on both the survey methodology and survey results.

(-b-) TxDOT will identify projects requiring coordination for archeological resources, as indicated by the level of project documentation. Such projects include:

(-1-) any project which, although classified as a categori-

cal exclusion (CB), is judged to have the potential to affect archeological resources;

(-2-) all projects requiring issuance of a finding of no significant impact (FONSI), when such a project is judged to have the potential to affect archeological resources; and

(-3-) all projects requiring an environmental impact statement (EIS).

(-c-) TxDOT will identify projects which are not believed to require individual coordination for archeological sites and will provide THC and the Committee with a list of such projects on a monthly basis.

(-d-) TxDOT will begin coordination by conducting a search of the site files at the Texas Archeological Research Laboratory (TARL) as well as site files and survey records held at the THC and the Committee. THC and the Committee will render TxDOT all reasonable assistance in the search.

(-e-) TxDOT will request a review of the project by the review agency. TxDOT will submit for review:

(-1-) plans, project descriptions, and other documentation required by the review agency for review;

(-2-) a statement detailing the result of the site files search, including information on any sites listed in the site files and occurring on or near the project, including a list of properties on or near the project which are listed in the NRHP, or are designated as State Archeological Landmarks (SALs); and

(-3-) a statement recommending which portions of the project are to be surveyed, the techniques to be used on each part of the project, and identifying the portions of the project which have high likelihood of yielding archeological remains.

(-f-) The review agency will respond within 30 days of receipt of the TxDOT request for review of the project. The response will include:

(-1-) a statement of concurrence or non-concurrence with the results of the site files check and the survey recommendations contained in the TxDOT request for review; and

(-2-) any other comments relevant to the archeological resources which could be affected by the project.

(-g-) TxDOT will include the results of the site files search, survey recommendations, and comments received from the review agency in any environmental assessment or draft EIS written as part of the project, and will present findings at the public hearing, if such hearing is held.

## (II) Archeological survey phase.

(-a-) All projects, and portions of projects, recommended for survey by TxDOT, and for which concurrence has been obtained from the review agency during the initial phase of coordination will be the subjects of archeological survey using the methods agreed upon between TxDOT and the review agency.

(-b-) An archeological survey will be conducted by a member of the TxDOT professional archeological staff or other archeologist approved by the review agency.

(-c-) When the archeological survey has been completed, TxDOT will request a review of the results of the survey. With its request for review, TxDOT will include:

(-1-) a letter report or form detailing the results of the survey, including a discussion of any deviations from the methods agreed upon during the initial phase of coordination;

(-2-) the project location plotted on 7.5' Series USGS quadrangle maps;

(-3-) copies of archeological site survey forms for any new archeological sites discovered during survey;

(-4-) copies of archeological site survey forms for any previously recorded archeological sites;

(-5-) recommendations regarding archeological testing or archeological monitoring; and

(-6-) if deemed necessary, the review agency may request TxDOT to produce a formal report of findings made as a result of a survey phase investigation.

(-d-) The review agency will respond within 30 days of receipt of the TxDOT request for review of the survey results and recommendations. The response will include:

(-1-) a statement of concurrence or non-concurrence with the results of the site files check and the survey results contained in the TxDOT request for review; and

(-2-) any other comments relevant to the archeological resources which could be affected by the project.

(-e-) TxDOT will include the results of the archeological survey and recommendations in the environmental assessment or final EIS, if one is prepared.

## (III) Archeological testing phase.

(-a-) All sites and portions of sites recommended for testing by TxDOT, THC, or the Committee will be subjects of archeological testing, using methods agreed upon by TxDOT and the review agency.

(-b-) The review agency may send a representative to observe any or all of the testing procedures.

(-c-) At the completion of testing, TxDOT will prepare a formal report of the results of testing.

(-1-) For sites affected by federal undertakings, the report will include recommendations regarding eligibility for the NRHP, as described in 36 Code of Federal Regulations 800.

(-2-) For sites affected by non-federal undertakings, the report will include recommendations regarding the significance of the site and whether designation as an SAL is warranted, in accordance with ACT, §191.091 and §191.092, and Chapters 41, 43, and 45 of this title.

(-d-) TxDOT will send the testing report to the review agency with a request for review.

(-e-) THC, in accordance with 36 Code of Federal Regulations 800, will respond to the report within 30 days of receipt of the TxDOT request for review. The response will include:

(-1-) a statement of concurrence or nonconcurrence with the results of the archeological testing and recommendations contained in the TxDOT request for review;

(-2-) a determination of the site's eligibility for listing in the NRHP; and

(-3-) any other comments relevant to the archeological site which has undergone archeological testing.

(-f-) The Committee, in accordance with Chapter 41 of this title and the ACT, Chapter 191, will respond to the report within 60 days of receipt of the TxDOT request for review. The response will include:

(-1-) a statement of concurrence or nonconcurrence with the results of the archeological testing and recommendations contained in the TxDOT request for review;

(-2-) a determination of whether the site warrants designation as an SAL; and

(-3-) any other comments relevant to the archeological site which has undergone archeological testing.

(-g-) TxDOT will include the results of the archeological survey and recommendations in the environmental assessment or final EIS, if one is prepared.

(-h-) The Committee may require an antiquities permit be issued for some test phase investigations if the scope of the investigations warrants it. All testing performed by non-TxDOT staff archeologists must be performed under an antiquities permit.

(IV) Archeological excavation/data recovery.

(-a-) All sites and portions of sites determined to be eligible for the NRHP (for federal undertakings) or significant (for non-federal undertakings) based on consultation with the review agency during the survey phase or testing phase will be the subjects of data recovery.

(-b-) TxDOT (or their contracted agent), in consultation with the review agency, will develop a suitable data recovery plan for each eligible or significant archeological site on a case-by-case basis, in accordance with 36 Code of Federal Regulations 800 for federal undertakings and the ACT, Chapter 191 for non-federal undertakings. Final data recovery plans must be approved by the review agency prior to their implementation.

(-c-) Results of data recovery will be published as required by 36 Code of Federal Regulations 800 and/or the ACT, Chapter 191.

(V) Archeological sites found after award of contract.

(-a-) When previously unknown archeological remains are encountered after award of contract, TxDOT will immediately suspend construction that would affect the site.

(-b-) A TxDOT archeologist will examine the remains and report the findings to the appropriate review agency. The Federal Highway Administration (FHWA) will enter consultations regarding the disposition of the site or sites for federal undertakings, as required by 36 Code of Federal Regulations 800.

(-c-) TxDOT and the review agency will prepare a plan of action to determine eligibility or significance, and/or mitigate the effects on the site.

(-d-) TxDOT may continue construction in the affected area upon approval of the review agency.

(ii) Procedures for coordination regarding historic resources.

(I) TxDOT will identify projects requiring coordination with the review agency for historic resources. Coordination will be required for:

(-a-) any project which, although classified as a CE, is judged to have the potential to affect historic resources;

(-b-) any project requiring the issuance of a FONSI, when such project is judged to have the potential to affect historic resources; and

(-c-) all projects requiring an EIS.

(II) TxDOT will identify which projects require individual coordination for historic resources. The TxDOT will provide a list of those projects which do not require individual coordination to the THC and Committee on a monthly basis.

(III) For projects requiring individual coordination, TxDOT will conduct a search of available records, references, and resources, including listings of Registered Texas Historic Landmarks (RTHLs), SALs, and properties listed in the NRHP, as well as local historic property survey files on record at the THC. The THC and Committee will render all reasonable assistance to TxDOT in the search.

(IV) TxDOT will conduct historic resources surveys to locate

historic resources which are potentially eligible for inclusion in the NRHP.

(V) For each project requiring individual historic resources coordination with the review agency, TxDOT will provide the following:

(-a-) plans, project descriptions, and other documentation as needed;

(-b-) a statement detailing the results of the records search; and

(-c-) a summary of the results of the historic resources survey, describing all resources:

(-1-) listed in or potentially eligible for listing in the NRHP for federal undertakings; or

(-2-) which possess historical interest as defined by the ACT, §191.092 for non-federal undertakings.

(VI) The review agency will respond within 30 days of receipt of the TxDOT request for review of the project. The response will be in accordance with 36 Code of Federal Regulations 800, ACT, Chapter 191 and Chapter 41 of this title.

(VII) TxDOT will include information on historic resources in the environmental assessment or final EIS, if one is prepared.

(VIII) All historic resources either listed in or determined eligible for listing in the NRHP (for federal undertakings) or designated SALs (for non-federal undertakings) which are affected by projects will be subject to mitigation of these effects.

(IX) TxDOT, in consultation with the review agency, will develop a suitable mitigation plan:

(-a-) in accordance with 36 Code of Federal Regulations 800 for historic resources listed in or determined eligible for listing in the NRHP for federal undertakings; or

(-b-) in accordance with the ACT, Chapter 191, for historic resources designated as SALs for non-federal undertakings. Final mitigation plans must be approved by the review agency prior to implementation of mitigation efforts.

(iii) Artifact recovery and curation.

(I) Artifact recovery.

(-a-) All artifacts or analysis samples (such as soil samples) that are recovered from survey, testing, or data recovery investigations by TxDOT or their contracted agents must be cleaned, labeled, and processed in preparation for long-term curation.

(-b-) Recovery methods must conform to 36 Code of Federal Regulations 800, Committee rules, and/or Council of Texas Archeologists (CTA) guidelines to ensure proper care and curation.

(II) Artifact curation.

(-a-) TxDOT may temporarily house artifacts and samples during their laboratory analysis research, but all artifacts must be transferred to a permanent curatorial facility within a reasonable time period, to be decided by the review agency.

(-b-) All artifacts and samples must be placed at the Texas Archeological Research Laboratory or some regional artifact curatorial repository which fulfills 36 Code of Federal Regulations 800 Committee rules, or CTA curation standards, as approved by the review agency.

(-c-) TxDOT is responsible for the curatorial preparation of all artifacts so that they are acceptable to the receiving curatorial repository and fulfill 36 Code of Federal Regulations 79, Committee rules, or CTA curation standards, as approved by the review agency.

(iv) Resolution of objections.

(I) Should the reviewing agency timely object (within stipulated review period) to any plans provided for review or any actions proposed by TxDOT regarding:

(-a-) any phase of coordination for archeological resources including initial coordination, survey, testing, excavation/data recovery, and reporting;

(-b-) any phase of coordination for historic resources including initial coordination, historic resources survey, and mitigation; or

(-c-) curation of site materials, documentation, and samples, TxDOT and reviewing agency shall enter into consultation to resolve the objection.

(II) If the objection cannot be resolved through the consultation process, either TxDOT or the reviewing agency, at any time, may terminate consultation and invoke the provisions of subparagraph (E) of this paragraph.

(E) Dispute resolution.

(i) In such instances when TxDOT and the review agency are unable to reach a mutually agreeable plan of action regarding survey, testing, determination of eligibility or significance, or mitigation, a good-faith effort will be made to develop a compromise plan.

(ii) If TxDOT and the review agency cannot arrive at a compromise plan, the dispute will be resolved in accordance with procedures established under state and federal rules.

(I) Federal undertakings will follow the procedures provided in 36 Code of Federal Regulations 800, including consultation with the Advisory Council on Historic Preservation, if necessary.

(II) Non-federal undertakings will follow the procedures provided in Chapters 41, 43, and 45 of this title.

(F) Review of MOU. This memorandum shall be reviewed and updated no later than January 1, 1997, and every fifth year after that date, as provided for in Senate Bill 352 and Texas Civil Statutes, Article 6673g, §3(d).

(2) Future adoption of memorandum of understanding. The Committee may, at a later date, adopt by rule memorandum of understanding with additional state agencies, federal agencies, and/or political subdivisions of the State of Texas to better implement programs and policies for the preservation of historic properties and archeological resources situated on public lands.

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 January 6, 1993.

TRD-9318048

Kathleen McLaughlin-Neyland  
Administrative Technician  
Texas Antiquities Committee

Effective date: February 12, 1993

Proposal publication date: October 23, 1992

For further information, please call: (512) 463-6096

## TITLE 16. ECONOMIC REGULATION

### Part VIII. Texas Racing Commission

#### Chapter 309. Operation of Racetracks

##### Subchapter A. General Provisions

##### Operations

##### • 16 TAC §309.51

The Texas Racing Commission adopts an amendment to §309.51, concerning contracts, without changes to the proposed text as published in the November 27, 1992, issue of the *Texas Register* (17 TexReg 8260).

The amendment is adopted to ensure that the commission is informed regarding all persons participating in pari-mutuel racing.

The amendment requires a racetracks association to obtain the approval of the commission on all contracts regarding the operation of the racetrack.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and under §6.06, which authorize the commission to adopt rules relating to the operation of racetracks.

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 January 15, 1993.

TRD-9318037

Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: February 11, 1993

Proposal publication date: November 27, 1992.

For further information, please call: (512) 794-8461

##### • 16 TAC §309.56

The Texas Racing Commission adopts an amendment to §309.56, concerning stable/kennel area visitors pass, without changes to the proposed text as published in the November 27, 1992, issue of the *Texas Register* (17 TexReg 8260).

The amendment is adopted to ensure that the stable and kennel areas of pari-mutuel racetracks are secure, to protect the integrity of pari-mutuel racing.

The amendment modifies the procedure for issuing a temporary pass in the stable/kennel area.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and under §6.06, which authorize the commission to adopt rules relating to the operation of racetracks.

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 January 15, 1993.

TRD-9318038 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: February 11, 1993

Proposal publication date: November 27, 1992

For further information, please call: (512) 794-8461

## Chapter 311. Conduct and Duties of Individual Licensees

### Subchapter B. Specific Licensees

#### Licensees for Greyhound Racing

##### • 16 TAC §311.171

The Texas Racing Commission adopts an amendment to §311.171, concerning kennel owners, with changes to the proposed text as published in the November 27, 1992, issue of the *Texas Register* (17 TexReg 8261).

The amendment is adopted to ensure that pari-mutuel wagering is conducted in a manner that is of the utmost integrity and is safe and humane for the race animals.

The amendment requires a kennel owner to document the removal of greyhounds from a pari-mutuel racetrack. Clarifying changes were made to the proposed language in response to public comments.

Oral comments were received by the Texas Greyhound Association and by an individual kennel owner. The Texas Greyhound Association commented that the duty of a kennel owner to update the kennel roster was unclear. The commission agreed with the comment and the proposal was changed accordingly. The Texas Greyhound Association also commented on the need to include a return to the greyhound's owner as an option for disposition of a retiring greyhound. The commission agreed with the comment and the proposal was changed accordingly. The individual commenter spoke against the proposal generally on the grounds that it would place an additional paperwork burden on kennels which can ill-afford more staff. The commission disagreed with the comment on the grounds that the reporting requirement can

be satisfied with an easy-to-use form developed and provided by the commission. Further, the need to track greyhounds as they leave the racetracks to reduce the risk of inhumane disposal outweighs the small increase in work for the kennel owners who must comply with the requirement.

The amendment is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rule for conducting racing with wagering and for administering the Texas Racing Act; and under §7.02, which authorize the commission to adopt rules specifying the qualification and experience required for licensing in each licensing category.

##### §311.171. Kennel Owners.

###### (a)-(i) (No change.)

(j) Not later than 30 days before the first day of race meeting, a kennel owner shall submit a completed kennel roster to the racing secretary. The kennel owner shall promptly notify the racing secretary of all changes in the kennel roster throughout the race meeting. Not later than five days after the date a greyhound is removed from the kennel roster, the kennel owner shall provide written notice to the racing judges regarding the removal and the disposition of the greyhound, including the name and address of the owner of the greyhound to which the greyhound is being returned, the name of the racetrack to which the greyhound was moved, the name of the greyhound adoption agency to which the greyhound, or any other information requested by the racing judges. Not later than five days after the last day of a race meeting, the kennel owner shall provide the written notice required by this subsection regarding each greyhound remaining on the kennel roster at the end of the race meeting.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 15, 1993.

TRD-9318038 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: February 11, 1993

Proposal publication date: November 27, 1992

For further information, please call: (512) 794-8461

## Chapter 321. Pari-mutuel Wagering

### Subchapter B. Distribution of Pari-mutuel Pools

##### • 16 TAC §321.119

The Texas Racing Commission adopts new §321.119, concerning odd-even, without

changes to the proposed text as published in the November 27, 1992, issue of the *Texas Register* (17 TexReg 8261).

The new section is adopted to ensure that pari-mutuel wagering is conducted in a manner that is of the utmost integrity.

The new section establishes a new pari-mutuel wager, to odd-even.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; under §11.01, which authorize the commission to adopt rules relating to pari-mutuel wagering.

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 January 15, 1993.

TRD-9318039 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Effective date: February 11, 1993

Proposal publication date: November 27, 1992

For further information, please call: (512) 794-8461

## TITLE 22. EXAMINING BOARDS

### Part XI. Board of Nurse Examiners

#### Chapter 217. Licensure and Practice

##### • 22 TAC §§217.4, 217.5, 217.6

The Board of Nurse Examiners adopts amendments to §§217.4, 217.5, and 217.6, concerning licensure and practice, without changes to the proposed text as published in the December 4, 1992, issue of the *Texas Register* (17 TexReg 8376).

These amendments are being adopted to clarify the rules in relation to an applicant writing both the Canadian Nurses Association Testing Service Examination (CNATSE) and the National Council Licensure Examination for Registered Nurses (NCLEX-RN).

A Canadian nurse will know upon application for licensure that if he/she is sitting for both the CNATSE and the NCLEX-RN, the prevailing examination will be the NCLEX-RN. This will clarify the licensing procedure for those applicants.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of



its duties and conducting of proceedings before it.

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 January 22, 1993.

TRD-9318086

Louise Waddill, Ph.D., R.N.  
Executive Director  
Texas Board of Nurse  
Examiners

Effective date: February 12, 1993

Proposal publication date: December 4, 1992

For further information, please call: (512) 835-8650

## **TITLE 25. HEALTH SERVICES**

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

#### **Chapter 98. HIV and STD Control**

##### **Subchapter C. Texas HIV Medication Program**

##### **General Provisions**

##### **• 25 TAC §98.104, §98.105**

The Texas Department of Health (department) adopts amendments to §98.104 and §98.105, concerning the Texas HIV Medication Program, without changes to the text as proposed in the September 22, 1992, issue of the *Texas Register* (17 TexReg 6536). The sections implement the provisions of the Communicable Disease Prevention and Control Act, Health and Safety Code, §§85.061-85.066, concerning the establishment of an HIV Medication Program in Texas. The program assists hospital districts, local health departments, public or non-profit hospitals and clinics, nonprofit community organizations, and HIV infected individuals in the purchase of medications approved by the board that have been shown to be effective in reducing hospitalizations due to HIV related conditions. Generally, the sections cover eligibility for participation and medication coverage. The amendments expand coverage of the program to include the drugs Interferon-Alpha and Amphotericin-B for eligible participants and IV Pentamidine for children; and establish the procedures for administering the drugs.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Communicable Disease Prevention and Control Act, Health and Safety Code, §85.063, which provides the Texas Board of Health with the authority to adopt rules concerning a Texas HIV Medication Program; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 21, 1993.

TRD-9318017

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

Effective date: February 11, 1993

Proposal publication date: November 22, 1992

For further information, please call: (512) 458-7357

### **Chapter 133. Hospital Licensing**

#### **Standards**

#### **• 25 TAC §133.21**

The Texas Department of Health (department) adopts an amendment to §133.21, concerning hospital licensing standards, without changes to the text as published in the November 3, 1992, issue of the *Texas Register* (17 TexReg 7750). The section adopts by reference the TDH publication titled "Hospital Licensing Standards."

The amendment to the text of the section reflects the amendment date. The amendment is to Chapters 2 and 7 are adopted without change and the amendment to Chapter 10 is adopted with changes. The amendment updates references to publications, or portions thereof, which are part of the standards. The publications cover requirements for installations to existing buildings or installations in a new hospital.

The changes will coincide with the adoption of the 1991 Life Safety Code by the Joint Commission on Accreditation of Healthcare Organizations and the Health Care Financing Administration in early 1993, and to ensure that hospital architectural drawings submitted to the department for review and approval are reviewed under the same guidelines.

The department received two comments concerning proposed rules. The first commenter stated that the list of publications and agencies referenced in Chapter 10 of the standards did not include the Gypsum Association. The department agrees that the Gypsum Association should be included and has done so. The second commenter stated that Appendix A, Tables 9-1, 9-2, and 9-3 concerning essential electrical systems for hospitals should be revised to conform with NFPA 99, 1990, which is referenced in Chapter 10 of the standards. The tables in Appendix A, Tables 9-1, 9-2, and 9-3 were not proposed for amendment; however, the department is revising to correspond with adopted changes in Chapter 10 which is being amended to conform with NFPA Standards in this adoption.

The commenters were staff personnel; no other comments were received.

The amendment is adopted under the Health and Safety Code, §241.027, which provides the Board of Health (board) with the authority to adopt rules to establish and enforce minimum standards for the licensing of hospitals; and §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

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 January 21, 1993.

TRD-9318018

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

Effective date: February 11, 1993

Proposal publication date: November 3, 1992

For further information, please call: (512) 834-6645

### **Chapter 169. Veterinary Public Health**

#### **Animal Shelters**

#### **• 25 TAC §§169.62-169.65**

The Texas Department of Health (department) adopts amendments to §§169.62-169.65, concerning the training of animal shelter personnel, without changes to the proposed text as published in the October 6, 1992, issue of the *Texas Register* (17 TexReg 6874).

The sections cover definitions, levels of proficiency, prerequisites for certification, and certification of proficiency as an Animal Control Officer. The amendments create a new level of proficiency (instructor), delineate the prerequisites for instructor certification, and prescribe requirements for renewal of an instructor certificate. The amendments also require that basic level animal control officers have the ability to read and write in the English language, that advanced level animal control officers be certified at the basic level for at least one year and provide proof of high school graduation or equivalency, that Administrative Level Animal Control Officers' qualifying employment be as a supervisor or administrator. Also, the amendments remove current employment as a requirement for renewal of a certificate. In addition, the department has made several editorial changes for purposes of clarification.

The amendments are adopted under the Health and Safety Code, §823.004, which provides the Texas Board of Health with the authority to adopt rules concerning the training of animal shelter personnel; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 20, 1993.

TRD-9317963

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

Effective date: February 10, 1993

Proposal publication date: October 6, 1992

For further information, please call: (512) 458-7255

## Riding Stable Registration Program

### • 25 TAC §169.82, §169.83

The Texas Department of Health (department) adopts amendments to §169.82 and §169.83, concerning the registration of riding stables. Section 169.83 is adopted with changes to the proposed text as published in the October 6, 1992, issue of the *Texas Register* (17 TexReg 6875). Section 169.82 is adopted without changes and will not be republished.

The sections cover definitions and standards for the housing, health and disease control, and humane care of rental equines. The amendments add or modify several definitions for the purpose of clarification, recognize natural shelter, and remove the requirements for smoke detectors and certain medical procedures; they prescribe rest periods for working animals, shade for resting animals when the ambient temperature is over 90 degrees Fahrenheit, preventive measures against excessive cold, and weight restrictions for riders. In addition, the department has made editorial changes for purposes of clarification.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Health and Safety Code, §827.004, which provides the Texas Board of Health with the authority to adopt rules and charge fees to implement a riding stable registration program; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

#### §169.83. Standards.

##### (a) Housing.

(1) When not at work equines may be stabled in box stalls or kept outside in pens or pastures provided they have access to adequate free-choice natural or artificial shelter and fresh, clean water. Artificial shelter, at a minimum, shall consist of a roof and at least one wall to afford protection against precipitation and north winds in inclement weather. The structure shall not

have sharp, protruding objects which might cause injury to the animal: i.e., nails, broken boards, etc.

##### (2) (No change.)

(3) Equines housed in stalls shall be quartered in clean, dry, well ventilated stalls. Stall floors must be reasonably level. Sufficient bedding of straw, shavings, or other suitable material shall be furnished and changed as often as necessary to maintain them in a clean and dry condition. Bedding for concrete floors shall be at least six inches of materials. Bedding for clay, dirt, or rubber base floor shall be at least three inches of materials.

(4) Minimum indoor standards of shelters shall include the following.

(A) The ambient temperature shall be compatible with the health and comfort of the animal.

(B) Indoor housing facilities shall be adequately ventilated by natural or mechanical means to provide for the health of the animals at all times.

(5) Minimum outdoor standards of shelters shall include the following.

(A) When sunlight is likely to cause heat exhaustion of an animal tied outside, sufficient shade by natural or artificial means shall be provided to protect the animal from direct sunlight.

(B) Natural or artificial shelter appropriate to the local climatic conditions shall be provided as necessary for the health of the animal.

(6) Minimum requirements for both indoor and outdoor enclosures shall include the following.

(A) The housing facilities shall be structurally sound and maintained in good repair to protect the animals from injury and to contain the animals.

(B) Enclosures shall be constructed and maintained so as to provide adequate space. Inadequate space may be indicated by evidence of debility, stress, or abnormal behavior patterns.

##### (b) (No change.)

##### (c) Health and disease control.

##### (1) (No change.)

(2) Any one of the following shall deem an equine unfit for work:

(A) lameness;

(B) untreated sores or wounds;

(C) obvious signs of emaciation, dehydration, or exhaustion;

(D) loose or improperly fitted shoes, or untrimmed hooves; and

(E) body condition score less than five.

(3) All rental equines shall be vaccinated on a yearly basis for rabies, eastern equine encephalomyelitis, western equine encephalomyelitis, and tetanus. Optional immunizations may also be administered at the owner's discretion. There must be documentation with adequate equine identification that the vaccinations were performed. Rabies vaccination must be done by or under the supervision of a veterinarian, and National Association of State Public Health Veterinarians Form #50 or its equivalent must be kept on file for each equine.

(4) An internal parasite control program, developed in consultation with a veterinarian knowledgeable in equine practice, shall be implemented and records kept of the date and product used for each equine.

(d) Humane care. Animals not cared for in a humane manner may be considered abused or neglected.

(1) Animals must be provided with adequate food and clean water and while working must have access to clean water at reasonable intervals whether working or at rest.

##### (2) (No change.)

(3) Animals kept outside will be provided free-choice protection from weather (shade from the sun, shelter from the rain, snow, and cold) and will be maintained in an area free from accumulations of waste and unsanitary debris.

(4) Owners are responsible for the acts of any person or persons to whom they rent equines for riding or driving purposes with respect to all acts where unjustified physical pain, suffering, or death is inflicted upon any equine from their establishment.

##### (5) (No change.)

(6) Working animals shall be given rest periods at reasonable intervals. Special attention must be given to animals on very hot days to preclude working when signs of heat stress, dehydration, or exhaustion are present.

(7) Rental equines restrained and under saddle or harnessed while await-



ing business during the months of May through October, inclusive, must be shaded unless the ambient temperature is less than 90 degrees Fahrenheit.

(8) Reasonable and effective protective measures for sick equines, or those with body condition score less than 5, must be taken when the ambient temperature is less than 50 degrees Fahrenheit.

(9) A saddle equine rider's size must be reasonably compatible with the size of the equine. In no case shall an equine be rented to a person whose weight, including clothing, exceeds 20% of the horse's weight as determined by scales or weight tape. Scales must be available for determining riders' weights, if necessary.

(10) Saddle equines must not be rented to obviously intoxicated persons.

(11) If two people ride simultaneously, the weight restriction in paragraph (9) of this subsection must be enforced except when one rider is handicapped. In that instance, the total weight of the riders must not exceed 30% of the equine's weight, and the length of the ride must not exceed 30 minutes, with a 30-minute rest required between rides.

(e) Public notice.

(1) Each facility (and each carriage) shall prominently display a notice consisting of the following information: "This facility is operated in compliance with the Texas Riding Stable Registration Requirements. Any person observing a violation of the requirements may report the violation to: Texas Department of Health, Bureau of Veterinary Public Health, 1100 West 49th Street, Austin, Texas 78756."

(2) (No change.)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 20, 1993.

TRD-9317984

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

Effective date: February 10, 1993

Proposal publication date: October 6, 1992

For further information, please call: (512) 458-7255

## Title 34. Public Finance Part I. Comptroller of Public Accounts

### Chapter 3. Tax Administration

#### Subchapter O. State Sales and Use Tax

##### • 34 TAC §3.331

The Comptroller of Public Accounts adopts an amendment to §3.331, concerning joint ownership transfers, without changes to the proposed text as published in the November 10, 1992, issue of the *Texas Register* (17 TexReg 7854).

The amendment reformats subsections (a) and (b) for clarity and adds a new subsection (d) on intercorporate services.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

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 January 20, 1993.

TRD-9317925

Martin Cherry  
Chief, General Law  
Section  
Comptroller of Public  
Accounts

Effective date: February 10, 1993

Proposal publication date: November 10, 1992

For further information, please call: (512) 463-4028

## TITLE 37. PUBLIC SAFETY AND CORREC- TIONS

### Part VI. Texas Department of Criminal Justice

#### Chapter 151. Meeting Procedures

##### • 37 TAC §151.4

The Texas Department of Criminal Justice adopts new §151.4, concerning meeting procedures, without changes to the proposed text as published in the November 24, 1992, issue of the *Texas Register* (17 TexReg 8227).

The rule formalizes the procedures to be followed by persons who wish to address comments on matters on the board agenda to the Texas Board of Criminal Justice at their regularly scheduled meeting. The rule also ad-

vises members of the public how they may request that items be placed on an agenda for discussion.

The rule establishes sign-in procedures for persons who wish to make statements to the board concerning the board agenda, and advises the public of how they may request that an item be placed on the board agenda for discussion.

Although the board received no written comments on this section, county representatives who appeared before the board both at subcommittee meetings and at the board's regular meeting stated their support for the rule.

The new section is adopted under the Texas Government Code, §492.007, which provides the Texas Board of Criminal Justice with authority to publish rules concerning public comment on matters within its jurisdiction.

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 January 25, 1993.

TRD-9318135

Jackee Cox  
General Counsel  
Texas Department of  
Criminal Justice

Effective date: February 15, 1993

Proposal publication date: November 24, 1992

For further information, please call: (512) 463-9988

### Chapter 152. General Allocation Provisions

#### Subchapter C. Maximum Sys- tem Capacity of the Institu- tional Division

##### • 37 TAC §§152.10-152.12

The Texas Department of Criminal Justice adopts new §§152.10, 152.11, and 152.12, concerning general allocation provisions, without changes to the proposed text as published in the November 27, 1992, issue of the *Texas Register* (17 TexReg 8269).

Final adoption of these rules will create a mechanism for determining maximum unit and system capacities in conformity with the Texas Government Codes, §499.001 et seq and the final judgment entered in *Ruiz v. Collins*.

The maximum system capacity of units defined as existing units in the final judgment in *Ruiz v. Collins* may be increased only as permitted under Section XIII of the Final Judgment. Maximum system capacity may also be increased by building new facilities as permitted under the Texas Government Code and the final judgment, or by acquiring new facilities, or by contracting for the operation of facilities pursuant to the procedures set forth under Section XIII.D.4 of the final judgment.

The inmates who commented on the proposed rule opposed it, generally because they believed that the system could not accommodate more inmates. As is required under the Texas Government Code, §499.106, the Governor reviewed recommendations from the Texas Department of Criminal Justice Board regarding increases in the inmate population capacity. She sustained the recommended increases; and made a finding that even if community corrections programs and other non-incarceration approaches were utilized more widely, the recommended increases in capacity would be necessary. She therefore forwarded the board's recommendations and findings to the Attorney General. Attorney General Dan Morales reviewed the recommendations of the board and the Governor in conformity with the requirements of the Texas Government Code, §499.107. He found the recommended capacity increases in the Institutional Division of the Texas Department of Criminal Justice are in compliance with state and federal law. He therefore recommended and urged the board to make the capacity increases as soon as possible.

Based on exhaustive inspection of facilities by staff, negotiations with plaintiffs counsel in Ruiz v. Collins, and the findings of fact and conclusions of law of the presiding judge in Ruiz v. Collins, the agency believes that the capacity increases permissible under these rules may be safely accomplished, and should be implemented. The agency concurs with the recommendations of the Governor and the Attorney General. Therefore, the rules as proposed have been adopted.

The new sections are adopted under the Texas Government Code, §499.101 et seq, which provides the Texas Board of Criminal Justice with authority to increase maximum capacity of the Texas Department of Criminal Justice-Institutional Division provided that all of the required procedures under that statute have been completed. The Final Judgment in Ruiz v. Collins permits increases upon completion of required tasks.

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 January 25, 1993.

TRD-9318137

Jackee Cox  
General Counsel  
Texas Department of  
Criminal Justice

Effective date: February 15, 1993

Proposal publication date: November 27, 1992

For further information, please call: (512) 463-9988

## Chapter 155. Reports and Information Gathering

### Subchapter A. Construction Matters

#### • 37 TAC §155.1

The Texas Department of Criminal Justice adopts new §155.1, concerning procedures for determination of prevailing wages, with changes to the proposed text as published in the November 24, 1992, issue of the *Texas Register*. (17 TexReg 8211).

Under Texas Civil Statutes, Article 5159a, the Texas Board of Criminal Justice has the duty to set prevailing wage rates for state construction projects. These rules are adopted in conformity with the requirements of that statute.

The new section establishes by rule the procedures which the Texas Department of Criminal Justice will follow in compiling data to ascertain the prevailing wage rate for each construction project to be done for the department. It also established a mechanism for protests to the wage rate determinations made by the department.

The Associated General Contractors-Texas Building Branch, through their counsel, commented that the inclusion of labor and union collective bargaining agreement data in our data gathering process might have a negative fiscal impact on state government.

Although the rules organizations concerning wage rates included in collective bargaining agreements, that information is used for comparative purposes only. The wage rates actually used to compute the prevailing wage rate will be obtained from contractors who are performing jobs in the area in question. The data collected from labor organizations and collective bargaining agreements will not be used as part of the actual computation of prevailing wages.

The new section is adopted under Texas Civil Statutes, Article 5159a, which imposes a duty on the Texas Department of Criminal Justice to set wage rates for state construction projects, and under the Texas Government Code, §492.013, which confers authority on the Board of Criminal Justice to adopt rules for the operation of the department.

#### *§155.1. Procedures to Determine Prevailing Wage Rates.*

(a) Requirements. The specifications and the contract for each construction project (Project) administered by the Department's Contract Construction Division (Division) shall include a schedule of wages (Prevailing Wage Rates) to be paid on the Project. The Prevailing Wage Rates determined by the Division shall be final and will not be changed except as hereinafter provided.

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

(1) Prevailing wage rates—Wages ascertained by the Division as prevailing in the locality of the Project for each craft or type of worker needed to execute the contract. It is mandatory that the Contractor to whom the contract is awarded, and any subcontractor under such contractor, pay not less than the wages specified by the Prevailing wage Rates in the execution of the contract.

(2) Wages—The basic hourly rate of pay plus payments made to or on behalf of employees for health insurance, pension plans, death benefits, and vacation pay.

#### (c) Data gathering procedures.

(1) The Division shall conduct a survey of contractors, labor organizations, and other interested parties in the locality in which the Project is performed to determine the wages paid to various classifications of workers and the number of workers receiving such wages.

(2) If information is presented to the Division and the Division determines that a survey for a particular locality is not sufficiently representative due to the lack of construction projects of comparable size in that locality or, in the sole judgment of the Division, the survey data is otherwise insufficient, the Division may extend the area of a survey to contiguous counties. If the data is still insufficient, the Division may survey the uniform service region established under Chapter 19, Article V, Rider 120 to the Appropriations Act, 72nd Legislature, First Called Session, (1991), in which the county of the Project is located.

(3) To support primary survey data or as a data source when surveys are impractical, the Division may include data from the following:

(A) other public contracting authorities constructing, planning to construct, or having recently constructed projects in the locality;

(B) the U.S. Division of Labor Wage Determinations;

(C) labor and construction related organizations which publish wage rates;

(D) relevant data from entities issuing building permits in the locality when such data is beneficial in confirming prevailing rates.

(4) The survey procedure is as follows.

(A) The Division will prepare master lists of contractors doing business in the locality of Project.

(B) The master lists shall be compiled from sources available to the Division including, but not limited to:

(i) yellow pages of the telephone book in the locality;

(ii) contractor associations and labor organizations which maintain an office in the locality being surveyed;

(iii) such other source that will provide the most complete list of all contractors doing business in the locality. If no office is maintained by a contractor association or labor organization in the locality, the Division may contact statewide organizations for names of additional contractors in the locality

(C) Master lists shall be as complete as possible but may exclude those contractors whose contribution to the local work force is deemed negligible by the Division.

(D) Master lists will contain the following categories:

(i) general and building contractors;

(ii) site work, paving, grading, excavation contractors;

(iii) utility (water, gas, sewer utilities) contractors;

(iv) plumbing (building systems) contractors;

(v) mechanical (HVAC) contractors;

(vi) electrical contractors;

(vii) roofing contractors;

(viii) painting contractors;

(ix) other contractors as applicable to specific projects or localities.

(E) Contractors within the listed categories will not be classified as to size of operation. Whether a contractor confines its operations to projects of a particular type or size (residential, commercial, industrial, etc.) will be considered when it is apparent that such specialization is common in the locality and is reflected in the wages prevailing therein.

(F) The Division will attempt to contact each contractor and labor organization on the master list to obtain wages being paid and an estimate of the contractor's work force. Contact will be by mail or personal interview using a standard questionnaire devised by the Division. Wage rates established by signed collective bar-

gaining agreements for construction projects within the locality shall be considered in determining Prevailing Wage Rates.

(G) Surveys will be conducted in a timely manner for the locality in which a construction project is scheduled to assure that the Prevailing Wage Rates included in the Division's project manual for the Project are accurate. Such survey will be complete within a six-month period prior to publication of the project manual for a particular project.

(H) After questionnaires are mailed, the Division will allow 30 days for responses. All data received up to that time will be compiled and a Prevailing Wage Rate determined.

(d) Ascertaining prevailing wage rates.

(1) Data from the wage rate questionnaires will be compiled and analyzed to determine the prevailing wage rates being paid for the various classifications of labor. Criteria used to determine the Prevailing Wage Rates will include:

(A) when 50% or more of workers within a given classification are all reported to have received the exact same wages, that rate will be considered as prevailing for that classification;

(B) when more than 50% of workers within a given classification are all reported to have received wages within \$1.00 of each other, the weighted average rate will be considered as prevailing. The term "weighted average rate" means the wage rate for a given classification produced by multiplying each rate reported times the number of employees receiving that rate, and dividing the cumulative products by the total number of workers reported for that classification;

(C) when a prevailing wage rate cannot be determined by either subparagraph (A) or (B) of this paragraph; the weighted average of all reported wages within a given classification will be considered as prevailing.

(2) The project schedule of Prevailing Wage Rates will be determined in accordance with the procedures of subsection (a) of this section, provided that if federal funds are to be used in any aspect of a particular construction project, the wage rates determined by the U.S. Department of Labor shall be used for the entire project.

(e) Use of determination.

(1) The Prevailing Wage Rates determined for a construction project shall

be included in the project manual for that particular project.

(2) Following determination of the Prevailing Wage Rates for a particular project, such Prevailing Wage Rates will not be changed unless:

(A) it is necessary to add omitted wage rates; or

(B) if prior to bid date for that project, substantial evidence is presented to the Division that the survey data on which determination was based does not reflect actual prevailing wages in the relevant labor market in the locality.

(f) Protests. The Division will respond to any person who protests a wage rate determination prior to the date bids are received for that project, provided:

(1) protest is made in writing listing the rate(s) which is believed to be in error, reasons why the rate(s) is believed incorrect, and the person's name. If the protester is representing an aggrieved person, then that interest must be disclosed and the aggrieved person named;

(2) upon receipt of a protest, staff personnel of the Division will review its determination, ascertain whether an error has been made, and report to the protesting person what action, if any, is to be taken;

(3) in the event the staff report is not found satisfactory, the protesting person may request that the matter be subjected to review by the Construction Committee of the Texas Board of Criminal Justice, the findings of which shall be final.

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 January 25, 1993.

TRD-9318134

Jackee Cox  
General Counsel  
Texas Department of  
Criminal Justice

Effective date: February 15, 1993

Proposal publication date: November 24, 1992

For further information, please call: (512) 463-9988

## Chapter 160. Receipt and Disbursement of Work Program Residents' Earned Funds

### • 37 TAC §160.3

The Texas Department of Criminal Justice adopts an amendment to §160.3, concerning

distribution of residents' contributions, without changes to the proposed text as published in the December 15, 1992, issue of the *Texas Register* (17 TexReg 8805).

The adoption of these regulations will bring the conditional work program rules of the Texas Board of Criminal Justice in compliance with the requirements of Federal Law for certification by the United States Department of Justice for participation in the private sector prison industry enhancement certification program.

The amendment as adopted increases the percentage of the earnings a work program resident must contribute to the compensation to victims of crime fund.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Government Code, §497.056(b), which requires the Texas Board of Criminal Justice to adopt rules for the conditional work program, including provisions of a contract with program participants to make financial contributions that shall be distributed in conformity with statutory requirements.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 25, 1993.

TRD-9318136 Jackee Cox  
General Counsel  
Texas Department of  
Criminal Justice

Effective date: February 15, 1993

Proposal publication date: December 15, 1992

For further information, please call: (512) 463-9988.

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 31. Case Management Services

##### Subchapter D. Early Childhood Intervention

###### General Provisions

The Texas Department of Human Services (DHS) adopts new §§31.401-31.408 and §§31.501-31.506, concerning general provisions and reimbursement methodology for the Texas Early Childhood Intervention (ECI) program, without changes to the proposed text as published in the December 11, 1992, issue of the *Texas Register* (17 TexReg 8618).

The justification for the new sections is to implement ECI targeted case management services as Medicaid reimbursable services. DHS is adopting the repeal of existing ECI rules in this issue of the *Texas Register*.

The new sections will function by providing developmentally disabled infants and toddlers with access to medical, social, educational, developmental, and other appropriate services to help them fully participate in the community.

No comments were received regarding adoption of the new sections.

###### • 40 TAC §§31.401-31.408

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

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 January 21, 1993.

TRD-9317999 Nancy Murphy  
Agency Liaison, Policy and  
Document Support  
Texas Department of  
Human Services

Effective date: March 1, 1993

Proposal publication date: December 11, 1992

For further information, please call: (512) 450-3765

###### Reimbursement Methodology for the Early Childhood Intervention Program

###### • 40 TAC §§31.501-31.506

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

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 January 21, 1993.

TRD-9318000 Nancy Murphy  
Agency Liaison, Policy and  
Document Support  
Texas Department of  
Human Services

Effective date: March 1, 1993

Proposal publication date: December 11, 1992

For further information, please call: (512) 450-3765

## Chapter 33. Early and Periodic Screening, Diagnosis, and Treatment

### Subchapter U. Early Childhood Intervention

#### General Provisions

The Texas Department of Human Services (DHS) adopts the repeal of §§33.501-33.508 and §§33.601-33.606, concerning general provisions and reimbursement methodology for the Texas Early Childhood Intervention (ECI) program, without changes to the proposed text as published in the December 11, 1993, issue of the *Texas Register* (17 TexReg 8624).

The justification for the repeals is to enable DHS to adopt new programmatic and reimbursement methodology rules and rates to implement ECI targeted case management services as Medicaid reimbursable services. DHS is adopting the new rules in this issue of the *Texas Register* in Chapter 31 of this title (relating to Case Management Services).

The repeals will function by enabling DHS to adopt in their place new rules that will provide developmentally disabled infants and toddlers access to medical, social, educational, developmental, and other appropriate services to help them fully participate in the community.

No comments were received regarding adoption of the repeals.

###### • 40 TAC §§33.501-33.508

The repeals are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

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 January 21, 1993.

TRD-9318001 Nancy Murphy  
Agency Liaison, Policy and  
Document Support  
Texas Department of  
Human Services

Effective date: March 1, 1993

Proposal publication date: December 11, 1992

For further information, please call: (512) 450-3765

###### Reimbursement Methodology for the Early Childhood Intervention Program

###### • 40 TAC §§33.601-33.606

The repeals are adopted under the Human Resources Code, Title 2, Chapters 22 and

32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413c(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

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 January 21, 1993.

TRD-9318002

Nancy Murphy  
Agency Liaison, Policy and  
Document Support  
Texas Department of  
Human Services

Effective date: March 1, 1993

Proposal publication date: December 11, 1992

For further information, please call: (512) 450-3765

◆ ◆ ◆

## Texas Department of Insurance

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

*(Editor's Note: As required by the Insurance Code, Article 5.96 and 5.97, the Texas Register publishes notices of actions taken by the State Board of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure and Texas Register Act.)*

These actions become effective 15 days after the date of publication or on a later specified date.

The text of the material being adopted will not be published, but may be examined in the offices of the State Board of Insurance, 333 Guadalupe, Austin.)

The State Board of Insurance of the Texas Department of Insurance, at a public meeting held at 9 a.m. January 6, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street, Austin, adopted the rules on Procedures for Hearing Appeals as proposed by the Texas Workers' Compensation Insurance Facility (Facility) in a petition filed in the Chief Clerk's Office on October 29, 1992. The petition recommends rules on procedures for hearing appeals by codifying current informal procedures at the Facility and providing alternative procedures for more complex appeals. The codification of the current appeals procedures will be beneficial to the efficient administration of the Facility's appeals process. The Facility's petition (Reference Number W-1092-66) was published in the December 4, 1992, issue of the *Texas Register* (17 TexReg 8429).

The State Board has jurisdiction over this matter pursuant to the Insurance Code Articles 5.76-2 and 5.96.

The full text of the rule on procedures for hearing appeals as adopted by the State Board of Insurance is filed with the Chief Clerk under Reference Number W-1092-66, and is incorporated by reference by Board Order Number 60107.

This notification is made pursuant to the Texas Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

Consistent with Texas Insurance Code, Article 5.96(h), prior to the effective date of this action, the Board will notify all insurers writing workers' compensation insurance.

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 January 22, 1993.

TRD-9318073

Linda K. von Quintus-Dorn  
Chief Clerk  
Texas Department of  
Insurance

Effective date: February 13, 1993

Proposal publication date: December 4, 1992

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

◆ ◆ ◆

The State Board of Insurance of the Texas Department of Insurance, at a public hearing held at 9 a.m. on January 6, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street, Austin, adopted amendments to the Texas Homeowners Policy, Texas Dwelling Policy, Texas Farm and Ranch Policy, and manual rules in the Texas Personal Lines Manual as proposed by staff in a petition filed in the Chief Clerk's Office on November 12, 1992. The petition recommended revising the existing policy forms and endorsements for the Texas Homeowners Policy, Texas Dwelling Policy, Texas Farm and Ranch Policy, and manual rules in the personal lines manual to clarify coverages and rules, to incorporate omissions and to correct errors discovered after the adoption of new policy forms and endorsements and manual effective on July 1, 1992. The amendments do not encompass any new revisions to coverages or manual rules and are intended to correct unintentional errors occurring during the rewriting of the policy forms and endorsements and manuals. Staff's petition (Reference Number P-1092-63-I) was published in the November 24, 1992, issue of the *Texas Register* (17 TexReg 8231).

The State Board has jurisdiction over this matter pursuant to the Insurance Code Articles 5.35 and 5.96.

The amendments adopted by the State Board of Insurance are as follows:

### POLICY FORM CORRECTIONS

#### I. Texas Homeowners Policy Form-A

A. Definitions Page 1, item 3 Business day. Replace the word "endorsement" with "policy".

B. Section I Property Coverage Page 3, Extensions of Coverage Item 2 Paragraph 2-Loss of Use is "20%" and should be "10%".

C. Section I Conditions page 6, item 3.a.(6).(b); (i), (ii), and (iii). Delete "(b) If you elect to make claim under the replacement cost coverage of this policy, this proof of loss shall also state, to the best of your knowledge and belief:

(i) The replacement cost of the described dwelling.

(ii) The replacement cost of any other building on which loss is claimed.

(iii) The full cost of repair or replacement of loss without deduction for depreciation".

#### II. Texas Homeowners Policy Form-B

A. Section I exclusions Page 4, 1.f. (1) & (5). Delete under item (1) "inherent vice, wear and tear or deterioration". Add "wear and tear, deterioration or loss caused by any quality in property that causes it to damage or destroy itself". Delete under item (5) "vermin". Add "rats, mice".

B. Section I conditions page 7, item 4.b.(2).

Delete

"Coverage A (Dwelling) Limit of Liability  
Replacement Cost of the Loss X 80% of  
Replacement Cost of the Dwelling".

Add

"Replacement Cost of the Loss  
X

Coverage A (Dwelling) Limit of Liability  
80% of Replacement Cost  
of the Dwelling".

### III. Texas Homeowners Policy Form-C

A. Section I Property Coverage Page 2, Coverage B, (Personal Property) item 4.a. The property is away from the residence premises. Add "of the residence employee" (continue sentence).

B. Section I Exclusions Page 5, item 1.i.(1) & (5). Delete under item (1) "inherent vice, wear and tear or deterioration". Add "wear and tear, deterioration or loss caused by any quality in property that causes it to damage or destroy itself". Delete under item (5) "vermin" Add "rats, mice".

C. Section I Conditions Page 8, item 4.b. (2).

Delete

Coverage A (Dwelling) Limit of Liability  
Replacement Cost of the Loss X 80% of  
Replacement Cost of the Dwelling.

Add

Replacement Cost of the Loss  
X  
Coverage A (Dwelling) Limit of Liability  
80% of Replacement Cost  
of the Dwelling

### IV. Texas Homeowners Tenant Policy Form B

A. Section I Property Coverage-Extensions of coverage page 3, item 2 paragraph 2. Delete both places in this paragraph stating "Coverage A (Dwelling)". Add "Coverage B (Personal Property)".

B. Section 1 Conditions page 5, item 3.a.(6)(b)(i),(ii), and (iii). Delete (b) "if you elect to make claim under the replacement cost coverage of this policy, this proof of loss shall also state, to the best of your knowledge and belief:

(i) The replacement cost of the described dwelling.

(ii) The replacement cost of any other building on which loss is claimed.

(iii) The full cost of repair or replacement of loss without deduction for depreciation".

V. Texas Homeowners Tenant Policy Form C: Section 1 Conditions page 5, item 3.a.(6)(b)(i), (ii), and (iii). Delete (b) "if you elect to make claim under the replacement cost coverage of this policy, this proof of loss shall also state, to the best of your knowledge and belief:

(i) The replacement cost of the described dwelling.

(ii) The replacement cost of any other building on which loss is claimed.

(iii) The full cost of repair or replacement of loss without deduction for depreciation".

VI. Texas Homeowners Condominium Policy Form B: Section I Conditions page 6, item 3.a.6. (b), (i), (ii), and (iii). Delete (b) "if you elect to make claim under the replacement cost coverage of this policy, this proof of loss shall also state, to the best of your knowledge and belief:

(i) The replacement cost of the described dwelling.

(ii) The replacement cost of any other building on which loss is claimed.

(iii) The full cost of repair or replacement of loss without deduction for depreciation".

**VII. Texas Homeowners Condominium Policy-Form C**

A. Section 1-Property coverage page 3, item 7.b. Delete "7". Add "6". Delete "property in transit up to 10% of the coverage B (Personal Property) limit of liability or \$1,000, whichever is greater". Add "property in transit up to the coverage B (Personal Property) limit of liability".

B. Section 1 Exclusions page 4, item 1. Delete "Coverage A (Dwelling) or".

C. Section 1 Exclusions page 4, item 1.i. (1) and (5). Delete under item (1) "inherent vice, wear and tear or deterioration". Add "wear and tear, deterioration or loss caused by any quality in property that causes it to damage or destroy itself". Delete under item (5) "vermin". Add "rats, mice".

D. Section 1 Exclusions page 5, item K. Delete "Coverage A (Dwelling)". Add "Coverage B (Personal Property)".

E. Section 1-conditions page 6, item 3.a. (6), (b), (i), (ii), and (iii). Delete (b) "If you elect to make claim under the replacement cost coverage of this policy, this proof of loss shall also state, to the best of your knowledge and belief:

(i) The replacement cost of the described dwelling.

(ii) The replacement cost of any other building on which loss is claimed.

(iii) The full cost of repair or replacement of loss without deduction for depreciation".

VIII. Texas Farm & Ranch Policy Endorsement

Endorsement No. TFR-071 Mobil Agricultural Machinery and Equipment Coverage-Page 2, item c. 3. b. (1), (2), (3), (1), (2), and (3). Delete.

"b. We will reimburse you for replacement cost for covered losses subject to the following conditions. These conditions apply at the time of the loss.

(1) If the limit of liability is 80% or more of the full replacement cost of the property, we will pay the repair or replacement cost of the damaged property. Replacement cost means there will not be deduction for depreciation.

(2) If the limit of liability is less than 80% of the full replacement cost of the property, we will pay only a proportionate share of the full replacement cost of the damaged property. Our share is equal to:

## Replacement Cost of the Loss

X

### Limit of Liability

### 80% of Replacement Cost of the Property

(3) If the actual cash value of the property is greater than the replacement cost determined in VIII Texas Farm & Ranch Policy Endorsement, (1) or (2), we will pay the actual cash value up to the applicable limit of liability. In determining the amount of insurance required to equal 80% of the full replacement cost of the property, do not include the value of excavations, underground pipes, and wiring and foundations which are below the surface of the ground. We will pay only the actual cash value of the damaged property until repair or replacement is completed. Repair or replacement must be completed

within 365 days after loss. We will extend this time limit for an additional 180 days. We will pay the additional amount claimed under replacement cost coverage, upon completion of repairs or replacement. We will not pay more than the smallest of the following: the limit of liability under this policy applicable to the damaged or destroyed property; the cost to repair or replace that part of the property damaged, with material of like kind and quality and for the same use and occupancy on the same premises; or the amount actually and necessarily spent to repair or replace the property".

IX. Texas Dwelling Policy Form 2.

A. Perils Insured Against

a. Page 2 item 3, Windstorm, Hurricane and Hail (b) We do not cover loss caused by windstorm, hurricane. Delete "and" add "or" (continue sentence).

b. Page 3 item 12, Vandalism and Malicious Mischief (b) loss by pilferage, theft, burglary or larceny, but. Add "we" (continue sentence).

X. Texas Dwelling Policy Form 3

a. Page 3, under item 9-Exclusions 1A through 1H under general exclusions do not apply to loss caused by this peril. Should read Exclusions 1. a through 1.i. under general exclusions do not apply to loss caused by this peril.

## PERSONAL LINES MANUAL CORRECTIONS

### A. Homeowners

1. Section IV item A.13 Page 9, change "Deductible Amendent Chart" to "Deductible Adjustment Chart".

2. Territorial Multipliers Page 29 Territory #19N, change "1.396" to "1.398".

3. Deductible Adjustment Chart Page 37, "substracted" should be "subtracted".

4. Premium Chart 4 bottom of page, 38 & 39, "Townshouses" should be "Townhouses".

5. Premium Chart 22 Page 44 Item 1 Limit of Liability 250, 000-Initial Farm Premises \$1,000, "14" should be "15".

6. Texas Homeowners Policy Endorsements and Forms Page 48

a. Add "Endorsement No. HO-100. Description-Refusal to Renew. Abbreviated Description-Refusal to Renew., Date 3-1-93."

b. Add "Endorsement No. HO-195. Description-Amendatory Endorsement. Abbreviated Description-Amendatory Endorsement., Date 3-1-93."

### B. Dwelling

1. Section VI Item A.3.D. (i), (i), (ii) (iii) Page 12.

a. Delete under (i) "The basic premiums shall be reduced 2% rounded to the



nearest dollar". Add "The key rate shall be reduced eight cents".

b. Delete under (ii) "the basic premiums shall be reduced 1% rounded to the nearest dollar". Add "The key rate shall be reduced four cents".

c. Delete under (iii) "the Basic Premium shall be reduced 1% rounded to the nearest dollar". Add "The key rate shall be reduced four cents".

2. Premium chart No. 12 Miscellaneous Property Schedule page 27, change the language in the all other perils column. Delete "Use dwelling premiums". Add "use additional perils/all risk premium charts. Delete "use additional perils premium charts. Add "Use additional perils/all risk premium chart".

3. Add page number 32 ("List of Policy Endorsements and Forms").

C. Farm and Ranchowners

1. Add page number 36 ("List of Policy Endorsements and Forms").

D. Farm & Ranch

1. Premium Chart No. 5 Miscellaneous Property Schedule Page 27, Greenhouses and contents plain glass E.C. Rate of "7.47" should be "8.00".

2. Add page number 32 ("List of Policy Endorsements and Forms").

These amendments will be incorporated into mandatory endorsement Form Numbers HO-195, TDP-028, and TFR-088 to be used by companies until such time as the amendments can be incorporated into the policy forms.

This notification is made pursuant to the Texas Insurance Code, Article 5. 96, which exempts it from the requirements of the Administrative Procedures and Texas Register Act.

Consistent with Texas Insurance Code Article 5.96(h), prior to the effective date, March 1, 1993 of this action, the Board will notify all

insurers writing property and casualty insurance.

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 January 22, 1993.

TRD-9318075

Linda K. von Quintus-Dorn  
Chief Clerk  
Texas Department of  
Insurance

Effective date: March 1, 1993

Proposal publication date: November 24, 1992

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

◆ ◆ ◆

The State Board of Insurance of the Texas Department of Insurance, at a public hearing held at 11 a.m. on January 6, 1993, under Docket Number 1980, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street, Austin, adopted Refusal to Renew Mandatory Endorsement HO-100, Refusal to Renew Mandatory Endorsement TDP-026, Refusal to Renew Mandatory Endorsement TFR-086, Refusal to Renew Mandatory Endorsement TFR-087, and refusal to Renew Mandatory Endorsement FRO-486 as proposed by staff in a petition filed in the Chief Clerk's Office on November 12, 1992. The petition recommended adopting mandatory endorsements to amend the Refusal to Renew provisions in the Texas Homeowners Policy, Texas Dwelling Policy, Texas Farm and Ranch Policy, and Texas Farm and Ranch Owners Policy incorporating a prohibition of the refusal to renew a residential property policy because of the condition of the premises unless there is a change in the condition(s) of the premises, the insurer has notified the insured of the condition(s), and provided the insured adequate time to correct the condition. The

staff's petition (Reference Number P-1092-64-I) was published in the November 24, 1992, issue of the *Texas Register* (17 TexReg 8231).

The State Board of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.35 and 5.96.

The endorsements as adopted by the State Board of Insurance amend the Refusal to Renew provisions in each policy to read as follows:

e. We may not refuse to renew this policy based on the condition of the premises unless:

(1) there is a change in the condition(s) of the premises,

(2) we have notified you of the condition(s) which may result in our refusal to renew the policy, and

(3) we have allowed you adequate time to remedy the condition(s).

This notification is made pursuant to the Texas Insurance Code, Article 5. 96, which exempts it from the requirements of the Administrative Procedures and Texas Register Act.

Consistent with Texas Insurance Code, Article 5.96(h), prior to the effective date, March 1, 1993, of this action, the Board will notify all insurers writing property and casualty insurance.

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 January 22, 1993.

TRD-9318074

Linda K. von Quintus-Dorn  
Chief Clerk  
Texas Department of  
Insurance

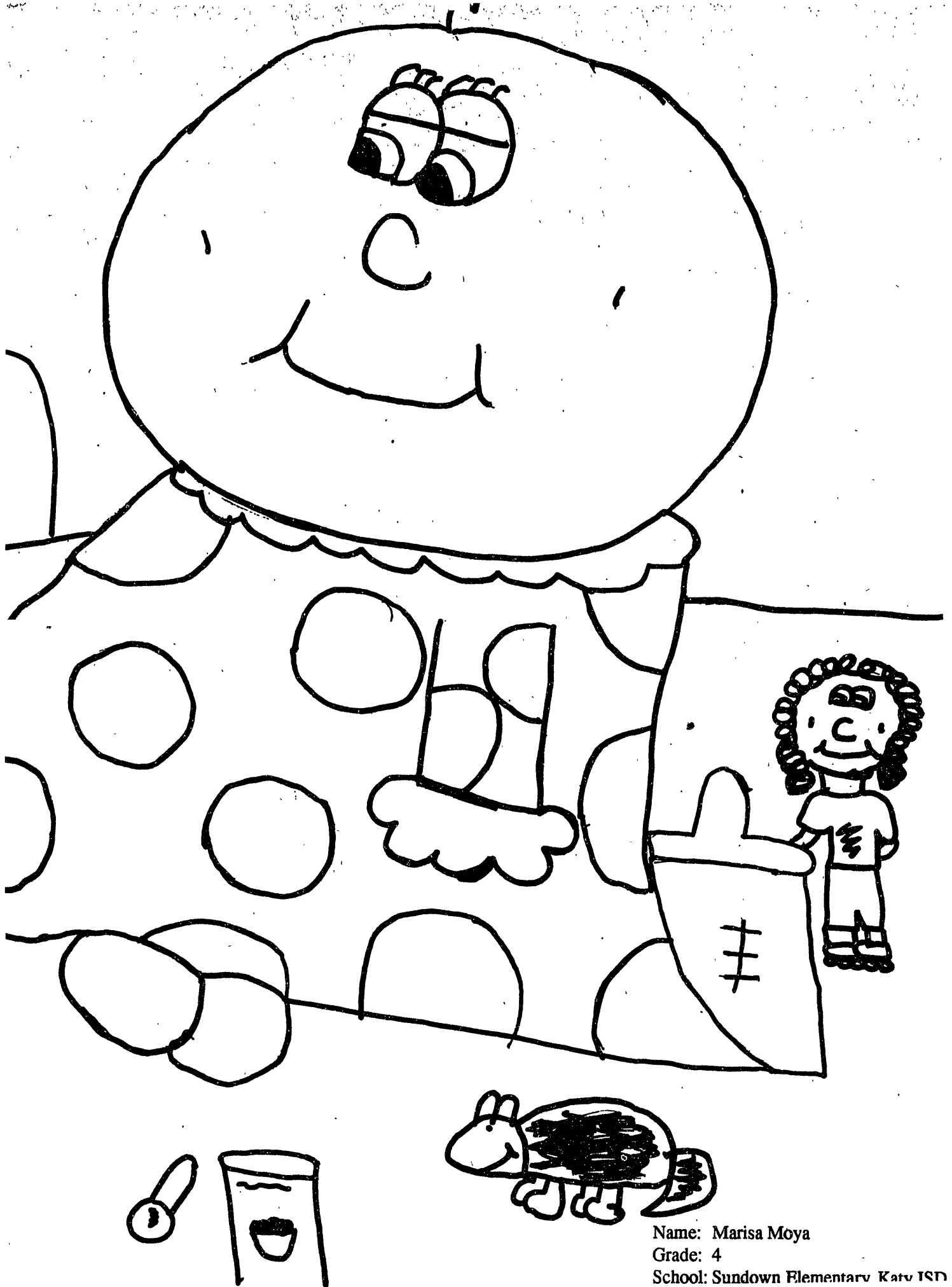
Effective date: March 1, 1993

Proposal publication date: November 24, 1992

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

◆ ◆ ◆





Name: Marisa Moya  
Grade: 4  
School: Sundown Elementary Katy ISD

# Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

**Emergency meetings and agendas.** Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

**Posting of open meeting notices.** All notices are posted on the bulletin board at the Office of the Secretary of State in lobby of 221 East 11th Street, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register*.

**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

## Texas Department of Agriculture

**Tuesday, February 2, 1993, 10 a.m.** The Texas Sheep and Goat Raisers Commodity Board of the Texas Department of Agriculture will meet at the Texas Sheep and Goat Raisers Association Board Room, 233 West Twohig, San Angelo. According to the complete agenda, the board will discuss and possibly act on: minutes of January 5, 1993 meeting; procedure for collection of funds; selection of bank for deposit of assessments; post office box and handling of mail; operating budget for 1993; other requirements for the board; employment of office staff and other personnel; discuss other business; and scheduling of next meeting.

**Contact:** Minnie Savage, P.O. Box 2290, San Angelo, Texas 76902, (915) 655-7388.

**Filed:** January 21, 1993, 1:54 p.m.

TRD-9318016

## Texas School for the Blind and Visually Impaired (TSBVI)

**Friday, January 29, 1993, 9 a.m.** The Personnel/Policy Committee of the Board of Trustees Personnel/Policy Committee of the Texas School for the Blind and Visually Impaired (TSBVI) will meet at 1100 West 45th Street, Administration Building, Room 150, Austin. According to the agenda summary, the committee will call the meeting to order; review school policies; career ladder criteria; and adjourn.

**Contact:** Jennifer Harris, 1100 West 45th Street, Austin, Texas 78756, (512) 454-8631, ext. 133.

**Filed:** January 21, 1993, 2:41 p.m.

TRD-9318025

**Friday, January 29, 1993, 9 a.m.** The Audit Committee of the Board of Trustees Finance/Audit Committee of the Texas School for the Blind and Visually Impaired (TSBVI) will meet at 1100 West 45th Street, Administration Building, Room 116, Austin. According to the agenda summary, the committee will call the meeting to order; discuss approval of minutes of November 13, 1992 meeting; 1992-1993 budget update; legacy fund update; internal auditor's report; and adjourn.

**Contact:** Jennifer Harris, 1100 West 45th Street, Austin, Texas 78756, (512) 454-8631, ext. 133.

**Filed:** January 21, 1993, 2:41 p.m.

TRD-9318024

**Friday, January 29, 1993, 9 a.m.** The Board of Trustees Curriculum Committee of the Board of Trustees of the Texas School for the Blind and Visually Impaired (TSBVI) will meet at 1100 West 45th Street, Administration Building, Room 110, Austin. According to the agenda summary, the committee will call the meeting to order; review and discuss funding for second printing of independent living curriculum; report on the latest draft of the early concepts curriculum; report on the piloting of the Orientation and Mobility (O&M) curriculum; report on the piloting of Alan Koenig and Cay Holbrook's Learning Media Assessment; Guidelines for Teacher; and adjourn.

**Contact:** Jennifer Harris, 1100 West 45th Street, Austin, Texas 78756, (512) 454-8631, ext. 133.

**Filed:** January 21, 1993, 2:41 p.m.

TRD-9318023

**Friday, January 29, 1993, 10 a.m.** The Board of Trustees of the Texas School for the Blind and Visually Impaired (TSBVI) will meet at 1100 West 45th Street, Administration Building, Room 116, Austin. According to the agenda summary, the board will call the meeting to order; presentation: "TSBVI presents...." (video presentation); hear public comments/open forum; discuss new business (including approval of November 13 board meeting minutes; approval of school policies; career ladder criteria; Medicaid reimbursement for school health and related services; summary of board members' training hours; results of TAAS report); comments from board members; and adjourn.

**Contact:** Jennifer Harris, 1100 West 45th Street, Austin, Texas 78756, (512) 454-8631, ext. 133.

**Filed:** January 21, 1993, 2:41 p.m.

TRD-9318022

## Texas Cancer Council

**Wednesday, February 17, 1993, 9 a.m.** The Board of Directors of the Texas Cancer Council will meet at the Texas Department of Health, Room M-739, 1100 West 49th Street, Austin. According to the complete agenda, the board will call the meeting to order; discuss approval of the minutes; hear executive director's report; report on the CATCHUM Project; legislative update; FY 1993 policy and funding decisions; discuss other business; and adjourn. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact

Debra Perkins at (512) 463-3190 five working days prior to the meeting so that appropriate arrangements can be made.

Contact: Emily F. Untermeyer, P.O. Box 12097, Austin, Texas 78701, (512) 463-3190.

Filed: January 25, 1993, 3:40 p.m.

TRD-9318172

### **Texas Catastrophe Property Insurance Association**

Friday, January 29, 1993, 10 a.m. The Board of Directors of the Texas Catastrophe Property Insurance Association will hold a meeting via conference call at the TCPIA Offices, 2801 South Interregional, Austin. According to the complete agenda, the board will receive the interim report of the task force study committee; discuss legislative issue; property rate hearing; and any other business that may come before the board. The conference call is to be heard by the public.

Contact: Frank R. Rogers, 2801 South Interregional, Austin, Texas 78741, (512) 444-9612.

Filed: January 21, 1993, 2:22 p.m.

TRD-9318019

### **Texas Department of Criminal Justice**

Friday, January 29, 1993, 8:30 a.m. The Board of Criminal Justice, Subcommittee on Windham School System of the Texas Department of Criminal Justice will meet at the TDCJ Austin Office, 816 Congress Avenue, Suite 500, Austin. According to the complete agenda, the subcommittee will convene; discuss Windham School Audit and its recommendations; discuss inmate education above the high school level; coordination and communication between the institutional division and the Windham School System; and adjourn.

Contact: Susan Power-McHenry, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250.

Filed: January 21, 1993, 11:07 a.m.

TRD-9318005

### **Texas State Board of Dental Examiners**

Friday, January 29, 1993, 2 p.m. The Texas State Board of Dental Examiners will meet at the TSBDE Offices, 333 Guadalupe Street, Tower Three, Suite 800, Austin. According to the complete agenda, the board will call the meeting to order; take roll call; meet in executive session to discuss litigation

pursuant to Article 6252-1F, §2(e), Youngblood versus TSBDE; and adjourn.

Contact: C. Thomas Camp, 333 Guadalupe Street, Tower Three, Austin, Texas 78701, (512) 463-6400.

Filed: January 21, 1993, 1:56 p.m.

TRD-9318009

### **Texas Office for Prevention of Developmental Disabilities**

Tuesday, February 9, 1993, 2 p.m. The Executive Committee of the Texas Office for Prevention of Developmental Disabilities will meet at the Texas Medical Association Building, 401 West 15th Street, 10th Floor, Austin. According to the complete agenda, the committee will call the meeting to order and opening remarks; take roll call; make introductions of guests; call for changes or corrections to November 17, 1992, minutes; discuss task forces reports; legislative proposals for 73rd Legislature; first advisory meeting status; schedule for next meeting; and other business.

Contact: Jerry Ann Robinson, 4900 North Lamar Boulevard, Austin, Texas 78756, (512) 483-5042.

Filed: January 25, 1993, 2:13 p.m.

TRD-9318151

Wednesday, February 10, 1993, 8:30 a.m. The Advisory Board of the Texas Office for Prevention of Developmental Disabilities will meet at the Texas Medical Association Building, 401 West 15th Street, First Floor, Austin. According to the complete agenda, the board will call the meeting to order and welcome; make introductions and TOP background; discuss status of Top/Charge and TDH grant provisions; strategic planning process; take a lunch break; reconvene to identify solvable problems; discuss group workshops on realistic ideal and barriers to the ideal; reconvene to review and assign tasks; and recess until Thursday, February 11, 1993, at 8:30 a.m.

Contact: Jerry Ann Robinson, 4900 North Lamar Boulevard, Austin, Texas 78756, (512) 483-5042.

Filed: January 25, 1993, 2:14 p.m.

TRD-9318152

Thursday, February 11, 1993, 8:30 a.m. The Advisory Board of the Texas Office for Prevention of Developmental Disabilities will meet at the Texas Medical Association Building, 401 West 15th Street, First Floor, Austin. According to the complete agenda, the board will call the meeting to order and make announcements; discuss group workshops on strategies to overcome top three barriers; group workshops on next steps (what and who); reconvene and review

group workshops; wrap-up (possible legislative training session); and adjourn.

Contact: Jerry Ann Robinson, 4900 North Lamar Boulevard, Austin, Texas 78756, (512) 483-5042.

Filed: January 25, 1993, 2:06 p.m.

TRD-9318150

### **Advisory Commission on State Emergency Communications**

Tuesday-Wednesday, February 2-3, 1993, 10 a.m. and 9 a.m. respectively. The Executive Development Workshop of the Advisory Commission on State Emergency Communications will meet at the Salado Stagecoach Inn, Number One Main Street, Salado. According to the agenda summary, on Tuesday, the workshop will begin with opening remarks and review of itinerary; staff orientation on 9-1-1 operations; tour of PSAPs in the Central Texas Council of Governments' region; hold a work session; and give an overview of 9-1-1 legislation, policies and procedures. On Wednesday, the workshop will begin with a work session and implementation of strategic plan. Persons requesting interpreter services for the hearing and speech-impaired should contact Velia Williams at (512) 327-1911 at least two work days prior to the meeting.

Contact: Jim Goerke, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: January 25, 1993, 3:13 p.m.

TRD-9318158

### **Texas Department of Health**

Wednesday, January 27, 1993, 9 a.m. The Texas State Board of Examiners of Marriage and Family Therapists of the Texas Department of Health held an emergency meeting at the J. W. Marriott Hotel, 5150 Westheimer, Houston. According to the complete agenda, the board discussed approval of minutes of the November 2, 1992 board meeting; discussed and possibly acted on: executive director's report (Sunset Commission decision materials; final rules on supervisor and supervision requirements; complaints; applications, denials, and audit; future committee meetings; and annual report from the board to the governor and legislature); committee reports (continuing education); examination to be used for the licensing of marriage and family therapists in Texas; and other issues concerning licensed marriage and family therapists. The emergency status was necessary due to unforeseeable circumstances.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657. For ADA assistance, call Richard Butler at (512) 458-7488 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: January 25, 1993, 4:33 p.m.

TRD-9318178

Friday, January 29, 1993, 10 a.m. The Midwifery Board of the Texas Department of Health held an emergency meeting at the Texas Department of Health, Room M-368, 1100 West 49th Street, Austin. According to the complete agenda, the board discussed and acted on: education rules; board nominations; Sunset Committee report; midwifery coordinator; ethics; and date of next meeting. The emergency status was necessary due to unforeseeable circumstances.

Contact: Joey Alexander, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700.

Filed: January 25, 1993, 4:33 p.m.

TRD-9318179

### Texas High-Speed Rail Authority

Friday, January 29, 1993, 10 a.m. The Board of Directors of the Texas High-Speed Rail Authority will meet at the Public Hearing Room, D. C. Greer State Highway Building, 125 East 11th Street, Austin. According to the agenda summary, the board will discuss approval of minutes from December 17, 1992 meeting; visiting delegation from New Orleans Regional Planning Commission and Southern Rapid Rail Transit Commission; report from Texas TGV Corporation; final adoption of proposed \$81.170; executive director search committee report; proposed Operations Manual; filed legislation report; meet in executive session; consider matters regarding agreement for services with Woodward-Clyde Consultants; authorization to negotiate Memorandum of Agreement with Texas Department of Transportation for EIS project management assistance; citizen communications; and report from financial advisor.

Contact: Allan Rutter, 832 Congress Avenue, Suite 1502, Austin, Texas 78701, (512) 478-5484.

Filed: January 21, 1993, 4:19 p.m.

TRD-9318040

### Texas Incentive and Productivity Commission

Friday, February 5, 1993, 10 a.m. The Texas Incentive and Productivity Commission will meet at One Capitol Square, Room 202, 15th and Lavaca Streets, Austin. According to the agenda summary, the com-

mission will call the meeting to order; take roll call; discuss approval of minutes of previous meeting; consider employee suggestions for approval; 1993 productivity plans; productivity bonus program 1992 plans; amendment to 1993 operating budget; report on administrative matters; and adjourn.

Contact: M. Elaine Powell, P.O. Box 12482, Austin, Texas 78711, (512) 475-2393.

Filed: January 26, 1993, 9:35 a.m.

TRD-9318187

### Texas Department of Insurance

Friday, January 29, 1993, 10:30 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby II, Fourth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the application of Texas Directors Life Insurance Company, Abilene, to acquire control of Winters Life Insurance Company, Winters, pursuant to the provisions of Texas Insurance Code, Article 21.49-1, §5.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: January 21, 1993, 1:29 p.m.

TRD-9318010

Friday, January 29, 1993, 1:30 p.m. The State Board of Insurance of the Texas Department of Insurance will meet in Room 100, William P. Hobby Building, 333 Guadalupe Street, Austin. According to the complete agenda, the board will hold a public hearing under Docket Number 1976 to consider the appeal from the Commissioner's Order Numbers 92-0608 and 92-1216 on behalf of First Assurance and Casualty Company Limited, Turks and Caicos Islands, British West Indies.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: January 21, 1993, 10:15 a.m.

TRD-9318004

Wednesday, February 3, 1993, 8:30 a.m. (Revised agenda). The State Board of Insurance of the Texas Department of Insurance will meet in 1350I, William P. Hobby Building, 333 Guadalupe Street, Austin. According to the complete revised agenda, the board will consider matters relating to the Texas Catastrophe Property Insurance Association (TCPIA) Legislative proposals.

Contact: Joe Woods, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: January 26, 1993, 9:44 a.m.

TRD-9318188

Wednesday, February 3, 1993, 2 p.m. The State Board of Insurance of the Texas Department of Insurance will meet in 1350I, William P. Hobby Building, 333 Guadalupe Street, Austin. According to the complete agenda, the board will meet with representatives of the Attorney General's office to discuss pending and contemplated litigation matters in executive session.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: January 26, 1993, 9:44 a.m.

TRD-9318189

Thursday, February 4, 1993, 9 a.m. The State Board of Insurance of the Texas Department of Insurance will meet in Room 100, William P. Hobby Building, 333 Guadalupe Street, Austin. According to the agenda summary, the board will review and discuss personnel; litigation; commissioner's orders; solvency; budget; hear staff reports; consider petition filed by the Office of Public Insurance Counsel and two petitions filed by the Texas Workers' Compensation Insurance Facility; consider motion filed by the St. Paul Insurance Company, et al requesting transfer of appointment as a designated insurer under the Small Premium Policy Plan; report to board on Texas private passenger automobile insurance market and consider possible courses of action; consider several excess of loss policies; consider filings by National American Insurance Company, Liberty Mutual Insurance Company, et al, Federal Insurance Company, et al, and Foremost County Mutual Insurance Company; and briefing by staff on professional liability insurance.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: January 25, 1993, 4:01 p.m.

TRD-9318173

Wednesday, February 24, 1993, 1:30 p.m. The State Board of Insurance of the Texas Department of Insurance will meet in Room 100, William P. Hobby Building, 333 Guadalupe Street, Austin. According to the complete agenda, the board will hold a public hearing under Docket Number 1975 to consider the appeal from Commissioner's Order Number 92-1001 on behalf of Robert Jeffery Wand.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: January 22, 1993, 9:53 a.m.

TRD-9318059

## **Lamar University System, Board of Regents**

**Thursday, January 28, 1993, 7 p.m.** The Board of Regents of Lamar University System met at the Mary and John Gray Library, Lamar University-Beaumont, 4400 Martin Luther King, Beaumont. According to the complete agenda, the board met in executive session pursuant to provisions of Vernon's Civil Statutes, Article 6252-17, §2(g) for the purpose of interviewing candidate for position of President of Lamar-Beaumont.

**Contact:** James A. (Dolph) Norton, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

**Filed:** January 25, 1993, 9:29 a.m.

TRD-9318127

## **Texas Department of Licens- ing and Regulation**

**Thursday, February 11, 1993, 9 a.m.** The Inspections and Investigations; Personnel Employment Services of the Texas Department of Licensing and Regulation will meet at 920 Colorado Street, E. O. Thompson Building, Third Floor Conference Room, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for Dawn L. Trehame doing business as Career El Paso Employment Agency for violation of 16 TAC §63.71(a)(3), §63.71(1)(8), §63.21(a), and §63.40(a); Article 5221a-7, §3(a)(3), §3(a)(9), §7(a), and §7(c); Business Commerce Code, Chapter 17; and Article 9100.

**Contact:** Paula Hamje, 920 Colorado Street, Austin, Texas 78701, (512) 463-3192.

**Filed:** January 25, 1993, 11:12 a.m.

TRD-9318143

## **Public Utility Commission of Texas**

**Tuesday, February 2, 1993, 1:30 p.m.** The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a second prehearing conference in Docket Number 11487-inquiry of the general counsel into the marketing and business practices of Southwestern Bell Telephone Company.

**Contact:** John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** January 22, 1993, 2:51 p.m.

TRD-9318098

**Friday, February 5, 1993, 10 a.m.** The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 11452-application of Southwestern Bell Telephone Company to provide a new service, Business Video Service (BVS), in Section 7 of the Digital Link Service Tariff.

**Contact:** John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** January 25, 1993, 3:23 p.m.

TRD-9318163

**Monday, March 8, 1993, 9 a.m.** The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the commission will hold a hearing on the merits in Docket Number 11548-application of Cap Rock Electric Cooperative, Inc. for an experimental cotton gin rate.

**Contact:** John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** January 25, 1993, 3:22 p.m.

TRD-9318159

**Tuesday, March 30, 1993, 1:30 p.m.** The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 11037-application of Texas Utilities Electric Company for approval of calculation of House Bill 11 tax adjustment factors for 1992 pursuant to Public Utility Commission Substantive Rule 23.21(d).

**Contact:** John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** January 25, 1993, 3:22 p.m.

TRD-9318160

**Tuesday, April 13, 1993, 1:30 p.m.** The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 11032-application of Southwestern Electric Service Company for approval of calculation of House Bill 11 tax

adjustment factors for 1992 pursuant to Public Utility Commission Substantive Rule 23.21(d).

**Contact:** John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** January 25, 1993, 3:23 p.m.

TRD-9318161

**Tuesday, June 1, 1993, 10 a.m.** The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 11045-application of North Texas Telephone Company for approval of calculation of House Bill 11 Tax Adjustment Factors for 1992 pursuant to Substantive Rule 23.21(d).

**Contact:** John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** January 21, 1993, 3:46 p.m.

TRD-9318032

**Thursday, June 3, 1993, 10 a.m.** The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 11044-application of Electra Telephone Company for approval of Calculations of House Bill 11 Tax Adjustment Factors for 1992 pursuant to Substantive Rule 23.21(d).

**Contact:** John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** January 21, 1993, 3:46 p.m.

TRD-9318033

**Monday, July 12, 1993, 9 a.m.** The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the commission will hold a hearing on the merits in Docket Number 11351-petition of the General Counsel to inquire into the reasonableness of the service practices and rates of Cherokee County Electric Cooperative Association, Inc. regarding switchover fees.

**Contact:** John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** January 25, 1993, 3:23 p.m.

TRD-9318162

## **Railroad Commission of Texas**

**Monday, February 1, 1993, 9:30 a.m.** The Railroad Commission of Texas will meet in the First Floor Conference Room 01-111, William B. Travis Building, 1701 North Congress Avenue, Austin. Agendas follow.

The commission will consider and act on the Office of Information Services Director's report on division administration, budget, procedures, and personnel matters.

**Contact:** Brian W. Schaible, P.O. Box 12967, Austin, Texas 78701, (512) 463-6710.

**Filed:** January 22, 1993, 10:36 a.m.

**TRD-9318065**

The commission will consider and act on the Division Director's report on budget and personnel matters related to organization of the Alternative Fuels Research and Education Division.

**Contact:** Dan Kelly, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7110.

**Filed:** January 22, 1993, 10:36 a.m.

**TRD-9318067**

The commission will consider and act on the administrative services division director's report on division administration, budget, procedures, and personnel matters.

**Contact:** Roger Dillon, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7257.

**Filed:** January 22, 1993, 10:36 a.m.

**TRD-9318068**

The commission will consider and act on the personnel division director's report on division administration, budget, procedures, and personnel matters. The commission will meet in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline and/or dismissal of personnel.

**Contact:** Mark Bogan, P.O. Box 12967, Austin, Texas 78711, (512) 463-6710.

**Filed:** January 22, 1993, 10:35 a.m.

**TRD-9318063**

The commission will consider and act on the office of the executive director's report on commission budget and fiscal matters, administrative and procedural matters, personnel and staffing, state and federal legislation, and contracts and grants. The commission will consider election of a chairman. The commission will discuss the implementation of individual operating budgets for each individual commissioner's office. The commission will discuss a pro-

posed training agreement for the Gas Utilities Section of the Legal Division. The commission will meet in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline and/or dismissal of personnel, and pending litigation. Consideration of a contract for public information services.

**Contact:** Walter H. Washington, Jr., P.O. Box 12967, Texas 78711-2967, (512) 463-7274.

**Filed:** January 22, 1993, 10:36 a.m.

**TRD-9318064**

The commission will consider and act on the automatic data processing division director's report on division administration, budget, procedures, equipment, acquisitions and personnel matters.

**Contact:** Bob Kmetz, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7251.

**Filed:** January 22, 1993, 10:35 a.m.

**TRD-9318062**

The commission will meet in consideration of category determinations under sections 102(c)(1)(B), 102(c)(1)(C), 103, 107, and 108 of the Natural Gas Policy Act of 1978.

**Contact:** Margie Osborn, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6755.

**Filed:** January 22, 1993, at 10:36 a.m.

**TRD-9318066**

The commission will consider and act on the investigation division director's report on division administration, investigations, budget, and personnel matters.

**Contact:** Marcelo R. Montemayor, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6828.

**Filed:** January 22, 1993, 10:35 a.m.

**TRD-9318061**

The commission will consider various applications and other matters within the jurisdiction of the agency including oral arguments at the time specified. The commission may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received. The commission will meet in executive session as authorized by the Open Meetings Act.

**Contact:** Carole J. Vogel, P.O. Box 12967, Austin, Texas 78711, (512) 463-6921.

**Filed:** January 22, 1993, 10:36 a.m.

**TRD-9318069**

## **Center for Rural Health Initiatives**

**Wednesday, February 3, 1993, 1 p.m.** The Executive Committee of the Center for Rural Health Initiatives will meet at the Texas Department of Health, 1100 West 49th Street, Room T-607, Austin. According to the complete agenda, the committee will discuss the Rural Health Clinic Contract Program; changes in the prescription limitation for Medicaid clients; and the Center's program alternatives.

**Contact:** Claudia Siegel, 211 East Seventh Street, #915, Austin, Texas 78767, (512) 479-8891.

**Filed:** January 26, 1993, 9:52 a.m.

**TRD-9318193**

## **School Land Board**

**Friday, January 29, 1993, 11:30 a.m.** The School Land Board will meet at the El Paso Marriott Hotel, 1600 Airway Boulevard, Salon G, El Paso. According to the complete agenda, the board will conduct a public hearing concerning the proposed partial dissolution of El Paso County Lower Valley Water District Authority (the "District") pursuant to Acts 1989, 71st Legislature, Chapter 573, Section 4, as amended by Acts 1991, 72nd Legislature, Chapter 597, Section 111. The purpose of the public hearing is to hear testimony to determine whether it is in the best interests of the Permanent School Fund to partially dissolve the District to remove all or a portion of Permanent School Fund lands from the District. The public hearing will end at 1 p.m. on January 29, 1993 or at such earlier time as testimony in the public hearing is completed.

**Contact:** Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

**Filed:** January 21, 1993, 2:39 p.m.

**TRD-9318020**

**Friday, January 29, 1993, 11:30 a.m.** The School Land Board will hold an emergency revised agenda at the El Paso Marriott Hotel, 1600 Airway Boulevard, Salon G, El Paso. According to the emergency revised complete agenda, the public hearing will end at 1:30 p.m. on January 29, 1993 or at such earlier time as testimony in the public hearing is completed. The emergency status is necessary due to clerical error.

**Contact:** Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

**Filed:** January 25, 1993, 4:25 p.m.

**TRD-9318175**

**Friday, January 29, 1993, 5:15 p.m.** The School Land Board will meet at the General Land Office, Stephen F. Austin Building, Room 831, 1700 North Congress Avenue, Austin. According to the complete agenda, the board will consider partial dissolution of El Paso County Lower Valley Water District Authority (the "District") pursuant to Acts 1989, 71st Legislature, Chapter 573, Section 4, as amended by Acts 1991, 72nd Legislature, Chapter 597, Section 111.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: January 21, 1993, 2:40 p.m.

TRD-9318021

**Tuesday, February 2, 1993, 10 a.m.** The School Land Board will meet at the General Land Office, Stephen F. Austin Building, 1700 North Congress Avenue, Room 831, Austin. According to the complete agenda, the board will discuss approval of the minutes of January 19, 1993 and January 29, 1993, meetings; pooling applications, Giddings (Austin Chalk-3) Field, Burleson County; Clay, Northeast (Austin Chalk, 11350) Field, Burleson County; proposed Yearly (7400) Field, Kleberg County; Flour Bluff Field, Nueces County; Brazos Block 338-L (Miocene) Field, Brazoria County; consider additional tracts, terms, and conditions, for the April 6, 1993, lease sale, including Texas Youth Commission, Comanche County; Texas Agriculture Department, Lee County; and coal lease, Freestone County; applications to lease highway right of way for oil and gas, Brazos County; excess acreage applications, La Salle County; consider partial dissolution of El Paso County Lower Valley Water District Authority (the District) pursuant to Acts 1989, 71st Legislature, Chapter 573, §4, as amended by Acts 1991, 72nd Legislature, Chapter 597, §111; coastal public lands-commercial lease applications, Clear Lake, Galveston County; Nueces County; Cedar Bayou, Chambers County; lease applications, Laguna Madre, Cameron County; Mission Bay, Refugio County; easement applications, Cox Lake, Brazoria County; Laguna Madre, Cameron County; Galveston Bay, Chambers County; Trinity Bay, Chambers County; Galveston Bay, Harris County; Carancahua Bay, Jackson County; Tres Palacios Bay, Matagorda County; structure permit terminations, Laguna Madre, Kleberg County; structure permit requests, Laguna Madre, Kleberg County; structure permit renewals, Laguna Madre, Cameron County; and meet in executive session-pending and proposed litigation.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: January 25, 1993, 4:27 p.m.

TRD-9318177

## **Board for Lease of State-Owned Lands**

**Tuesday, February 2, 1993, at 1:30 p.m.** The Board for Lease of Texas Department of Criminal Justice of the Board for Lease of State-Owned Lands will meet at the General Land Office, Stephen F. Austin Building, 1700 North Congress Avenue, Room 833, Austin. According to the complete agenda, the board will discuss approval of the minutes of the previous board meeting; consider tracts, terms, conditions, and procedures for the April 6, 1993, oil, gas, and other minerals lease sale.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Austin, Texas 78711, (512) 463-5016.

Filed: January 25, 1993, 4:26 p.m.

TRD-9318176

## **Board of Tax Professional Examiners**

**Monday, February 8, 1993, 6:30 p.m.** The Board of Tax Professional Examiners will meet at the Hyatt Regency Hotel, Chula Vista Room, San Antonio. According to the agenda summary, the board will call the meeting to order; take roll call, notice and quorum; discuss approval of minutes of December 16, 1992 meeting; discussion items include certification and re-certification of registrants; adoption rule change to §623.5; policy and procedure on reclassification from assessing-collecting to collections; information items are registrant population and 93 renewal program; budget and planning for 1994-1995 biennium; Attorney General Opinion request; planning calendar; meet in executive session, §2(g) of Article 6252-17; Vernon's Texas Civil Statutes for consideration of personnel matters: i.e.: evaluation of director; board action to evaluate performance of director; discuss other business; hear public comment; election of officers for 1993; and adjourn.

Contact: Sam H. Smith, 4301 Westbank Drive, Building B, Suite 140, Austin, Texas 78746-6565, (512) 329-7982.

Filed: January 25, 1993, 9:34 a.m.

TRD-9318130

## **The Texas A&M University System, Board of Regents**

**Thursday-Friday, January 28-29, 1993, 8:30 a.m. and 8 a.m. respectively.** The Board of Regents of the Texas A&M University System will meet at the Board of Regents Meeting Room, College Station. According to the agenda summary, the

board will review and discuss: initiation of construction projects; construction matters for the system parts; selection of architect/engineers; authorization for a limited partnership agreement; establishment of a center; authorization for option agreements; resolutions; quasi-endowment; change name of the Madlin Stevenson Companion Animal Geriatric Center; authorization to establish memorial scholarship; selection of lead bank; transfer of funds; authorization for sale of revenue financing system bonds, Series 1993; ratification of production and pooled units; easement; disposition and acquisition of real estate; appointments and promotions; terminations; gifts, grants, loans and bequests; emeritus; appropriation of funds; and to receive reports from system administration; resolution regarding system administrative and general offices study; budget and fiscal transfers; and establish revolving funds account.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: January 22, 1993, 2:18 p.m.

TRD-9318079

**Thursday-Friday, January 28-29, 1993, 8:30 a.m. and 8 a.m. respectively.** (Revised agenda). The Board of Regents of the Texas A&M University System will meet at the Board of Regents Meeting Room, College Station. According to the revised agenda summary, the board will act on bids on movable furnishings for the Veterinary Medical Center addition, Texas A&M University and adoption of policy on acquisition of movable furnishings.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: January 26, 1993, 9:51 a.m.

TRD-9318191

## **Texas Department of Transportation**

**Tuesday, January 26, 1993, 9:30 a.m.** The Texas Transportation Commission of the Texas Department of Transportation met at the Dewitt C. Greer Building, 125 East 11th Street, First Floor, Austin. According to the emergency revised agenda summary, the commission added a supplement to the agenda which reads as follows: 7.(c) Denton and Tarrant Counties-FM 156 and SH 114-authorization to enter into an agreement with the City of Fort Worth and the Atchison, Topeka and Santa Fe Railway Company for relocation of FM 156 and the Associated Railroad Grade Crossings on SH 114 and FM 156. The emergency status was necessary as action was required to allow immediate construction to protect public safety and avoid adverse economic impacts on the local economies.



Contact: Myrna Klipple, 125 East 11th Street, Austin, Texas 78701, (512) 463-8576.

Filed: January 25, 1993, 3:26 p.m.

TRD-9318166

## The University of Texas at Austin

Monday, January 25, 1993, 3:30 p.m. The Council for Intercollegiate Athletics for Women of the University of Texas at Austin met at the Ex-Students' Association, Moffett Library, 21st and San Jacinto Streets, University of Texas, Austin. According to the agenda summary, the council called the meeting to order; discussed approval of minutes of previous meeting; discussed old and new business; met in executive session to discuss pending litigation and personnel matters; heard announcements/information reports; and adjourned.

Contact: Jody Conratt, UT Austin, BEL 718, 33800, Austin, Texas 78712, (512) 471-7693.

Filed: January 21, 1993, 11:09 a.m.

TRD-9318006

## Texas Board of Veterinary Medical Examiners

Wednesday-Thursday, February 3-4, 1993, 8:30 a.m. The Texas Board of Veterinary Medical Examiners will meet at 1946 South IH-35, Fourth Floor Conference Room, Austin. According to the agenda summary, the board will act on rules reflected on the agenda; consider negotiated settlements of docketed cases; act on proposals for decision in cases not settled through negotiation; discuss the license renewal program; discuss the compliance program; consider publication of names of licensees that have been disciplined in the board's newsletter; and conduct other business. The items may however be taken out of order and/or continued from February 3 until February 4, 1993. Where appropriate and permitted by law, executive sessions may be held on the subjects listed on the agenda. Persons with disabilities who plan to attend this meeting, and who may need auxiliary aids or services, are requested to contact Judy Smith, 1946 South IH-35, #306, Austin, Texas 78704, (512) 447-1183 within 72 hours in order that appropriate arrangements can be made.

Contact: Buddy Matthijetz, 1946 South IH-35, #306, Austin, Texas 78704, (512) 447-1183.

Filed: January 22, 1993, 9:11 a.m.

TRD-9318050

Thursday-Friday, February 4-5, 1993, 10:30 a.m. The April Examination Preparation Committee of the Texas Veterinary Medical Examiners will meet at 1946 South IH-35, Fourth Floor Conference Room, Austin. According to the complete agenda, the committee will convene in open session and go into executive session to review examination questions and prepare the April, 1993 state board examination. The executive session is held in accordance with Article 6252-17 and Attorney General Opinion H-484, 1974. The exact time will be announced upon adjournment of the board meeting.

Contact: Buddy Matthijetz, 1946 South IH-35, #306, Austin, Texas 78704, (512) 447-1183.

Filed: January 22, 1993, 9:11 a.m.

TRD-9318051

## On-site Wastewater Treatment Research Council

Thursday, February 4, 1993, 1:30 p.m. The On-site Wastewater Treatment Research Council will hold an emergency meeting at the Center for Environmental Research Wastewater and Treatment Facility, 2210 South FM 973, Austin. According to the complete agenda, the council will discuss approval of the minutes of previous meetings of November 13, 1992 and January 14, 1993; hold an executive session for legal counsel from Attorney General's Office; consider and possibly act on reports from chairman, members and executive secretary; discuss and act on inter-agency and inter-local contracts/arrangements and procedures; act on request for proposal for second annual symposium; discuss and act on grant proposal; and hear comments from the public and schedule future meetings. The emergency status is necessary for the council to receive legal counsel from the Attorney General relating to contracts and contract procedures.

Contact: January 21, 1993, 11:43 a.m.

TRD-9318008

## Texas Water Commission

Wednesday, February 3, 1993, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will consider approving the following matters: enforcement actions; examiner's proposal for decision; interim rates; meet in executive session; in addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including

but not limited to, rescheduling an item in its entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: January 22, 1993, 4:18 p.m.

TRD-9318112

Wednesday, February 3, 1993, 9 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will consider approving the following matters: transfer of municipal solid waste permit; new permits; amendments; renewal; district matters; rates; water rights; and examiner's memorandums; in addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to, rescheduling an item in its entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: January 22, 1993, 4:19 p.m.

TRD-9318113

Thursday, February 4, 1993, 9 a.m. The Texas Water Well Drillers Council of the Texas Water Commission will meet at the Arlington Convention Centre/Sheraton Centre Park Hotel, 1500 Stadium Drive East, Arlington. According to the agenda summary, the council will consider the approval of minutes of its January 14, 1993, meeting; consider whether to set the following complaints for a formal hearing or appropriate legal action: Mike Winstead, John Webb, Johnny Folmar, Ruben Balderas, Don Donnelly, Donn Galaway, Francisco Huerta, Royce Radicke, and Alan Utley; consider the certification of applicants for registration; applications for driller-trainee registration; and staff reports.

Contact: Kathy Keils, P.O. Box 13087, Austin, Texas 78711, (512) 463-8069.

Filed: January 26, 1993, 9:35 a.m.

TRD-9318186

Thursday, February 4, 1993, 10 a.m. (Revised agenda). The Texas Water Commission will meet at the Stephen F. Austin Building, Room 211, 1700 North Congress Avenue, Austin. According to the revised agenda summary, the commission will hold a public hearing on Application Number 14-1261A by Sugarberry Oil and Gas Corporation.

Contact: Joe O'Neal, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 22, 1993, 3:31 p.m.

TRD-9318101



**Monday, February 8, 1993, 1 p.m.** The Texas Water Commission will meet at the City Government Center, City Commission Room, 200 North 12th Street, Corsicana. According to the agenda summary, the commission will hold a public meeting to consider an application for a municipal solid waste facility permit by the City of Corsicana. Permit Number MSW2190.

**Contact:** Charles Stavley, P.O. Box 13087, Austin, Texas 78711, (512) 908-6687.

**Filed:** January 22, 1993, 2:22 p.m.

**TRD-9318084**

**Tuesday, February 9, 1993, 10 a.m.** The Texas Water Commission will meet at the Waxahachie Police Building, City Council Chambers, 216 North College Street, Waxahachie. According to the agenda summary, the commission will hold a public meeting on an application for a municipal solid waste facility permit by the City of Waxahachie. Proposed Permit Number MSW2223.

**Contact:** Ann Scudday, P.O. Box 13087, Austin, Texas 78711, (512) 908-6688.

**Filed:** January 22, 1993, 2:22 p.m.

**TRD-9318083**

**Tuesday, February 9, 1993, 10 a.m.** The Texas Water Commission will meet in Room 543, Stephen F. Austin State Office Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will discuss notice of public hearing on application Number 5314-A by C. D. (Josh) Ham.

**Contact:** Jim Bateman, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

**Filed:** January 25, 1993, 1:13 p.m.

**TRD-9318147**

**Thursday, February 25, 1993, 10 a.m.** The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 1028-B, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a hearing to consider Encanto Real Utility District of Harris County's application for adoption of standby fees.

**Contact:** Jim Bateman, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

**Filed:** January 22, 1993, 9:14 p.m.

**TRD-9318053**

**Monday, March 1, 1993, 10 a.m.** The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 1149-B, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will consider an application for rate increase by Sylvan Water System, Inc. Docket Number 9550-G.

**Contact:** Linda Sorrells, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

**Filed:** January 21, 1993, 1:46 p.m.

**TRD-9318014**

**Monday, March 1, 1993, 10 a.m.** The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 1149-A, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a hearing on Richard de Yampert doing business as Rancho Los Pistachio's Water System application for a Certificate of Convenience and Necessity (CCN) to authorize Pastachio's WS to provide water utility service in El Paso County. Applicant also proposes decertification of a portion of Butterfield Water Systems, Inc.'s service area authorized under CCN Number 12127. The proposed service area is located approximately 24 miles east of downtown El Paso, and is approximately 55 to 85 acres and 10 current customers. Docket Number 9539-C. The commission staff is recommending consolidation of this matter with an application filed by Butterfield Water Systems, Inc. for an amendment to CCN Number 12127, which has been assigned Docket Number 9466-C.

**Contact:** Carol Wood, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

**Filed:** January 22, 1993, 9:15 a.m.

**TRD-9318057**

**Monday, March 1, 1993, 10 a.m.** The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 1149-A, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a hearing on Butterfield Water Systems, Inc.'s application to amend Butterfield's Certificate of Convenience and Necessity (CCN) Number 12127 to allow it to expand the area to which it provides water utility service in El Paso County. The proposed water utility service area is located approximately 18 miles east of downtown El Paso, and includes approximately 640 acres and 36 current customers. Docket Number 9466-C. Commission staff is recommending consolidation of this matter with an application filed by Richard de Yampert doing business as Rancho Los Pistachio's Water System for a CCN, which has been assigned Docket Number 9539-C.

**Contact:** Carol Wood, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

**Filed:** January 22, 1993, 9:15 a.m.

**TRD-9318058**

**Friday, March 5, 1993, 10 a.m.** The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 211, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a hearing on William H. Robotham doing business as Blueberry Hill Water Supply's water rate increase effective July 17, 1992 for its service area in Montgomery County. Commission staff is protesting application on basis that requested rates on tariff do not comply with the Texas Water Code and provisions of commission's permanent rules. In addition, applicant has pending enforcement case, Docket Number 9754-E. This matter has been designated Docket Number 9554-G.

**Contact:** Bill Zukauckas, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

**Filed:** January 22, 1993, 9:15 a.m.

**TRD-9318056**

**Friday, March 5, 1993, 10 a.m.** The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 1149-A&B, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a hearing on North Kaufman Water Supply Corporation's September 11, 1992 notice to ratepayers of a water utility rate increase put into effect by the board of directors. Ratepayers of North Kaufman WSC have filed a petition under the Texas Water Code appealing the water utility rate increase. Docket Number 9847-W.

**Contact:** Jim Bateman, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

**Filed:** January 22, 1993, 9:14 a.m.

**TRD-9318054**

**Monday, March 8, 1993, 10 a.m.** The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 1028A, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a hearing on the City of Parker's request to decertify a portion of its water utility service area in Collin County, authorized under Certificate of Convenience and Necessity Number 10207. Docket Number 9764-Q.

**Contact:** Elizabeth Bourbon, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

**Filed:** January 22, 1993, 9:14 a.m.

**TRD-9318055**

## Texas Workers' Compensation Commission

Friday, January 29, 1993, 10 a.m. The Texas Certified Self-Insurer Guaranty Association of the Texas Workers' Compensation Commission will meet in Rooms 910-911, Southfield Building, 4000 South IH-35, Austin. According to the agenda summary, the association will call the meeting to order; hear general reports; discuss and possibly act on issues relating to Guaranty Association activities, including but not limited to: election of a temporary chairman; responsibilities of the Guaranty Association; functions of the Association; overview of the information to be provided to the Guaranty Association Board of Directors; meet in executive session to provide legal advice on the statutory requirements regarding board members; consider and possibly act on the May Department Stores Company and Textron, Inc.; discuss future public meetings; and adjourn.

Contact: Todd K. Brown, 4000 South IH-35, Austin, Texas 78704, (512) 448-7962.

Filed: January 21, 1993, 3:52 p.m.

TRD-9318035

## Regional Meetings

### Meetings Filed January 21, 1993

The Bandera County Appraisal District Board of Directors met at the Bandera County Appraisal Office, North End of Ninth Street, Bandera, January 28, 1993, at 5 p.m. Information may be obtained from P. H. Coates, IV, P.O. Box 1119, Bandera, Texas 78003, (210) 796-3039. TRD-9318013.

The Golden Crescent Regional Planning Commission Board of Directors met at the Randle Rather Building, Third Floor, Gonzales, January 27, 1993, at 12:30 p.m. Information may be obtained from Patrick J. Kennedy, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587. TRD-9318012.

The Gulf Bend Mental Health and Mental Retardation Board of Trustees met at 1404 Village Drive, Victoria, January 28, 1993, at noon. Information may be obtained from Sharon Pratkanis, 1404 Village Drive, Victoria, Texas 77901, (512) 575-0611. TRD-9318041.

The Henderson County Appraisal District Appraisal Review Board met at 1751 Enterprise, Athens, January 28, 1993, at 9 a.m. Information may be obtained from Donna Bailey, 1751 Enterprise, Athens, Texas 75751, (903) 675-9296. TRD-9318042.

The Mental Health and Mental Retardation Authority of Brazos Valley Board of Trustees met at 804 Texas Avenue, Conference Room A, Bryan, January 28, 1993, at 1:30 p.m. Information may be obtained from Leon Bawcom, P.O. Box 4588, Bryan, Texas 77805, (409) 822-6467. TRD-9318030.

The Region VIII Education Service Center Board of Director's met at the Region VIII ESC, FM 1734, Mount Pleasant, January 28, 1993, at 7 p.m. Information may be obtained from Scott Ferguson, P.O. Box 1894, Mount Pleasant, Texas 75456-1894. TRD-9318015.

The West Central Texas Council of Governments Executive Committee met at 1025 East North 10th Street, Abilene, January 27, 1993, at 12:45 p.m. Information may be obtained from Brad Helbert, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544. TRD-9318007.

The West Central Texas Council of Governments, Area Agency on Aging Citizens Advisory Council on Aging will meet at the WCTCOG Administrative Building, 1025 East North 10th Street, Abilene, January 29, 1993, at 9:30 a.m. Information may be obtained from Dr. Lewis E. Lemmond, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544. TRD-9318031.

The West Texas Municipal Power Agency Board of Directors will meet at 916 Texas, Room 102 Municipal Square, Lubbock, February 2, 1993, at 10 a.m. Information may be obtained from Robert Massengale, P.O. Box 2000, Lubbock, Texas 79457, (806) 767-2015. TRD-9318003.

### Meetings Filed January 22, 1993

The Andrews Center Board of Trustees met at 2323 West Front Street, Board Room, Tyler, January 28, 1993, at 4 p.m. Information may be obtained from Richard J. DeSanto, P.O. Box 4730, Tyler, Texas 75712, (903) 597-1351. TRD-9318060.

The Ark-Tex Council of Governments Executive Committee met at the Two Senoritas Restaurant, Mt. Pleasant, January 28, 1993, at 5:30 p.m. Information may be obtained from Laurie Dean, P.O. Box 5307, Texarkana, Texas 75505-5307, (903) 832-8636. TRD-9318045.

The Atascosa County Appraisal District Board of Directors met at Fourth and Avenue J, Poteet, January 28, 1993, at 1:30 p.m. Information may be obtained from Vernon A. Warren, P.O. Box 139, Poteet, Texas 78065-0139. TRD-9318096.

The Austin-Travis County Mental Health and Mental Retardation Center Personnel Committee met at 1430 Collier Street, Board Room, Austin, January 26, 1993, at 6

p.m. Information may be obtained from Sharon Taylor, P. O. Box 3548, Austin, Texas 78764-3548, (512) 447-4141. TRD-9318071.

The Bastrop Central Appraisal District Board of Directors met at the Bastrop Central Appraisal District, 1200 Cedar Street, Bastrop, January 28, 1993, at 7:30 p.m. Information may be obtained from Dana Ripley, P.O. Box 578, Bastrop, Texas 78602, (512) 321-3925. TRD-9318119.

The Brazos Valley Development Council Criminal Justice Planning Advisory Committee will meet at the Brazos Valley Development Council Offices, 3006 East 29th Street, Suite #2, Bryan, January 29, 1993, at noon. Information may be obtained from Tom Wilkerson, Jr., P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 776-2277. TRD-9318046.

The Brazos Valley Quality Work Force Planning Committee met at 715 University Drive East, College Station, January 26, 1993, at 11:30 a.m. Information may be obtained from Patty Groff, 301 Post Office, Bryan, Texas 77801, (409) 823-4988. TRD-9318047.

The Dallas Area Rapid Transit System Plan Review Ad Hoc Committee met at the DART Headquarters, 1401 Pacific Avenue, Board Conference Room B, Dallas, January 26, 1993, at 11:30 a.m. Information may be obtained from Nancy McKethan, 1401 Pacific Avenue, Dallas, Texas 75202, (214) 749-3347. TRD-9318108.

The Dallas Area Rapid Transit Minority Affairs Committee met at the DART Headquarters, 1401 Pacific Avenue, Board Conference Room C, Dallas, January 26, 1993, at 1 p.m. Information may be obtained from Nancy McKethan, 1401 Pacific Avenue, Dallas, Texas 75202, (214) 749-3347. TRD-9318109.

The Dallas Area Rapid Transit Audit Committee met at the DART Headquarters, 1401 Pacific Avenue, Board Conference Room B, Dallas, January 26, 1993, at 1:30 p.m. Information may be obtained from Nancy McKethan, 1401 Pacific Avenue, Dallas, Texas 75202, (214) 749-3347. TRD-9318111.

The Dallas Area Rapid Transit Board of Directors' met at the DART Headquarters, 1401 Pacific Avenue, DART Board Room, Dallas, January 26, 1993, at 4 p.m. Information may be obtained from Nancy McKethan, 1401 Pacific Avenue, Dallas, Texas 75202, (214) 749-3347. TRD-9318110.

The Denton Central Appraisal District Board of Directors met at 3911 Morse Street, Denton, January 28, 1993, at 5 p.m. Information may be obtained from John Brown, 3911 Morse Street, Denton, Texas 76208, (817) 566-0904. TRD-9318052.

The Golden Crescent Service Delivery Area Private Industry Council, Inc. met at 2401 Houston Highway, Victoria, January 27, 1993, at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9318097.

The Gonzales County Appraisal District Appraisal Review Board met at 928 St. Paul Street, Gonzales, January 26, 1993, at 1:30 p.m. Information may be obtained from Glenda Strackbein, P.O. Box 867, Gonzales, Texas 78629, (210) 672-2879. TRD-9318107.

The Heart of Texas Region Mental Health and Mental Retardation Center Board of Trustees met at 110 South 12th Street, Waco, January 28, 1993, at 11:45 a.m. Information may be obtained from Helen Jasso, P.O. Box 890, Waco, Texas 76703, (817) 752-3451. TRD-9318043.

The Heart of Texas Region Mental Health and Mental Retardation Center Board of Trustees met at 110 South 12th Street, Waco, January 28, 1993, at 11:45 a.m. (Revised agenda). Information may be obtained from Helen Jasso, P.O. Box 890, Waco, Texas 76703, (817) 752-3451. TRD-9318072.

The Kempner Water Supply Corporation Board of Directors met at the Kempner Water Supply Corporation Office, Highway 190, Kempner, January 28, 1993, at 7 p.m. Information may be obtained from Doug Lavender or Alton Myers, P.O. Box 103, Kempner, Texas 76539, (512) 932-3701. TRD-9318076.

The Leon County Central Appraisal District Board of Directors met at the Leon County Central Appraisal District Office, Gresham Building, Centerville, January 25, 1993, at 7 p.m. Information may be obtained from Donald Gillum, P.O. Box 536, Centerville, Texas 75833, (903) 536-2252. TRD-9318082.

The Lower Rio Grande Valley Development Council Annual Membership and Board of Directors met at the Harlingen Chamber of Commerce, 311 East Tyler Street, Harlingen, January 28, 1993, at 1:30 p.m. Information may be obtained from Kenneth N. Jones, Jr., 4900 North 23rd Street, McAllen, Texas 78504, (210) 682-3481. TRD-9318080.

The North Central Texas Council of Governments Executive Board met at 616 Six Flags Drive, Second Floor, Arlington, January 28, 1993, at 12:45 p.m. Information may be obtained from Edwina J. Shires, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 640-3300. TRD-9318081.

The Panhandle Regional Planning Commission Board of Directors met at 2736 West Tenth Street, PRPC Board Room,

Amarillo, January 28, 1993, at 1:30 p.m. Information may be obtained from Rebecca Rusk, P.O. Box 9257, Amarillo, Texas 79105-9257. TRD-9318044.

### Meetings Filed January 25, 1993

The Angelina and Neches River Authority Board of Directors will meet at the Crown Colony Country Club, Azalea Room, Lufkin, February 2, 1993, at 10 a.m. Information may be obtained from Gary L. Neighbors, P.O. Box 387, Lufkin, Texas 75902-0387, (409) 632-7795, FAX 632-2564. TRD-9318167.

The Austin-Travis County Mental Health and Mental Retardation Center Board of Trustees met at 1430 Collier Street, Board Room, Austin, January 28, 1993, at 7 a.m. Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78764-3548, (512) 447-4141. TRD-9318121.

The Coryell City Water Supply District Board of Directors met at Our Place Restaurant, 510 South Main Street, McGregor, January 28, 1993, at 6:30 p.m. Information may be obtained from Helen Swift, Route 2, Box 93, Gatesville, Texas 76528, (817) 865-6089. TRD-9318141.

The Deep East Texas Council of Governments Grants Application Review Committee met at the San Augustine Civic and Tourism Center, San Augustine, January 28, 1993, at 11 a.m. Information may be obtained from Rusty Phillips, 274 East Lamar, Jasper, Texas 75951, (409) 384-5704. TRD-9318129.

The Deep East Texas Regional Mental Health and Mental Retardation Services Board of Trustees held an emergency meeting in the Ward R. Burke Community Room-Administration Facility, 4101 South Medford Drive, Lufkin, Angelina County, January 26, 1993, at 3 p.m. The emergency meeting was necessary due to late postal service. Information may be obtained from Sandra J. Vann, 4101 South Medford Drive, Lufkin, Texas 75901, (409) 639-1141. TRD-9318153.

The Denton Central Appraisal District Board of Directors held a revised agenda at 3911 Morse Street, Denton, January 28, 1993, at 5 p.m. Information may be obtained from John Brown, 3911 Morse Street, Denton, Texas 76208, (817) 566-0904. TRD-9318155.

The Gregg Appraisal District Appraisal Review Board met at 2010 Gilmer Road, Longview, January 28, 1993, at 9 a.m. Information may be obtained from William T. Carroll, P.O. Box 6700, Longview, Texas 75608, (903) 759-0015. TRD-9318154.

The Jasper County Appraisal District Appraisal Review Board met at the Jasper County Appraisal District, 137 North Main Street, Jasper, January 28, 1993, at 1:30 p.m. Information may be obtained from David W. Luther, 137 North Main Street, Jasper, Texas 75951, (409) 384-2544. TRD-9318148.

The Lubbock Regional Mental Health and Mental Retardation Center Board of Trustees met at 3801 Avenue J, Board Room, Lubbock, January 25, 1993, at noon. The emergency status was necessary to discuss property and legal issues. Information may be obtained from Gene Menefee, 1210 Texas Avenue, Lubbock, Texas 79401, (806) 766-0202. TRD-9318142.

The Region 18 Education Service Center Board of Directors will meet at 2811 LaForce Boulevard, Midland, February 4, 1993, at 7 p.m. Information may be obtained from Dr. Vernon Stokes, P.O. Box 60580, Midland, Texas 79711, (915) 563-2380. TRD-9318183.

The Tyler County Appraisal District Board of Directors will meet at 806 West Bluff, Woodville, February 4, 1993, at 4 p.m. Information may be obtained from Linda Lewis, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9318157.

The Upper Leon River Municipal Water District Board of Directors met at the General Office of the Filter Plant, Lake Proctor, Comanche, January 28, 1993, at 6:30 p.m. Information may be obtained from Gary D. Lacy, P.O. Box 67, Comanche, Texas 76442, (817) 879-2258. TRD-9318131.

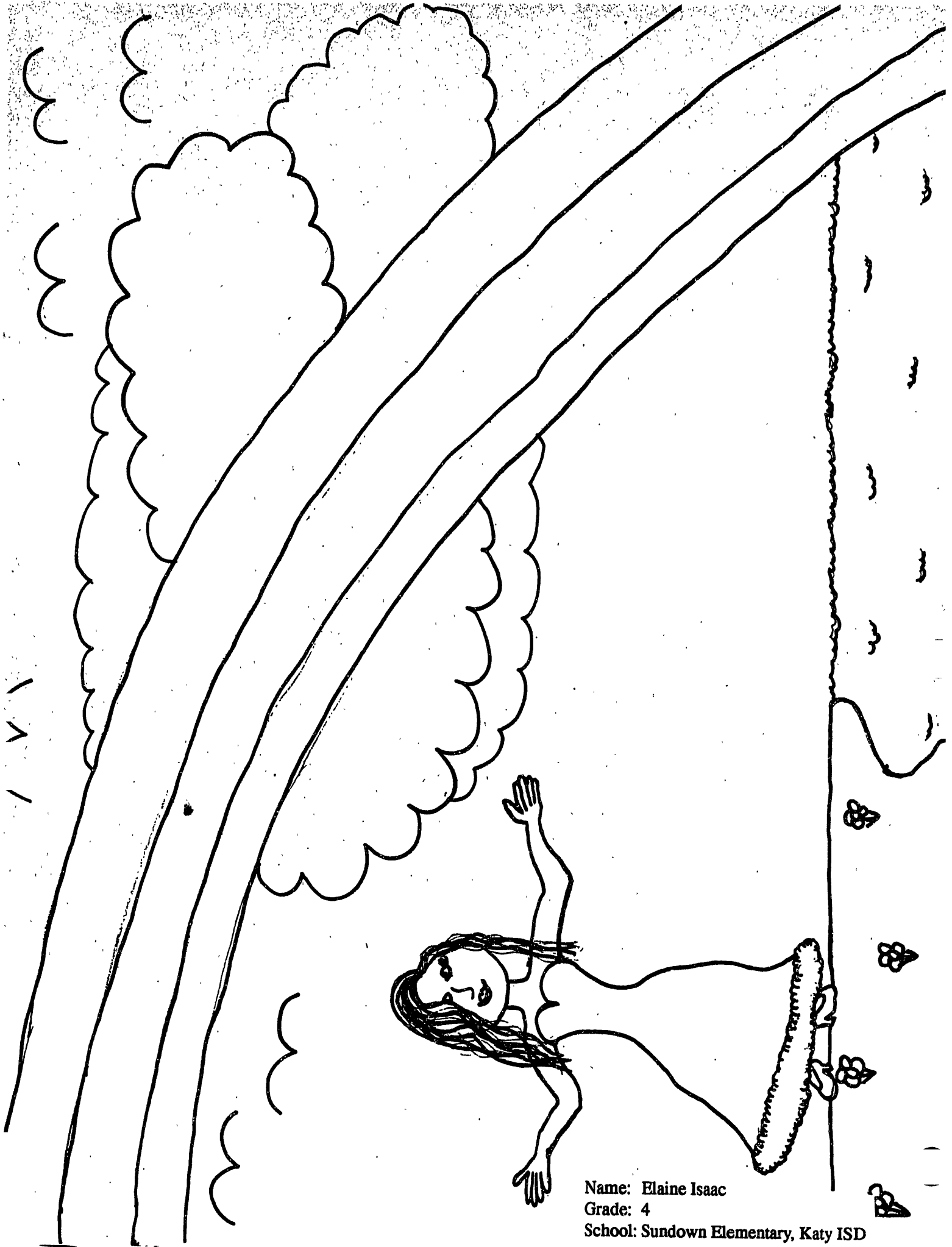
The Upper Rio Grande, Quality Work Force Planning Region VIII will meet at Sul Ross University, West Dining Hall, Alpine, February 5, 1993, at 12:30 p.m. (CST). Information may be obtained from Otis E. Burnett, 1155 Westmoreland, #235, El Paso, Texas 79925, (915) 779-6623. TRD-9318128.

The West Central Texas Municipal Water District met at 410 Hickory Street, Abilene, January 28, 1993, at 9:30 a.m. Information may be obtained from Virginia Duncan, P.O. Box 2362, Abilene, Texas 79604, (916) 673-8254. TRD-9318122.

### Meetings Filed January 26, 1993

The Kendall County Appraisal District Board of Directors will meet at 121 South Main Street, Conference Room, Boerne, February 4, 1993, at 4 p.m. Information may be obtained from J. P. Davis, P.O. Box 788, Boerne, Texas 78006, (210) 249-8012. TRD-9318192.

Liberty County Central Appraisal  
District Board of Directors will meet at 315  
Main Street, Liberty, February 3, 1993, at  
9:30 a.m. (Revised agenda rescheduled  
from January 27, 1993). Information may  
be obtained from Sherry Greck, P.O. Box  
0016, Liberty, Texas 77575. (409)  
336-5722 TRD-9318190



Name: Elaine Isaac

Grade: 4

School: Sundown Elementary, Katy ISD

# In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

## Texas Air Control Board

### Additional Extension of Deadlines for Written Comments

In the November 20, 1992, issue of the *Texas Register* (17 TexReg 8136), the Texas Air Control Board (TACB) published a notice of public hearings on proposed rule amendments to be held December 14-15, 1992. The purpose of the hearings is to receive testimony on proposed revisions to TACB Regulation VII, concerning Control of Air Pollution From Nitrogen Compounds. In the December 15, 1992, issue of the *Texas Register* (17 TexReg 8819), the original deadline of December 31, 1992, for receipt of written comments was extended to February 1, 1993. Now the deadline has been extended to February 1, 1993. Now the deadline has been extended to February 15, 1993. All comments at the hearings, as well as written comments received by 4 p.m. on February 15, 1993, at the TACB Central Office in Austin, will be considered by the Board prior to any final decision on the proposed changes.

Copies of the proposed revisions are available at the TACB Air Quality Planning Annex, located at 12118

North IH-35, Park 35 Technology Center, Building A, Austin, Texas 78753 and at all TACB regional offices. For further information, call Kevin Bloomer at (512) 908-1514.

Issued in Austin, Texas, on January 22, 1993.

TRD-9318070

Lane Hartsock  
Deputy Director, Air Quality Planning  
Texas Air Control Board

Filed: January 22, 1993

## 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, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05).

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer (1)/Agricultural/ Commercial (2) thru \$250,000</u>	<u>Commercial(2) over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	01/25/93-01/31/93	18.00%	18.00%
Judgment Rate - Art. 1.05, Section 2	02/01/93-02/28/93	10.00%	10.00%

(1) Credit for personal, family or household use. (2) Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on January 19, 1993.

TRD-9317935

Al Endaley  
Consumer Credit Commissioner

Filed: January 20, 1993

Issued in Austin, Texas, on January 19, 1993.

TRD-9317936

Ron Resch  
Executive Director  
Texas Cosmetology Commission

Filed: January 20, 1993

## Texas Cosmetology Commission Exam Seminar

The Texas Cosmetology Commission will conduct an "Operator Exam Seminar" on Sunday, February 7, 1993, at the Omni Austin (formerly Radisson Plaza), 700 San Jacinto, Austin, Texas 78701. The seminar will begin at 9 a.m. and end at approximately 4 p.m. The seminar fee is \$10 payable at the door. For hotel reservations call 1 (800) 695-2740 and advise them you will be attending the Texas Cosmetology Commission seminar.

## Employees Retirement System of Texas Contract for Consulting Services-Benefits Communication on Programs, Administered by the Employees Retirement System of Texas

This award for consulting services is being filed pursuant to the provisions of Texas Civil Statutes, Article 6252-11(c). The consultant will provide benefits communication services on programs administered by the Employees Retirement System of Texas. The consultant is N. J. Robnett, Jr., P. O. Box 685093, Austin, Texas 78758.



The total cost for the contract is \$24,000, and the term of the contract is January 15, 1993-August 31, 1993.

Issued in Austin, Texas, on January 22, 1993.

TRD-9318106 Charles D. Travis  
Executive Director  
Employees Retirement System of Texas

Filed: January 22, 1993

### Contract for Trustee Election Administrator

This award is being filed in accordance with the Government Code, §815. 003 concerning a contract for trustee election administrator services.

The Request for Proposals was published on October 23, 1992, at (17 TexReg 7547). The firm selected will administer the 1993 Board of Trustees election for the Employees Retirement System of Texas.

Further services may be necessary if a run-off election is required.

The firm selected is National Computer Systems, 4401 West 76th Street, Edina, MN 55435.

#### NEW LICENSES ISSUED:

Location	Name	License#	City	ment #	Action
Fort Worth	Nuclear Imaging Center	L04634	Fort Worth	0	01/13/93
Houston	MacGregor Medical Association	L04646	Houston	0	01/13/93
Pasadena	FINA Oil & Chemical Co	L04640	La Porte	0	12/29/92
Throughout Texas	Combest Geoscience	L04652	Austin	0	01/12/93

#### AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
Arlington	HCA Arlington Medical Center	L02228	Arlington	32	12/22/92
Austin	Austin Diagnostic Clinic	L00868	Austin	41	12/28/92
Austin	Synacor International Corporation	L02117	Austin	51	12/30/92
Austin	CEDRA Corporation	L04427	Austin	3	01/11/93
Bedford	Harris Methodist Hospital - HEB	L02303	Bedford	18	01/04/93
Bedford	Northeast Community Hospital	L03455	Bedford	13	01/12/93
Bishop	Hoechst Celanese	L02441	Bishop	18	01/11/93
Carthage	Panola General Hospital	L02540	Carthage	11	12/29/92
Dallas	Loral Vought Systems Corporation	L02670	Dallas	13	01/11/93
Denton	Texas Woman's University	L00304	Denton	37	12/28/92
Fort Worth	Fort Worth Police Department	L04374	Fort Worth	2	01/07/93
Fort Worth	Radiation Sterilizers, Inc.	L03851	Fort Worth	5	01/08/93
Freeport	BASF Corporation	L01021	Freeport	41	01/06/93
Friendswood	GAMX	L04375	Friendswood	3	12/31/92
Houston	Sunbelt Regional Medical Center	L03306	Houston	10	12/30/92
Houston	The Institute for Rehabilitation and Research	L04000	Houston	10	12/30/92
Houston	Spring Branch Memorial Hospital	L02473	Houston	21	12/31/92
Houston	DuMont Enterprises, Inc.	L04444	Houston	5	12/28/92
Houston	ONCORE Analytics, Inc.	L04575	Houston	1	01/12/93
Irving	Irving Healthcare System	L02444	Irving	18	01/13/93
Kaufman	Presbyterian Hospital of Kaufman	L03337	Kaufman	9	12/31/92
Lubbock	St. Mary Imaging Center, Ltd.	L04005	Lubbock	4	01/11/93
Midland	G. Murthy Gollapudi, M.D., Ph.D.	L03238	Midland	5	12/23/92

The total value of the Contract is not to exceed \$52,214. The beginning date is January 15, 1993, and reports and summaries of actions and accomplishments are due upon request by the Employees Retirement System of Texas.

Issued in Austin, Texas, on January 22, 1993.

TRD-9318105 Charles D. Travis  
Executive Director  
Employees Retirement System of Texas

Filed: January 22, 1993

### Texas Department of Health Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

Orange	Chevron Chemical Company	L00031	Orange	31	01/13/93
Point Comfort	Formosa Plastics Corporation Texas	L03893	Point Comfort	6	01/11/93
Richmond	Polly Ryan Hospital Authority	L02406	Richmond	15	01/08/93

#### AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

San Antonio	Syncor International Corp.	L02033	San Antonio	63	12/23/92
San Antonio	Alfred L. Burden, Jr., M.D.	L01025	San Antonio	12	12/23/92
San Antonio	Southwest Texas Methodist Hospital	L00594	San Antonio	98	01/04/93
Throughout Texas	TREMETRICS Inc.	L01186	Austin	31	12/28/92
Throughout Texas	R/A Services, Inc.	L03010	Odessa	29	12/22/92
Throughout Texas	Bee-Line Services, Inc.	L03436	Bryan	7	12/92/92
Throughout Texas	Henley-Johnston & Associates, Inc.	L00286	Dallas	23	12/30/92
Throughout Texas	Berger Materials Engineering, Inc.	L03332	Bryan	14	12/30/92
Throughout Texas	Century Inspection, Inc.	L00062	Dallas	59	12/30/92
Throughout Texas	Corpus Christi Inspection & Engineering, Inc.	L04379	Corpus Christi	22	12/29/92
Throughout Texas	Ebasco Services Inc.	L02662	Houston	33	12/30/92
Throughout Texas	Phoenix Surveys Inc.	L04108	Graham	6	12/30/92
Throughout Texas	Texas Department of Transportation	L00197	Austin	66	01/05/93
Throughout Texas	T&M Laboratories & Engineering, Inc.	L04417	Beaumont	3	01/06/93
Throughout Texas	Nuclear Technologies International	L02975	Houston	34	01/08/93
Throughout Texas	Longview Inspection, Inc.	L03720	Longview	41	01/08/93
Throughout Texas	Catch-A-Fault	L02725	Denton	10	01/07/93
Throughout Texas	Midland Inspection and Engineering, Inc.	L03724	Odessa	38	01/11/93
Throughout Texas	AnAid, Inc.	L03171	Dickinson	28	01/11/93
Throughout Texas	Halliburton Services	L01835	Duncan, Oklahoma	47	01/11/93
Throughout Texas	Southwestern Laboratories	L01934	Dallas	35	01/12/93
Tyler	The University of Texas Health Center at Tyler	L01796	Tyler	39	01/13/93
Victoria	E I Du Pont De Nemours & Co., Inc.	L00386	Victoria	60	01/06/93
Wichita Falls	Wichita General Hospital	L00350	Wichita Falls	45	12/30/92
Wichita Falls	Wichita General Hospital	L00403	Wichita Falls	21	12/30/92

#### RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
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Austin	Amber Well Completion Rentals, Inc.	L03267	Austin	7	12/14/92
Austin	Craven Laboratories, Inc.	L02773	Austin	7	01/06/93
Baytown	Exxon Chemical Company	L03335	Baytown	13	01/11/93
Dallas	Texas Instruments Incorporated	L04096	Dallas	5	01/07/93
El Paso	El Paso Water Utilities	L02272	El Paso	7	01/12/93
Grapevine	Baylor Medical Center at Grapevine	L03320	Grapevine	8	01/11/93
Houston	Rice University	L03050	Houston	6	01/04/93
Lancaster	Midway Park Medical Center	L03342	Lancaster	11	12/31/92
Lubbock	Methodist Hospital	L01822	Lubbock	9	12/28/92
McAllen	Vannie E. Cook, Jr., Cancer Center	L02205	McAllen	32	01/13/93
Odessa	Shell Oil Company	L01882	Odessa	10	01/05/93
Palestine	Trinity Valley Medical Center	L04137	Palestine	9	12/23/92
Pittsburg	Pilgrim's Pride Corporation	L04150	Pittsburg	1	01/05/93
San Antonio	St. Luke's Lutheran Hospital	L03309	San Antonio	19	01/12/93
Throughout Texas	IHS Geotech & CMT	L04153	San Antonio	4	12/28/92
Throughout Texas	Kuykendall Electric Wireline Services	L03351	Odessa	5	01/05/93
Throughout Texas	International Digital Modeling Corp.	L04113	Austin	11	01/05/93
Throughout Texas	Technical Welding Laboratory, Inc.	L02187	Pasadena	74	01/04/93



Throughout Texas	Independent Inspection Co., Inc.	L02513	Wichita Falls	8	01/04/93
Throughout Texas	Texas Water Development Board	L01852	Austin	14	01/05/93
Throughout Texas	The Dia-Log Company	L01887	Houston	18	01/11/93
Throughout Texas	Troxler Electronic Laboratories, Inc.	L01296	Res. Tri. Pk., NC	31	01/12/93

#### RENEWALS OF EXISTING LICENSES ISSUED CONTINUED:

Throughout Texas	Zack Burkett Company	L04102	Graham	3	01/12/93
Throughout Texas	Price Construction, Inc.	L02273	Big Spring	8	01/12/93
Throughout Texas	ASOMA Instruments, Inc.	L02788	Austin	28	01/13/93
Wichita Falls	City of Wichita Falls	L03217	Wichita Falls	7	01/12/93

#### TERMINATIONS OF LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
Fort Worth	Industrial Laboratories	L02105	Fort Worth	7	12/23/92
Houston	The Womens Hospital of Texas	L02806	Houston	5	01/13/93
Lockhart	Community Hospital Lockhart, Inc.	L03259	Lockhart	8	12/30/92
Throughout Texas	Travis Cnty Public Improvements & Transportation Dept	L03092	Austin	10	12/30/92
Throughout Texas	City of Huntsville	L03392	Huntsville	3	12/30/92
Throughout Texas	Mobile Research and Development Corporation	L00194	Dallas	36	01/12/93
Tyler	East Texas Cancer Center	L03281	Tyler	8	12/30/92

#### NEW LICENSES DENIED:

Location	Name	License#	City	Amend- ment #	Date of Action
Odessa	R/A Services, Inc.	0	Odessa	0	01/07/93

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with *Texas Regulations for Control of Radiation* in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the *Texas Regulations for Control of Radiation*.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or person affected may request a hearing by writing David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the Office of the Bureau of Radiation Control, Texas Department of Health, The Exchange Building, 8407 Wall Street, Austin, from 8 a.m. to 5 p.m. Monday-Friday (except holidays).

Issued in Austin, Texas, on January 15, 1993.

TRD-9318132

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

Filed: January 25, 1993

### Texas Department of Human Services Notice of Public Hearing

The Texas Department of Human Services (TDHS) will conduct a public hearing to receive comments on the department's proposed reimbursement rates for the following programs: Case Management for Individuals with Mental Retardation or Related Condition; Case Management for Persons with Chronic Mental Illness; Case Man-

agement for High-Risk Pregnant Women and High-Risk Infants; Rehabilitative Services for Persons with Mental Illness; and Diagnostic Services for Persons with Potential of Mental Retardation. The hearing is held in compliance with 40 TAC §24.102(j), which requires a public hearing on proposed reimbursement rates for medical assistance programs. The public hearing will be held on February 12, 1993 at 9 a.m. in the department's public hearing room of the John H. Winters Center (701 West 51st Street, Austin, First Floor, East Tower). Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed reimbursement rates on or after January 29, 1993, by contacting Kathy E. Hall, MC E-601, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3702.

Issued in Austin, Texas, on January 25, 1993.

TRD-9318123      Nancy Murphy  
Agency Liaison, Policy and Document  
Support  
Texas Department of Human Services

Filed: January 25, 1993

## North Central Texas Council of Governments

### Request for Proposals

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Texas Civil Statutes, Article 6252-11c.

NCTCOG and the Fort Worth Transportation Authority (FWTA) are requesting proposals to develop a strategic public transportation plan for downtown Fort Worth.

**Contract Award Procedures.** The firm selected to perform this study will be recommended by the Project Review Committee (PRC). The PRC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the PRC's recommendation, and if found acceptable, will issue an award of contract.

**Regulations.** NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all bidders that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, or national origin in consideration of an award.

**Due Date.** Proposals must be submitted no later than 12 noon, February 8, 1993, to David Aria, Senior Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Second Floor, or P.O. Box 5888, Arlington, Texas 76005-5888. For more information and copies of the Request for Proposals, contact Shirley Henry, (817) 640-3300.

Issued in Arlington, Texas, on January 19, 1993.

TRD-9318078

Mike Eastland  
Executive Director  
North Central Texas Council of Governments

Filed: January 22, 1993

**Consultant Request.** This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Texas Civil Statutes, Article 6252-11c.

NCTCOG is requesting proposals to produce a video that will encourage Chief Executive Officers of major companies in the Dallas-Fort Worth metropolitan area to promote alternative commute modes to and from work within their companies.

**Contract Award Procedures.** The firm selected to perform this study will be recommended by the Travel Demand Management (TDM) Committee. The TDM Committee will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the TDM Committee's recommendation, and if found acceptable, will issue an award of contract.

**Regulations.** NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all bidders that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, or national origin in consideration of an award.

**Due Date.** Proposals must be submitted no later than 12 noon, February 12, 1993, to Lynn Hayes, Transportation Planner II, North Central Texas Council of Governments, 616 Six Flags Drive, Second Floor, or P.O. Box 5888, Arlington, Texas 76005-5888. For more information and copies of the Request for Proposals, contact Shirley Henry, (817) 640-3300.

Issued in Austin, Texas, on January 19, 1993.

TRD-9318077      Mike Eastland  
Executive Director  
North Central Texas Council of Governments

Filed: January 22, 1993

## Texas Parks and Wildlife Department

### Request for Public Input National Recreation Trails Fund

The Texas Parks and Wildlife Department (TPWD) solicits input from interested parties about how best to distribute funds available through a new National Recreational Trails Fund (NRTF). TRPW recently received notice that the state's share of the NRTF will be \$228,294 for Fiscal Year 1993. These funds will be available through a reimbursement grant program for trail development and main-

tenance. The funds come from a portion of the federal tax on motor fuel consumed by non-highway recreational vehicles. Even though the tax is collected from motorized trail users, the act dictates spending on non-motorized trails as well.

While there are some federal restrictions and guidelines associated with this program, state have been given maximum flexibility in the administration of these funds. TPWD will host a meeting on February 2, 1993, to seek input from the trails community and other interested parties on how to make the best use of these dollars. The meeting will be held from 1-5 p.m. in the Commission Hearing Room of there department headquarters at 4200 Smith School Road, Austin.

Once of the topics addressed will be to prioritized uses for the funds among trail maintenance, new trail construction, trail acquisition, and trailhead and trailside facilities. Other issues include whether to set a ceiling for individual grants, require a match from the applicant, earmark funds for safety and environmental education, or give priority to volunteer citizen groups or government. Information about the funds and topics for discussion are available on request by writing Texas Parks and Wildlife Department, Greenways Program, 4200 Smith School Road, Austin, Texas 78744; or by call Andy Goldbloom at (512) 389-4737. Interested parties unable to attend the public input meeting may submit comments by original copy at the address or by facsimile transmission (512) 389-4469 no later than 5 p.m. on February 12, 1993.

After review and analysis or input received, TPWD will develop a recreational trails grant program. Before final action on that program, TPWD will seek additional public comments during a public comment period.

Issued in Austin, Texas, on January 20, 1993.

TRD-9318011 Paul M. Shinkawa  
Director, Legal Services  
Texas Parks and Wildlife Department

Filed: January 21, 1993

## Public Utility Commission of Texas

### Notice of Proceeding For Approval of Extended Area Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on September 22, 1992, seeking approval of extended metropolitan service pursuant to §23.49(i) of the Public Utility Commission of Texas substantive rules. The following is a summary of the joint petition.

**Docket Title and Number.** Petition of Southwestern Bell Telephone Company for Optional Extended Metropolitan Service Around the Austin, San Antonio, and Fort Worth Metropolitan Exchanges, Docket Number 11483, before the Public Utility Commission of Texas.

**The Joint Petition.** In Docket Number 11483, Southwestern Bell Telephone Company (SWB) seeks approval of a joint petition for optional Extended Metropolitan Service (EMS) for all Tier 1 and Tier 2 SWB exchanges around the Austin, San Antonio, and Fort Worth metropolitan exchanges. EMS is an optional service that will provide residents unlimited two-way calling between certain exchanges for a flat monthly fee.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Public Information Office by February 4, 1993, at (512) 458-0256.

The telecommunications device for the deaf (TDD) number for the Public Information Office is (512) 458-0221.

Issued in Austin, Texas, on January 20, 1993.

TRD-9318034 John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: January 21, 1993

## Texas Water Commission

### Notice of Application For Waste Disposal Permit

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of January 18, 1993-January 22, 1993.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain: the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7906.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number, and type of application-new permit, amendment, or renewal.

City of Alpine; the wastewater treatment facilities; are approximately 2 1/2 miles northeast of the City of Alpine on the west bank of Alpine Creek in Brewster County; renewal; 10117-01.

Ascension Resorts, Limited; the wastewater treatment facilities; are approximately 0.5 mile northwest of the intersection of League Line Road and White Oak Drive on Lake Conroe in Montgomery County; renewal; 13417-01.

City of Callisburg; the wastewater treatment facilities; are adjacent to and west of FM Road 678, approximately 3,000 feet southeast of the intersection of FM Roads 678 and 2896 in Cooke County; renewal; 11840-01.

City of Corpus Christi; the wastewater treatment facilities; are at the intersection of Nile Drive and Ennis Joslin Road in the City of Corpus Christi in Nueces County; renewal; 10401-04.

City of Devers; the wastewater treatment facilities; are south of the City of Devers, on the south side of U.S. Highway 90, adjacent to Chism Street in Liberty County; renewal; 11540-01.

City of Eldorado; the wastewater treatment facilities; are approximately 5,000 feet northeast of the intersection of U.S. Highway 277 and U.S. Highway 915 in Schleicher County; renewal; 10165-01.

Exxon Corporation, Mount Belvieu Plastics Plant; a polyethylene manufacturing plant; the plant site is immediately west of the Southern Pacific Railroad Line (about one mile west of State Highway 146) and immediately east of Hatcherville Road and approximately two miles northwest of the City of Mount Belvieu, Chambers and Liberty County; renewal; 02546.

Gardner-Culler Industries, Inc.; a plant manufacturing flat and beveled-edge mirrors; the plant site is approximately four miles southeast of the City of Huntsville on the east side of State Highway 75 and immediately south of the Goree Prison Farm in Walker County; renewal; 02919.

Ronald G. Horton; the wastewater treatment facilities; are adjacent to Sam Rayburn Reservoir, approximately 500 feet southeast of the intersection of State Highway 147 and FM Road 3123, approximately 5.9 miles northeast of the intersection of State Highways 63 and 147 in Angelina County; renewal; 11438-01.

City of Jefferson; the wastewater treatment facility; are approximately 2,200 feet east of U.S. Highway 59 at the north end of North Line Street in Marion County; renewal; 10801-01.

Liberty City Water Supply Corporation; the wastewater treatment facilities; are immediately west of State Highway 135 on the south bank of Rocky Creek in Gregg County; renewal; 11179-01.

Libbey-Owens-Ford Company, Sherman Plant; a manufacturing plant producing tempered and laminated automobile glass; the plant site is at 1400 Highway 1417, 6,000 feet west of U.S. Highway 75 in the City of Sherman, Grayson County; renewal; 02943.

City of Los Fresnos; the wastewater treatment facilities; are southwest of Los Fresnos approximately 2,000 feet west of FM Road 1847 and 3,000 feet south of State Highway 100 at the end of Nogal Street in Cameron County; renewal; 10590-02.

Matagorda County Water Control and Improvement District Number 5; the Blessing Wastewater Treatment Facilities are; immediately west of the intersection of Pecan Street and Sixth Street in the City of Blessing in Matagorda County; renewal; 10217-01.

Robert W. and Betty R. Mercer; the wastewater treatment facilities; are approximately 1.8 miles south of the intersection of Interstate Highway 20 and State Highway 43 and approximately 5,800 feet east of State Highway 43 in Harrison County; renewal; 13085-01.

Montgomery County Municipal Utility District Number 48; the Kingwood Place Wastewater Treatment Facilities; the plant site is approximately 250 feet south of River Ridge Drive and 3/4 mile west of U.S. Highway 59 in Montgomery County; renewal; 12434-01.

City of Pasadena; the Vince Bayou Wastewater Treatment Facilities; the plant site is on the east and west banks of Vince Bayou, west of McDonald Street and north of West

Richey Access Road in Harris County; renewal; 10053-05.

Pendleton Associates, Inc.; the wastewater treatment facilities are; approximately 500 feet north of State Highway 21 on the west shore of Toledo Bend Reservoir at Pendleton Bridge in Sabine County; renewal; 11099-01.

Pioneer Concrete of Texas, Inc., Woodlands Sand and Gravel; a sand and gravel plant; the plant site is four miles east of Interstate Highway 45 adjacent to Sleepy Hollow Road in Montgomery County; renewal; 02502.

Pirates Cove Water Supply and Sewer Service Corporation; the Pirates Cove Condominium Wastewater Treatment Facilities; the plant site is approximately 1,250 feet south of State Highway 185, between 15th and 16th Streets in the City of Port O'Conner in Calhoun County; renewal; 12553-01.

Red Lick Independent School District; the wastewater treatment facilities; are approximately 1.5 miles east of the intersection of Interstate Highway 30 and FM Road 2253; approximately 1,000 feet west of the intersection of Earnest Road and FM Road 2148 in Bowie County; renewal; 13392-01.

Southwestern Electric Power Company; the Wilkes Power Plant, a steam electric generating station; the plant site is adjacent to Johnson Creek Reservoir approximately 1 1/2 miles southwest of State Highway 49 and 12 miles northwest of the City of Jefferson in Marion County; renewal; 01331.

Tidwell Timbers Municipal Utility District; the wastewater treatment facilities; are located on the west Bank of Greens Bayou; north of and adjacent to Tidwell Road in Harris County; renewal; 13333-01.

Tisdale Air Conditioning and Heating Company; the wastewater treatment facilities; are on the north side of FM Road 1485 at a point approximately two miles east of State Highway 105 and FM Road 1485 intersection in Montgomery County; renewal; 12508-01.

The McLendon Company; the wastewater treatment facilities; are approximately 2,000 feet southwest of the intersection of Interstate Highway 45 and West Road in Harris County; renewal; 12413-01.

Yeh's Brothers Inc., doing business as Days Inn Intercontinental Airport; from the Days Inn Wastewater Treatment Facilities; the plant site is at 17607 Highway 59 approximately two miles south of its intersection with FM Road in Harris County; renewal; 12138-01.

Issued in Austin, Texas, on January 22, 1993.

TRD-9318114

Gloria A. Vasquez  
Chief Clerk  
Texas Water Commission

Filed: January 22, 1993

## Public Notice

The Texas Water Commission publishes a report in accordance with the Texas Health and Safety Code, Chapter 361, Solid Waste Disposal Act known as the Annual Report of the Hazardous and Solid Waste Program. The report provides a summary of activities performed by the Industrial and Hazardous Waste Division and Field Operations Division in accomplishing its mission to effectively manage hazardous and industrial nonhazardous programs

for the State of Texas. This report summarizes the agency's inspection strategy; points out a need for additional enforcement staff to address an increasing backlog of significant violations; describes the results of all inspections conducted during fiscal year 1992; and lists hazardous waste treatment, storage, and disposal facilities not scheduled for compliance evaluation inspections (CEI) during State Fiscal Years.

The report identifies facilities that were inspected in fiscal year 1992 which were compliant. The report also identified those facilities having demonstrated an exemplary record of compliance over the preceding three years.

The report identifies each hazardous and solid waste handler inspected and includes the following information: a listing of those handlers found to be compliant with all hazardous and solid waste regulations; those handlers with only minor or clerical violations; and those found to have substantive, non-clerical violations. In addition, for substantive, non-clerical violations, the report identifies the violations and either summarizes corrective actions or describes the status of unresolved violations.

Request for copies may be addressed to the Texas Water Commission Library, Post Office Box 13087, Austin, Texas 78711-3087 or contact the Library at (512) 463-7834. Copies must be prepaid. There is a nominal cost for the publication, including postage and handling. Checks should be made payable to the Texas Water Commission.

For copies of any specific inspection report listed in this document you may contact the Texas Water Commission Central Records Office located at Technical Park Center, Messenger Building B, 12118 North IH-35, Austin, Texas 78753 or call (512) 908-2920.

Issued in Austin, Texas, on January 25, 1993.

TRD-9318133      Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

Filed: January 25, 1993

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# 1993 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1993 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on July 30, November 5, November 30, and December 28. A asterisk beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
1 Friday, January 1	Monday, December 28	Tuesday, December 29
2 Tuesday, January 5	Wednesday, December 30	Thursday, December 31
3 Friday, January 8	Monday, January 4	Tuesday, January 5
4 Tuesday, January 12	Wednesday, January 6	Thursday, January 7
5 Friday, January 15	Monday, January 11	Tuesday, January 12
6 Tuesday, January 19	Wednesday, January 13	Thursday, January 14
Friday, January 22	1992 ANNUAL INDEX	
7 Tuesday, January 26	Wednesday, January 20	Thursday, January 21
8 Friday, January 29	Monday, January 25	Tuesday, January 26
9 Tuesday, February 2	Wednesday, January 27	Thursday, January 28
10 Friday, February 5	Monday, February 1	Tuesday, February 2
11 Tuesday, February 9	Wednesday, February 3	Thursday, February 4
12 Friday, February 12	Monday, February 8	Tuesday, February 9
13 Tuesday, February 16	Wednesday, February 10	Thursday, February 11
14 *Friday, February 19	Friday, February 12	Tuesday, February 16
15 Tuesday, February 23	Wednesday, February 17	Thursday, February 18
16 Friday, February 26	Monday, February 22	Tuesday, February 23
17 Tuesday, March 2	Wednesday, February 24	Thursday, February 25
18 Friday, March 5	Monday, March 1	Tuesday, March 2
19 Tuesday, March 9	Wednesday, March 3	Thursday, March 4
20 Friday, March 12	Monday, March 8	Tuesday, March 9
21 Tuesday, March 16	Wednesday, March 10	Thursday, March 11
22 Friday, March 19	Monday, March 15	Tuesday, March 16
23 Tuesday, March 23	Wednesday, March 17	Thursday, March 18
24 Friday, March 26	Monday, March 22	Tuesday, March 23
25 Tuesday, March 30	Wednesday, March 24	Thursday, March 25
26 Friday, April 2	Monday, March 29	Tuesday, March 30
27 Tuesday, April 6	Wednesday, March 31	Thursday, April 1
28 Friday, April 9	Monday, April 5	Tuesday, April 6
29 Tuesday, April 13	Wednesday, April 7	Thursday, April 8
Friday, April 16	FIRST QUARTERLY INDEX	
30 Tuesday, April 20	Wednesday, April 14	Thursday, April 15

31 Friday, April 23	Monday, April 19	Tuesday, April 20
32 Tuesday, April 27	Wednesday, April 21	Thursday, April 22
33 Friday, April 30	Monday, April 26	Tuesday, April 27
34 Tuesday, May 4	Wednesday, April 28	Thursday, April 29
35 Friday, May 7	Monday, May 3	Tuesday, May 4
36 Tuesday, May 11	Wednesday, May 5	Thursday, May 6
37 Friday, May 14	Monday, May 10	Tuesday, May 11
38 Tuesday, May 18	Wednesday, May 12	Thursday, May 13
39 Friday, May 21	Monday, May 17	Tuesday, May 18
40 Tuesday, May 25	Wednesday, May 19	Thursday, May 20
41 Friday, May 28	Monday, May 24	Tuesday, May 25
42 Tuesday, June 1	Wednesday, May 26	Thursday, May 27
43 *Friday, June 4	Friday, May 28	Tuesday, June 1
44 Tuesday, June 8	Wednesday, June 2	Thursday, June 3
45 Friday, June 11	Monday, June 7	Tuesday, June 8
46 Tuesday, June 15	Wednesday, June 9	Thursday, June 10
47 Friday, June 18	Monday, June 14	Tuesday, June 15
48 Tuesday, June 22	Wednesday, June 16	Thursday, June 17
49 Friday, June 25	Monday, June 21	Tuesday, June 22
50 Tuesday, June 29	Wednesday, June 23	Thursday, June 24
51 Friday, July 2	Monday, June 28	Tuesday, June 29
52 Tuesday, July 6	Wednesday, June 30	Thursday, July 1
53 Friday, July 9	Monday, July 5	Tuesday, July 6
Tuesday, July 13	SECOND QUARTERLY INDEX	
54 Friday, July 16	Monday, July 12	Tuesday, July 13
55 Tuesday, July 20	Wednesday, July 14	Thursday, July 15
56 Friday, July 23	Monday, July 19	Tuesday, July 20
57 Tuesday, July 27	Wednesday, July 21	Thursday, July 22
Friday, July 30	NO ISSUE PUBLISHED	
58 Tuesday, August 3	Wednesday, July 28	Thursday, July 29
59 Friday, August 6	Monday, August 2	Tuesday, August 3
60 Tuesday, August 10	Wednesday, August 4	Thursday, August 5
61 Friday, August 13	Monday, August 9	Tuesday, August 10
62 Tuesday, August 17	Wednesday, August 11	Thursday, August 12
63 Friday, August 20	Monday, August 16	Tuesday, August 17
64 Tuesday, August 24	Wednesday, August 18	Thursday, August 19
65 Friday, August 27	Monday, August 23	Tuesday, August 24
66 Tuesday, August 31	Wednesday, August 25	Thursday, August 26
67 Friday, September 3	Monday, August 30	Tuesday, August 31
68 Tuesday, September 7	Wednesday, September 1	Thursday, September 2
69 *Friday, September 10	Friday, September 3	Tuesday, September 7

70 Tuesday, September 14	Wednesday, September 8	Thursday, September 9
71 Friday, September 17	Monday, September 13	Tuesday, September 14
72 Tuesday, September 21	Wednesday, September 15	Thursday, September 16
73 Friday, September 24	Monday, September 20	Tuesday, September 21
74 Tuesday, September 28	Wednesday, September 22	Thursday, September 23
75 Friday, October 1	Monday, September 27	Tuesday, September 28
76 Tuesday, October 5	Wednesday, September 29	Thursday, September 30
77 Friday, October 8	Monday, October 4	Tuesday, October 5
Tuesday, October 12	THIRD QUARTERLY INDEX	
78 Friday, October 15	Monday, October 11	Tuesday, October 12
79 Tuesday, October 19	Wednesday, October 13	Thursday, October 14
80 Friday, October 22	Monday, October 18	Tuesday, October 19
81 Tuesday, October 26	Wednesday, October 20	Thursday, October 21
82 Friday, October 29	Monday, October 25	Tuesday, October 26
83 Tuesday, November 2	Wednesday, October 27	Thursday, October 28
Friday, November 5	NO ISSUE PUBLISHED	
84 Tuesday, November 9	Wednesday, November 3	Thursday, November 4
85 Friday, November 12	Monday, November 8	Tuesday, November 9
86 Tuesday, November 16	Wednesday, November 10	Thursday, November 11
87 Friday, November 19	Monday, November 15	Tuesday, November 16
88 Tuesday, November 23	Wednesday, November 17	Thursday, November 18
89 Friday, November 26	Monday, November 22	Tuesday, November 23
Tuesday, November 30	NO ISSUE PUBLISHED	
90 Friday, December 3	Monday, November 29	Tuesday, November 30
91 Tuesday, December 7	Wednesday, December 1	Thursday, December 2
92 Friday, December 10	Monday, December 6	Tuesday, December 7
93 Tuesday, December 14	Wednesday, December 8	Thursday, December 9
94 Friday, December 17	Monday, December 13	Tuesday, December 14
95 Tuesday, December 21	Wednesday, December 15	Thursday, December 16
96 Friday, December 24	Monday, December 20	Tuesday, December 21
Tuesday, December 28	NO ISSUE PUBLISHED	



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