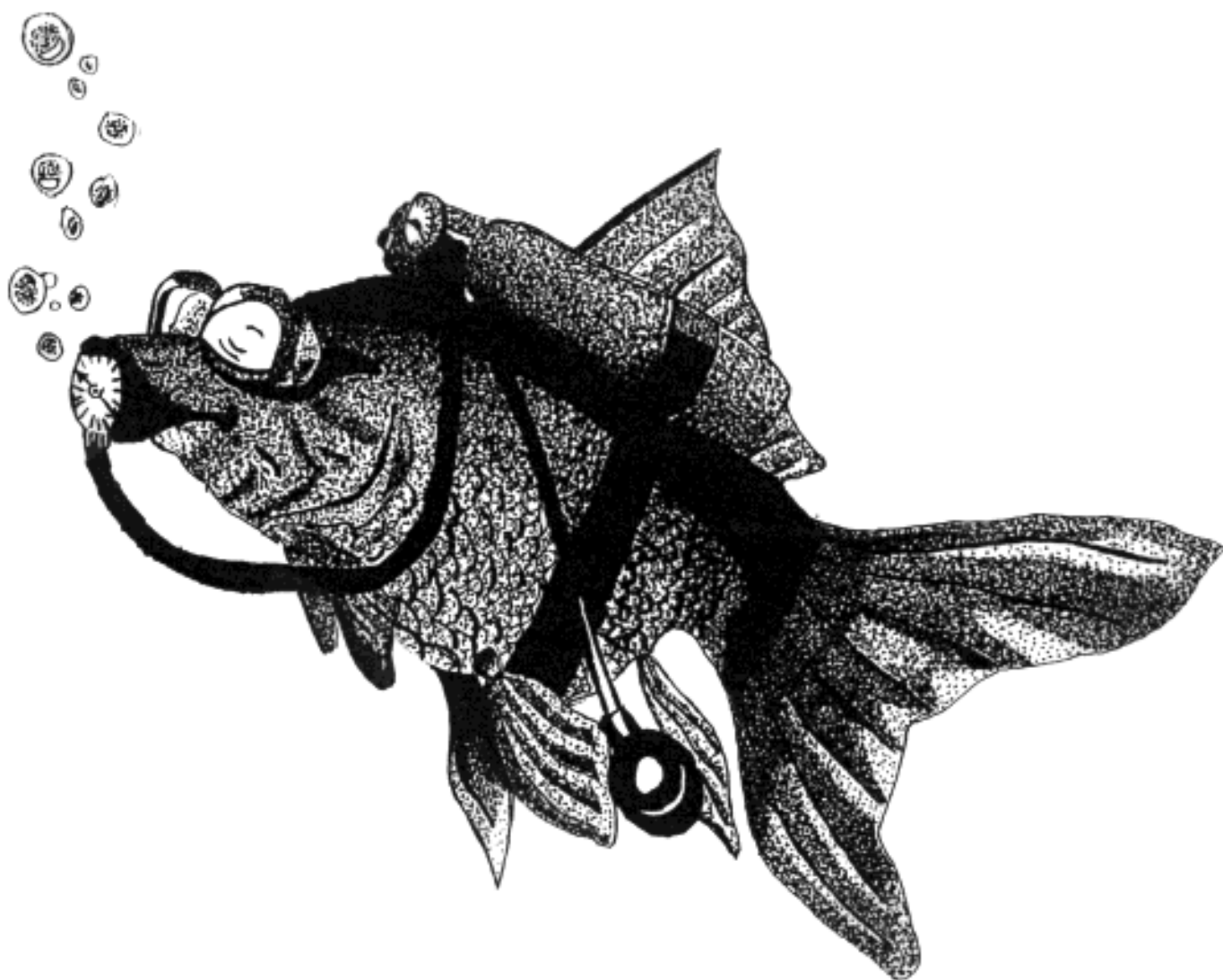


# TEXAS REGISTER

*Volume 23 Number 29 July 17, 1998*

*Pages 7305-7464*

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***Artist: Stefanie Crane***

***10th Grade***

***Sanger High School***

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**GOVERNOR**

**Office of the Governor**

Appointments made July 9, 1998..... 7313  
PROCLAMATION 41-2726..... 7313

**ATTORNEY GENERAL**

Open Records Decision..... 7315

**PROPOSED RULES**

**Records Management Interagency Coordinating Council**

Council Procedures

13 TAC §§50.1, 50.3, 50.5, 50.7, 50.9, 50.11..... 7317

**Railroad Commission of Texas**

Practice and Procedure

16 TAC §1.130..... 7318

Gas Utilities Division

16 TAC §7.45..... 7321

Alternative Fuels Research and Educational Division

16 TAC §15.30..... 7322

**Public Utility Commission of Texas**

Practice and Procedure

16 TAC §22.202..... 7323

**Texas Board of Veterinary Medical Examiners**

Rules of Professional Conduct

22 TAC §573.64..... 7323

**Texas Board of Professional Land Surveying**

General Rules of Procedures and Practices

22 TAC §§661.3, 661.4, 661.9, 661.11..... 7324

22 TAC §661.63, §661.75..... 7325

22 TAC §661.123..... 7326

Standards of Responsibility and Rules of Conduct

22 TAC §§663.5, 663.7, 663.10..... 7326

22 TAC §§663.16, 663.17, 663.19..... 7327

**Texas Department of Health**

Ambulatory Surgical Centers

25 TAC §§135.41-135.43..... 7329

25 TAC §§135.41-135.42..... 7329

25 TAC §135.51, §135.52..... 7331

25 TAC §§135.51-135.54..... 7331

25 TAC §§135.61-135.67..... 7347

**Texas Natural Resource Conservation Commission**

Consolidated Permit Processing

30 TAC §33.1, §33.3..... 7350

30 TAC §§33.11, 33.13, 33.15, 33.17, 33.19, 33.21, 33.23, 33.25, 33.27, 33.29, 33.31..... 7351

30 TAC §§33.41, 33.43, 33.45, 33.47, 33.49, 33.51..... 7352

Public Notice

30 TAC §39.1, §39.5..... 7354

30 TAC §39.251..... 7354

30 TAC §39.401..... 7355

Control of Air Pollution From Toxic Materials

30 TAC §113.100..... 7356

30 TAC §§113.110, 113.120, 113.130, 113.140..... 7357

30 TAC §113.190..... 7357

30 TAC §113.220..... 7357

30 TAC §113.230..... 7358

30 TAC §113.250..... 7358

30 TAC §113.260..... 7358

30 TAC §113.290..... 7359

30 TAC §113.350..... 7359

30 TAC §113.360..... 7359

30 TAC §113.380..... 7359

30 TAC §113.400..... 7360

30 TAC §113.420..... 7360

30 TAC §113.670..... 7360

**Texas Youth Commission**

Youth Rights and Remedies

37 TAC §93.1..... 7361

**Texas Department of Human Services**

Income Assistance Services

40 TAC §3.2901..... 7361

40 TAC §3.4011..... 7362

**ADOPTED RULES**

**Texas Agriculture Resources Protection Authority**

General Rules

4 TAC §101.2, §101.20..... 7363

**Railroad Commission of Texas**

Oil and Gas Division

16 TAC §3.83..... 7363

Rail Division

16 TAC §5.802..... 7364

<b>Public Utility Commission of Texas</b>	
Practice and Procedure	
16 TAC §§22.31, 22.33, 22.35.....	7364
16 TAC §§22.51, 22.52, 22.56.....	7365
<b>Texas Board of Physical Therapy Examiners</b>	
License Renewal	
22 TAC §341.8.....	7365
<b>Texas Health Care Information Council</b>	
Health Care Information	
25 TAC §§1301.12, 1301.17-1301.19.....	7365
<b>Texas Workers' Compensation Commission</b>	
Accident Prevention Services	
28 TAC §166.4.....	7367
<b>Texas Natural Resource Conservation Commission</b>	
Industrial Solid Waste and Municipal Hazardous Waste	
30 TAC §§335.341-335.351 .....	7369
30 TAC §335.352 .....	7380
<b>Texas Parks and Wildlife Department</b>	
Finance	
31 TAC §53.1.....	7380
<b>Comptroller of Public Accounts</b>	
Tax Administration	
34 TAC §3.251 .....	7381
34 TAC §3.285 .....	7381
34 TAC §3.298 .....	7381
34 TAC §3.372 .....	7385
34 TAC §3.422 .....	7386
34 TAC §§3.1101-3.1103 .....	7386
34 TAC §3.1101 .....	7386
<b>Texas Juvenile Probation Commission</b>	
Standards for Child Abuse and Neglect Investigations in Secure Juvenile Facilities	
37 TAC §§349.101-349.119.....	7387
37 TAC §§349.501-349.508.....	7387
<b>Texas Department of Human Services</b>	
Medicaid Eligibility	
40 TAC §15.503 .....	7388
Nursing Facility Requirements for Licensure and Medi- caid Certification	
40 TAC §19.2009 .....	7388
Emergency Response Services	
40 TAC §52.301 .....	7388
40 TAC §52.401, §52.402 .....	7389
40 TAC §52.503 .....	7389
Legal Services	
40 TAC §§79.1001-79.1007 .....	7389
Nurse Aides	
40 TAC §94.11 .....	7389
<b>EXEMPT FILINGS</b>	
<b>Texas Department of Insurance</b>	
Proposed Actions.....	7391
Adopted Actions.....	7393
<b>RULE REVIEW</b>	
<b>Agency Rule Review Plans</b>	
Texas Alcoholic Beverage Commission.....	7395
Employees Retirement System of Texas.....	7395
Texas Youth Commission.....	7395
Texas Board of Veterinary Medical Examiners.....	7395
Texas Council on Purchasing from People with Disabilities.....	7395
Texas Department of Agriculture.....	7395
Texas Board of Professional Engineers.....	7395
Fire Fighters' Pension Commission.....	7395
Texas Funeral Service Commission.....	7395
Texas Department of Protective and Regulatory Services.....	7395
Texas Historical Commission.....	7395
Texas Juvenile Probation Commission.....	7395
Executive Council of Physical Therapy and Occupational Examin- ers.....	7395
Texas State Board of Examiners of Professional Counselors.....	7395
Texas Workers' Compensation Commission.....	7395
Texas Municipal Retirement System.....	7395
State Council on Competitive Government.....	7395
<b>Proposed Rule Reviews</b>	
Texas State Board of Examiners of Professional Counselors.....	7396
Texas Public Finance Authority.....	7396
Public Utility Commission of Texas.....	7396
Texas Veterinary Medical Diagnostic Laboratory (TVMDL) .....	7396
<b>Adopted Rule Review</b>	
Public Utility Commission of Texas.....	7397
<b>TABLES AND GRAPHICS</b>	

<b>Tables and Graphics</b>	
Tables and Graphics .....	7399
<b>OPEN MEETINGS</b>	
<b>Texas State Board of Public Accountancy</b>	
Wednesday, July 15, 1998, 10:00 a.m. ....	7407
Wednesday, July 15, 1998, 1:00 p.m. ....	7407
Wednesday, July 15, 1998, 2:00 p.m. ....	7407
Wednesday, July 15, 1998, 3:30 p.m. ....	7408
Wednesday, July 15, 1998, 4:00 p.m. ....	7408
Thursday, July 16, 1998, 9:00 a.m. ....	7408
<b>State Office of Administrative Hearings</b>	
July 13, 1998, 10:00 a.m. ....	7408
<b>Texas Commission on Alcohol and Drug Abuse</b>	
Friday, July 10, 1998, 10:00 a.m. ....	7408
Thursday, July 16, 1998, 10:30 a.m. ....	7409
<b>Texas Alternative Fuels Council</b>	
Thursday, July 9, 1998, 1:30 p.m. ....	7409
<b>Texas School for the Blind and Visually Impaired</b>	
Tuesday, June 14, 1998, 1:00 p.m. ....	7409
<b>Texas Bond Review Board</b>	
Tuesday, July 14, 1998, 10:00 a.m. ....	7409
<b>Children’s Trust Fund of Texas Council</b>	
Monday, July 13, 1998, 9:30 a.m. ....	7410
<b>Comptroller of Public Accounts</b>	
Monday, July 13, 1998, 9:00 a.m. ....	7410
Tuesday, July 21, 1998, 10:00 a.m. ....	7410
<b>Texas Commission for the Deaf and Hard of Hearing</b>	
Friday, July 17, 1998, 9:00 a.m. ....	7410
<b>Texas Diabetes Council</b>	
Friday, July 17, 1998, 9:00 a.m. ....	7411
<b>Interagency Council on Early Childhood Intervention</b>	
Thursday-Friday, July 16–17, 1998, 9:30 a.m. and 8:30 a.m. (respectively).....	7411
<b>Texas Department of Economic Development</b>	
Friday, July 17, 1998, 2:00 p.m. ....	7411
<b>Advisory Commission on State Emergency Communications Programs Committee</b>	
Monday, July 13, 1998, 1:30 p.m. ....	7411
Monday, July 13, 1998, 4:30 p.m. ....	7412
Tuesday, July 14, 1998, 8:30 a.m. ....	7412
Tuesday, July 14, 1998, 10:15 a.m. ....	7412
<b>State Employee Charitable Campaign</b>	
Monday, July 13, 1998, 3:30 p.m. ....	7413
Wednesday, July 15, 1998, 9:00 a.m. ....	7413
Wednesday, July 15, 1998, 9:30 a.m. ....	7413
Tuesday, July 21, 1998, 11:30 a.m. ....	7413
<b>Texas Energy Coordination Council (TECC)</b>	
Wednesday, July 15, 1998, 10:00 a.m. ....	7414
Wednesday, July 15, 1998, 10:00 a.m. ....	7414
<b>Texas Commission on Fire Protection</b>	
Friday, July 17, 1998, 9:00 a.m. ....	7414
Friday, July 17, 1998, 9:00 a.m. ....	7414
Friday, July 17, 1998, 1:00 p.m. ....	7415
Friday, July 17, 1998, 1:00 p.m. ....	7415
<b>Texas Department of Health</b>	
Wednesday, July 15, 1998, 10:00 a.m. ....	7415
<b>Texas Health Care Information Council</b>	
Thursday, July 16, 1998, 1:00 p.m. ....	7415
<b>Texas Health Insurance Risk Pool (Health Pool)</b>	
Friday, July 17, 1998, 8:00 a.m. ....	7415
<b>Texas Health Reinsurance System</b>	
Wednesday, July 15, 1998, 9:00 a.m. ....	7416
<b>Texas Healthy Kids Corporation</b>	
Tuesday, July 14, 1998, 9:45 a.m. ....	7416
<b>Texas Higher Education Coordinating Board</b>	
Wednesday, July 15, 1998, 5:00 p.m. ....	7416
<b>Texas Department of Insurance</b>	
Thursday, July 16, 1998, 9:30 a.m. ....	7416
Tuesday, August 11, 1998, 9:00 a.m. ....	7417
Monday, August 17, 1998, 9:00 a.m. ....	7417
Tuesday, August 18, 1998, 9:00 a.m. ....	7417
Tuesday, August 18, 1998, 1:00 p.m. ....	7417
Thursday, August 20, 1998, 9:00 a.m. ....	7417
<b>Board of Law Examiners</b>	
Monday, July 13, 1998, 9:30 p.m. ....	7417
Tuesday, July 14, 1998, 9:30 p.m. ....	7418
Wednesday, July 15, 1998, 9:30 p.m. ....	7418
Thursday, July 16, 1998, 8:30 a.m. ....	7418
Friday, July 17, 1998, 8:30 a.m. ....	7418
<b>Texas Department of Licensing and Regulation</b>	

Thursday, July 23, 1998, 9:30 a.m. ....	7418
Tuesday, August 4, 1998, 9:30 a.m. ....	7419
<b>Texas Lottery Commission</b>	
Saturday, July 11, 1998, 9:00 a.m. ....	7419
<b>Texas Mental Health and Mental Retardation Board</b>	
Thursday, July 9, 1998, 9:30 a.m. ....	7419
Thursday, July 9, 1998, 11:00 a.m. ....	7420
Thursday, July 9, 1998, 1:00 p.m. ....	7420
Thursday, July 9, 1998, 1:30 p.m. ....	7420
Friday, July 10, 1998, 9:30 a.m. ....	7420
<b>Texas Natural Resource Conservation Commission</b>	
Wednesday, July 15, 1998, 8:30, 9:30 a.m. and 1:00 p.m. (respec- tively.) ....	7421
Wednesday, July 15, 1998, 9:30 a.m. ....	7421
Thursday, July 16, 1998, 1:30 p.m. ....	7421
Thursday, July 30, 1998, 10:00 a.m. ....	7421
Thursday, August 4, 1998, 7:00 p.m. ....	7421
Monday, August 10, 1998, 10:00 a.m. ....	7421
<b>Texas Board of Orthotics and Prosthetics</b>	
Wednesday, July 15, 1998, 10:00 a.m. ....	7422
<b>Texas State Board of Plumbing Examiners</b>	
Monday, July 13, 1998, 8:30 a.m. ....	7422
Monday, July 13, 1998, 8:30 a.m. ....	7422
<b>State Preservation Board</b>	
Monday, July 13, 1998, 8:45 a.m. ....	7422
<b>Texas State Board of Examiners of Psychologists</b>	
Wednesday, July 29, 1998, 8:30 a.m. ....	7423
<b>Texas Department of Public Safety</b>	
Thursday, July 16, 1998, 10:00 a.m. ....	7423
<b>Public Utility Commission of Texas</b>	
Thursday, July 16, 1998, 8:00 a.m. ....	7423
Thursday, July 16, 1998, 8:00 a.m. ....	7423
Friday, July 17, 1998, 9:30 a.m. ....	7423
Thursday, July 23, 1998, 9:00 a.m. ....	7424
<b>Railroad Commission of Texas</b>	
Tuesday, July 14, 1998, 9:30 a.m. ....	7424
<b>Texas Real Estate Research Center</b>	
Thursday, July 16, 1998, 3:00 p.m. ....	7424
<b>Texas Rehabilitation Commission</b>	
Monday, July 27, 1998, 10:00 ....	7424

<b>Rural Community Health System</b>	
Friday-Saturday, July 17-18, 1998, 1:00 p.m. and 9:00 a.m. (respectively.) ....	7424
<b>Center for Rural Health Initiatives</b>	
Friday, July 10, 1998, 9:00 a.m. ....	7425
Friday, July 10, 1998, 10:00 a.m. ....	7425
<b>State Securities Board</b>	
Wednesday, August 19, 1998, 9:00 a.m. ....	7425
<b>Texas State Soil and Water Conservation Board</b>	
Tuesday, July 14, 1998, 9:00 a.m. ....	7425
<b>Stephen F. Austin State University</b>	
Monday, July 13, 1998, 11:00 a.m. ....	7425
Monday, July 13, 1998, 1:30 p.m. ....	7426
Tuesday, July 14, 1998, 9:00 a.m. ....	7426
<b>Teacher Retirement System of Texas</b>	
Tuesday, July 14, 1998, Noon. ....	7427
<b>Texas Association of Counties</b>	
Thursday, July 16, 1998, 9:00 a.m. ....	7427
<b>Texas Department of Transportation</b>	
Monday, August 3, 1998, 9:30 a.m. ....	7427
<b>Trinity Higher Educational Facilities Corporation</b>	
Wednesday, July 8, 1998, 12:30 p.m. ....	7427
<b>University of Houston System</b>	
Monday, July 13, 1998, 11:00 a.m. ....	7427
<b>University of Texas System</b>	
Tuesday, July 7, 1998, 1:00 p.m. ....	7428
<b>Texas Veterans Commission</b>	
Wednesday, July 15, 1998, 10:00 a.m. ....	7428
<b>Texas Water Development Board</b>	
Tuesday-Wednesday, July 14-15, 1998, 3:00 p.m. and 8:30 a.m. (respectively.) ....	7428
Wednesday, July 15, 1998, 3:00 p.m. ....	7428
<b>Texas Windstorm Insurance Association</b>	
Wednesday, July 15, 1998, 1:30 p.m. ....	7428
<b>Texas Youth Commission</b>	
Wednesday, July 15, 1998, 5:30 p.m. ....	7428
Wednesday, July 15, 1998, 5:30 p.m. ....	7429
Thursday, July 16, 1998, 8:15 a.m. ....	7429
Thursday, July 16, 1998, 8:15 a.m. ....	7429
Thursday, July 16, 1998, 2:00 p.m. ....	7429
Regional Meetings. ....	7430

**IN ADDITION**

**Texas Department of Agriculture**

Notice of Public Hearing ..... 7435

**Office of the Attorney General**

Access and Visitation Grant Funding..... 7435

**Cameron Works, Inc.**

Request for Proposal..... 7435

**Coastal Coordination Council**

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program..... 7436

**Comptroller of Public Accounts**

Notice of Request for Proposals..... 7437

**Office of Consumer Credit Commissioner**

Notice of Rate Ceilings..... 7437

**Texas Department of Criminal Justice**

Notice to Bidders ..... 7437

**Texas Planning Council for Developmental Disabilities**

Request for Proposals..... 7438

**Texas Education Agency**

Notice of Intent..... 7439

Request for Proposal for the Production of Braille Textbook Copies for Texas Public Schools..... 7439

Request for Proposal for the Production of Braille Masters for Texas Public Schools..... 7440

**General Services Commission**

Notice to Bidders for Project Number 97-004K-303..... 7440

**Texas Department of Health**

Licensing Action for Radioactive Materials..... 7441

Notice of Request for Proposals for Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)..... 7444

**Texas Department of Housing and Community Affairs**

Notice of Public Hearing..... 7444

**Houston-Galveston Area Council**

Request for Proposal..... 7445

**Texas Department of Human Services**

Public Notice..... 7445

**Texas Department of Insurance**

Insurer Services..... 7445

Notice of Applications by Small Employer Carriers to be Risk-Assuming Carriers..... 7445

Notices of Public Hearings..... 7446

**Texas State Library and Archives Commission**

Quarterly Report of Consultant Contract Reports Received by the Texas State Library..... 7447

**Texas Low-Level Radioactive Waste Disposal Authority**

Request for Proposals ..... 7448

**Texas Natural Resource Conservation Commission**

Enforcement Orders..... 7450

Notices of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions..... 7451

Notice of Public Hearing (Chapters 33 and 39)..... 7454

Notice of Public Hearing (Chapter 113)..... 7454

Proposal for Decision..... 7454

Public Notices..... 7454

Public Notice – Change of Meeting Date ..... 7455

**Texas Department of Protective and Regulatory Services**

Request for Proposal..... 7455

**Public Utility Commission of Texas**

Notice of Application for Amendment to Service Provider Certificate of Operating Authority ..... 7456

Notice of Application for Approval of Preliminary Integrated Resource Plan ..... 7456

Notice of Application for Service Provider Certificate of Operating Authority..... 7456

Notice of Application to Amend Certificate of Convenience and Necessity ..... 7456

Notice of Contract for Resources Acquired Outside of Solicitation 7457

Notices of Intent to File Pursuant to P.U.C. Substantive Rule §23.27 7457

Notice of Petition for Approval of New Interruptible Service Tariff 7458

Notice of True-Up of Expanded Local Calling Surcharge ..... 7458

Notice of Workshop on Issues Relating to Transmission Access and Pricing ..... 7458

Request for Comments on Issues Related to Utilities' Year 2000 Preparations and Notice of Workshops ..... 7459

**Texas A&M University System**

Consultant Contract Award Notification ..... 7459

Request for Proposal ..... 7459

**Texas Department of Transportation**

Public Notice..... 7460

**University of Houston System**

Consultant Proposal Request..... 7460

**The University of Texas System**

Consultant Proposal Request.....7461      Notice of Availability of Funds and Request for Applications ..7461  
**Texas Workforce Commission (TWC)**



# THE GOVERNOR

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As required by Texas Civil Statutes, Article 6252-13a, §6, the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

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## Office of the Governor

### Appointments made July 9, 1998

To be appointed to the COUNCIL ON SEX OFFENDER TREATMENT pursuant to House Bill 2699, 75th Legislature, Regular Session: for a term to expire 2-1-99: Kristy M. Carr, 5604 Southwest Parkway, 2231, Austin, Texas 78735; For a term to expire 2-1-01: Officer David Swinson, Jr., P.O. Box 97, Hewitt, Texas 76643; For a term to expire 2-1-03: Liles Arnold, 3720 Chaparral Road, Plano, Texas 75074.

To be appointed to the TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS for a term to expire February 1, 2001: Waymon Ray Hinson, Ph.D., 810 Canyon Court, Abilene, Texas. Dr. Hinson will be filling the unexpired term of Anna Beth Benningfield of Dallas who resigned.

To be appointed to the UNIVERSITY OF NORTH TEXAS BOARD OF REGENTS for a term to expire May 22, 1999: Roy Gene Evans, 3301 St. Johns Dallas, Texas 75205. Mr. Evans will be filling the unexpired term of Topsy Wright of Grand Prairie who is deceased.

Filed July 10, 1998

TRD-9811002



### PROCLAMATION 41-2726

THE STATE OF TEXAS EXECUTIVE DEPARTMENT, OFFICE OF THE GOVERNOR, AUSTIN, TEXAS:

TO ALL TO WHOM THESE PRESENTS MAY COME:

WHEREAS, HENRY LEE LUCAS, EXECUTION NUMBER 799, was convicted on or about May 28, 1985 of the Crime of Capital Murder, a Capital Felony, in the cause styled and numbers: *State of Texas v. Henry Lee Lucas*, Cause Number 13,890-B in the 199th Judicial District Court of Tom Green County, Texas, on a Change of Venue from Williamson County, Texas. He was thereafter sentenced to Death and the Mandate of the Court of Criminal Appeals was entered July 13, 1990: and

WHEREAS, the Board of Pardons and Paroles has recommended the commutation of sentence from Death to a lesser penalty in the Institutional Division of the Texas Department of Criminal Justice; and

WHEREAS, the Board of Pardons and Paroles has also recommended a reprieve of 270 days.

NOW, THEREFORE, I, George W. Bush, Governor of the State of Texas, by virtue of the authority vested in me under the Constitution and laws of the State of Texas, and acting upon the recommendation

of the Board of Pardons and Paroles dated June 25, 1998, do hereby Commute the sentence imposed in the above styled and numbered cause, of the said Henry Lee Lucas, from Death to Life Imprisonment in the Institutional Division of the Texas Department of Criminal Justice;

IT IS FURTHER ORDERED that punishment under this Commutation of Sentence from Death to Life Imprisonment shall begin when the judgements and sentences in all of the following enumerated convictions have ceased to operate against this defendant:

Style: State of Texas v. Henry Lee Lucas

Cause No: B-8832

Court: 242nd Judicial District Court of Hale County, Texas

Sentence: Life Imprisonment

Style: State of Texas v. Henry Lee Lucas

Cause No: 18,475-C

Court: 211th Judicial District Court of Denton County, Texas

Sentence: Life Imprisonment

Style: State of Texas v. Henry Lee Lucas

Cause No: 17,001

Court: 284th Judicial District Court of Montgomery County, Texas

Sentence: Life Imprisonment

Style: State of Texas v. Henry Lee Lucas

Cause No: 17,002

Court: 284th Judicial District Court of Montgomery County, Texas

Sentence: Life Imprisonment

Style: State of Texas v. Henry Lee Lucas

Cause No: 14,405

Court: 86th Judicial District Court of Kaufman County, Texas

Sentence: Life Imprisonment

FURTHER, I do not concur with the recommendation of the Board of Pardons and Paroles dated June 25, 1998 for a reprieve, therefore IT IS FURTHER ORDERED that no reprieve shall be granted to the said Henry Lee Lucas.

I THEREBY DIRECT that a copy of this proclamation be filed in the office of the Secretary of State.

IN TESTIMONY WHEREOF, I have hereunto signed my name and caused the Seal of the State of Texas to be impressed hereon, this the 26th day of June, A.D., 1998.

George W. Bush, Governor

ATTEST: Albert R. Gonzales, Secretary of State.

TRD-9810700



# OFFICE OF THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

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Open Records Decision

**ORD-658(ORQ-28)**Mr. Stephen R. Alcorn Assistant City Attorney City of Grand Prairie P.O. Box 534045 Grand Prairie, Texas 75053-4045 concerning whether a final mediated settlement agreement, including financial and all other terms of that agreement, is confidential under section 154.073 of the Civil Practice and Remedies Code (ORQ-28)

**S U M M A R Y** Open Records Letter Number 98-0302 (1998) is overruled to the extent that it conflicts with this decision. Section

552.101 of the Government Code in conjunction with §154.073 of the Civil Practice and Remedies Code does not except from required public disclosure a governmental body's mediated final settlement agreement. Nor does §552.107(1) of the Government Code except from disclosure such agreement in this instance. Section 552.103 of the Government Code protects from required public disclosure a portion of the settlement agreement that relates to pending litigation.

TRD-9810795

# PROPOSED RULES

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 action is 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 action, 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 text being underlined. [Brackets] and ~~strike-through~~ of text indicates deletion of existing material within a section.

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## TITLE 13. CULTURAL RESOURCES

### Part IV. Records Management Interagency Coordinating Council

#### Chapter 50. Council Procedures

##### 13 TAC §§50.1, 50.3, 50.5, 50.7, 50.9, 50.11

The Records Management Interagency Coordinating Council proposes new §§50.1, 50.3, 50.5, 50.7, 50.9, and 50.11, concerning the council's procedures. The new rules are proposed under the authority of the Texas Government Code, §441.053(g), and in compliance with the Texas Government Code, §2001. These procedures define the functions of the Council regarding its purpose, officers, meetings, committees, staff, and rules.

Teresa Morales, Chair of the Council, has determined that for each of the first five years the rules are in effect, there will be no fiscal implications for state and local government as a result of administering the rules.

Ms. Morales also has determined that for each year of the first five years the rules as proposed are in effect the public will benefit by the council's procedures being clearly defined. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the rules as proposed.

Comments on the proposal may be submitted in writing within 30 days of publication in the *Texas Register* to Teresa Morales, Chair of the Records Management Interagency Coordinating Council, C/O Texas State Library, P.O. Box 12927 Austin, Texas 78711-2927, or by email to [teresa.morales@cpa.state.tx.us](mailto:teresa.morales@cpa.state.tx.us).

The rules are proposed under the Texas Government code, §441.053, which provides the Records Management Interagency Coordinating Council with the authority to adopt rules to improve the state's management of records.

The Texas Government Code, §441.053(g) is affected by the proposed rules.

##### §50.1. Purpose.

The Records Management Interagency Coordinating Council (RMICC) was established by Senate Bill 366 during the 74th Legislative Session in 1995. RMICC coordinates the management of government records by:

(1) informing the legislature on records management issues and making recommendations to improve records management processes and accountability;

(2) facilitating the transition from paper to electronic records; and

(3) developing consistent records management in state agencies.

##### §50.3. Officers.

(a) The RMICC is composed of the following officers or the officer's designee:

(1) the secretary of state;

(2) the state auditor, who serves as a nonvoting member;

(3) the comptroller of public accounts;

(4) the attorney general;

(5) the director and librarian of the State Library and Archives Commission;

(6) the executive director of the General Services Commission; and

(7) the executive director of the Department of Information Resources.

(b) Designees have full power and authority to act on behalf of the members of the RMICC who they represent.

(c) The presiding officer is the chair, who shall be one of the officers or an officer's designee.

(1) The officers shall nominate and elect a chair and a vice chair during even-numbered years.

(2) The chair and vice-chair shall serve for two years, beginning on February 1 of each odd-numbered year.

(d) Should the chair resign, the vice chair shall serve as chair for the remainder of the unexpired term.

(e) The chair shall preside at all meetings of the commission. If the chair is unavailable, the vice chair will act as chair.

(f) No member shall serve more than two consecutive full terms in any one office.

(g) Notices, suggestions, correspondence, or other documents to be delivered to the RMICC shall be delivered to P.O. Box 12927, Austin, Texas, 78711. Phone: (512) 463-5460.

§50.5. Meetings.

(a) The RMICC shall meet at least once quarterly and at other times at the call of the chair or upon the written request of three or more members. Any written request must be filed with the chair or the vice chair. All meetings shall comply with the open meetings provisions in the Government Code, Chapter 551.

(b) The chair or a majority of the officers may call a special meeting at any time by giving at least seven days' notice to all officers.

(c) The chair or a majority of the officers will designate the time, date, and place of all meetings. The chair shall be responsible for filing notice of meetings as required by law. The chair shall also give notice of the meetings to RMICC officers.

(1) The chair shall prepare the agenda before RMICC meetings.

(2) Items shall be included on the agenda upon the written request of one RMICC member and approval of the chair.

(3) An officer who is unable to attend a meeting shall notify the chair before the meeting, and if possible send a designee to the meeting.

(d) The RMICC may take action upon a majority vote of the members eligible to vote on that action.

(e) The chair shall designate a clerk to keep a complete record of the meetings of the RMICC and shall prepare written summaries or minutes reflecting actions taken by the RMICC officers present as required by the Government Code, Chapter 551.

(f) An opportunity for public comments shall be provided at each RMICC meeting. Public comments shall be heard subject to limitations imposed at the discretion of the chair, including time limits and other constraints as necessary for efficient and fair consideration of agenda items.

(g) The RMICC may periodically hold public hearings to obtain input regarding the policies and operations of the Council, issues before the Council, and to solicit suggestions and ideas from interested members of the public.

§50.7. Committees.

(a) The RMICC may assign committees to review, evaluate, consider, or analyze any legislation, suggestions, proposals, or other information on the RMICC's behalf. The assigned committees may perform any function deemed necessary by the RMICC. The results of any reviews or evaluations may be made in writing and submitted to the RMICC.

(1) The RMICC may consider the written recommendations, but shall not be bound by such recommendations.

(2) The RMICC may vote to abolish a committee or change a committee's assignment.

(b) All committee chairs shall be nominated and elected by the RMICC. Committee chairs may appoint committee members.

§50.9. Staff.

Service on the RMICC is an additional duty of a member's office or employment. A member of the Council is not entitled to compensation for performing the work of the Council but is entitled to reimbursement for actual expenses incurred in performing that work.

§50.11. Rules.

To implement its policies, the RMICC shall adopt rules as prescribed under the Government Code, Section 441.053 and under the Administrative Procedure Act, Government Code, Section 2001.

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

Filed with the Office of the Secretary of State on July 6, 1998.

TRD-9810637

Teresa Morales

Chair of RMICC

Records Management Interagency Coordinating Council

Earliest possible date of adoption: August 16, 1998

For further information, please call: (512) 463-4498

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**TITLE 16. ECONOMIC REGULATION**

**Part I. Railroad Commission of Texas**

**Chapter 1. Practice and Procedure**

**Subchapter G. Hearings**

**16 TAC §1.130**

The Railroad Commission of Texas proposes new §1.130, relating to telephonic proceedings. New §1.130 outlines the method to request a telephonic proceeding, how the proceeding shall be conducted, the establishment of the record in such proceedings, and the grounds for a default judgment or a dismissal.

Proposed new §1.130 permits a party to request to appear at a commission proceeding by telephone either in the request for a hearing or in a subsequent timely-filed motion. The request must be in writing, filed at the commission, and served on all parties, and must include the pertinent telephone number(s), the scope of the telephonic portion of the proceeding, and the identity of any witnesses that may testify telephonically. If expert witnesses will testify, the request must include their qualifications to testify as experts.

In determining whether it is feasible to conduct all or part of a proceeding telephonically, the hearings examiner must ensure that such proceeding will provide due process and will be fair, and must take into account the following factors: whether a party's request is timely; whether all parties have agreed in writing, and if so, whether the parties have demonstrated how witnesses will be separated, how coaching of witnesses will be prevented, why observing only a witness's oral demeanor is sufficient, how the witnesses' and parties' identities will be established; the number of parties; the number of witnesses; the number and type of exhibits; the distance of the parties or witnesses from Austin; the nature of the hearing; and any other pertinent factors which the examiner believes may affect the proceeding. If the examiner determines that a telephonic proceeding will be held, the examiner must notify the parties five days in advance of the proceeding.



All substantive and procedural rights apply to telephonic proceedings, subject only to the limitations of the physical arrangement. The time and location of telephonic proceedings will be posted, and any person may, by advance request, be present in the room with the hearings examiner. The hearings examiner will conduct telephonic proceedings using a speaker either the hearings examiner will make a tape recording of the telephonic proceeding, or the proceeding will be transcribed by a court reporter.

The hearings examiner will initiate the telephonic proceeding, including arranging any necessary conference call. When all parties appearing telephonically are connected, the hearings examiner will affirm the parties' consent to the telephonic proceeding; call the proceeding to order; ask for all parties to identify themselves, their locations, and their witnesses; affirm on the record the prior written agreement from all parties consenting to the telephonic appearance or proceeding; and state whether the proceeding is being memorialized by means of a tape recording or transcription of the proceeding. The hearings examiner will administer the oath to each witness individually, prior to his or her testimony.

If the hearings examiner decides or any party requests not to proceed with the telephonic proceeding at any time, or asserts that the presence of the parties or witnesses in the hearing room is necessary for full disclosure of the facts, the hearings examiner may postpone, continue, or recess the proceeding, as appropriate, until the earliest possible date and time for the proceeding to be reconvened with all participants present in person. The examiner must state on the record or in writing to all parties the reasons for terminating the telephonic proceeding and state the date, time, and location of the reconvened proceeding.

The commission may consider the following events to constitute a failure to appear and grounds for default or dismissal: failure to answer the telephone for more than 10 minutes after the scheduled time for the proceeding; failure to free the telephone for the proceeding for more than 10 minutes after the scheduled time for the proceeding; failure to be ready to proceed with the proceeding within 10 minutes of the scheduled time; and a party's intentional disconnection from the conference call. If the examiner is prevented from connecting all parties (due to technical difficulties, for example), the examiner may postpone, continue, or recess the proceeding, as appropriate, until the earliest possible date and time for the proceeding to be reconvened.

In the event of accidental disconnection of one or more parties to the proceeding, the hearings examiner will immediately recess the hearing and attempt to re-establish the connection or connections. If reconnection is achieved within 30 minutes, the hearings examiner may resume the telephonic hearing, or may postpone, continue, or recess the proceeding, as appropriate, until the earliest possible date and time for the proceeding to be reconvened. The examiner must state on the record the date, time, and location of the reconvened proceeding. If reconnection cannot be achieved, then the hearings examiner then recesses the telephonic proceeding until a date and time certain and at a location specified in a written notice of reconvened hearing.

Mary Ross McDonald, Deputy General Counsel, Office of General Counsel, has determined that for each year of the first five years the proposed new section is in effect there

will be fiscal implications for state government. The fiscal impact results from the cost of using the state's TexAn network to make long- distance telephone calls to conduct hearings. Intrastate calls on TexAn are approximately \$0.10 per minute (day) and \$0.07 per minute (night). Interstate calls on TexAn are approximately \$0.07 per minute (day) and \$0.05 per minute (night). Because the commission cannot know how many telephonic proceedings it might conduct or how long any of them might last, it is not possible to calculate the total annual fiscal impact. There are no fiscal implications for local governments.

Ms. McDonald has also determined that the public benefit anticipated as a result of enforcing the new section will be the commission's ability to offer another method by which parties may appear at commission proceedings. In addition, by holding some proceedings telephonically, the commission will be freeing hearing rooms that would otherwise be used, so that it should be possible to conduct some proceedings sooner than would be the case if a room had to be reserved.

There may be some cost of compliance for small businesses or individuals as a result of the proposed new section, but those may be offset by savings. Parties seeking to introduce documentary evidence will bear the cost of mailing or otherwise delivering copies to all parties and the hearings examiner at least three days prior to the proceeding; the cost will depend on the number of copies mailed or delivered and the type of service the party uses. The additional cost would be only for mailing or other delivery, since copies of documentary evidence must be provided to all parties and to the hearings examiner regardless of the forum. On the other hand, parties would be able to save the expenses associated with travel to Austin for a prehearing conference or a hearing, and it seems likely that such savings would exceed the cost of mailing or other delivery of copies of documentary evidence. It is not possible to calculate either the costs or the savings that an individual or small business might experience as a result of participating in a hearing telephonically, since that will depend on the difference between the cost of mailing or delivering copies of documents and the cost of travel to Austin, and will vary for each party, type of proceeding, and volume of documentary material.

The Commission has not requested a local employment impact statement pursuant to Texas Government Code, §2001.022(h).

Comments on the proposal may be submitted to Mary Ross McDonald, Deputy General Counsel, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*. The commission would find particularly helpful comments about whether the timelines stated in the proposed rule are sufficiently flexible to be useful to parties in a variety of commission proceedings. For more information, call Ms. McDonald at (512) 463-7008.

The new section is proposed under the Texas Government Code, §2001.004(1), which requires the commission to adopt rules of practice stating the nature of all available formal and informal procedures.

Texas Government Code, §2001.004(1), is affected by the proposed new section.

§1.130. Telephonic Proceedings.

(a) The hearings examiner, on the timely written motion of a party or on the examiner's own motion and with the consent of

all parties to a protested proceeding, may conduct all or part of a prehearing conference or hearing by telephone.

(b) A party may request to appear at a prehearing conference or a hearing by telephone.

(1) All motions requesting a telephonic appearance or proceeding shall be in writing, shall be filed at the commission and served on all parties not less than 20 days prior to the proceeding, and shall include the pertinent telephone number(s).

(2) If the request is to conduct only a portion of the proceeding by telephonic means, the requesting party shall specify the part of the proceeding to be conducted telephonically.

(3) If the proceeding involves testimony, the requesting party shall identify the witnesses and, for expert witnesses, their qualifications to testify as experts.

(4) Responses to a request for telephonic appearance shall be made in accordance with §1.28 of this title (relating to Responsive Pleadings and Emergency Action).

(5) Upon agreement of the parties or a finding of good cause, the examiner may modify the times for filing a request for telephonic appearance and/or responses to such a request, and for filing witness information.

(c) In considering whether conducting all or part of a prehearing conference or hearing by telephone is feasible, the hearings examiner shall ensure that the telephonic hearing will provide due process and will be fair, and shall take into account the following factors:

(1) whether a party's request for such is timely;

(2) whether all parties to a protested proceeding have agreed in writing, filed no later than five days prior to the proceeding, to conducting all or part of the proceeding via telephone;

(3) whether the parties have demonstrated:

(A) how witnesses will be separated;

(B) how coaching of witnesses will be prevented;

(C) why observing a witness's oral demeanor is adequate to make a reliable determination of the truth of the witness's testimony; and

(D) how the witnesses' and parties' identities will be established;

(4) the number of parties;

(5) the number of witnesses;

(6) the number and type of exhibits;

(7) the distance of the parties or witnesses from Austin;

(8) the nature of the hearing; and

(9) any other pertinent factors which the examiner believes may affect the proceeding.

(d) The hearings examiner shall issue a ruling not less than five days prior to the proceeding stating whether the proceeding will be conducted, in whole or in part, telephonically. In addition, the examiner shall notify all parties by telephone or by facsimile transmission of the ruling. The parties may waive this notice deadline.

(e) The proponent of any documentary evidence shall serve copies of that evidence on all parties and the hearings examiner no later than three days prior to the telephonic proceeding. All

documentary evidence shall be clearly labeled with the name of the sponsoring party and a unique document number. With the consent of the hearings examiner, a party may supplement or amend evidence less than three days prior to the proceeding or during the proceeding.

(f) All substantive and procedural rights apply to telephonic proceedings, subject only to the limitations of the physical arrangement.

(g) The time and location of telephonic proceedings shall be properly posted, and any person may, by advance request, be present in the room with the hearings examiner.

(h) The hearings examiner shall conduct telephonic proceedings using a speaker telephone. The hearings examiner shall make a tape recording of the telephonic proceeding, or the proceeding may be recorded by a court reporter by prior arrangement, pursuant to §1.129 of this title (relating to Reporters and Transcripts).

(i) The telephonic proceeding, including arranging the conference call, shall be initiated by the hearings examiner. When all parties appearing telephonically are connected, the hearings examiner shall affirm the parties' consent to the telephonic proceeding.

(1) The hearings examiner shall then call the proceeding to order and ask for all parties to identify themselves, their locations, and their witnesses.

(2) The hearings examiner shall affirm on the record the prior written agreement from all parties consenting to the telephonic appearance or proceeding and shall state whether the proceeding is being memorialized by means of a tape recording or transcription of the proceeding.

(3) The hearings examiner shall administer the oath to each witness individually, prior to his or her testimony.

(j) If the hearings examiner is prevented from establishing the telephonic connection for the proceeding through circumstances which are beyond the control of any party or the examiner; which cannot be attributed to any party's intentional or negligent conduct; and which continue for at least 30 minutes past the time for beginning the hearing, the hearings examiner may postpone, continue, or recess the proceeding, as the hearings examiner deems appropriate, until the earliest possible date and time for the proceeding to be reconvened. The hearings examiner shall state on the record or in writing to all parties the date, time, and location of the reconvened proceeding.

(k) If the hearings examiner decides or any party requests not to proceed with the telephonic proceeding at any time, or asserts that the presence of one or more of the parties or witnesses in the hearing room is necessary for full disclosure of the facts and states the reasons for such an assertion, the hearings examiner may postpone, continue, or recess the proceeding, as the hearings examiner deems appropriate, until the earliest possible date and time for the proceeding to be reconvened with all participants present in person. The examiner shall state on the record and in writing to all parties the reasons for terminating the telephonic proceeding and the date, time, and location of the reconvened proceeding.

(l) The commission may consider the following events to constitute a failure to appear and grounds for default or dismissal:

(1) failure to answer the telephone for more than 10 minutes after the scheduled time for the proceeding;

(2) failure to free the telephone for the proceeding for more than 10 minutes after the scheduled time for the proceeding;

(3) failure to be ready to proceed with the proceeding within 10 minutes of the scheduled time; and

(4) a party's intentional disconnection from the call.

(m) In the event of accidental disconnection of one or more parties to the proceeding, the hearings examiner shall immediately recess the hearing and attempt to re-establish the connection or connections.

(1) If reconnection is achieved within 30 minutes, the hearings examiner may resume the telephonic hearing, or may postpone, continue, or recess the proceeding, as the hearings examiner deems appropriate, until the earliest possible date and time for the proceeding to be reconvened. The examiner shall state on the record or in writing to all parties the date, time, and location of the reconvened proceeding.

(2) If reconnection cannot be achieved within 30 minutes, then the hearings examiner shall recess the telephonic proceeding until a date and time certain and at a location specified in a written notice of reconvened hearing.

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

Filed with the Office of the Secretary of State on July 1, 1998.

TRD-9810365

Mary Ross McDonald

Deputy General Counsel

Railroad Commission of Texas

Earliest possible date of adoption: August 16, 1998

For further information, please call: (512) 463-7008



## Chapter 7. Gas Utilities Division

### Subchapter B. Substantive Rules

#### 16 TAC §7.45

The Railroad Commission of Texas proposes amendments to §7.45 relating to the commission's quality of service rules for gas utilities. Section 7.45 sets forth minimum service standards for gas utility service to residential and small commercial customers.

The proposed amendment implements the provisions of House Bill 670, 73rd Legislature, 1993, later codified in Texas Civil Statutes, Article 1446c-2, and subsequently in Texas Utilities Code, §§182.001-182.005. Proposed new paragraph (2)(E) would require gas utilities to permit persons 60 years of age and older to delay payment of gas utility bills without penalty for up to 25 days after the utility bill is issued.

Karl J. Nalepa, Deputy Assistant Director, Gas Services Division, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal impact upon state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Nalepa has also determined that the cost of compliance with the proposed amendment will be the same for small and large businesses. To the extent businesses are required to defer recovery of utility revenue from elderly persons for up to 25 days from the date of issuance of the bill, businesses may incur opportunity costs associated with revenues not recovered as

promptly as they would have been without the rule. In addition, businesses may incur additional working capital costs due to potential increased delay in recovering revenue for service provided.

The anticipated economic cost to persons who are required to comply with the proposed amendment will depend on the number of elderly customers requesting delayed payment of gas utility bills; the dollar amount of the bills so delayed; the length of the delay in recovery of utility revenue associated with these bills; the utility's discount rate; and the utility's cost of capital.

Mr. Nalepa has determined that for each year of the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing or administering the rule will be to grant a reasonable preference or advantage in rates and services to recognize and assure the dignity of elderly persons; to provide elderly persons greater flexibility in the payment of gas utility bills; to permit elderly persons, who often have fixed or restricted incomes, greater opportunities to budget utility payments and manage their financial resources; to reduce late payment penalties incurred by elderly persons; to reduce the number of service terminations of elderly persons and the potential life or health threatening consequences of such terminations; to improve utility-customer relations; to reduce the expenditure of utility resources in terminating and reestablishing service; to reduce the expenditure of resources by elderly persons responding to service terminations, and requesting and negotiating reestablishment of service; to reduce utility uncollectible expense; and to avert the potential for disputes over billing, service termination, and service reestablishment that could lead to commission proceedings requiring the commitment of commission resources.

The commission has not requested a local employment impact statement pursuant to Texas Government Code, §2001.022(h).

Comments may be submitted to Mr. Karl J. Nalepa, Deputy Assistant Director, Gas Services Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register* and should refer to Gas Utilities Docket (GUD) No. 8873. For additional information, call Mr. Nalepa at (512) 463- 8574.

The commission proposes the amendment under Texas Utilities Code, §§104.001, which authorizes the commission to determine the classification of customers and services and to ensure that gas utilities comply with the obligation of the Code, and §§182.001-182.005, which provide for the delay without penalty of the payment date of gas utility bills by elderly persons.

Texas Utilities Code, §§104.001 and 182.001-182.005, are affected by the proposed amendment.

#### §7.45. *Quality of Service.*

For gas utility service to residential and small commercial customers, the following minimum service standards shall be applicable in unincorporated areas. In addition, each gas distribution utility is ordered to amend its service rules to include said minimum service standards within the utility service rules applicable to residential and small commercial customers within incorporated areas, but only to the extent that said minimum service standards do not conflict with standards lawfully established within a particular municipality for a gas distribution utility. Said gas distribution utility shall file service rules incorporating said minimum service standards with the Railroad Commission and with the municipalities in the manner prescribed by law.

- (1) (No change.)
- (2) Customer relations.
  - (A)-(D) (No change.)

(E) Delayed payment of bills by elderly persons.

(i) Applicability. This subparagraph applies only

to:

(I) a utility that assesses late payment charges on residential customers and that suspends service before the 26th day after the date of the bill for which collection action is taken;

(II) utility bills issued on or after August 30, 1993; and

(III) an elderly person, as defined in subparagraph (ii) of this paragraph, who is a residential customer and who occupies the entire premises for which a delay is requested.

(ii) Definitions.

(I) Elderly person—A person who is 60 years of age or older.

(II) Utility—A gas utility or municipally owned utility, as defined in Texas Utilities Code, §§101.003(7), 101.003(8), and 121.001-121.006.

(iii) An elderly person may request that the utility implement the delay for either the most recent utility bill or for the most recent utility bill and each subsequent utility bill.

(iv) On request of an elderly person, a utility shall delay without penalty the payment date of a bill for providing utility services to that person until the 25th day after the date on which the bill is issued.

(v) The utility may require the requesting person to present reasonable proof that the person is 60 years of age or older.

(vi) Every utility shall notify its customers of this delayed payment option no less often than yearly. A utility may include this notice with other information provided pursuant to subparagraph (A) of this paragraph.

- (3)-(8) (No change.)

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

Filed with the Office of the Secretary of State on July 1, 1998.

TRD-9810364

Mary Ross McDonald

Deputy General Counsel

Railroad Commission of Texas

Earliest possible date of adoption: August 16, 1998

For further information, please call: (512) 463-7008



## Chapter 15. Alternative Fuels Research and Educational Division

### Subchapter A. General Rules

#### 16 TAC §15.30

The Railroad Commission of Texas proposes to amend §15.30, relating to the Propane Alternative Fuels Advisory Committee.

Specifically, the commission proposes to amend the date on which the advisory committee is abolished in order to continue the committee in existence until September 1, 2002.

Dan Kelly, Director, Alternative Fuels Research and Education Division, has determined that, because the proposed amendment would result in the continuation of an existing advisory committee, for each year of the first five years the proposed amendment will be in effect there will be no fiscal implications for state or local governments or small businesses as a result of enforcing or administering the section as amended.

Mr. Kelly has also determined that for each year of the first five years the proposed amendment is in effect the public benefit anticipated will be to continue the current procedure by which industry and consumer members of the committee voluntarily provide the commission with expert advice concerning the programs of the Alternative Fuels Research and Education Division. There is an anticipated economic cost to the 17 individuals who voluntarily serve as members of the propane alternative fuels advisory committee, arising from the provision in subsection (g) of the rule that the commission will not reimburse advisory committee members for travel or other expenses related to service on the committee. The amount of that cost cannot be determined, since these expenses will be different for each committee member.

Comments on the proposal may be submitted to Dan Kelly, Director, Alternative Fuels Research and Education Division, Railroad Commission of Texas, P. O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 14 days after publication in the *Texas Register*.

The amendment is proposed under Texas Natural Resources Code, §113.241, which gives the commission the authority to adopt all necessary rules relating to conducting research and educating the public regarding the use of propane; and Texas Natural Resources Code, §113.242, which gives the commission the authority to appoint one or more advisory committees composed of members representing the propane industry, consumers, and other interests to consult with and advise the commission on opportunities and methods to expand the use of propane.

Texas Natural Resources Code, §§113.241 and 113.242, are affected by the proposed amendment.

#### §15.30. Propane Alternative Fuels Advisory Committee.

- (a) (No change.)

(b) Establishment; duration. Effective September 1, 1994, the committee is hereby established. The committee is abolished on September 1, 2002 [~~1998~~], unless the commission amends this subsection to establish a different date.

- (c)-(m) (No change.)

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

Filed with the Office of the Secretary of State on July 1, 1998.

TRD-9810363

Mary Ross McDonald

Deputy General Counsel

Railroad Commission of Texas

Earliest possible date of adoption: August 16, 1998

For further information, please call: (512) 463-7008

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## Part II. Public Utility Commission of Texas

### Chapter 22. Practice and Procedure

#### Subchapter K. Hearings

##### 16 TAC §22.202

The Public Utility Commission of Texas proposes an amendment to §22.202 relating to Presiding Officer. The proposed amendment is to clarify that subsection (e) applies to administrative law judges with the State Office of Administrative Hearings (SOAH). Project Number 17709 has been assigned to this proceeding.

Paula Mueller, deputy chief, Office of Regulatory Affairs, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Mueller has determined that for each year of the first five years the proposed section is in effect the public benefits anticipated as a result of enforcing the section will be more clearly stated commission rules. There will be no effect on small businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Ms. Mueller has also determined that for each year of the first five years the proposed section is in effect there will be no impact on employment in the geographic area affected by implementing the requirements of the section.

Comments on the proposed amendment (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 N. Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. The Appropriations Act of 1997, HB 1, Article IX, Section 167 requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or re-adopting the rule continues to exist. The commission invites specific comments regarding whether the reason for adopting this section continues to exist in considering this proposed amendment. All comments should refer to Project Number 17709 and reference Procedural Rules, Subchapter K.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Index to Statutes: Public Utility Regulatory Act §14.002 and §14.052.

§22.202. *Presiding Officer.*

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

(e) Replacement. If at any time a SOAH [an] administrative law judge is unable to continue presiding over a case, SOAH may

appoint a substitute administrative law judge who shall perform any function remaining to be performed without the necessity of repeating any previous proceedings. The substitute administrative law judge shall read the record of the proceedings that occurred prior to his or her appointment before issuing a Proposal for Decision or recommended findings of fact and conclusions of law.

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

Filed with the Office of the Secretary of State, on July 3, 1998.

TRD-9810579

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: August 16, 1998

For further information, please call: (512) 936-7308

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## TITLE 22. EXAMINING BOARDS

### Part XXIV. Texas Board of Veterinary Medical Examiners

#### Chapter 573. Rules of Professional Conduct

##### Subchapter G. Other Provisions

##### 22 TAC §573.64

The Texas Board of Veterinary Medical Examiners proposes amendments to §573.64, concerning Continuing Education Requirements. The amendments clarify the requirements of the program. Subsection (a)(1) clarifies that licensees in an inactive or retired status are exempt from obtaining continuing education as long as they remain in that status. Subsection (a)(3) adds the requirement that requests for hardship extensions must be received in the Board offices by December 15th. Subsection (e) is changed to add inactive status of those exempt from the continuing education requirements. Subsection (f) clarifies that the licensee is subject to disciplinary action for failure to complete the required CE hours without obtaining a hardship extension.

The agency is proposing these amendments to add the requirement that requests for hardship extensions must be received in the Board offices by December 15th.

Ron Allen, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Mr. Allen also has determined that for the first five years the amendments are in effect that the public benefit anticipated as a result of enforcing the amendments is that veterinary medicine will be provided by only those veterinarians who have kept abreast of the latest advances in veterinary medicine. There will be no adverse effect on small businesses. There is no anticipated economic cost to persons required to comply with the amendments as proposed.

Comments on the proposal may be submitted in writing to Chris Kloeris, Texas Board of Veterinary Medical Examiners,

333 Guadalupe, Suite 2-330, Austin, Texas 78701-3998, phone: (512) 305-7555, and must be received by August 14, 1998.

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Civil Statutes, Article 8890, §7(a) which states "The Board may make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this act."

The amendment affects the Veterinary Licensing Act, Article 8890, §13(g) which requires the Board to establish a minimum number of hours of continuing education required to renew a license.

§573.64. *Continuing Education Requirements.*

(a) Requirements.

(1) ~~Effective for the 1995 renewal cycle, fifteen~~ Fifteen (15) ~~attendance~~ hours of acceptable continuing education ~~shall~~ will be required annually for renewal of all types of Texas licenses except as provided in subsection (e) of this section. Licensees who successfully complete the Texas State Board Examination ~~shall~~ will be allowed to substitute the examination for the continuing education requirements of ~~that~~ their examination ~~particular~~ year.

(2) Required continuing education hours must be obtained during the calendar year immediately preceding the submission for license renewal. Continuing education hours may be used for only one renewal period.

(3) Hardship extensions may be granted by appeal to the Executive Director of the ~~Texas~~ Board ~~of Veterinary Medical Examiners~~. The executive director shall only consider requests for a hardship extension from licensees who were prevented from completing the required continuing education hours due to circumstances beyond the licensee's control. Requests for a hardship extension must be received in the Board offices by December 15. Should such extension be granted, thirty (30) ~~[30]~~ hours of continuing education shall be obtained in the two-year period of time that includes the year of insufficiency and the year of extension. Licensees receiving a hardship extension shall maintain records of the 30 hours of continuing education obtained and shall file copies of these records with the Board by attaching the records to the license renewal application submitted following the extension year. [Documentation of the required continuing education received will be required in these cases, and must be filed with the Board by March 1st of the second year of the hardship period.]

(b) Proof of Continuing Education. The licensee shall be required to sign a statement on the license renewal form attesting to the fact that the required continuing education hours have been obtained. It shall be the responsibility of the licensee to maintain records which support the sworn statements. Such records ~~may~~ include continuing education certificates ~~[certificate]~~, attendance records signed by the presenter, ~~and~~ and/or receipts for meeting registration fees. These documents must be maintained for the last 3 complete renewal cycles and shall ~~will~~ be provided for inspection to ~~Texas~~ Board ~~of Veterinary Medical Examiners~~ investigators upon request.

(c) Acceptable Continuing Education. Acceptable continuing education hours ~~shall~~ will be ~~considered by the Board to be~~ hours earned by attending ~~[participation in]~~ meetings sponsored or co-sponsored by the American Veterinary Medical Association (AVMA), AVMA's affiliated state veterinary medical associations and/or their continuing education organizations, AVMA recognized specialty groups, regional veterinary medical associations, local veterinary medical associations, and veterinary medical colleges. ~~Other~~

~~offerings of continuing education hours may be approved by the] The Executive Director and a licensed veterinarian Board member appointed [who is a veterinarian designated] by the Board President may approve hours earned by alternative methods.~~

(d) Distribution of Continuing Education Hours. Of the required 15 hours of continuing education, no more than five may be derived from either:

(1) ~~[Not more than 5 hours of required continuing education may be derived from]~~ correspondence courses~~;~~ nor will; or

(2) ~~[more than 5 hours of]~~ practice management courses ~~[be acceptable]~~. Continuing Education obtained as part of a disciplinary action is acceptable ~~[credit towards the total of 15 hours required annually]~~.

(e) Exemption from Continuing Education Requirements. A licensee is not required to obtain or report continuing education hours, provided that the licensee submits to the Board sufficient proof that during the preceding year the licensee was:

(1) ~~[A licensee who is]~~ in retired status,

(2) a veterinary intern or resident, or

(3) ~~[who is]~~ out-of-country on charitable or special government assignments for ~~[during]~~ at least nine months ~~[of the preceding year, shall not be required to meet continuing education requirements to renew his/her license]~~ or

(4) on inactive status. Licensees on inactive status may voluntarily acquire continuing education for purposes of reinstating his/her license to regular status.

(f) Disciplinary Action for Non-Compliance. Failure to complete the required hours without obtaining a hardship extension from the executive director, failure [Failure] to maintain required records, falsifying records, or intentionally misrepresenting programs for continuing education credit shall be grounds for disciplinary action by the Board.

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

Filed with the Office of the Secretary of State, on June 30, 1998.

TRD-9810304

Ron Allen

Executive Director

Texas Board of Veterinary Medical Examiners

Proposed date of adoption: October 1, 1998

For further information, please call: (512) 305-7555



## Part XXIX. Texas Board of Professional Land Surveying

### Chapter 661. General Rules of Procedures and Practices

#### Subchapter A. The Board

#### 22 TAC §§661.3, 661.4, 661.9, 661.11

The Texas Board of Professional Land Surveying proposes amendments to §§661.3, 661.4, 661.9, and 661.11, concerning the board. The amendments are being proposed for clar-

ification on existing rules and language in the Texas Board of Professional Land Surveying Practices Act (Act).

Sandy Smith, 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.

Ms. Smith 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 clarification on existing rules and language in the Act. 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 Sandy Smith, Texas Board of Professional Land Surveying, 7701 North Lamar, Suite 400, Austin, Texas 78752.

The amendments are proposed under Texas Civil Statutes, Article 5282c, §9, which provides the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

No other statute, article, or code is affected by this proposal.

§661.3. *Chair [Chairman].*

The chair [chairman] shall, when present, preside at all meetings, except as otherwise provided herein. The chair [chairman] shall appoint such committees as the board may authorize from time to time. The chair [chairman] shall sign all certificates.

§661.4. *Vice Chair [Chairman].*

The vice chair [chairman] may in the absence or incapacity of the chair [chairman] exercise the duties and may possess all the powers of the chair [chairman], as permitted by law.

§661.9. *Special Committees.*

Special committees shall have such duties as may be assigned by the chair [chairman] of the board, with the consent of the board.

§661.11. *Vacancies.*

If for any reason, a vacancy shall occur in the board, the chair [chairman] shall call a special meeting for the purpose of preparing a notice to the governor asking for the appointment of a new member to fill the unexpired term. If the vacancy shall occur in the office of the chair [chairman], the vice chair [chairman] shall call the meeting.

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

Filed with the Office of the Secretary of State on July 6, 1998.

TRD-9810625

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

Earliest possible date of adoption: August 16, 1998

For further information, please call: (512) 452-9427



Subchapter E. Contested Case

22 TAC §661.63, §661.75

The Texas Board of Professional Land Surveying proposes amendments to §661.63 and §661.75, concerning contested case. The amendments are being proposed for clarification on

existing rules and language in the Texas Board of Professional Land Surveying Practices Act (Act).

Sandy Smith, 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.

Ms. Smith 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 clarification on existing rules and language in the Act. 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 Sandy Smith, Texas Board of Professional Land Surveying, 7701 North Lamar, Suite 400, Austin, Texas 78752.

The amendments are proposed under Texas Civil Statutes, Article 5282c, §9, which provides the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

No other statute, article, or code is affected by this proposal.

§661.63. *Complaints Officer.*

The licensed or registered members of the board or the commissioner or his/her [his] designee may act as complaints officers on a rotating basis. It shall be the duty of the complaints officer to review a complaint filed against a person licensed under the Professional Land Surveying Practices Act and to make recommendations to the board regarding further actions. The complaints officer shall have no vote in the rendering of a final decision on any matter reviewed by the complaints officer.

§661.75. *Notice and Hearing.*

(a) An applicant or licensee is entitled to at least 20 days notice of any hearing.

(b) Notice of hearing for rejection, cancellation, or revocation may be served personally by the board or its authorized representative or sent by United States certified mail addressed to the applicant or licensee at his/her [his] last known address.

(c) In the event that notice cannot be effected by either of these methods after due diligence, the board may prescribe any reasonable method of notice calculated to inform a person of average intelligence and prudence in the conduct of his/her [his] affairs. The board shall publish notice of a hearing in a newspaper of general circulation in the area in which the licensee conducts his/her [his] business activities.

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

Filed with the Office of the Secretary of State on July 6, 1998.

TRD-9810626

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

Earliest possible date of adoption: August 16, 1998

For further information, please call: (512) 452-9427



Subchapter F. Firms Furnishing Surveying Crews

## 22 TAC §661.123

The Texas Board of Professional Land Surveying proposes new §661.123, concerning firms furnishings surveying crews. The new section being proposed will establish a regulation regarding construction layout points set in relation to a boundary.

Sandy Smith, executive director, has determined that for the first five-year period the section is in effect, there will be no fiscal implications for state or local government.

Ms. Smith 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 use of a Registered Professional Land Surveyor when construction layout points are set in relation to a boundary. 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 Sandy Smith, Texas Board of Professional Land Surveying, 7701 North Lamar, Suite 400, Austin, Texas 78752.

The new section proposed under Texas Civil Statutes, Article 5282c, §9, which provides the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

No other statute, article, or code is affected by this proposal.

### §661.123. Construction Layout Points.

The actual location of any construction layout point set in relation to a boundary or easement shall be performed by a Registered Professional Land Surveyor.

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

Filed with the Office of the Secretary of State on July 6, 1998.

TRD-9810627

Sandy Smith  
Executive Director

Texas Board of Professional Land Surveying  
Earliest possible date of adoption: August 16, 1998  
For further information, please call: (512) 452-9427



## Chapter 663. Standards of Responsibility and Rules of Conduct

### Subchapter A. Ethical Standards

#### 22 TAC §§663.5, 663.7, 663.10

The Texas Board of Professional Land Surveying proposes amendments to §§663.5, 663.7, and 663.10, concerning ethical standards. The amendments are being proposed for clarification on existing rules and language in the Texas Board of Professional Land Surveying Practices Act (Act).

Sandy Smith, 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.

Ms. Smith 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 clarification on existing

rules and language in the Act. 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 Sandy Smith, Texas Board of Professional Land Surveying, 7701 North Lamar, Suite 400, Austin, Texas 78752.

The amendments are proposed under Texas Civil Statutes, Article 5282c, §9, which provides the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

No other statute, article, or code is affected by this proposal.

### *§663.5. Representations.*

The highest degree of integrity, truthfulness, and accuracy should be paramount in all dealings with, and representations to, others by not misleading in any way the other's understandings of personal qualifications or information regarding a project. The registrant:

(1) shall [may] not allow a person who is not registered or licensed under the Professional Land Surveying Practices Act to exert control over the end product of his/her [his] professional work;

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

(6) shall not, without the knowledge and consent of his/her [his] client, recommend to a client services of another for the purpose of collecting a fee for himself for those services.

### *§663.7. Maintenance of Standards.*

Aid should be given the board in maintaining the highest standards of integrity and competence of those in its subject profession and occupation. The registrant:

(1) may initiate a complaint or [shall] furnish the board with any information that comes into his/her [his] possession, indicating that any person or firm has violated any of the provisions of the registration laws or code;

(2) (No change.)

### *§663.10. Disciplinary Rules.*

The surveyor shall not:

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

(4) fail to exercise reasonable care or diligence to prevent his/her [his] partners, associates, or employees from engaging in conduct which, if done by him, would violate any of the provisions of the Act or rules;

(5) engage in any conduct that discredits or attempts to discredit the profession of surveying;

(6) permit or allow any [himself, his] professional identification, seal, form, or business name, or [his] service to be used or made use of, directly or indirectly, or any manner whatsoever, so as to make possible to create the opportunity for the unauthorized practice of professional surveying by any person, firm, or corporation in this state;

(7)-(8) (No change.)

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

Filed with the Office of the Secretary of State on July 6, 1998.



TRD-9810628  
Sandy Smith  
Executive Director  
Texas Board of Professional Land Surveying  
Earliest possible date of adoption: August 16, 1998  
For further information, please call: (512) 452-9427

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**Subchapter B. Professional and Technical Standards**

**22 TAC §§663.16, 663.17, 663.19**

The Texas Board of Professional Land Surveying proposes amendments to §§663.16, 663.17, and 663.19, concerning professional and technical standards. The amendments are being proposed for clarification on existing rules and language in the Texas Board of Professional Land Surveying Practices Act (Act).

Sandy Smith, 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.

Ms. Smith 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 clarification on existing rules and language in the Act. 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 Sandy Smith, Texas Board of Professional Land Surveying, 7701 North Lamar, Suite 400, Austin, Texas 78752.

The amendments are proposed under Texas Civil Statutes, Article 5282c, §9, which provides the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

No other statute, article, or code is affected by this proposal.

*§663.16. Boundary Construction.*

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

(c) A land surveyor assuming the responsibility of performing a land survey also assumes the responsibility for such research of adequate thoroughness to support the determination of the location of intended boundaries of the land parcel surveyed. [~~if however, the~~] The surveyor may rely on record data related to the determination of boundaries furnished for the registrants' use by a qualified provider, provided the registrant [such as a title or abstract company provided he/she] reasonably believes such data to be sufficient and notes, references, or credits the documentation by which it is furnished.

(d) (No change.)

*§663.17. Monumentation.*

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

(c) All metes and bounds description prepared for easements shall be tied to physical monuments of record related to the boundary of the affected [effected] tract. If the surveyor chooses to monument the easement or is directed to do so by his/her [his] client, such monumentation shall be in compliance with subsection (b) of this section.

*§663.19. Plat/Description/Report.*

For the purposes of these rules the word "report" shall mean any or all of the following survey plat, descriptions, or separate narratives.

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

(5) The survey plat shall bear the firm name, surveyor's name, address, and phone number [name] of the land surveyor responsible for the land survey, his/her official seal, his/her original signature (see §661.46 of this title (relating to Seal and Stamps)), and date surveyed.

(6) (No change.)

(7) A reference shall be cited on the plat to the record instrument that [which] defines the location of adjoining boundaries. The cited instrument need not be the current ownership, but shall be the document containing the description of the boundaries being re-established.

(8) When appropriate, reference shall be cited in the prepared description [prepared] to the record instrument that [which] defines the location of adjoining boundaries. The cited instrument need not be the current ownership, but shall be the document containing the description of the boundaries being re-established.

(9) (No change.)

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

Filed with the Office of the Secretary of State on July 6, 1998.

TRD-9810629  
Sandy Smith  
Executive Director  
Texas Board of Professional Land Surveying  
Earliest possible date of adoption: August 16, 1998  
For further information, please call: (512) 452-9427

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**TITLE 25. HEALTH SERVICES**

**Part I. Texas Department of Health**

**Chapter 135. Ambulatory Surgical Centers**

The Texas Department of Health (department) proposes the repeal of §§135.41 - 135.43, §§135.51 - 135.52, and §§135.61 - 135.67; and new §§135.41 - 135.42 and §§135.51 - 135.54, concerning the regulation of ambulatory surgical centers (ASCs). Specifically, the sections cover fire prevention, protection, and safety; handling and storage of gases, anesthetics, and flammable liquids; and physical plant and construction requirements for ASCs including existing and new construction.

The sections proposed for repeal were initially adopted in October 1986, with an effective date of November 5, 1986, to implement the Texas Ambulatory Surgical Center Licensing Act (Act), Health and Safety Code, Chapter 243, created by the 69th Legislature, 1985. Existing language contains references to national standards and codes issued and published between the years of 1977 - 1985 by the following nationally recognized organizations: National Fire Protection Association (NFPA); American Institute of Architects; National Association of Plumbing Heating Cooling Contractors; American National Standards Institute (ANSI); American Society of Heating, Refrigerating and Air Conditioning Engineers; American Society for Testing and

Materials; National Council on Radiation Protection; International Conference of Building Officials (Uniform Building Code); International, Inc. (Standard Building Code); and Underwriters' Laboratories. These organizations have revised their standards since 1985 and the references contained in the existing sections are obsolete. In addition, the existing rules contain obsolete references to organizations which no longer publish the referenced standard or no longer have regulatory oversight. For instance, the General Services Commission referenced in the current rules no longer has regulatory oversight of the elimination of architectural barriers. This function is now performed by the Texas Department of Licensing and Regulation, effective September 1, 1993. Sections 135.41 - 135.43, 135.51 - 135.52, and 135.61 - 135.67 are being proposed for repeal to reorganize and update the construction and design rules for ASCs to reflect current practices and standards recognized by professional health care facility architects and engineers.

The new sections have been reorganized and updated to include current references and language which conform to the nationally recognized construction and design codes and standards and to the changes in state requirements relating to architectural barriers adopted by the Texas Department of Licensing and Regulation. The revised standards contain several changes, and in some instances more stringent requirements for new construction and renovation, but also in some instances, the revised standard is less restrictive which will provide more flexibility to architects and engineers designing, constructing, or renovating an ASC. A summary of these changes is explained as follows.

New §135.41 incorporates requirements from existing §135.26(c)(3) and §135.51(b)(3)-(6), §135.51(b)(1)(A), §135.51(c)(4), and §35.51(g)(1), and adds new requirements relating to fire prevention, protection, and general safety. Existing requirements have been updated and clarified. This section includes requirements for: fire protection standards; reporting of fires; smoking policy; fire extinguishing systems; fire protection and evacuation plan; fire drills, fire alarm system; fire department access; fire department protection; safety officer, maintaining a fire safe environment; and electrical systems. This section requires compliance with certain provisions of NFPA 101, "Code for Safety to Life from Fire in Buildings and Structures," 1997 edition; NFPA 13, "Standard for Installation of Sprinkler Systems," 1996 edition; NFPA 10, "Standard for Portable Fire Extinguishers," 1994 edition; NFPA 72, "National Fire Alarm Code," 1996 edition; and NFPA 70, "National Electrical Code," 1996 edition. These NFPA codes and standards have been revised to reflect current acceptable standards.

New §135.42 incorporates requirements from existing §135.51(e)(1), and adds new requirements relating to handling and storage of gases, anesthetics, and flammable liquids. This section includes requirements for flammable germicides, flammable and nonflammable gases and liquids, and gas fired appliances. This section requires compliance with certain provisions of NFPA 325, "Guide to Fire Hazard Properties of Flammable Liquids, Gases, and Volatile Solids," 1994 edition; NFPA 99, Chapter 4, "Standard for Health Care Facilities," 1996 edition, and Chapter 8, "Gas Equipment"; and NFPA 54, "National Fuel Gas Code," 1996 edition. These NFPA codes and standards have been revised to reflect current acceptable standards.

New §135.51 incorporates requirements from existing §135.52 and §135.61(a)(3), and adds new requirements for construction at an existing ASC. This section includes: compliance requirements for existing facilities; construction requirements for remodeling and additions; and construction requirements for previously licensed ASCs which has been vacated or used for other purposes. Licensed ASCs which are not remodeling, altering, or adding to the facility have a choice to maintain compliance with, at a minimum, the standards under which it was licensed, or may maintain compliance with NFPA 101, §13-6, "Existing Ambulatory Health Care Facilities," 1997 edition. All remodeling, renovations, additions, and alterations to an existing licensed ASCs must comply with new §135.52 relating to construction requirements for new ASCs.

New §135.52 incorporates existing requirements from §135.43(a)(4), §135.51(g)(3), §135.61, §135.63 - §135.66, and adds new requirements for construction of new ASCs. This section includes: location and site requirements for an ASC; building design and construction requirements; spatial requirements; detail requirements; finish requirements; elevator requirements; and mechanical requirements. The location and site requirements for a new ASC cover accessibility, means of egress, hazardous and undesirable locations, paved roads and walkways, and parking. The building design and construction requirements for a new ASC must comply with updated codes and standards which reflect current acceptable standards (NFPA and American Institute of Architects standards). New and updated design and construction requirements have been included for multi-occupancy buildings; foundations; physical environment; separate freestanding buildings (not for patient use); public facilities; reception area; consultation room; fire protection for laboratories that use chemicals; laundry and linen processing areas; preoperative patient holding room; fluoroscopy room (if provided); staff clothing change area; sterilizing facilities; surgical suite; treatment room; details (corridors, labeled doors, glazing, ceiling heights, toilet room accessories, hand washing facilities, radiation protection, and rooms with heat producing equipment); finishes (floor, wall, ceiling, penetrations, hanging fabrics (curtains); elevators (new, existing, elevator machine rooms, car size, shaft doors, controls and alarms (and accessibility of), leveling, operation, location, testing and certification); mechanical requirements (mechanical systems; air-conditioning, heating and ventilating systems; steam and hot and cold water systems; plumbing fixtures; piping systems; and thermal and acoustical insulation); electrical material and equipment (fire safety, installation and testing and certification, electrical safeguards, wiring, lighting, receptacles, equipment, wet patient locations, grounding requirements, new call systems, essential electrical system, and fire alarm system).

New §135.52 requires compliance with specific standards of NFPA 101, "Code for Safety to Life from Fire in Buildings and Structures," 1997 edition; NFPA 99, "Health Care Facilities," 1996 edition; NFPA 45, "Standards on Fire Protection for Laboratories Using Chemicals," 1996 edition; NFPA 80, "Standard for Fire Doors and Fire Windows," 1995 edition; NFPA 701, "Standard Methods of Fire Tests for Flame-Resistant Textiles and Films," 1996 edition; NFPA 90A, "Standard for the Installation of Air Conditioning and Ventilating Systems," 1996 edition, or 90B, "Standard for the Installation of Warm Air Heating and Air-conditioning Systems," 1996 edition, as applicable; NFPA 72, Chapter 5, "National Fire Alarm Code," 1996 edition; NFPA 13, "Standard for Installation of Sprinkler Systems," 1996 edi-

tion; NFPA 255, "Standard Method of Test of Surface Burning Characteristics of Building Materials, 1996 edition; NFPA 70, "National Electrical Code," 1996 edition; NFPA 110, "Standard for Emergency and Standby Power Systems, 1996 edition; Uniform Building Code, 1997 edition; Texas Accessibility Standards of the Architectural Barriers Act; Americans With Disabilities Act of 1990; Medical Physics Act, Texas Civil Statutes, Article 4512n; American Society of Mechanical Engineers and the American National Standards Institute (ASME/ANSI) A17.1, "Safety Code for Elevators and Escalators," 1990 edition; American Society of Heating, Refrigerating, and Air-conditioning Engineers (ASHRAE), Inc., Standard 52, "Gravimetric and Dust Spot Procedures for Testing Air Cleaning Devices Used in General Ventilation for Removing Particulate Matter," 1992 edition; Underwriters' Laboratories, Inc., Standard 181, "Factory-Made Duct Materials and Air Duct Connectors"; National Standard Plumbing Code, 1996 edition; Health and Safety Code, Chapter 755, Boiler Code; ASHRAE's Handbook of Fundamentals, 1993 edition; and other specifically stated requirements which were developed by the department's Health Facility Licensing Division's architectural staff. These NFPA codes and other standards have been revised to reflect current acceptable standards.

New §135.53 incorporates requirements from existing §135.62 and adds new requirements for preparation, submittal, review and approval of plans. This section covers preparation of preliminary plans (area map, site plan, floor plans, construction type and fire rating, outline specifications); functional program narrative; submission of preliminary plans; preparation of construction documents (architectural plans, fire safety plans, equipment drawings, structural drawings, mechanical drawings, electrical drawings); correction of final plan deficiencies; construction approval; construction document changes; special submittals (designer certified construction documents, fast-track projects, fire sprinkler systems); construction and inspections (major construction, construction commencement notification, completion, certification of sprinkler system installations; construction inspections); approval for occupancy; resubmittal of construction documents; and project cancellation. This section incorporates current practices which are not presently addressed in the existing rules, and new requirements not currently practiced for: submittal of an area map; calculations for smoke compartment area in floor plans; floor plan for construction in existing facilities; outline specifications; functional program narrative; fire safety plans; special submittals; construction inspections; resubmittal of construction documents; and project cancellations.

New §135.54 replaces the tables in existing §135.67 and adds tables for piped oxygen, medical gas and vacuum systems, and flame spread and smoke production limitations.

In addition to the specific changes, other changes have been made to clarify the intent of existing language.

Bernie Underwood, Chief of Staff Services, Health Care Quality and Standards, has determined that for each year of the first five-year period the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the sections as proposed.

Ms. Underwood has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be to ensure that the design, construction, and renovation of ASCs are performed in accordance with the most current

standards nationally recognized by architects and engineers to be the benchmark for physical plant integrity and life safety from fire. There may be additional costs to small and large businesses as a result of implementing the new sections. Many ambulatory surgical centers are currently voluntarily meeting most of the proposed new requirements. The additional costs to owners who are not already voluntarily designing and constructing ASCs in accordance with these proposed new standards will vary depending greatly how the ASC is designed. The estimated additional cost for an ASC meeting minimum requirements (with one operating room) ranges from \$40,750 to \$61,000. There are no economic costs to persons (other than ASCs) who are required to comply with the sections as proposed. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Julia R. Beechinor, Director, Health Facility Licensing Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199 (FAX: 512/834-6714). Comments will be accepted for a period of 45 days following publication of the proposal in the *Texas Register*. In addition, a public hearing will be held at 10:00 a.m., Monday, August 17, 1998, at the Texas Department of Health, Room K-100, 1100 West 49th Street, Austin, Texas.

## Subchapter B. General Construction Requirements for Ambulatory Surgical Centers

### 25 TAC §§135.41-135.43

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

The repeal is proposed under the Texas Ambulatory Surgical Center Licensing Act, Health and Safety Code, Chapter 243, which provides the Board of Health (board) with the authority to adopt rules governing the licensing and regulation of ASCs; and §12.001, which provides the board with the authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

The repeal affects the Health and Safety Code, Chapter 243.

§135.41. *Location.*

§135.42. *Services.*

§135.43. *Codes and Standards.*

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

Filed with the Office of the Secretary of State on June 23, 1998.

TRD-9810023

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: August 31, 1998

For further information, please call: (512) 458-7236



## Subchapter B. Safety Requirements for New and Existing Ambulatory Surgical Centers

### 25 TAC §§135.41-135.42

The new sections are proposed under the Texas Ambulatory Surgical Center Licensing Act, Health and Safety Code, Chapter

243, which provides the Board of Health (board) with the authority to adopt rules governing the licensing and regulation of ASCs; and §12.001, which provides the board with the authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

The new sections affect the Health and Safety Code, Chapter 243.

§135.41. Fire Prevention, Protection, and Safety.

(a) Fire inspections. An ambulatory surgical center (ASC) must comply with local fire codes.

(b) Fire reporting. All occurrences of fire shall be reported in writing no later than 10 calendar days following the occurrence to the director, Health Facility Licensing Division (HFL), Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756 or faxed to (512) 834-6714. Any fire occurrence causing injury to a person shall be reported no later than the next business day to the director, HFL, by fax or overnight mail, to the address or fax number previously mentioned in this subsection.

(c) Smoking policy. Each ASC shall adopt, implement and enforce a smoking policy. The policy shall include the minimum provisions of National Fire Protection Association 101, Code for Safety to Life from Fire in Buildings and Structures, 1997 edition (NFPA 101), §12-7.4. All documents published by National Fire Protection Association (NFPA) as referenced in this section may be obtained by writing or calling the NFPA at the following address or telephone number: National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101 or (800) 344-3555.

(d) Fire extinguishing systems. The ASC shall adopt, implement, and enforce a policy for periodic inspection, testing and maintenance of firefighting equipment, portable fire extinguishers and sprinkler systems, when installed. If installed, fire sprinkler systems shall comply with National Fire Protection Association 13, Standard for the Installation of Sprinkler Systems, 1996 edition (NFPA 13). Portable fire extinguishers shall comply with National Fire Protection Association 10, Standard for Portable Fire Extinguishers, 1994 edition (NFPA 10).

(e) Fire protection and evacuation plan. A written plan for the protection of patients in the event of fire and their evacuation from the building when necessary shall be formulated according to NFPA 101, §12-7. Copies of the plan shall be made available to all staff.

(1) Posting requirements. Evacuation floor plans shall be prominently displayed in public areas, so as to be readily visible to patients, employees, and visitors.

(2) Annual training. An annual training program shall be conducted to instruct all personnel in the location and use of fire-fighting equipment.

(f) Fire drills. At least one fire drill per shift, per quarter, shall be conducted. Each drill shall include activation of the fire alarm system, simulation of evacuation of patients and other occupants, and the use of fire-fighting equipment. Fire exit drills shall incorporate the minimum requirements of NFPA 101, §§12-7.1.2. through 12-7.2.3. The ASC shall maintain documentation of its compliance with this subsection.

(g) Fire alarm system. A fire alarm system shall be installed, maintained and tested by a nationally recognized testing laboratory, as required by National Fire Protection Association 72, National Fire

Alarm Code, 1996 edition (NFPA 72) standard and NFPA 101, §12-6.3.4.

(h) Fire department access. Driveways shall be provided for access of fire fighting apparatus and rescue vehicles. Such driveways shall be maintained and kept free from all obstructions.

(i) Fire department protection. Every ASC shall meet local fire department access requirements. When an ASC is located outside of the service area of the public fire protection, arrangements shall be made for the nearest fire department to respond in case of an emergency.

(j) Safety officer. Each ambulatory surgical center (ASC) shall have a designated safety officer who is knowledgeable in safety practices in health care facilities. The safety officer shall be assured of time to carry out the functions of the safety program. The ASC shall have written safety policies and procedures approved by the governing body and medical staff and available to all employees.

(k) Maintaining a fire safe environment. The building and premises shall be free of accumulations of combustible and extraneous materials not necessary for the day-to-day operation of the center.

(l) Electrical systems. Electrical systems shall be installed and maintained in a safe condition and in accordance with National Fire Protection Agency 70, National Electrical Code, 1996 edition (NFPA 70). All documents published by National Fire Protection Association (NFPA) as referenced in this section may be obtained by writing or calling the NFPA at the following address or telephone number: National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101 or (800) 344-3555.

§135.42. Handling and Storage of Gases, Anesthetics, and Flammable Liquids.

(a) Flammable germicides. Flammable germicides shall not be used for preoperative preparation of the surgical field.

(b) Flammable and nonflammable gases and liquids. The determination of flammability of liquids and gases shall be in accordance with the National Fire Protection Agency, Guide to Fire Hazard Properties of Flammable Liquids, Gases, and Volatile Solids, 1994 edition, (NFPA 325). All documents published by National Fire Protection Association (NFPA) as referenced in this section may be obtained by writing or calling the NFPA at the following address or telephone number: National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101 or (800) 344-3555.

(1) Nonflammable gases shall be stored and distributed in accordance with National Fire Protection Association 99 (NFPA 99), Chapter 4, "Standard for Health Care Facilities," 1996 edition. Examples of nonflammable gases include, but are not limited to, oxygen and nitrous oxide. Medical gases and liquefied medical gases shall be handled in accordance with NFPA 99, Chapter 8, "Gas Equipment."

(2) Flammable gas systems intended for use in laboratories and piping systems for fuel gases shall comply with requirements of NFPA 99, §4-6.

(3) Flammable and combustible liquids intended for use in laboratories shall comply with NFPA 99, §10-7.

(4) Other flammable agents shall be stored in accordance with NFPA 99, Chapter 6.

(c) Gas fired appliances. The installation, use, and maintenance of gas fired appliances and gas piping installations shall comply

with the NFPA 54, National Fuel Gas Code, 1996 edition. The use of portable gas heaters and unvented open flame heaters is prohibited.

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

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Susan K. Steeg

General Counsel

Texas Department of Health

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For further information, please call: (512) 458-7236



## Subchapter C. Existing Ambulatory Surgical Centers

### 25 TAC §135.51, §135.52

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

The repeal is proposed under the Texas Ambulatory Surgical Center Licensing Act, Health and Safety Code, Chapter 243, which provides the Board of Health (board) with the authority to adopt rules governing the licensing and regulation of ASCs; and §12.001, which provides the board with the authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

The repeal affects the Health and Safety Code, Chapter 243.

§135.51. *General.*

§135.52. *Renovation Projects.*

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

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Susan K. Steeg

General Counsel

Texas Department of Health

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## Subchapter C. Physical Plant and Construction Requirements for New and Existing Ambulatory Surgical Centers

### 25 TAC §§135.51-135.54

The new sections are proposed under the Texas Ambulatory Surgical Center Licensing Act, Health and Safety Code, Chapter 243, which provides the Board of Health (board) with the authority to adopt rules governing the licensing and regulation of ASCs; and §12.001, which provides the board with the authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

The new sections affect the Health and Safety Code, Chapter 243.

§135.51. Construction Requirements for an Existing Ambulatory Surgical Center.

(a) Compliance.

(1) A licensed ambulatory surgical center (ASC) which is licensed prior to the effective date of these rules is considered to be an existing licensed ASC and shall continue, at a minimum, to meet the licensing requirements under which it was originally licensed.

(2) In lieu of meeting the requirements in paragraph (1) of this subsection, an existing licensed ASC may, instead, comply with National Fire Protection Association (NFPA) 101, Code for Safety to Life from Fire in Buildings and Structures, §13-6, "Existing Ambulatory Health Care Facilities," 1997 edition.

(3) All documents published by NFPA as referenced in this section may be obtained by writing or calling the NFPA at the following address or telephone number: National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101 or (800) 344-3555.

(b) Remodeling and additions. All remodeling, renovations, additions and alterations to an existing ASC shall be done in accordance with the requirements for new construction in §139.52 of this title (relating to Construction Requirements for New Ambulatory Surgical Centers). When existing conditions make such changes impractical, the department may grant a conditional approval of minor deviations from the requirements of §139.52 of this title, if the intent of the requirements is met and if the care, safety and welfare of patients will not be jeopardized. The operation of the ASC, accessibility of individuals with disabilities, and safety of the patients shall not be jeopardized by the condition(s) not in compliance with these sections.

(1) Building equipment alterations or installations. Any alteration or any installation of new building equipment, such as mechanical, electrical, plumbing, fire protection, or piped medical gas system shall comply with the requirements for new construction and may not be replaced, materially altered, or extended in an existing ASC until complete plans and specifications have been submitted to the department, reviewed, and approved in accordance with §135.53(c)(3) of this title (relating to Preparation, Submittal, Evaluation and Approval of Plans).

(2) Minor remodeling or alterations. Minor remodeling or alterations which do not involve alterations to load bearing members or partitions, change functional operation, affect fire safety, add or subtract services, or involve changes listed in paragraph (3) of this subsection, shall be submitted to the department for evaluation as minor projects. Such submittal shall include a written request for evaluation, a brief description of the proposed changes, and sketches of the area being remodeled. Based on such submittal, the department will determine if any additional submittals or inspections are required.

(3) Major remodeling or alterations. All remodeling or alterations which involve alterations to load bearing members or partitions, change functional operation, affect fire safety, or add or delete services, are considered as major remodeling and alterations.

(A) Submittal of plans. Plans shall be submitted in accordance with §135.53 of this title for all major remodeling or alterations.

(B) Phasing of construction in existing facilities. Projects involving alterations of or additions to existing buildings

shall be programmed and phased so that on-site construction will minimize disruptions of existing functions.

(i) Access, exit access, fire protection and all necessary functions shall be maintained so that the safety of the occupants will not be jeopardized during construction.

(ii) Dust and vapor barriers shall be provided to separate areas undergoing demolition and construction from occupied areas.

(iii) Temporary sound barriers shall be provided where intense, prolonged construction noises will disturb patients or staff in the occupied portions of the building.

(c) Previously licensed ASCs. A previously licensed ASC which has been vacated or used for other purposes shall comply with all the requirements for new construction contained in §135.52 of this title in order to be licensed.

§135.52. Construction Requirements for New Ambulatory Surgical Centers.

(a) Ambulatory surgical center (ASC) location. The ASC may be a distinct separate part of an existing hospital, it may occupy an entire separate independent structure, or it may be located within another building such as an office building or commercial building.

(1) Accessibility. Any proposed new ASC shall be easily accessible for service vehicles and fire protection apparatus.

(2) Means of egress. Each ASC shall have at least two exits remotely located per National Fire Protection Association (NFPA) 101, Code for Safety to Life from Fire in Buildings and Structures, 1997 edition, §12-6.2.4.1. When a required means of egress from the ASC is through a portion of another building, that means of egress shall comply with the requirements of NFPA 101 which are applicable to that other building. Such means of egress shall be open, available, unlocked, unrestricted, and lighted at all times during the ASC hours of operation.

(3) Hazardous location.

(A) Underground and above ground hazards. New ASCs or additions to existing ASCs shall not be constructed near a hazardous location. Hazardous locations include underground liquid butane or propane, liquid petroleum or natural gas transmission lines, high pressure lines, or under high voltage electrical lines.

(B) Fire hazards. New ASCs shall not be built within 300 feet of above ground or underground storage tanks containing liquid petroleum or other flammable liquids used in connection with a bulk plant, marine terminal, aircraft refueling, bottling plant of a liquefied petroleum gas installation, or near other hazardous or hazard producing areas as determine by other state and federal requirements.

(C) Health and safety hazards. A new ASC may not be located in a building(s) which, because of its location, physical condition, state of repair, or arrangement of facilities, would be hazardous to the health or safety of the patients.

(4) Undesirable locations.

(A) Nuisance producing sites. New ASCs shall not be located near nuisance producing sites such as industrial sites, feed lots, sanitary landfills, or manufacturing plants producing excessive noise or air pollution.

(B) Flood plains. Construction of new ASCs shall be avoided in designated flood plains. Where such is unavoidable, access and required ASC components shall be constructed above the designated flood plain. This requirement also applies to new additions

to existing ASCs or portions of facilities which have been licensed previously as ASCs, but which have been vacated or used for other purposes. This requirement does not apply to remodeling of existing licensed ASCs.

(b) ASC site.

(1) Paved roads and walkways. Paved roads and walkways shall be provided within lot lines for access from public roads to the main entrance and to service entrances. Finished surface walkways shall be provided for pedestrians.

(2) Parking.

(A) Off street parking shall be available for patients, visitors, employees and staff. At least one parking space shall be provided for each staff and for each patient expected at maximum occupancy periods plus extra spaces for visitors.

(B) Handicapped parking. Parking spaces for handicapped persons shall be provided in accordance with the Texas Accessibility Standards of the Architectural Barriers Act, Texas Civil Statutes, Article 9102, administered by the Texas Department of Licensing and Regulation (TDLR).

(c) Building design and construction requirements. Every building and every portion thereof shall be designed and constructed to sustain all dead and live loads in accordance with accepted engineering practices and standards and the local governing building codes. Where there is no local governing building code, one of the following codes shall be adhered to: Uniform Building Code, 1997 edition, published by the International Conference of Building Officials, 5360 Workman Mill Road, Whittier, California 90601, telephone (562) 699-0541; or the Standard Building Code, 1997 edition, published by the Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama 35213-1206, telephone (205) 591-1853.

(1) General architectural requirements. All new construction, including conversion of an entire existing building to an ASC or establishing a separately licensed ASC within another existing building, shall comply with NFPA 101, §12-6. and this section.

(A) Construction types for multiple building occupancy.

(i) When an ASC is part of a larger building which complies with NFPA 101, §12-6.1.6. for (fire resistance) construction type, the designated ASC shall, as a minimum, be separated from the remainder of the building with a one hour rated fire and smoke wall.

(ii) Multi-story buildings. When an ASC is located in a multi-story building of two or more stories, the entire building shall meet the construction requirements of NFPA 101, §12-6.1.6.3. An ASC may not be located in a multi-story building which does not comply with the minimum construction requirements of NFPA 101, §12-6.1.6.3.

(iii) Single story buildings. When an ASC is part of a one-story building that does not comply with the construction requirements of NFPA 101, §12-6.1.6.2, then the ASC must be separated from the remainder of the building with a 2-hour rated fire and smoke wall. The designated ASC portion shall have the construction type upgraded to comply with NFPA 101, §12-6.1.6.2.

(B) Special design provisions. Special provisions shall be made in the design of facilities in regions where local experience shows loss of life or extensive damage to buildings resulting from hurricanes, tornadoes, or floods.

(2) Foundations. Foundations shall rest on natural solid bearing if satisfactory bearing is available. Proper soil-bearing values shall be established in accordance with nationally recognized requirements. If solid bearing is not encountered at practical depths, the structure shall be supported on driven piles or drilled piers designed to support the intended load without detrimental settlement, except that one-story buildings may rest on a fill designed by a soils engineer. When engineered fill is used, site preparation and placement of fill shall be done under the direct full-time supervision of the soils engineer. The soils engineer shall issue a final report on the compacted fill operation and certification of compliance with the job specifications. All footings shall extend to a depth not less than one foot below the estimated maximum frost line.

(3) Physical environment. A physical environment that protects the health and safety of patients, personnel, and the public shall be provided in each facility. The physical premises of the facility and those areas of the facility's physical structure that are used by the patients (including all stairwells, corridors, and passageways) shall meet the local building and fire safety codes and the requirements of this chapter.

(4) State handicapped requirements. An ASC shall be designed in accordance with the Texas Accessibility Standards of the Architectural Barriers Act, Texas Civil Statutes, Article 9102. The Texas Department of Licensing and Regulations (TDLR) rules at Title 16 Texas Administrative Code, Chapter 68, require plans to be submitted to TDLR for approval. Proof of plan approval by TDLR shall be submitted to the Texas Department of Health by the architect.

(5) Federal handicapped requirements. An ASC shall comply with the Americans with Disabilities Act of 1990, Public Law 101-336, 42 United States Code, Chapter 126, and Title 36 Code of Federal Regulations, Part 1191, Appendix A, Accessibility Guidelines for Buildings and Facilities.

(6) Other regulations. Certain projects may be subject to other regulations, including those of federal, state, and local authorities. The more stringent standard or requirement shall apply when a difference in requirements exists.

(7) Exceeding minimum requirements. Nothing in these sections shall be construed to prohibit a better type of building construction, more exits, or otherwise safer conditions than the minimum requirements specified in these sections.

(8) Equivalency. Nothing in these sections is intended to prevent the use of systems, methods, or devices of equivalent or superior quality, strength, fire resistance, effectiveness, durability, and safety to those prescribed by these sections, provided technical documentation which demonstrates equivalency is submitted to the department for approval.

(9) Separate freestanding buildings (not for patient use). Separate freestanding buildings for nonpatient use which are located at least 20 feet from the ASC building such as the heating plant, boiler plant, repair workshops, or general storage may be designed and constructed in accordance with other applicable occupancy classification requirements listed in NFPA 101.

(10) Energy conservation. In new facilities and alterations and additions to existing facilities, electrical, and mechanical components shall be selected for efficient utilization of energy.

(d) Spatial requirements.

(1) Administration and public areas.

(A) Entrance. Entrances shall be located at grade level, be accessible for an individual with disabilities, and protected from inclement weather with a drive-under canopy for loading and unloading passengers. When an ASC is located on a floor above grade level, elevators shall be accessible and shall meet the requirements of subsection (g) of this section.

(B) Waiting area. A waiting area or lobby shall be provided. The following rooms and items shall be provided:

(i) accessible public toilet facilities;

(ii) a public telephone(s); and

(iii) a drinking fountain(s).

(C) Reception area. A designated reception area with desk or counter shall be provided.

(D) Interview space(s). Space shall be provided for private interviews relating to social services, credit, or admission.

(E) General or individual office(s). An office(s) shall be provided for business transactions, records, and administrative and professional staff.

(F) Medical records area. Medical record storage space shall be located within a secure designated area under direct visual supervision of administrative staff.

(G) General storage area.

(i) A minimum of 50 square feet per operating room shall be provided exclusive of soiled holding, sterile supplies, clean storage, drug storage, locker rooms, and surgical equipment storage. General storage may be located in one or more rooms or closets and shall be located within the administrative and/or public areas.

(ii) The general storage room(s) shall be separated from adjacent areas by fire-rated construction in accordance with the NFPA 101, §§26-3.2.1 and 26-3.2.2.

(H) Wheelchair storage space. Wheelchair storage space shall be provided and shall be out of the direct line of traffic.

(2) Engineering services and equipment areas. Equipment rooms with adequate space shall be provided for mechanical and electrical equipment. These areas shall be separate from public, patient, and staff areas.

(3) Janitor's closet. In addition to the janitor's closet called for in the surgery suite, sufficient number of janitor's closets(s) shall be provided throughout the facility to maintain a clean and sanitary environment. The closet shall contain a floor receptor or service sink and storage space for housekeeping supplies and equipment.

(4) Laboratory.

(A) General. Laboratory facilities shall be provided within the ASC or through a contractual arrangement with a hospital or accredited laboratory.

(B) Special requirements. When the laboratory is located on-site the following minimum items shall be provided:

(i) work counter with utility sink, storage cabinets or closet(s); and

(ii) specimen collection facilities. For dip stick urinalysis, urine collection rooms shall be equipped with a water

closet and lavatory. Blood collection facilities shall have space for a chair, work counter and hand washing facilities.

(C) Code compliance. An on-site laboratory shall comply with the following codes.

(i) Construction for fire protection in laboratories employing quantities of flammable, combustible, or other hazardous material shall be in accordance with the National Fire Protection Association 99, Health Care Facilities, 1996 edition, (NFPA 99).

(ii) Laboratories shall comply with the requirements of NFPA 99, "Health Care Facilities," 1996 edition, Chapter 10, as applicable and the requirements of NFPA 45, "Standards on Fire Protection for Laboratories Using Chemicals," 1996 edition, as applicable.

(5) Laundry and linen processing area(s). Laundry and linen processing may be done within the center or off-site at a commercial laundry.

(A) On-site linen processing. When on-site linen processing is provided, soiled and clean processing operations shall be separated and arranged to provide a one-way traffic pattern from soiled to clean areas. The following rooms and items shall be provided:

(i) a soiled linen processing room which includes areas for receiving, holding, sorting, and washing;

(ii) a clean linen processing room which includes areas for drying, sorting, folding, and holding prior to distribution;

(iii) supply storage cabinets in the soiled and clean linen processing rooms; and

(iv) hand washing facilities within the soiled linen processing room.

(B) Off-site linen processing. When off-site processing is provided, a storage room for clean linen shall be located within the surgical suite. Clean linen storage may be combined with the clean work room.

(6) Pharmacy. A pharmacy work room or alcove shall be provided and located separate from patient and public areas and under the direct supervision of staff. A work counter, hand washing facilities, refrigerator, medication storage and locked storage for biologicals and drugs shall be provided.

(7) Preoperative patient holding room.

(A) General. A preoperative holding area shall be provided and arranged in a one-way traffic pattern so that patients entering from outside the surgical suite can change, gown, and move directly into the restricted corridor of the surgical suite. The holding area shall be separate from recovery and the restricted corridor.

(B) Patient station. A minimum of one patient station per operating room shall be provided.

(i) A minimum area of 60 square feet shall be provided for each patient station.

(ii) When a gurney or bed is used, a minimum clear space of three feet shall be provided at the foot and on each side of the gurney or bed. A minimum of six feet shall be provided between gurneys or beds.

(iii) Space shall be made available for storing and securing patient's personal effects.

(C) Patient toilet. A toilet room with water closet and hand washing facilities shall be provided. The toilet room may be shared with the recovery room, if conveniently located to both.

(D) Special requirements. Hand washing facilities and a counter or shelf space for writing shall be provided for staff use within or convenient to the pre-op area. Staff hand washing facilities shall be separate from and in addition to patient toilet accommodations.

(8) Radiology.

(A) General. Basic diagnostic procedures shall be provided within the ASC or through a contractual arrangement with a hospital or an accredited diagnostic service.

(B) Special requirements. When radiology services are provided on-site, the following minimum facilities shall be provided:

(i) film processing facilities;

(ii) viewing and administrative areas; and

(iii) storage facilities for exposed film located in rooms or areas constructed in accordance with the NFPA 101, §§26-3.2.1 and 26-3.2.2.

(C) Fluoroscopy room. When fluoroscopy services are provided on site, a toilet room with water closet and hand washing facilities shall be directly accessible to the room.

(9) Recovery room.

(A) General. A recovery room shall be distinct and separate from the preoperative areas. The recovery room shall be arranged to provide a one way traffic pattern from the restricted surgical corridor to recovery and then to second stage recovery or discharge.

(B) Patient station(s). A minimum of two patient stations per operating room shall be provided.

(i) A minimum clear space of three feet shall be provided at the foot and on each side of the bed.

(ii) A minimum of six feet shall be provided between beds.

(C) Patient toilet. A toilet room with water closet and hand washing facilities shall be provided. The toilet room may be shared with the preoperative patient holding area, if conveniently located to both.

(D) Second stage recovery. A separate supervised room or area shall be provided for use by patients who are able to leave the recovery/post-anesthesia room, but need addition time for all vital signs to be stabilized to the point where the patient may leave the facility. This area may be combined with the waiting area required by paragraph (1)(B) of this subsection. When individual rooms are provided for second stage recovery, the rooms shall have an area of at least 60 square feet. When such rooms include a bed or recliner, minimum clearance of 3 feet at the foot and on each side of the bed or recliner shall be provided.

(10) Staff clothing change area.

(A) General. The change area shall be designed to provide a one-way traffic pattern so that personnel entering from outside the surgical suite can change, gown, and move directly into the restricted corridor of the surgical suite.



(B) Staff changing area. Staff changing areas shall be provided and shall include the following items:

(i) separate male and female dressing rooms with lockers;

(ii) a toilet room(s) with water closet, hand washing facilities (can be shared); and

(iii) a shower room(s) (can be shared).

(11) Soiled workroom. In addition to the soiled workroom provided in the surgical suite, a separate soiled workroom(s) shall be required when an examination or treatment room(s) is provided, except as allowed in subparagraph (B) of this paragraph.

(A) Special requirements. The workroom(s) shall contain a clinical sink or equivalent flushing type fixture, work counter, designated space for waste and linen receptacles, and hand washing facilities.

(B) Shared functions. The soiled workroom required in support of an examination or treatment room(s) may be combined with a surgical suite soiled work room with two means of entry. A separate door into the soiled workroom shall serve the treatment rooms located outside the surgical suite.

(12) Sterilizing facilities. A system for sterilizing equipment and supplies shall be provided. Sterilizing procedures may be done on-site or off-site, or disposables may be used to satisfy functional needs.

(A) Off-site sterilizing. When sterilizing is provided off-site and disposables and prepackage surgical supplies are used, the following rooms shall be provided near the operating room.

(i) Soiled holding room. A room for receiving contaminated/soiled material and equipment from the operating room shall be provided. The room shall be physically separate from all other areas of the suite. The room shall include a work counter(s) or a table(s), clinical sink or equivalent flushing type fixture, equipment for initial disinfection and preparation for transport to off-site sterilizing, and hand washing facilities. The soiled holding room may be combined with the surgical suite soiled workroom.

(ii) Clean workroom. A clean workroom shall be provided for the exclusive use of the surgical suite. The workroom shall contain a work counter, with space for receiving, disassembling and organizing clean sterile supplies, storage cabinets or shelving, and hand washing facilities.

(iii) Sterilizer equipment. Sterilizer equipment shall be located in a separate room convenient to the operating room(s), in an alcove adjacent to the restricted corridor, or in the clean workroom.

(B) On-site sterilizing facilities. When sterilizing facilities are provided on-site they shall be located near the operating room and provide the following rooms.

(i) Receiving/decontamination room. This room shall be physically separate from all other areas of the surgical suite. The room shall include work counters or tables, clinical sink or equivalent flushing type fixture, equipment for initial sterilization/disinfection, and hand washing facilities. Pass-through doors/windows and washer/sterilizer decontaminators shall serve in delivering material to the clean workroom.

(ii) Clean assembly/workroom. The room shall include counters or tables with space for organizing, assembling, and packaging of medical/surgical supplies and equipment, equipment for

terminal sterilizing, and hand washing facilities. Clean and soiled work areas shall be physically separated.

(iii) Sterile storage. A storage room for clean and sterile supplies shall be provided. The storage room shall have adequate areas and counters for breakdown of manufacturers' clean/sterile medical/surgical supplies. This room may be combined with the clean assembly/workroom.

(iv) Sterile equipment storage. An equipment storage room shall be provided. Sterile storage equipment may be combined with surgical equipment storage but space provided for sterile equipment must be in addition to the 30 square feet per operating room requirement in paragraph (13)(B)(viii) of this subsection.

(v) Cart storage room. The storage room for distribution carts shall be adjacent to clean and sterile storage area and close to main distribution points.

(13) Surgical suite. The surgical suite shall be arranged to preclude unrelated traffic through the suite. The surgical suite shall contain at least one operating room and surgical service areas.

(A) Operating room. The operating room(s) shall have a clear floor area of at least 240 square feet exclusive of fixed or moveable cabinets, counters, or shelves. The minimum clear dimension between built-in cabinets, counters, and shelves shall be 14 feet.

(B) Surgical service areas.

(i) Control station. A control station shall be located to permit direct visual surveillance of the restricted corridor and all traffic which enters the surgical suite.

(ii) Restricted corridor. The corridor shall serve as the primary passageway for staff and patients within the surgical suite. The following rooms shall have direct access to the restricted corridor:

(I) preoperative patient holding area;

(II) operating room(s);

(III) recovery room(s);

(IV) soiled workroom;

(V) janitor's closet;

(VI) equipment storage;

(VII) sterilizing facilities;

(VIII) staff clothing change area; and

(IX) anesthesia workroom.

(iii) Soiled workroom. A soiled workroom shall be provided for the exclusive use of the surgical suite. The workroom shall contain a clinical sink or equivalent flushing type fixture, work counter, designated space for waste and linen receptacles, and hand washing facilities. The soiled workroom shall not have direct connection with operating room(s) or other sterile activity room(s).

(iv) Clean linen storage room. A storage room shall be provided for storing clean linen.

(v) Scrub facilities. A scrub sink shall be provided near the entrance to each operating room. Scrub facilities shall be arranged to minimize incidental splatter on nearby personnel or carts. One scrub station with dual controls may serve two adjacent operating rooms.

(vi) Janitor's closet. A janitor's closet shall be provided for the exclusive use of the surgical suite. The closet shall contain a floor receptor or service sink and storage space for housekeeping supplies and equipment.

(vii) Equipment storage room or area. A room, alcove, or designated area shall be provided for storing equipment and supplies used in the surgical suite. The storage room or area shall be a minimum of 30 square feet per operating room.

(viii) Anesthesia workroom. When anesthesia is administered, an anesthesia workroom shall be provided for cleaning, testing, and storing anesthesia equipment. The room shall contain a work counter, hand washing facilities, storage racks for cylinders, and separate storage for clean and soiled items.

(ix) Area for emergency crash cart. An area or alcove located out of traffic and convenient to operating and surgical rooms shall be provided for an emergency crash cart.

(x) Stretcher storage area. An area or alcove shall be located convenient for use and out of the direct line of traffic for the storage of stretchers. Stored stretchers shall not encroach on corridor widths.

(14) Treatment room.

(A) A treatment room is not required but when provided it may be used for minor procedures that use only local anesthetics.

(B) The treatment room shall have a clear floor area of at least 100 square feet exclusive of fixed or moveable cabinets, counters, or shelves.

(C) The treatment room shall contain an examination table, a counter for writing, and hand washing facilities.

(15) Waste processing. Space and facilities shall be provided for the safe and sanitary storage and disposal of waste by incineration, mechanical destruction, compaction, containerization, removal, or a combination of these techniques as appropriate for the material being handled.

(e) Details.

(1) Corridors.

(A) Public corridor. The minimum clear and unobstructed width of a public corridor shall be at least four feet.

(B) Communicating corridor. The communicating corridor is used to convey patients by stretcher, gurney, or bed.

(i) The communicating corridor shall link the preoperative holding area, operating rooms(s), recovery room(s), and be continuous to at least one exit.

(ii) The minimum clear and unobstructed width of a communicating corridor shall be eight feet.

(2) Doors and windows.

(A) Door types. Doors at all openings between corridors and rooms or spaces subject to occupancy shall be swing type. Elevator doors are excluded from this requirement.

(B) Door swing. Doors, except doors to spaces such as small closets which are not subject to occupancy, shall not swing into corridors in a manner that might obstruct traffic flow or reduce the required corridor width. Large walk-in type closets are considered as occupiable spaces.

(C) Patient access doors. The minimum width of doors for patient access to examination and consultation rooms shall be three feet. The minimum width of doors requiring access for beds and gurneys (preoperative holding area, operating room, recovery room) shall be three feet eight inches.

(D) Emergency access. At least one door into a patient use toilet room shall swing outward or have hardware to permit access from the outside in an emergency.

(E) Labeled doors. Labeled fire doors shall be listed by an independent testing laboratory and shall meet the construction requirement for fire doors in NFPA 80, "Standard for Fire Doors and Fire Windows," 1995 edition. Reference to a labeled door shall be construed to include labeled frame and hardware.

(F) Glazing. Glass doors, sidelights, borrowed lights, and windows located within 12 inches of a door jamb or with a bottom-frame height of less than 18 inches above the finished floor shall be glazed with safety glass or plastic glazing material that will resist breaking and will not create dangerous cutting edges when broken. Similar materials shall be used for wall openings unless otherwise required for fire safety. Safety glass, tempered or plastic glazing materials shall be used for shower doors and bath enclosures, interior windows and doors.

(3) Ceiling heights. The minimum ceiling height shall be eight feet with the following exceptions.

(A) The operating room(s) or other rooms containing ceiling-mounted light fixtures or equipment shall have ceiling heights of not less than nine feet. Additional ceiling height may be required to accommodate special fixtures or equipment.

(B) Minor rooms. Ceilings in storage rooms, toilet rooms, and other minor rooms shall be not less than seven feet six inches.

(C) Special requirements. Suspended tracks, rails, pipes, signs, lights, door closures, exit signs, and other fixtures that protrude into the path of normal traffic shall not be less than six feet eight inches above the finished floor.

(4) Toilet room accessories.

(A) Grab bars. Grab bars shall be provided at toilets and showers. The bars shall be one and one-half inches in diameter, shall have one and one-half inches clearance to walls, and shall have sufficient strength and anchorage to sustain a concentrated vertical or horizontal load of 250 pounds.

(B) Mirrors. Mirrors shall not be installed at hand washing fixtures where asepsis control and sanitation requirements would be lessened by hair combing.

(5) Hand washing facilities. Location and arrangement of fittings for hand washing facilities shall permit their proper use and operation. Hand washing fixtures with hands free controls shall be provided in each examination room, preoperative area, recovery room, soiled utility room, fluoroscopy room, clean work room, and toilet room. Particular care shall be given to the clearances required for blade-type operating handles. Lavatories and hand washing facilities shall be securely anchored to withstand an applied vertical load of not less than 250 pounds on the front of the fixture. In addition to the specific areas noted, hand washing facilities shall be conveniently located for staff use throughout the center where patient care services are provided.

(6) Hand drying. Provisions for hand drying shall be included at all hand washing facilities except scrub sinks. There

shall be hot air dryers or individual paper units enclosed in such a way as to provide protection against dust or soil. Paper dispensing units shall provide for single unit dispensing.

(7) Radiation protection. Shielding shall be designed, tested, and approved by a medical physicist licensed under the Medical Physics Act, Texas Civil Statutes, Article 4512n. Shielding calculations, specifications, and installations shall be reviewed by the Texas Department of Health's Bureau of Radiation Control (BRC) inspectors subsequent to equipment use. Any changes in design or shielding which affects radiation exposure levels adjacent to those rooms, requires prior approval by BRC. The ASC must obtain certificate of registration issued by BRC.

(8) Rooms with heat producing equipment. Rooms containing heat producing equipment such as mechanical and laundry rooms shall be insulated and ventilated to prevent floors of any occupied room located above it from exceeding a temperature differential of 10 degrees Fahrenheit above the ambient room temperature.

(f) Finishes.

(1) Floor finishes.

(A) General. Floor materials shall be easily cleanable, wear resistant, and appropriate for the location involved. In areas subject to frequent wet cleaning methods, floor materials shall not be physically affected by germicidal and cleaning solutions. Floors that are subject to traffic while wet, such as shower areas and certain work areas, shall have a nonslip surface.

(B) Operating room(s) and sterilizing facility(ies). Floor finishes shall be seamless, tightly sealed to the wall without voids, impervious to water, and shall have an integral covered base. Welded joint flooring shall be acceptable.

(C) Threshold and expansion joint covers. Thresholds and expansion joint covers shall be flush with the floor surface to facilitate the use of wheelchairs and carts. Expansion joints shall be constructed to restrict the passage of smoke and fire and shall be listed by a nationally recognized testing laboratory.

(2) Wall finishes. Wall finishes shall be smooth, washable, moisture resistant, and cleanable by standard housekeeping practices. Wall finishes shall comply with the requirements of NFPA 101, §26-3.3, relating to flame spread.

(A) Finishes at plumbing fixtures. Wall finishes shall be water resistant in the immediate area of plumbing fixtures.

(B) Wet cleaning methods. Wall finishes in areas subject to frequent wet cleaning methods shall be impervious to water, tightly sealed and without voids.

(3) Ceiling finishes.

(A) General. All occupied rooms and spaces shall be provided with finished ceilings, unless otherwise noted. Ceilings which are a part of a rated roof and ceiling assembly or a floor-ceiling assembly shall be constructed of listed components (by a nationally recognized testing laboratory) and installed in accordance with the listing.

(B) Monolithic ceilings. Ceilings in operating rooms and sterilizing facilities shall be monolithic from wall to wall, smooth and without fissures, open joints, or crevices and with a washable and moisture impervious finish.

(C) Special requirements. Finished ceilings may be omitted in mechanical and equipment spaces, shops, and similar spaces unless required for fire-resistive purposes.

(4) Floor, wall and ceiling penetrations. Floor, wall and ceiling penetrations by pipes, ducts, and conduits shall be tightly sealed to minimize entry of dirt particles, rodents and insects. Joints of structural elements shall be similarly sealed.

(5) Cubicle curtains, draperies and other hanging fabrics shall be noncombustible or flame retardant and shall pass both the small scale and large scale test of NFPA 701, "Standard Methods of Fire Tests for Flame-Resistant Textiles and Films," 1996 edition. Copies of laboratory test reports for installed materials shall be submitted to the department at the time of the final construction inspection.

(g) Elevators. All buildings that have patients services located on other than the main entrance floor shall have electric or electrohydraulic elevators. The elevators shall be installed in sufficient quantity, capacity, and speed that the average interval of dispatch time will not exceed one minute, and average peak loading can be accommodated.

(1) Requirements for new elevators. New elevators shall be installed in accordance with the requirements of A17.1, "Safety Code for Elevators and Escalators," 1990 edition, published by the American Society of Mechanical Engineers and the American National Standards Institute (ASME/ANSI A17.1). All new elevators shall conform to the Fire Fighters' Service Requirements of ASME/ANSI A17.1 requirements of NFPA 101, Section 7-4.4. All documents published by the ASME/ANSI as referenced in this section may be obtained by writing the ANSI, United Engineering Center, 345 East 47th Street, New York, N.Y. 10017.

(2) Requirements for existing elevators. Existing elevators shall comply with the ASME/ANSI A17.1, Safety Code for Existing Elevators and Escalators, 1990 edition. All existing elevators having a travel distance of 25 feet or more above or below the level that best serves the needs of emergency personnel for fire fighting or rescue purposes shall conform to Fire Fighters' Service Requirements of ASME/ANSI A17.3 as required by NFPA 101, §7-4.5.

(3) Elevator machine rooms. Elevator machine rooms that contain solid-state equipment for elevators having a travel distance of more than 50 feet above the level of exit discharge or more than 30 feet below the level of exit discharge shall be provided with independent ventilation or air-conditioning systems required to maintain temperature during fire fighters' service operations for elevator operation. The operating temperature shall be established by the elevator equipment manufacturer's specifications and shall be posted in each such elevator machine room. When standby power is connected to the elevator, the machine room ventilation or air conditioning shall be connected to standby power. These requirements are not applicable to existing elevators.

(4) Elevator car size.

(A) Minimum elevator car size shall be five feet wide and five feet deep.

(B) When the operating room(s) is located on a floor other than the preoperative and recovery floors a hospital-type elevator shall be provided. Cars of hospital-type elevators shall be at least 5 feet 8 inches wide by 9 feet deep.

(5) Elevator and elevator shaft doors. Light beams, if used for operating door reopening devices without touch, shall be used in combination with door edge devices and shall be interconnected with a system of smoke detectors. This is so that the light control feature will be overridden or disengaged should it encounter smoke at any landing.

(A) The smallest elevator car door opening shall be at least 3 feet wide and 7 feet high.

(B) The elevator car door opening for a hospital-type elevator shall be at least 44 inches wide and 7 feet high.

(6) Type of controls and alarms. Elevator call buttons, controls, and door safety stops shall be of a type that will not be activated by heat or smoke.

(7) Leveling. All elevators shall be equipped with an automatic leveling device of the two-way automatic maintaining type with an accuracy of one-half inch.

(8) Operation. All elevators, except freight elevators, shall be equipped with a two-way service key operated switch to permit cars to bypass all landing button calls and be dispatched directly to any floor.

(9) Accessibility of controls and alarms. Elevator controls, alarm buttons, and telephones shall be accessible to wheelchair occupants.

(10) Location. Elevators shall not open to an exit.

(11) Testing. Each ASC shall ensure routine, periodic inspections and testing of all elevators and escalators as specified in ASME/ANSI A17. All elevators equipped with fire fighter service shall be subject to a monthly operation with a written record of the findings made and kept on the premises as required by NFPA 101, §7-4.8.

(12) Certification. Each ASC shall obtain a certificate of inspection evidencing that the elevators and related equipment were inspected in accordance with the requirements in Health and Safety Code (HSC), Chapter 754, Subchapter B, and determined to be in compliance with the safety standards adopted under HSC, §754.014, administered by the Texas Department of Licensing and Regulation. The certificate of inspection shall be on record in each center.

(h) Mechanical requirements. This subsection contains requirements for mechanical systems; air-conditioning, heating and ventilating systems; steam and hot and cold water systems; plumbing fixtures; piping systems; and thermal and acoustical insulation.

(1) Cost. All mechanical systems shall be designed for overall efficiency and life cycle costing, including operational costs. Recognized engineering procedures shall be followed to achieve the most economical and effective results except that in no case shall patient care or safety be sacrificed for conservation.

(2) Equipment location. Mechanical equipment may be located indoors or outdoors (when in a weatherproof enclosure), or in a separate building(s).

(3) Vibration isolation. Mechanical equipment shall be mounted on vibration isolators as required to prevent unacceptable structure-borne vibration. Ducts, pipes, etc. connected to mechanical equipment which is a source of vibration shall be isolated from the equipment with vibration isolators.

(4) Performance and acceptance. Prior to completion and acceptance of the facility, all mechanical systems shall be tested, balanced, and operated to demonstrate to the design engineer or his representative that the installation and performance of these systems conform to the requirements of the plans and specifications.

(A) Material lists. Upon completion of the contract, the owner shall be provided with parts lists and procurement information with numbers and description for each piece of equipment.

(B) Instructions. Upon completion of the contract, the owner shall be provided with instructions in the operational use of systems and equipment as required.

(5) Heating, ventilating, and air conditioning (HVAC) systems.

(A) All central HVAC systems shall comply with and shall be installed in accordance with the requirements of NFPA 90A, "Standard for the Installation of Air Conditioning and Ventilating Systems," 1996 edition, or NFPA 90B, "Standard for the Installation of Warm Air Heating and Air-Conditioning Systems," 1996 edition, as applicable and the requirements contained in this subparagraph. Air handling units serving two or more rooms are considered to be central units. All documents published by NFPA as referenced in this section may be obtained by writing or calling the NFPA at the following address or telephone number: National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101 or (800) 344-3555.

(B) Non-central air handling systems, i.e., individual room units that are used for heating and cooling purposes (e.g., fan-coil units, heat pump units) shall be equipped with permanent (cleanable) or replaceable filters. The filters shall have a minimum efficiency of 68% weight arrestance. These units may be used as recirculating units only. All outdoor air requirements shall be met by a separate central air handling system with the proper filtration, as required in Table 1 in §135.54(a) of this title (relating to Tables).

(C) Ventilation system requirements. All rooms and areas in the center shall have provision for positive ventilation. Fans serving exhaust systems shall be located at the discharge end and shall be conveniently accessible for service. Exhaust systems may be combined, unless otherwise noted, for efficient use of recovery devices required for energy conservation. The ventilation rates shown in Table 1 of §135.54(a) of this title shall be used only as minimum requirements since they do not preclude the use of higher rates that may be appropriate.

(i) Temperatures and humidities. The designed capacity of the systems shall be capable of providing the following ranges of temperatures and humidities.

(I) Operating room. The operating room shall have the capability to control temperature and relative humidity in operating rooms between 68 degrees and 75 degrees Fahrenheit and between 45% and 60%, respectively.

(II) Recovery rooms. Capability to maintain temperature in recovery rooms at 75 degrees Fahrenheit and control the relative humidity between 45% and 60%.

(III) Other areas. The indoor design temperature in all other patient care areas shall be 75 degrees Fahrenheit with relative humidity of not less than 30%.

(ii) Thermometers and humidity gauges. Each operating room and recovery room shall have a thermometer and a humidity gauge conveniently mounted at approximately eye level.

(iii) Air handling duct requirements. Fully ducted supply, return and exhaust air systems shall be provided for all patient care areas. Combination systems, utilizing both ducts and plenums for movement of air in these areas shall not be permitted.

(I) X-ray protection. Ducts which penetrate construction intended for X-ray or other ray protection shall not impair the effectiveness of the protection.

(II) Protection of ducts penetrating fire and smoke partitions. Combination smoke and fire leakage rated (Class II) dampers shall be installed in accordance with manufacturers' instructions in all ducts penetrating one-hour rated fire and smoke partitions required by NFPA 101, §12-6.3.7 (not required in ASCs with an approved complete sprinkler system).

(-a-) Fail-safe installation. Combination smoke and fire dampers shall close on activation of the fire alarm system by smoke detectors installed and located as required by NFPA 72, Chapter 5, "National Fire Alarm Code," 1996 edition; NFPA 90A, Chapter 4; and NFPA 101, §12-6.3.7; the fire sprinkler system; and upon loss of power. Smoke dampers shall not close by fan shut-down alone. This requirement applies to all existing and new installations.

(-b-) Interconnection of air handling fans and smoke dampers. Air handling fans and smoke damper controls may be interconnected so that closing of smoke dampers will not damage the ducts.

(-c-) Frangible devices. The use of frangible (nonresetting) devices for shutting smoke dampers shall not be permitted.

(iv) Outside air intake locations.

(I) Outside air intakes shall be located at least 25 feet from exhaust outlets of ventilating systems, combustion equipment stacks, medical-surgical vacuum systems, plumbing vents, or areas which may collect vehicular exhaust or other noxious fumes. (Prevailing winds and proximity to other structures may require other arrangements).

(II) Plumbing and vacuum vents that terminate five feet above the level of the top of the air intake may be located as close as 10 feet to the air intake.

(III) The bottom of outside air intakes shall be located not less than six feet above ground level. The bottom of outside air intakes located on a roof shall be not less than three feet above a roof level.

(v) Air exhaust outlets. Exhaust outlets from areas having ethylene oxide sterilizers and other contaminants shall be above the roof level and arranged to exhaust upward.

(vi) Pressure relationship. Ventilation systems shall be designed and balanced to provide pressure relationships contained in Table 1 of §135.54(a) of this title. For reductions and shut down of ventilation systems when a room is unoccupied, the provisions in Note 4 of Table 1 of §135.54(a) of this title shall be followed.

(vii) Supply grilles. Supply grilles in operating rooms shall be located on the ceiling or on a wall near the ceiling and bottoms of return air grilles shall be located not more than 12 inches above the finished floor nor less than 6 inches. At least two return air outlets shall be provided in each operating room on opposing walls.

(viii) Ventilation start-up requirements. Air handling systems shall not be started up and operated without the filters installed in place. This includes the 90% efficiency filters where required. Ducts shall be cleaned thoroughly by an air duct cleaning contractor when the air handling systems have been operating without the required filters in place. This includes construction operations.

(ix) Humidifier location. When duct humidifiers are located upstream of the final filters, they shall be located at least 15 feet from the filters. Duct work with duct-mounted humidifiers shall be provided with a means of removing water accumulation. An adjustable high-limit humidistat shall be located downstream of the humidifier to reduce the potential of condensation inside the duct.

All duct takeoffs should be sufficiently downstream of the humidifier to ensure complete moisture absorption. Reservoir-type water spray or evaporative pan humidifiers shall not be used.

(x) Filtration requirements. All air handling units shall be equipped with filters having efficiencies equal to, or greater than, those specified in Table 2 of §135.54(b) of this title. Filter efficiencies shall be average efficiencies tested in accordance with American Society of Heating, Refrigerating, and Air-conditioning Engineers (ASHRAE), Inc., Standard 52, "Gravimetric and Dust Spot Procedures for Testing Air Cleaning Devices Used in General Ventilation for Removing Particulate Matter," 1992 edition. All joints between filter segments, and between filter segments and the enclosing ductwork, shall have gaskets and seals to provide a positive seal against air leakage. All documents published by ASHRAE as referenced in this section may be obtained by writing or calling the ASHRAE, Inc. at the following address or telephone number: ASHRAE, Inc., 1791 Tullie Circle, N. E., Atlanta, GA 30329; telephone (404) 636-8400.

(I) Location of multiple filters. Where two filter beds are required by Table 2 of §135.54(b) of this title, filter bed number one shall be located upstream of the air-conditioning equipment, and filter bed number two shall be downstream of the supply fan or blowers.

(II) Location of single filters. Where only one filter bed is required by Table 2 of §135.54(b) of this title, it shall be located downstream of the supply fan.

(III) Duct linings. Internal linings shall not be used in ducts, terminal boxes, or other air system components supplying operating rooms and post anesthesia recovery rooms unless terminal filters of at least 90% efficiency are installed downstream of linings. This requirement shall not apply to mixing boxes and acoustical traps that have approved nonabrasive coverings over such linings.

(xi) Pressure monitoring devices. A manometer or draft gauge shall be installed across each filter bed having a required efficiency of 75% or more, including laboratory hoods requiring high efficiency particulate air (HEPA) filters.

(xii) Ventilation for anesthetizing locations. Ventilation for anesthetizing locations (defined in NFPA 99, §2-2) shall comply with NFPA 99, §13-4.1.2.1 and the requirements of sub-clauses (I) and (II) of this clause.

(I) Smoke removal systems for anesthetizing locations (surgical suites). Supply and exhaust systems for windowless anesthetizing locations shall be arranged to automatically exhaust smoke and products of combustion, prevent recirculation of smoke originating within the surgical suite, and prevent the circulation of smoke entering the system intakes, without in either case interfering with the exhaust function of the system as required by NFPA 99, §5-4.1.3.

(II) Smoke exhaust grilles. Exhaust grilles for smoke evacuation systems shall be ceiling-mounted or on the wall near the ceiling.

(D) Thermal and acoustical insulation for air handling systems. Asbestos insulation shall not be used.

(i) Thermal duct insulation. Air ducts and casings with outside surface temperature below ambient dew point or temperature above 80 degrees Fahrenheit shall be provided with thermal insulation.

(ii) Insulation in air plenums and ducts. When installed, linings in air ducts and equipment shall meet the Erosion Test Method described in Underwriters' Laboratories, Inc., Standard 181, "Factory-Made Duct Materials and Air Duct Connectors." This document may be obtained from the Underwriters' Laboratories, Inc., 333 Pfingsten Road, Northbrook, IL 60062-2096.

(iii) Insulation flame spread and smoke developed ratings. Interior and exterior insulation, including finishes and adhesives on the exterior surfaces of ducts and equipment, shall have a flame spread rating of 25 or less and a smoke developed rating of 50 or less as required by NFPA 90A, Chapters 2 and 3.

(iv) Frangible insulation. Insulation of soft and spray-on types shall not be used where it is subject to air currents or mechanical erosion or where loose particles may create a maintenance or health problem.

(6) Piping systems and plumbing fixture requirements. All piping systems and plumbing fixtures shall be designed and installed in accordance with the requirements of the National Standard Plumbing Code published by the National Association of Plumbing-Heating-Cooling Contractors (PHCC), 1996 edition, and this paragraph. The National Standard Plumbing Code may be obtained by writing or calling the PHCC at the following address or telephone number: Plumbing-Heating-Cooling Contractors, P. O. Box 6808, Falls Church, VA 22040; telephone (800) 533-7694.

(A) Water supply piping systems. Water supply piping systems shall be designed to supply water at sufficient pressure to operate all fixtures and equipment during maximum demand.

(i) Valves. Each water service main, branch main, riser, and branch to a group of fixtures shall be valved. Stop valves shall be provided at each fixture.

(ii) Backflow preventers. Backflow preventers (vacuum breakers) shall be installed on hose bibs, laboratory sinks, janitor sinks, bedpan flushing attachments, autopsy tables, and on all other fixtures to which hoses or tubing can be attached.

(iii) Flushing valves. Flush valves installed on plumbing fixtures shall be of a quiet operating type, equipped with silencers.

(iv) Water storage tanks. Water storage tanks shall be fabricated of corrosion-resistant metal or lined with noncorrosive material.

(B) Fire sprinkler systems. When provided, fire sprinkler systems shall comply with the requirements of NFPA 101, Section 7-7 and the requirements of this clause. All fire sprinkler systems shall be designed, installed, and maintained in accordance with the requirements of NFPA 13, "Standard for the Installation of Sprinkler Systems," 1996 edition, and shall be certified as required by §135.53(e)(4) of this title (relating to Preparation, Submittal Review, and Approval of Plans).

(C) Piped nonflammable medical gas and clinical vacuum systems. When provided, piped nonflammable medical gas and clinical vacuum system installations shall be designed, installed and certified in accordance with the requirements of NFPA 99, Section 4-3 for Level I systems and the requirements of this subparagraph.

(i) Outlets. Nonflammable medical gas and clinical vacuum outlets shall be provided in accordance with Table 3 of §135.54(c) of this title.

(ii) Installer qualifications. All installations of the medical gas piping systems shall be done only by, or under the direct

supervision of a holder of a master plumber license or a journeyman plumber license with a medical gas piping installation endorsement issued by the Texas State Board of Plumbing Examiners.

(iii) Installer tests. Prior to closing of walls, the installer shall perform an initial pressure test, a blowdown test, a secondary pressure test, a cross-connection test, and a purge of the piping system as required by NFPA 99.

(iv) Qualifications for conducting verification tests and inspections. Verification tests and inspections by a party, other than the installer, shall be conducted by individuals who are technically competent and experienced in the field of piped medical gas systems.

(v) Verification tests. Upon completion of the installer inspections and tests and after closing of walls, verification tests of the medical gas piping systems, the warning system, and the gas supply source shall be conducted. The verification tests shall include a cross-connection test, valve test, flow test, piping purge test, piping purity test, final tie-in test, operational pressure tests, and medical gas concentration test.

(vi) Verification test requirements. Verification tests of the medical gas piping system and the warning system, shall be performed on all new piped medical gas systems, additions, renovations, or repaired portions of an existing system. All systems that are breached and components that are added, renovated, or replaced shall be inspected and appropriately tested. The breached portions of a system shall be repaired with all new components in the immediate zone or area located upstream of the point or area of intrusion and downstream to the end of the system or at a properly installed isolation valve.

(vii) Warning system verification tests. Verification tests of piped medical gas systems shall include tests of the source alarms and monitoring safeguards, master alarm systems, and the area alarm systems.

(viii) Source equipment verification tests. Source equipment verification tests shall include medical gas supply sources (bulk and manifold) and the compressed air source systems (compressors, dryers, filters, and regulators).

(ix) Written certification. Written certification for piped medical gas and vacuum systems including the supply sources and warning systems shall be provided by a party technically competent and experienced in the field of medical gas pipeline testing. The certification shall document compliance with NFPA 99 and the integrity of the completed system. The written certification shall be submitted directly to the ASC and the installer. A copy shall be available at final department construction inspection.

(x) Facility responsibility. Before new piped medical gas systems, additions, renovations, or repaired portions of an existing system are put into use, ASC medical personnel shall verify that the gas delivered at the outlet corresponds with requiring labeling at each outlet.

(xi) Documentation of medical gas and clinical vacuum outlets. Documentation of the installed, modified, extended or repaired medical gas piping system shall be submitted to the department by the same party certifying the piped medical gas systems. The number and type of medical gas outlets (e.g., oxygen, vacuum, medical air, nitrogen, nitrous oxide) shall be documented and arranged tabularly by room numbers and room types.

(D) Waste anesthetic gas disposal (WAGD) systems. Each space routinely used for administering inhalation anesthesia

shall be provided with a WAGD system as required by NFPA 99, §4-3.3.

(7) Steam and hot water systems.

(A) Boilers. Boilers shall have the capacity, based upon the net ratings published by the Hydronics Institute or another acceptable national standard, to supply the normal heating, hot water and steam requirements of all systems and equipment. The number and arrangement of boilers shall be such that, when one boiler breaks down or routine maintenance requires that one boiler be temporarily taken out of service, the capacity of the remaining boiler(s) shall be sufficient to provide hot water service for clinical and patient use; steam for sterilization; and heating for operating, recovery, and critical care rooms. However, reserve capacity for facility space heating of noncritical care areas such as administrative areas, is not required in geographical areas where a design dry bulb temperature equals 25 degrees Fahrenheit or higher as based on the 99% design value shown in the Handbook of Fundamentals, 1993 edition, published by ASHRAE, Inc.

(i) Valves. Supply and return mains and risers of cooling, heating, and process steam systems shall be valved to isolate the various sections of each system. Each piece of equipment shall be valved at the supply and return ends except that vacuum condensate returns need not be valved at each piece of equipment.

(ii) Boiler certification. When required, the ASC shall ensure compliance with Texas Department of Licensing and Regulation, Boiler Section, Texas Boiler Law, 1995 (Health and Safety Code, Chapter 755, Boilers), which requires that certification documentation for boilers shall be posted on site at each boiler installation.

(B) Hot water system. Hot water distribution system serving all patient care areas shall be under constant recirculation to provide continuous hot water at each hot water outlet.

(i) Capacity of water heating equipment. Water heating equipment shall have sufficient capacity to supply water for all clinical needs based on accepted engineering procedures using actual number and type of fixtures and for heating, when applicable.

(ii) Water temperature measurements. Water temperatures shall be measured at hot water point of use or at the inlet to processing equipment. Hot water temperature at point of use for patients, staff and visitors shall not exceed 110 degrees Fahrenheit.

(8) Drainage systems. Building sewers shall discharge into a community sewage system. Where such a system is not available, a facility providing sewage treatment must conform to applicable local and state regulations.

(A) Above ground piping. Soil stacks and roof drains installed above ground within buildings shall be drain-waste-vent (DWV) weight or heavier and shall be: copper pipe, copper tube, cast iron pipe, polyvinyl chloride (PVC) schedule 40 pipe, or galvanized iron pipe. Buildings or portions of buildings remodeled to an ASC need not comply with this requirement.

(B) Underground piping. All underground building drains shall be cast iron soil pipe, hard temper copper tube (DWV or heavier), acrylonitrile-butadiene-styrene (ABS) plastic pipe (DWV Schedule 40 or heavier), PVC pipe (DWV Schedule 40 or heavier), or extra strength vitrified clay pipe (VCP) with compression joints or couplings. Underground piping shall have at least 12 inches of earth cover or comply with local codes. Existing building or portions of buildings that are being remodeled need not comply with this subparagraph.

(C) Drains for chemical wastes. Separate drainage systems for chemical wastes (acids and other corrosive materials) shall be provided. Materials acceptable for chemical waste drainage systems shall include chemically resistant glass pipe, high silicone content cast iron pipe, VCP, plastic pipe, or plastic lined pipe.

(9) Thermal insulation for piping systems and equipment. Asbestos insulation shall not be used.

(A) Insulation shall be provided for the following:

(i) boilers, smoke breeching, and stacks;

(ii) steam supply and condensate return piping;

(iii) hot water piping and all hot water heaters, generators, converters, and storage tanks;

(iv) chilled water, refrigerant, other process piping, equipment operating with fluid temperatures below ambient dew point, and water supply and drainage piping on which condensation may occur. Insulation on cold surfaces shall include an exterior vapor barrier; and

(v) other piping, ducts, and equipment as necessary to maintain the efficiency of the system.

(B) Flame spread. Flame spread shall not exceed 25 and smoke development rating shall not exceed 50 for pipe insulation as determined by an independent testing laboratory in accordance with NFPA 255, "Standard Method of Test of Surface Burning Characteristics of Building Materials," 1996 edition.

(10) Plumbing fixtures. Plumbing fixtures shall be made of nonabsorptive, acid resistant materials and shall comply with the recommendations of the National Standard Plumbing Code, 1996 edition, and this paragraph.

(A) Sink and lavatory controls. All lavatories used by medical and nursing staff and by patients shall be trimmed with valves which can be operated without the use of hands. Blade handles used for this purpose shall not be less than 4 inches in length. Single lever or wrist blade devices may be used.

(B) Clinical sink traps. Clinical sinks shall have an integral trap in which the upper portion of a visible trap seal provides a water surface.

(C) Sinks for disposal of plaster of paris. Sinks that are used for the disposal of plaster of paris shall have a plaster trap.

(D) Back flow or siphoning. All plumbing fixtures and equipment shall be designed and installed to prevent the back-flow or back-siphonage of any material into the water supply. The over-the-rim type water inlet shall be used wherever possible. Vacuum-breaking devices shall be properly installed when an over-the-rim type water inlet cannot be utilized.

(E) Drinking fountain. Each drinking fountain shall be designed so that the water issues at an angle from the vertical, the end of the water orifice is above the rim of the bowl, and a guard is located over the orifice to protect it from lip contamination.

(F) Sterilizing equipment. All sterilizing equipment shall be designed and installed to prevent not only the contamination of the water supply but also the entrance of contaminating materials into the sterilizing units.

(G) Hose attachment. No hose shall be affixed to any faucet if the end of the hose can become submerged in contaminated liquid unless the faucet is equipped with an approved, properly installed vacuum-breaker.

(H) Bedpan washers and sterilizers. When provided, bedpan washers and sterilizers shall be designed and installed so that both hot and cold water inlets shall be protected against back-siphonage at maximum water level.

(I) Flood level rim clearance. The water supply spouts for lavatories and sinks required in patient care areas shall be mounted so that its discharge point is a minimum of 5 inches above the rim of the fixture.

(J) Scrub sink controls. Freestanding scrub sinks and lavatories used for scrubbing in procedure rooms shall be trimmed with foot, knee, or ultrasonic controls. Single lever wrist blades are not acceptable at scrub sinks.

(K) Floor drains or floor sinks. Where floor drains or floor sinks are installed, they shall be of a type that can be easily cleaned by removal of the cover. Removable stainless steel mesh shall be provided in addition to a gridded drain cover to prevent entry of large particles of waste which might cause stoppages.

(L) Under counter piping. Under counter piping and above floor drains shall be arranged (raised) so as not to interfere with cleaning of the floor below the equipment.

(i) Electrical requirements. All electrical material and equipment, including conductors, controls, and signaling devices, shall be installed in compliance with applicable sections of the NFPA 70, "National Electrical Code," 1996 edition, §517-50; NFPA 99, Chapter 13; the requirements of this subsection; and as necessary to provide a complete electrical system. Electrical systems and components shall be listed by nationally recognized listing agencies as complying with available standards and shall be installed in accordance with the listings and manufacturers' instructions.

(1) All fixtures, switches, sockets, and other pieces of apparatus shall be maintained in a safe and working condition.

(2) Extension cords and cables shall not be used for permanent wiring.

(3) All electrical heating devices shall be equipped with a pilot light to indicate when the device is in service, unless equipped with a temperature limiting device integral with the heater.

(4) All equipment, fixtures, and appliances shall be properly grounded in accordance with NFPA 70.

(5) Under-counter electrical installations shall be arranged (raised) to not interfere with cleaning of the floor below the equipment.

(6) Installation testing and certification.

(A) Installation testing. The electrical installations, including grounding continuity, fire alarm, nurses calling system and communication systems, shall be tested to demonstrate that equipment installation and operation is appropriate and functional. A written record of performance tests on special electrical systems and equipment must show compliance with applicable codes and standards and shall be available to the department upon request.

(B) Installation certification. Certifications in affidavit form signed by a registered electrical engineer attesting that the electrical service, electrical equipment, and electrical appliances have been installed in compliance with the approved plans and applicable standards, shall be submitted to the department upon request.

(7) Electrical safeguards. Shielded isolation transformers, voltage regulators, filters, surge suppressors, and other safeguards shall be provided as required where power line disturbances are likely

to affect fire alarm components, data processing, equipment used for treatment, and automated laboratory diagnostic equipment.

(8) Services and switchboards. Main switchboards shall be located in an area separate from plumbing and mechanical equipment and shall be accessible to authorized persons only. Switchboards shall be convenient for use, readily accessible for maintenance, away from traffic lanes, and located in dry, ventilated spaces free of corrosive or explosive fumes, gases, or any flammable material. Overload protective devices must operate properly in ambient temperatures.

(9) Panelboard. Distribution panels containing circuit breakers which control lighting and power to essential and normal electrical circuits shall be located within the ASC.

(10) Wiring. All conductors for controls, equipment, lighting and power operating at 100 volts or higher shall be installed in metal or metallic raceways in accordance with the requirements of NFPA 70, Article 517. All surface mounted wiring operating at less than 100 volts shall be protected from mechanical injury with metal raceways to a height of seven feet above the floor. Conduits and cables shall be supported in accordance with NFPA 70, Article 300.

(11) Lighting.

(A) Lighting intensity for staff and patient needs shall comply with guidelines for health care facilities set forth in the Illuminating Engineering Society of North America (IES) Handbook published by the Illuminating Engineering Society of North America, 345 east 47th Street, New York, NY 10017.

(i) Consideration should be given to controlling light intensity and wavelength to prevent harm to the patient's eyes.

(ii) Approaches to buildings and parking lots, and all spaces within buildings shall have fixtures that can be illuminated as necessary. All rooms including storerooms, electrical and mechanical equipment rooms, and all attics shall have sufficient artificial lighting so that all spaces shall be clearly visible.

(iii) Consideration should be given to the special needs of the elderly. Excessive contrast in lighting levels that makes effective sight adaptation difficult shall be minimized.

(B) Means of egress and exit sign lighting intensity shall comply with NFPA 101, §§5-8, 5-9 and 5-10.

(C) Electric lamps which may be subject to breakage or which are installed in fixtures in confined locations when near woodwork, paper, clothing, or other combustible materials, shall be protected by wire guards, or plastic shields.

(D) Ceiling mounted surgical and examination light fixtures shall be suspended from rigid support structures mounted above the ceiling.

(E) Operating rooms shall have general lighting in addition to local lighting provided by special lighting units at the surgical tables. Each fixed special lighting unit at the tables, except for portable units, shall be connected to an independent circuit.

(F) X-ray film illuminators for handling at least four films simultaneously shall be provided in each major operating room and special procedure room.

(12) Receptacles. Only listed hospital grade grounding receptacles shall be used in the operating rooms and post anesthesia recovery area. This does not apply to special purpose receptacles.



(A) Installations of multiple ganged receptacles shall not be permitted in patient care areas.

(B) All receptacles powered from the critical branch shall be colored red.

(C) Replacement of malfunctioning receptacles and installation of new receptacles powered from the critical branch in existing facilities shall be accomplished with receptacles of the same distinct color as the existing receptacles.

(D) In locations where mobile X-ray or other equipment requiring special electrical configuration is used, the additional receptacles shall be distinctively marked for the special use.

(E) Each receptacle shall be grounded to the reference grounding point by means of a green insulated copper equipment grounding conductor in accordance with NFPA 70, §517-13.

(F) Each operating room and special procedure room shall have at least four duplex receptacles located convenient to the head of the procedure table and one receptacle on the other walls.

(G) Appliances shall be grounded in accordance with NFPA 99, Chapter 9.

(H) A minimum of one duplex receptacle in each wall shall be installed in each work area or room other than storage or lockers. Each examination and work table shall have access to a minimum of two duplex receptacles.

(13) Equipment.

(A) The following shall be powered from the Type I essential electrical system in accordance with the requirements of NFPA 99, §3-4.2.2.3 when such a system is required for safe operation of the ASC referenced in paragraph (17) of this subsection.

(i) Boiler accessories including feed pumps, heat-circulating pumps, condensate return pumps, fuel oil pumps, and waste heat boilers shall be connected to the equipment system.

(ii) Ventilating system serving preoperative areas, operating rooms, and post anesthesia recovery rooms shall be connected to the equipment system in accordance with the requirements of NFPA 99, Chapter 3.

(B) Laser equipment shall be installed according to manufacturer recommendations and shall be registered with the Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(14) Wet patient care location. Wet patient care locations shall be protected against shock in accordance with the requirements of NFPA 99, §3-3.2.1.2(f).

(15) Grounding requirements. Fixed electrical equipment shall be grounded in accordance with the requirements of NFPA 99, §3-3.1.2 and NFPA 70, Article 517-13.

(16) Nurses calling systems.

(A) A nurse emergency calling system shall be installed in all toilets used by patients to summon nursing staff in an emergency. Activation of the system shall sound an audible signal which repeats every five seconds at a staffed location and shall activate a distinct visible signal outside of toilet room where the call originated. The visible and audible signals shall be cancelable only at the patient calling station. Activation of the system shall also activate distinct visible signals in the clean workroom and in the soiled workroom.

(B) A staff emergency assistance calling system station shall be located in each operating room, treatment room, examination room, recovery and preoperative holding area to be used by staff to summon additional help in an emergency. Activation of the system shall sound an audible signal at a staffed location, indicate type and location of call on the system monitor and activate a distinct visible signal in the corridor at the door. Additional visible signals shall be installed at corridor intersections in multi-corridor facilities. Distinct visible and audible signals shall be activated in the clean and in soiled workrooms.

(17) Essential electrical system. The essential electrical system shall comply with the requirements of NFPA 99, §13-3.3.2.

(A) A Type 1 essential electrical system shall be installed, maintained and tested in each facility in accordance with requirements of NFPA 99, Section 3-4; NFPA 101, §12.6.2.9; and National Fire Protection Association 110, Standard for Emergency and Standby Power Systems, 1996 edition when critical care areas (see definition in NFPA 99, §2-2) are provided in the facility. Otherwise, a Type 3 essential electrical system shall be installed, maintained, and tested in accordance with the requirements of NFPA 99, §3-6.

(B) Fuel storage capacity for an on-site generator for a Type 1 essential electrical system shall allow continuous operation, under full load for eight hours and six months of testing as required by NFPA 99, §3-4.4.1.1(b).

(18) Fire alarm system. A fire alarm system which complies with the requirements of NFPA 101, §12-6.3.4; NFPA 70, Article 760; and NFPA 72, Chapter 3 requirements, shall be provided in each facility.

(A) Fire alarm system shall be installed by or under direct supervision of a fire alarm installer licensed by the State Fire Marshal.

(B) The ASC shall submit a copy of the Fire Alarm Installation Certificate (State Fire Marshal's form FML 009 040392) to the department for all new installations and for any material changes to the existing systems.

§135.53. Preparation, Submittal, Review, and Approval of Plans.

(a) General. Plans and specifications describing the construction of new buildings and additions to or renovations and conversions of existing buildings shall be prepared by design professionals. A functional program narrative which describes the medical procedures to be performed at the facility shall be prepared and submitted by medical professionals.

(b) Preliminary documents. Preliminary documents shall consist of preliminary plans, a functional program narrative and outline specifications. The functional program shall describe, in detail, staffing, patient types, hours of operation, function and space relationships, transfer provisions and availability of offsite services. These documents shall contain sufficient information to establish the project scope, description of functions to be performed, project location, required fire safety and exiting requirements, building construction type, compartmentation showing fire and smoke barriers, services, and the usage of all spaces, areas, and rooms on every floor level.

(1) Preparation of preliminary plans. Preliminary plans shall be of a sufficiently large scale to clearly illustrate the proposed design but not less than one-eighth inch equals one foot. Preliminary plans shall provide the following information.

(A) Area map. A map of the area within a two-mile radius of the ASC site shall be provided and any hazardous and undesirable location noted in §135.52(a)(3) and (4) of this title (relating to Construction Requirements for New Ambulatory Surgical Centers) shall be identified.

(B) Site plan. A site plan shall be submitted and shall indicate the location of the proposed building(s) in relation to property lines, existing buildings or structures, access and approach roads, and parking areas and drives. Any overhead or underground utilities or service lines shall also be indicated. Any extreme variations in grade shall be indicated.

(C) Floor plans.

(i) New facilities. Each floor plan shall indicate and identify all individual spaces, doors, windows and means of egress. The total floor area on each level involved in construction shall be shown on the drawings. Each smoke compartment area shall be calculated and shown.

(ii) Existing facilities. An overall floor plan showing existing spaces, smoke partitions, smoke compartments, and exits and their relationship to the new construction shall be submitted on all renovations or additions to an existing facility. Plans for remodeling of spaces above or below the level of discharge shall include the level of discharge floor plan which shows all exits at that level. When there are two different levels of discharge, plans for both levels shall be submitted.

(D) Construction type and fire rating. Building sections shall be provided to illustrate construction type and fire protection rating. Section(s) shall be drawn at a scale sufficiently large to clearly present the proposed construction system.

(E) Outline specifications. Outline specifications shall contain a general description of the construction; materials; and finishes not shown on the drawings; type of heating, ventilation and air conditioning system; and type of essential electrical system.

(2) Functional program narrative. The narrative shall outline and describe the medical procedure(s) to be performed and shall describe the scope of the project, type of construction (existing or proposed) as stated in National Fire Protection Association 101, Code for Safety to Life from Fire in Buildings and Structures, 1997 edition (NFPA 101), §12-6.1.6, published by the National Fire Protection Association (NFPA), functional description of each space (may be shown on plans), energy conservation measures included in building, mechanical and electrical designs. All documents published by the NFPA as referenced in this section may be obtained by writing or calling the NFPA at the following address and telephone number: Post Office Box 9101, 1 Batterymarch Park, Quincy, Massachusetts 02269-9101, (800) 344-3555.

(3) Submission of preliminary plans. One set of preliminary plans and outline specifications covering the construction of new buildings, additions, or renovations to existing buildings, shall be submitted to the Texas Department of Health (department) for review and approval. For convenience, preliminary plans may be of a reduced size or scale.

(A) Preliminary plans and specifications must be accompanied by a completed Application for Plan Review.

(B) All deficiencies noted in the preliminary plan review shall be satisfactorily resolved. Written department approval of preliminary plans must be obtained prior to proceeding with final plans and specifications. This requirement also applies to fast-track projects.

(c) Construction documents. Construction documents or final plans and specifications shall be submitted to the department for review and approval prior to the start of construction. All final plans and specifications shall be appropriately sealed and signed by a registered architect and professional engineers licensed by the State of Texas.

(1) Preparation of construction documents. Construction documents shall be well prepared so that clear and distinct prints may be obtained, shall be accurately and adequately dimensioned, and shall include all necessary explanatory notes, schedules, and legends and shall be adequate for contract purposes. Compliance with model building codes and this chapter shall be indicated. The type of construction, as classified by NFPA 20, "Standard on Types of Building Construction," 1995 edition, shall be provided for existing and new facilities. Final plans shall be drawn to a sufficiently large scale to clearly illustrate the proposed design but not less than one-eighth inch equals one foot. All rooms shall be identified by usage on all plans (architectural, fire safety, mechanical, electrical, etc.) submitted. Separate drawings shall be prepared for each of the following branches of work.

(A) Architectural plans. Architectural drawings shall include the following:

(i) a site plan showing all new topography, newly established levels and grades, existing structures on the site (if any), new buildings and structures, roadways, walks, and the extent of the areas to be landscaped. All structures which are to be removed under the construction contract and improvements shall be shown. A general description of the immediate area surrounding the site shall be provided;

(ii) a plan of each floor and roof with identification of all spaces;

(I) when a new ASC is to be located above the ground floor (above level of exit discharge) of a multi-story building, whether new or existing, a floor plan of the entire floor containing the ASC and every floor below shall be submitted. These floor plans shall clearly show exits, such as stairs, to grade discharge. A roof plan shall also be submitted for the building; and

(II) when an existing ASC which is located above the ground floor (level of exit discharge) is to be remodeled and/or expanded, then only the plan of that floor and a plan of the floor of exit discharge need be submitted;

(iii) schedules of doors, windows, and finishes;

(iv) elevations of each facade;

(v) sections through building; and

(vi) scaled details as necessary.

(B) Fire safety plans. Fire safety plans shall be provided in addition to the architectural floor plan(s) for all newly constructed or renovated ASCs. Plans shall be of a sufficiently large scale to clearly illustrate the proposed design but not less than one-sixteenth inch equals one foot and shall include the following information:

(i) separate fire safety plans indicating the designated smoke compartments required by NFPA 101, §12-6.3.7, location of fire rated walls, location and fire resistance rating of each fire and smoke damper, and the required means of egress (corridors, stairs, exits, exit passageways);

(ii) location of all required fire alarm devices, including all fire alarm control panels, manual pull stations, audible and visual fire alarm signaling devices, smoke detectors (ceiling and duct mounted), fire alarm annunciators, fire alarm transmission devices, fire sprinkler flow switches and control valve supervisory switches on each of the floor plans; and

(iii) areas protected with fire sprinkler systems (pendant, sidewall or upright, normal or quick response, and temperature rating shall be indicated), stand pipe system risers and sizes with valves and inside and outside fire department connections, fire sprinkler risers and sizes, location and type of portable fire extinguishers.

(C) Equipment drawings. Equipment drawings shall include the following:

(i) all equipment that is necessary for the operation of the ASC as planned. The design shall indicate provisions for the installation of large and special items of equipment and for service accessibility;

(ii) fixed equipment which is permanently affixed to the building or which must be permanently connected to a service distribution system designed and installed during construction for the specific use of the equipment. The term "fixed equipment" includes items such as sterilizers, communication systems, and built-in casework (cabinets);

(iii) movable equipment (equipment not described in clause (ii) of this subparagraph as fixed). The term "moveable equipment" includes wheeled equipment, plug-in type monitoring equipment, and relocatable items; and

(iv) equipment which is not included in the construction contract but which requires mechanical or electrical service connections or construction modifications. The equipment described in this clause shall be identified on the drawings to ensure its coordination with the architectural, mechanical, and electrical phases of construction.

(D) Structural drawings. Structural drawings shall include:

(i) plans for foundations, floors, roofs, and all intermediate levels;

(ii) a complete design with sizes, sections, and the relative location of the various members;

(iii) a schedule of beams, girders, and columns;

(iv) dimensioned floor levels, column centers, and offsets;

(v) details of all special connections, assemblies, expansion joints; and

(vi) special openings and pipe sleeves dimensioned or otherwise noted for easy reference.

(E) Mechanical drawings. Documentation for selection of the type of heating and cooling system based on requirements contained in §135.52(h)(1) of this title (relating to Construction Requirements for New Ambulatory Surgical Centers) shall be included with the mechanical plans. Mechanical drawings shall include:

(i) complete ventilation systems (supply, return, exhaust), all fire and smoke partitions, locations of all dampers, registers, and grilles, air volume flow at each device, and name identification of all spaces;

(ii) boilers, chillers, heating and cooling piping systems (steam piping, hot water, chilled water), and associated pumps;

(iii) cold and warm water supply systems, water heaters, storage tanks, circulating pumps, plumbing fixtures, emergency water storage tank(s), and special piping systems such as for deionized water;

(iv) nonflammable medical gas piping (oxygen, compressed medical air, vacuum systems, nitrous oxide), emergency shut-off valves, pressure gages, alarm modules, gas outlets;

(v) drain piping systems (waste and soiled piping systems, laboratory drain systems, roof drain systems);

(vi) fire protection piping systems (sprinkler piping systems, fire standpipe systems, water or chemical extinguisher piping system if used);

(vii) piping riser diagrams, equipment schedules, control diagrams or narrative description of controls, filters, and location of all duct mounted smoke detectors; and

(viii) laboratory exhaust and safety cabinets.

(F) Electrical drawings. Electrical drawings shall include:

(i) electrical service entrance with service switches, service feeders to the public service feeders, and characteristics of the light and power current including transformers and their connections;

(ii) location of all normal electrical system and essential electrical system conduits, wiring, receptacles, light fixtures, switches and equipment which require permanent electrical connections, on plans of each building level;

(iii) light fixtures marked distinctly to indicate connection to critical or life safety branch circuits or to normal lighting circuits;

(iv) outlets marked distinctly to indicate connection to critical, life safety or normal power circuits;

(v) telephone and communication, fixed computers, terminals, connections, outlets, and equipment;

(vi) nurses calling system showing all stations, signals, and annunciators on the plans;

(vii) in addition to electrical plans, single line diagrams prepared for:

(I) complete electrical system consisting of the normal electrical system and the essential electrical system including the on-site generator(s), transfer switch(es), emergency system (life safety branch and critical branch), equipment system, panels, sub-panels, transformers, conduit, wire sizes, main switchboard, power panels, light panels, and equipment for additions to existing buildings, proposed new ASCs, and remodeled portions of existing ASCs. Feeder and conduit sizes shall be shown with a schedule of feeder breakers or switches; and

(II) complete nurses calling system with all stations, signals, annunciators, etc. with room number noted by each device and indicating the type of system (nurses regular calling system, nurses emergency calling system, or staff emergency assistance calling system); and

(III) a single line diagram of the complete fire alarm system showing all control panels, signaling and detection devices and the room number where each device is located; and

(viii) schedules of all panels indicating connection to life safety branch, critical branch, equipment system or normal system, and connected load at each panel.

(2) Correction of final plan deficiencies. All deficiencies noted in the final plan review shall be satisfactorily resolved before approval of project for construction will be granted.

(3) Construction approval. Construction shall not begin until written approval by the department is received by the owner of the ASC.

(4) Construction document changes. Any changes to construction documents which affect or change the function, design, or designated use of an area shall be submitted to the department for approval prior to authorization of the modifications.

(d) Special submittals.

(1) Designer certified construction documents. In an effort to shorten the plan review and approval process, design professionals may submit, at the discretion of the department, a set of final construction documents, the department's completed checklist of licensing requirements and a certification letter which states that the plans and specifications, based on the department's checklist comply with the requirements of this chapter. Project certification letter and checklist shall be signed by the architect and engineer(s) of record.

(2) Fast-track projects. Submittal of fast-track projects shall be at the discretion of the department and shall be submitted in not more than three separate packages. Each package shall be approved by the department before construction is begun on that package.

(A) First package. The first package shall include:

(i) a map showing the location of the proposed site and the adjacent surrounding area, at least two miles in radius, which identifies any hazardous and undesirable location noted in §135.52(a)(3) of this title;

(ii) preliminary architectural plans and a detailed building site plan showing all adjacent streets, site work, underslab mechanical, electrical, and plumbing work, and related specifications; and

(iii) foundation and structural plans.

(B) Second package. The second package shall include complete architectural plans and details with specifications and fire safety plans as described in subsection (c)(1)(A) and (B) of this section.

(C) Third package. The third package shall include complete mechanical, electrical, equipment and furnishings, and plumbing plans and specifications, as described in subsection (c)(1)(E)-(F) of this section.

(3) Fire sprinkler systems. Fire sprinkler systems, when provided, shall comply with the requirements of NFPA 13, "Standard for the Installation of Sprinkler Systems," 1996 edition. Fire sprinkler systems shall be designed or reviewed by an engineer who is registered by the Texas State Board of Registration for Professional Engineers in fire protection specialty or is experienced in hydraulic design and fire sprinkler system installation. A short resume shall be submitted if registration is not in fire protection specialty.

(A) Fire sprinkler working plans, complete hydraulic calculations and water supply information shall be prepared in accordance with NFPA 13, §§6-1, 6-2 and 6-3, for new fire sprinkler systems, alterations of and additions to existing systems.

(B) Installation certification of changes to an existing system is not required when such change involves only the relocation of fewer than 20 heads.

(C) One set of fire sprinkler working plans (sealed by the engineer), calculations and water supply information shall be forwarded to the department together with the engineer's certification letter stating that the sprinkler system design complies with the requirements of NFPA 13. Certification of the fire sprinkler system design shall be submitted prior to system installation.

(e) Construction and inspections.

(1) Major construction. Construction, of other than minor alterations, shall not commence until the final plan review deficiencies have been satisfactorily resolved, the appropriate licensing fee has been paid, and the department has issued a letter granting approval to begin construction. Such authorization does not constitute release from the requirements contained in this chapter. If the construction takes place in or near occupied areas of an existing ASC, adequate provision shall be made for the safety and comfort of occupants during construction.

(2) Construction commencement notification. The architect of record shall provide written notification to the department when construction will commence.

(3) Completion. Construction shall be completed in compliance with the construction documents including all addenda or modifications approved for the project.

(4) Certification of sprinkler system installations. Upon completion of the fire sprinkler system installation and any required corrections, written certification by the engineer, stating that the fire sprinkler system is installed in accordance with NFPA 13 requirements, shall be submitted prior to or with the written request for the final construction inspection of the project.

(5) Construction inspections. The department shall determine the number of required inspections necessary to complete all proposed construction projects. Normally, a minimum of two construction inspections of the project shall be scheduled for the purpose of verifying compliance with requirements contained in §135.51 of this title (relating to Construction Requirements for an Existing Ambulatory Surgical Centers) and §135.52 of this title and the approved plans and specifications.

(A) Intermediate and final inspections shall be requested only by the architect of record or the licensee by the submission of an "Application for Construction Inspection" form supplied by the department. The department must receive such request for inspections at least three weeks prior to the requested inspection date. To save time, these inspection request forms may be faxed to the department. Inspection requests by contractors will not be honored.

(i) The intermediate construction inspection shall be requested at approximately 80% completion. All major work above the ceiling shall be essentially completed at the time of the intermediate inspection but ceilings should not yet be installed.

(ii) The final construction inspection shall be requested by the architect of record or the licensee at 100% completion. One-hundred percent completion means that the project is completed to the extent that all equipment is operating in

accordance with specifications, all necessary furnishings are in place, and patients could be admitted and treated in all areas of the project. Requests for final inspections shall follow the same procedure as noted above for the 80% intermediate inspection.

(B) During the final construction inspection by the department, the inspector will determine if the project can be approved for patient occupancy. If the inspector finds that it cannot be approved for occupancy, the facility will have to schedule another final inspection after corrections are made. If the inspector finds only a few minor deficiencies which do not jeopardize patient health, safety and welfare, the inspector may approve the project for occupancy based on an acceptable written "Plan of Correction" signed by the licensee. Depending on the number and nature of the deficiencies cited in a "Plan of Correction," the inspector may require that a "follow-up" reinspection be conducted to confirm correction of all deficiencies cited.

(6) Approval for occupancy. Patients shall not occupy a new structure or a remodeled or renovated space until the appropriate approval has been received from the local building and fire authorities and until all required documentation has been received by the department.

(7) Resubmittal of construction documents. When construction is delayed for longer than one year from the plan approval date, construction documents shall be resubmitted to the department for review and approval. The plans shall be accompanied by a new Application for Plan Review.

(8) Project cancellation. The licensee or the owner shall notify the department in writing when a project has been canceled or abandoned.

§135.54. Tables.

(a) Table 1. Ventilation and Pressure Relationship Requirements.

Figure: 25 TAC, §135.54(a)

(b) Table 2. Filter Efficiencies for Ventilation and Air-Conditioning Systems.

Figure: 25 TAC, §135.54(b)

(c) Table 3. Station Outlets for Oxygen, Vacuum (Suction), and Medical Air Systems.

Figure: 25 TAC, §135.54(c)

(d) Table 4. Flame Spread and Smoke Production Limitations for Interior Finishes.

Figure: 25 TAC, §135.54(d)

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

Filed with the Office of the Secretary of State on June 23, 1998.

TRD-9810027

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: August 31, 1998

For further information, please call: (512) 458-7236



## Subchapter D. New Construction Requirements for Ambulatory Surgical Centers

25 TAC §§135.61-135.67

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

The repeal is proposed under the Texas Ambulatory Surgical Center Licensing Act, Health and Safety Code, Chapter 243, which provides the Board of Health (board) with the authority to adopt rules governing the licensing and regulation of ASCs; and §12.001, which provides the board with the authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

The repeal affects the Health and Safety Code, Chapter 243.

§135.61. *Application of Standards.*

§135.62. *Submittal Requirements.*

§135.63. *Site Requirements.*

§135.64. *Design Requirements.*

§135.65. *Mechanical Requirements.*

§135.66. *Electrical Requirements.*

§135.67. *Tables.*

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

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Susan K. Steeg

General Counsel

Texas Department of Health

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For further information, please call: (512) 458-7236



## TITLE 30. ENVIRONMENTAL QUALITY

### Part I. Texas Natural Resource Conservation Commission

#### Chapter 33. Consolidated Permit Processing

The Texas Natural Resource Conservation Commission (commission) proposes new §§33.1, 33.3, 33.11, 33.13, 33.15, 33.17, 33.19, 33.21, 33.23, 33.25, 33.27, 33.29, 33.31, 33.41, 33.43, 33.45, 33.47, 33.49, and 33.51, concerning consolidated permit processing. This action is part of the commission's implementation of House Bill (HB) 1228, 75th Legislature, 1997, which granted the commission authority to conduct consolidated permit processing and issue consolidated permits.

In addition, the commission is concurrently proposing conforming amendments and other changes to 30 TAC Chapter 39, concerning Public Notice. These amendments are published in this edition of the *Texas Register*.

#### EXPLANATION OF PROPOSED RULES

HB 1228 created a new Texas Water Code (TWC), Chapter 5, Subchapter J. The new statute creates a process for an applicant to request consolidated permit processing and the issuance of a consolidated permit. Federal operating permits are prohibited from consolidation. The statute establishes a

voluntary program by which a plant, facility, or site can request consolidated permit processing. It provides for designation of a lead permitting program for coordination of application reviews, a consolidated permit hearing on all permits requested by the applicant, and issuance of one consolidated permit. It also allows the applicant to opt-out of the process before public notice of the opportunity to request a hearing and request separate processing either before or after referral to the State Office of Administrative Hearings, depending on certain, specified circumstances.

The statute provides that the renewal period for a consolidated permit is the shortest term set by any state or federal statute or rule governing one or more of the authorizations in the consolidated permit. It also clarifies the commission's authority to modify, amend, or renew existing permits containing authority from more than one permit program (including so-called "one-stop" permits).

The statute requires the fee for a consolidated permit to be computed as if the permits that are consolidated had been processed separately. However, TWC, §5.405, authorizes the commission to reduce the fee by rule for a consolidated permit if processing results in savings to the agency.

Finally, TWC, §5.406, as added by HB 1228, allows the commission to adopt rules to implement the program, including rules that provide for consolidated notice and procedures for issuing such permits.

The proposed rules are necessary for the implementation of the statute. They provide general procedural requirements governing consolidated processing of permit applications and the issuance of consolidated permits. The rules do not impact the voluntary nature of the program established by TWC, Chapter 5, Subchapter J. Applicants will retain the flexibility to determine if consolidated permitting would be consistent with their needs and processes.

The proposed rules also do not represent a fundamental change to the commission's permitting processes. Due to the limited and voluntary nature of TWC, Chapter 5, Subchapter J, as well as other statutory limitations, such as permit and notice requirements under federal programs for which the commission is seeking authorization, implementation of this statute will be conducted under current commission rules and processes. Consequently, the proposed rules cover only those areas where the commission believes rules are necessary, such as clarifying notice requirements. Other details relating to implementation, such as the role of the designated lead coordinating office, will be addressed in guidance rather than by rule. This draft guidance document is available for review and input and may be obtained by contacting the agency at the number listed in the "SUBMITTAL OF COMMENTS" portion of this preamble.

Proposed new §33.1, concerning Purpose and Applicability, provides that the purpose of the proposed chapter is to implement the commission's authority under TWC, Chapter 5, Subchapter J. The section also sets forth the chapter's applicability. The rules would apply to plants, facilities, or sites required to have more than one permit issued by the commission. This language is identical to the statutory language, and the commission declines to define the terms in order to maintain as much flexibility, and allow as much participation, as possible. Under this approach, any entity that has to obtain more than one authorization can take part in the program. The proposed

section also states that federal operating permits may not be consolidated. The proposed section implements TWC, §5.401.

Proposed new §33.3, concerning Definitions, defines consolidated permit as a permit issued under TWC, Chapter 5, Subchapter J, and that contains authorizations for activities in more than one program. The new section also provides a definition for component authorization, which describes an authorization within a consolidated permit. These definitions are necessary for program implementation.

Proposed Subchapter B provides general provisions concerning consolidated permit processing and the issuance of consolidated permits. The subchapter includes provisions concerning renewals and changes to permits, as well as fee requirements. The general provisions are necessary to clarify that consolidated permit processing will be conducted, and consolidated permits will be issued, under current commission statutory authority and rules, unless otherwise provided by TWC, Chapter 5, Subchapter J.

Proposed new §33.11, concerning Issuance of Consolidated Permit, requires the commission to conduct coordinated application reviews if requested by an applicant. It also requires the commission to issue a consolidated permit if that is requested by an applicant. The proposed section implements TWC, §5.401.

Proposed new §33.13, concerning Applications for Consolidated Permits, requires applicants to use existing applications required under current commission rules.

Proposed new §33.15, concerning Fees for Consolidated Permit Processing, provides that the fee for a consolidated permit will be equal to the sum of the fees normally required if the applications were processed separately. In addition, the section allows the executive director to reduce the fee if there are savings to the agency. The proposed new section implements TWC, §5.405.

Proposed new §33.17, concerning Public Notice, provides that all notice requirements applicable to each separate authorization being requested must be satisfied. The section also clarifies that if an applicant is required under commission rules to mail notice for any part of a consolidated public notice, then the applicant must fulfill all mailed notice requirements. This clarification is necessary to avoid any duplication of notice mailed to interested entities. Rules concerning notice are authorized by TWC, §5.406.

Proposed new §33.19, concerning Renewal of Consolidated Permits, provides that the renewal period for a consolidated permit is the shortest term for one or more of the authorizations sought in the consolidated permit. The section also provides for the separation of a consolidated permit at renewal if requested by an applicant. The proposed section requires renewal applications to be filed in a timely fashion. If they are not, the consolidated permit would expire in its entirety. Finally, the section provides that a component authorization that has been separated from a consolidated permit may be renewed for the full term provided by applicable law governing that authorization. The section includes provisions necessary to implement TWC, §5.403 and §5.404, as well as provisions necessary for program implementation.

Proposed new §33.21, concerning Amendment of a Consolidated Permit, and proposed new §33.23, concerning Transfer of a Consolidated Permit, provide requirements for amendments to, or transfers of, consolidated permits. Both sections provide

that a consolidated permit can remain consolidated, or be separated at the request of the applicant, for purposes of processing amendments or transfers. In addition, the sections provide for the terms of any component authorizations that are separated at the request of the applicant. Both sections also provide that current commission rules apply to actions taken under the sections.

Proposed new §33.25, concerning Correction of a Consolidated Permit, provides that any corrections to consolidated permits will be conducted under 30 TAC §50.45, concerning Corrections to Permits.

Proposed new §33.27, concerning Consolidated Permit Denial, Suspension, and Revocation, provides that all denials, suspensions, and revocations will be administered under existing commission rules.

Proposed new §33.29, concerning Modification of a Consolidated Permit, provides that a modification of a consolidated permit, or any constituent part of that permit, will be administered under existing commission rules. In addition, any component authorization separated for purposes of modification will retain the term of the consolidated permit.

Proposed new §33.31, concerning Emergency or Temporary Orders, provides that the issuance of an emergency order or a temporary order will be administered under 30 TAC Chapter 35. The commission is proposing this new Chapter 35 in this edition of the *Texas Register*.

Proposed new Subchapter C, concerning Consolidated Permit Processing, sets forth procedural requirements for processing consolidated applications and issuing consolidated permits.

Proposed new §33.41, concerning Pre-submittal Conference, provides for a preliminary meeting between an applicant considering consolidated permitting and commission staff to discuss the consolidated permit process and various options that are available to applicants. The conference is not mandatory; however, the commission recommends it to help potential applicants determine if participation in this voluntary program would suit their needs and requirements. The conference would cover a variety of topics, identify important issues, and assist a potential applicant with the decision of whether to participate in the consolidated permitting process.

Proposed new §33.43, concerning Intent to File Applications for Consolidated Permit Processing and a Consolidated Permit, provides procedures for filing applications for consolidated processing with the commission. The section requires a letter of intent and prescribes its minimum contents. The section also contains the requirement that applications be filed within a 30-day time period, as required by TWC, §5.401. The section also provides that applications will not be processed until all have been received, and provides for the return of an incomplete set of applications by the executive director. These procedural requirements are necessary for processing and issuing consolidated permits.

Proposed new §33.45, concerning Separation by Executive Director, provides for separate processing of consolidated applications at the direction of the executive director. The executive director may require separate processing if an applicant has submitted an incomplete application or failed to respond as requested to any notices of deficiency. The section implements TWC, §5.401.

Proposed new §33.47, concerning Request for Separate Processing Before Public Notice of Opportunity to Request a Hearing, authorizes an applicant to request separation of applications before public notification of the opportunity to request a hearing. The section provides that these requests must be filed with the executive director. The section implements TWC, §5.402(a).

Proposed new §33.49, concerning Separate Processing After Notice of Opportunity to Request a Hearing and Before Referral to SOAH, authorizes the executive director to separate applications after notice is issued but before referral to SOAH, if an applicant demonstrates good cause. Good cause is defined by TWC, §5.402(b) and the proposed rule as a change in a statutory requirement, or a substantial change in factual conditions surrounding the applications. The section also prescribes requirements concerning the request for separation that are necessary for implementation, and the disposition of any hearing requests that were received on the consolidated applications. Finally, the section provides for renotification of the separate applications in accordance with commission public notice rules.

Proposed new §33.51, concerning Separate Processing After Referral to SOAH, authorizes an applicant to have applications processed separately after the consolidated applications have been referred to SOAH. The applicant must comply with commission rules relating to the withdrawal of an application. This section implements TWC, §5.402(c).

#### FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections as proposed are in effect, there will be fiscal implications as a result of administration or enforcement of the sections. The effect on state government will be a minor reduction in cost associated with the consolidation of separate permitting processes, particularly public hearings. Some costs may be incurred in the initial development of new procedures for consolidated permits, but these costs are not anticipated to outweigh anticipated savings. No significant effects are anticipated for local governments, except some local governments may elect to acquire consolidated permits for regulated activities and would be similarly affected as any other party.

#### PUBLIC BENEFIT

Mr. Minick has also determined that, for the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcement of and compliance with the sections will be improvement in and simplification of the process of issuing permits under different program requirements, more cost-effective management of permitted activities, and enhanced opportunities for public participation in the permitting process. Generally, costs to affected parties are not anticipated to increase and could, in fact, decrease as a result of the proposed rules. Participation in a consolidated permit process is voluntary and there are no economic costs anticipated to any person, including small business, required to comply with the sections as proposed.

#### DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that it is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute, and it does

not meet any of the four applicability requirements listed in §2001.0225(a). The rule is not a major environmental rule because it prescribes limited procedural requirements governing a voluntary program. In addition, this action is expressly authorized by state statute, TWC, Chapter 5, Subchapter J.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of these rules is to implement the statutory provisions of TWC, Chapter 5, Subchapter J, concerning consolidated permit processing. The rules will substantially advance this purpose by providing specific provisions on these matters. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because they concern commission procedural rules.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in the Coastal Coordination Implementation Rules, 31 TAC §505.11, or will affect an action/authorization identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11, and will, therefore, require that applicable goals and policies of the Coastal Management Program (CMP) be considered during the rule-making process.

The commission has prepared a consistency determination for the proposed rules under 31 TAC §505.22, and found that the proposed rules are consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the proposed rules is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. CMP policies applicable to the proposed rules include the administrative policies and the policies for specific activities related to: construction and operation or solid waste treatment, storage, and disposal facilities; and discharge of municipal and industrial wastewater to coastal areas. Promulgation and enforcement of these proposed rules is consistent with the applicable CMP goals and policies because the proposed rules have no impact on existing commission rules concerning affected activities. They establish a voluntary program that will utilize already existing commission rules and practices to the maximum extent required. Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because they will have no impact on existing commission rules concerning affected activities.

The commission invites public comment on the consistency of the proposed rules with the CMP.

#### PUBLIC HEARING

A public hearing on this proposal will be held August 17, 1998, at 10:00 a.m. in Room 2210 of Texas Natural Resource Conservation Commission (TNRCC) Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to

discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 97170-033-AD. Comments must be received by 5:00 p.m., August 17, 1998. For further information, please contact Brian Christian, Policy Research Division, (512) 239-1760.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

#### Subchapter A. Purpose and Applicability

##### 30 TAC §33.1, §33.3

##### STATUTORY AUTHORITY

The new sections are proposed under TWC, §5.401 et seq., which establishes the commission's authority concerning consolidated permit processing. Other relevant sections under which the commission takes this action include: §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. This action is also taken under Texas Health and Safety Code, §382.017, which establishes the commission's rulemaking authority.

The proposed new sections implement TWC, 5.401 et. seq.

##### §33.1. Purpose and Applicability.

(a) The purpose of this chapter is to implement the commission's authority under Texas Water Code, Chapter 5, Subchapter J, to conduct coordinated permit processing and issue one consolidated permit.

(b) This chapter applies to any plant, facility, or site that is required to have more than one permit issued by the commission and that files applications with the commission under Texas Water Code, Chapter 5, Subchapter J. This chapter sets forth the standards and requirements for applications and actions concerning consolidated permits and amendments, modifications, renewals, transfers, corrections, revocations, and suspensions of those permits.

(c) A federal operating permit governed by the requirements of Texas Health and Safety Code, §§382.054-382.0543, may not be consolidated with other permits under this chapter.

##### §33.3. Definitions.

The following terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Consolidated permit - A permit issued under Texas Water Code, Chapter 5, Subchapter J, and this chapter, and that contains authorizations for activities in more than one program.

(2) Component authorization - An authorization within a consolidated permit that would normally be issued as an individual authorization under the requirements of applicable law governing operations at a facility, plant, or site.

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



Filed with the Office of the Secretary of State, on July 2, 1998.

TRD-9810523

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: November 4, 1998

For further information, please call: (512) 239-1966



## Subchapter B. General Provisions

**30 TAC §§33.11, 33.13, 33.15, 33.17, 33.19, 33.21, 33.23, 33.25, 33.27, 33.29, 33.31**

### STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.401 et.seq., which establishes the commission's authority concerning consolidated permit processing. Other relevant sections under which the commission takes this action include: §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. This action is also taken under Texas Health and Safety Code, §382.017, which establishes the commission's rulemaking authority.

The proposed new sections implement Texas Water Code, §5.401 et.seq.

#### §33.11. Issuance of Consolidated Permit.

(a) If a plant, facility, or site is required to have more than one permit issued by the commission, and the applications for all permits are filed within a 30-day period, the commission, on request of the applicant, shall conduct coordinated application reviews and one hearing on all permits requested to be consolidated by the applicant. The commission may issue one consolidated permit.

(b) The commission shall issue one consolidated permit upon request of an applicant meeting the requirements of this chapter.

#### §33.13. Applications for Consolidated Permits.

An applicant shall use existing applications required under commission rules for all of the authorizations sought in the consolidated permit.

#### §33.15. Fees for Consolidated Permit Processing.

A fee for a consolidated permit shall be equal to the sum of the fees that would be required if each application for a requested authorization was processed separately. The executive director may reduce the fee for a consolidated permit if he finds that consolidated processing of an application will result in savings to the agency.

#### §33.17. Public Notice.

(a) As provided by Chapter 39, Subchapter G of this title (relating to Public Notice for Applications for Consolidated Permits), all notice requirements that apply to each separate authorization must be satisfied when an applicant requests combined public notices of consolidated permits.

(b) If an applicant is required to mail notice under Chapter 39 of this title (relating to Public Notice), Chapter 305 of this title (relating to Consolidated Permits), or Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), for any part of a consolidated public notice, the applicant shall fulfill those mailed notice requirements.

#### §33.19. Renewal of Consolidated Permits.

(a) The renewal period for a consolidated permit is the shortest term set by any state or federal statute or rule governing one or more of the authorizations in the consolidated permit.

(b) A consolidated permit may be renewed as a consolidated permit; or may be separated at the request of the applicant and the applications processed separately. Consolidated permits shall be subject to the renewal requirements of applicable laws and commission rules governing operations at the facility, plant, or site.

(c) A permit issued before and effective on September 1, 1997, that authorizes more than one permit program, may be renewed as a consolidated permit, or, upon request of the applicant, may be separated by programs and the permits processed separately.

(d) An applicant shall submit permit renewal applications in a timely fashion, as required in commission rules. Failure to submit permit renewal applications in a timely fashion shall cause a consolidated permit to expire in its entirety.

(e) If a component authorization has been separated from a consolidated permit when amended, transferred, or modified, as provided by this chapter, it may be renewed for the full term provided by applicable law governing that authorization.

#### §33.21. Amendment of a Consolidated Permit.

(a) A consolidated permit may be amended as a consolidated permit or, upon request of an applicant, separated by program and the permits processed separately. A component authorization that is separated from a consolidated permit for amendment shall retain the same term as the consolidated permit, unless the applicant requests a change in the term as part of a major amendment.

(b) A consolidated permit shall be amended under all applicable commission rules concerning amendments for the programs in the consolidated permit.

#### §33.23. Transfer of a Consolidated Permit.

(a) A consolidated permit may be transferred as a consolidated permit or, upon request of the applicant, separated for the purposes of transferring authorizations. A component authorization that is separated from a consolidated permit for transfer shall retain the same term as the consolidated permit.

(b) A consolidated permit, or any of its component authorizations, shall be transferred under all applicable transfer rules required for the programs in the consolidated permit.

#### §33.25. Correction of a Consolidated Permit.

A consolidated permit, or a component authorization part of that permit, shall be corrected under §50.45 of this title (relating to Corrections to Permits).

#### §33.27. Consolidated Permit Denial, Suspension, and Revocation.

A consolidated permit, or any component authorization of that permit, shall be denied, suspended, or revoked under all applicable rules required for the programs in the consolidated permit.

#### §33.29. Modification of a Consolidated Permit.

A consolidated permit, or any component authorization of that permit, shall be modified under all applicable rules required for the programs in the consolidated permit. A component authorization that is separated from a consolidated permit for modification shall retain the same term as the consolidated permit.

#### §33.31. Emergency or Temporary Orders.

An emergency or temporary order concerning a consolidated permit shall be issued under Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions).

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

Filed with the Office of the Secretary of State, on July 2, 1998.

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Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: November 4, 1998

For further information, please call: (512) 239-1966



## Subchapter C. Consolidated Permit Processing

### 30 TAC §§33.41, 33.43, 33.45, 33.47, 33.49, 33.51

#### STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code, §5.401 et.seq., which establishes the commission's authority concerning consolidated permit processing. Other relevant sections under which the commission takes this action include: §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. This action is also taken under Texas Health and Safety Code, §382.017, which establishes the commission's rulemaking authority.

The proposed new sections implement Texas Water Code, §5.401 et.seq.

#### §33.41. Pre-submittal Conference.

An applicant considering the submission of applications for coordinated reviews and one hearing, or for a consolidated permit, may request a pre-submittal conference to determine, at a minimum, the types of permits to be consolidated, timelines for the submission of applications, and notice and hearing requirements. A request for a pre-submittal conference may be made to the executive director.

#### §33.43. Intent to File Applications for Consolidated Permit Processing and a Consolidated Permit.

(a) An applicant shall notify the commission of the intent to request consolidated permit processing or a consolidated permit by submitting a letter of intent to the executive director. The letter of intent must contain at least the following:

- (1) the applicant's name;
- (2) the applicant's address;
- (3) the location of the facility;
- (4) the number and types of authorizations to be consolidated;

and

- (5) the types of notices the applicant wishes to combine;

- (6) the beginning and ending date of the time period, not to exceed 30 days, during which the applicant will submit all applications intended for consolidation.

(b) All applications received by the executive director will be held and not processed until the ending date identified by the applicant under subsection (a)(6) of this section. This does not exempt the applicant from the timely submittal of permit renewal applications as required in Chapter 305, Subchapter D of this title (relating to Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits), or Chapter 336 of this title (relating to

Radiation Rules). All applications received by that date are deemed as officially received on that date by the executive director for the purpose of processing the applications.

(c) If an applicant has not submitted all of the applications by the deadline specified in subsection (a)(6) of this section, the executive director shall return all of the applications to the applicant unless the applicant has amended its letter of intent. The letter of intent may be amended by submitting a revised letter of intent to the executive director. Renewal applications will not be returned, but shall be processed separately.

#### §33.45. Separation by Executive Director.

(a) The executive director may require separate processing of consolidated applications, or may return one or more applications, if the executive director determines:

(1) that the applicant has submitted an incomplete application; or

(2) if the applicant does not respond as requested to notices of deficiency.

(b) The executive director shall notify the applicant of any decision concerning applications under this section. This notice shall include the reasons for the executive director's decision on the applications.

#### §33.47. Request for Separate Processing Before Public Notice of Opportunity to Request a Hearing.

(a) An applicant may request that consolidated applications be processed separately at any time before mailing or publishing any public notice of the opportunity to request a hearing.

(b) Requests shall be filed with the executive director in a timely fashion and include at least the applicant's name and a list of the applications to be separated.

#### §33.49. Separate Processing After Notice of Opportunity to Request a Hearing and Before Referral to SOAH.

(a) The executive director may separate the applications for processing at any time after the issuance of any notice of opportunity to request a hearing, but before referral of the matter to SOAH, upon demonstration of good cause by the applicant. For purposes of this section, good cause includes, but is not limited to:

(1) a change in the statutory or regulatory requirements governing a permit; or

(2) a substantial change in the factual circumstances surrounding the applications for permits.

(b) An applicant shall file the request for separate processing with the executive director and provide copies to affected program offices. The request shall include the following:

(1) the applicant's name;

(2) a list of the applications to be separated; and

(3) the demonstration of good cause.

(c) Upon determination by the executive director that there is good cause for the separate processing of permit applications, the chief clerk shall notify anyone who submitted comment or a hearing request on any combined notice of the executive director's decision. The applicant shall re-notice the separate applications in accordance with applicable commission notice requirements.

(d) Any hearing requests received on the consolidated applications before the applicant requested separate processing shall

be held by the chief clerk. The chief clerk shall process those requests along with all additional comments and hearing requests received for each of the separate applications after those applications are renoticed under subsection (c) of this section.

§33.51. Separate Processing After Referral to SOAH.

An applicant may have applications processed separately after an application has been referred to SOAH. An applicant shall show compliance with §80.25 of this title (relating to Withdrawing the Application) in order to have the applications processed separately.

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

Filed with the Office of the Secretary of State, on July 2, 1998.

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Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

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For further information, please call: (512) 239-1966



## Chapter 39. Public Notice

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §§39.1, 39.5, and 39.251, concerning public notice, and new §39.401, concerning public notice for applications for consolidated permits. This action is part of the commission's implementation of House Bill (HB) 1228, 75th Legislature, 1997, which granted the commission authority to conduct consolidated permit processing and issue consolidated permits. It also includes minor corrections and clarifications to preexisting rules.

In addition, the commission is concurrently proposing a new 30 TAC Chapter 33, concerning Consolidated Permit Processing. The new chapter is published in this edition of the *Texas Register*.

### EXPLANATION OF PROPOSED RULES

HB 1228 created a new Texas Water Code (TWC), Chapter 5, Subchapter J. The new statute creates a process for an applicant to request consolidated permit processing and the issuance of a consolidated permit. Federal operating permits are prohibited from consolidation. The statute establishes a voluntary program by which a plant, facility, or site can request consolidated permit processing. It provides for designation of a lead permitting program for coordination of application reviews, a consolidated permit hearing on all permits requested by the applicant, and issuance of one consolidated permit. It also allows the commission to adopt rules to implement the program, including rules that provide for consolidated notice and procedures for issuing such permits.

These proposed rules are necessary to implement the notice provisions of the statute and do not represent a fundamental change to the commission's notice processes. Due to the limited and voluntary nature of TWC, Chapter 5, Subchapter J, as well as other statutory limitations, such as permit and notice requirements under federal programs for which the commission is seeking authorization, implementation of HB 1228 will be conducted under current commission rules and processes.

The proposed rules also include corrections to certain provisions in Chapter 39. These are proposed for clarification purposes.

The proposed amendment to §39.1, concerning Applicability, provides that Chapter 39 applies to applications for consolidated permit processing.

The proposed amendment to §39.5, concerning General Provisions, removes redundant language concerning the publication of newspaper notice. This change is nonsubstantive, and its intent is to correct a mistake in the existing rule.

The proposed amendment to §39.251, concerning Application for Injection Well Permit, clarifies that the rules apply to both existing and proposed facilities.

Proposed new §39.401, concerning Public Notice for Applications for Consolidated Permits, provides that combined notices for applications consolidated under Texas Water Code, Chapter 5, Subchapter J, and Chapter 33, will be given only when requested by an applicant and when the combined notice satisfies all statutory and regulatory requirements applicable if each application had been processed separately. This provision clarifies that all applicable notice requirements must be met when an applicant requests consolidated permit processing. The commission notes that combined notices are not mandatory, and that an applicant retains the ability to do separate notices if it prefers.

### FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections as proposed are in effect, there will be fiscal implications as a result of administration or enforcement of the sections. The effect on state government will be a minor reduction in cost associated with the consolidation of separate permitting processes, particularly public hearings. Some costs may be incurred in the initial development of new procedures for consolidated permits, but these costs are not anticipated to outweigh anticipated savings. No significant effects are anticipated for local governments, except some local governments may elect to acquire consolidated permits for regulated activities and would be similarly affected as any other party.

### PUBLIC BENEFIT

Mr. Minick has also determined that, for the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcement of and compliance with the sections will be improvement in and simplification of the process of issuing permits under different program requirements, more cost-effective management of permitted activities, and enhanced opportunities for public participation in the permitting process. Generally, costs to affected parties are not anticipated to increase and could, in fact, decrease as a result of the proposed rules. Participation in a consolidated permit process is voluntary and there are no economic costs anticipated to any person, including small business, required to comply with the sections as proposed.

### DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute,

and it does not meet any of the four applicability requirements listed in §2001.0225(a). The rule is not a major environmental rule because it prescribes limited procedural requirements governing a voluntary program, and it provides for minor clarifications to existing rules. In addition, the provisions concerning notice for consolidated permits are expressly authorized by state statute, TWC, Chapter 5, Subchapter J.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of these rules is to implement the statutory provisions of TWC, Chapter 5, Subchapter J, concerning consolidated permit processing, and to make necessary clarifications to existing rules. The rules will substantially advance this purpose by providing specific provisions on these matters. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because they concern commission procedural rules.

#### COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the proposed rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program (CMP), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. These rules concern procedural requirements of the agency relating to public notice. Therefore, the proposed rules are not subject to the CMP.

#### PUBLIC HEARING

A public hearing on this proposal will be held August 17, 1998, at 10:00 a.m. in Room 2210 of Texas Natural Resource Conservation Commission (TNRCC) Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas, 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 97170-033-AD. Comments must be received by 5:00 p.m., August 17, 1998. For further information, please contact Brian Christian, Policy Research Division, (512) 239-1760.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

#### Subchapter A. Applicability and General Provisions

##### 30 TAC §39.1, §39.5

#### STATUTORY AUTHORITY

The amendments are proposed under the following sections of the TWC: §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; and §5.401 et seq., which establishes the commission's authority concerning consolidated permit processing. This action is also taken under Texas Health and Safety Code, §382.017, which establishes the commission's rulemaking authority.

The proposed amendments implement TWC, §§5.103, 5.105, and 27.019, and Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

#### §39.1. Applicability.

This chapter applies to:

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

(8) applications for consolidated permit processing and consolidated permits processed under Texas Water Code, Chapter 5, Subchapter J, and Chapter 33 of this title (relating to Consolidated Permit Processing).

#### §39.5. General Provisions.

(a)-(f) (No change.)

(g) When this chapter requires notice to be published according to this subsection, the applicant shall publish notice in a newspaper of the largest general circulation that is published in the county in which the facility is located or proposed to be located. If a newspaper is not published in the county, the notice must be published in a newspaper of general circulation in the county in which the facility is located or proposed to be located. If a newspaper is not published in the county, and the application concerns an application for a new or amended municipal solid waste permit, and publication of notice of intent, notice of draft permit, or notice of hearing, then the applicant shall publish notice in a newspaper of the largest general circulation [~~that is published~~] in the county in which the facility is located or proposed to be located and in a newspaper of circulation in the immediate vicinity in which the facility is located or proposed to be located, and such notice may be satisfied by one publication if the publishing newspaper meets both circulation requirements. This subsection does not apply to applications for radioactive material licenses under Chapter 336 of this title.

(h) (No change.)

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

Filed with the Office of the Secretary of State, on July 2, 1998.

TRD-9810526

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: November 4, 1998

For further information, please call: (512) 239-1966



#### Subchapter E. Public Notice of Other Specific Applications

##### 30 TAC §39.251

#### STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.103, which establishes the commission's general authority to adopt rules; and §5.105, which establishes the commission's authority to set policy by rule. This action is also taken under Texas Health and Safety Code, §382.017, which establishes the commission's rulemaking authority.

The proposed amendment implements Texas Water Code, §§5.103, 5.105, and 27.019, and Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

§39.251. *Application for Injection Well Permit.*

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

(d) Notice of draft permit.

(1) The applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and in each county and area which is adjacent or contiguous to each county in which the [proposed] facility is located.

(2)-(4) (No change.)

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

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

Filed with the Office of the Secretary of State, on July 2, 1998.

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Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: November 4, 1998

For further information, please call: (512) 239-1966



## Subchapter G. Public Notice for Applications for Consolidated Permits

### 30 TAC §39.401

#### STATUTORY AUTHORITY

The new section is proposed under the following sections of the TWC: §5.103, which establishes the commission's general authority to adopt rules; §5.105, which establishes the commission's authority to set policy by rule; and §5.401 et seq., which establishes the commission's authority concerning consolidated permit processing. This action is also taken under Texas Health and Safety Code, §382.017, which establishes the commission's rulemaking authority.

The proposed new section implements Texas Water Code, §§5.103, 5.105, and 27.019, and Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

§39.401. *Public Notice for Applications for Consolidated Permits.*

Combined public notices shall be given for applications consolidated under Texas Water Code, Chapter 5, Subchapter J, and Chapter 33 of this title (relating to Consolidated Permit Processing) only when:

(1) combined notice is requested by the applicant; and

(2) combined notice satisfies all statutory and regulatory requirements that would apply if each application had been processed separately, including, without limitation, all requirements for notice content, publication, mailing, broadcasting, and the posting of signs.

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

Filed with the Office of the Secretary of State, on July 2, 1998.

TRD-9810528

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

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For further information, please call: (512) 239-1966



## Chapter 113. Control of Air Pollution From Toxic Materials

The commission proposes amendments to §§113.100, 113.110, 113.120, 113.130, 113.140, 113.190, 113.220, 113.230, 113.250, 113.290, 113.360, and 113.380, and new §§113.260, 113.350, 113.400, 113.420, and 113.670, concerning National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories.

The proposed amendments incorporate changes that the United States Environmental Protection Agency (EPA) has made to Maximum Achievable Control Technology (MACT) standards by updating the federal promulgation dates cited in the commission rules that were previously adopted by reference. Sections 113.100, 113.110, 113.120, 113.130, 113.140, 113.230, 113.250, and 113.290 were adopted by the commission on June 25, 1997. Section 113.190 and §113.380 were adopted by the commission on October 15, 1997. In addition, the commission proposes to correct the federal promulgation dates for §113.220 and §113.360, which contained incorrect dates as adopted.

The proposed new sections concern requirements that are contained in 40 Code of Federal Regulations (CFR) Part 63. The EPA is developing these national standards to regulate emissions of hazardous air pollutants under of the Federal Clean Air Act (FCAA) Amendments, §112. These NESHAPs for source categories are technology based standards and commonly referred to as MACT Standards.

**EXPLANATION OF PROPOSED RULES** The commission proposes to adopt by reference, without changes, five of the federal MACT Standards. Under federal law, the affected industries will be required to implement these MACT standards regardless of whether the commission or the EPA is the agency responsible for implementation of the standards. With delegation, the commission will be responsible for administration and enforcement of the MACT requirements.

These five federal rules, each of which will be under their own division of the same name, are Group I Polymers and Resins, 40 CFR 63, Subpart U; Offsite Waste and Recovery Operations, 40 CFR 63, Subpart DD; Shipbuilding and Ship Repair (Surface Coating), 40 CFR 63, Subpart II; Printing and Publishing, 40 CFR 63, Subpart KK; and Group IV Polymers and Resins, 40 CFR 63, Subpart JJJ. As other MACT standards continue to be promulgated, they will be reviewed for compatibility with current state regulations and policies. The commission will then incorporate them into Chapter 113 through formal rulemaking procedures. The commission will then seek formal delegation from EPA under 40 CFR 63, Subpart E, which implements the FCAA Amendments, §112(l).

**FISCAL NOTE** Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period these sections as proposed are in effect, there will be no significant fiscal implications for state or local government as a result of administration or enforcement of the sections. Enforcement of these federal standards will result in some increased workload for commission staff, particularly in the compliance inspection of affected facilities. These increases are not anticipated to significantly increase the number of facilities currently inspected and are anticipated to be managed within existing budgeted resources and appropriated levels of funds from the state Clean Air Fund.

**PUBLIC BENEFIT** Mr. Minick has also determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated from enforcement of and compliance with these sections will be a reduction in the emission of hazardous air pollutants, increased consistency between federal and state air quality regulations, and more cost effective implementation and enforcement of air quality standards. The economic impact of complying with the standards as they are promulgated will vary for each standard and for each industry subject to the standards; however, no additional economic impact to affected owners and operators is anticipated due to the state's adoption of the federal requirements or the delegation of enforcement to the state. There are no additional anticipated economic costs to persons or small businesses required to comply with the sections as proposed.

**DRAFT REGULATORY IMPACT ANALYSIS** The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Code. This rulemaking does not establish any new requirements beyond those already established by federal law. Affected sources are required to comply with these federal standards whether or not the commission adopts them.

**TAKINGS IMPACT ASSESSMENT** The commission has prepared a Takings Impact Assessment for this proposal pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rulemaking is to facilitate implementation and enforcement of the MACT standards by the state. This rulemaking will not create any additional burden on private real property. Under federal law, the affected industries will be required to implement these MACT standards regardless of whether the commission or the EPA is the agency responsible for implementation of the standards.

**COASTAL MANAGEMENT PLAN** The commission has determined that the proposed rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resource Code, §33.201 et. seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this proposed action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and has determined that the proposed action is consistent with the applicable CMP

goals and policies. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations at Title 40, Code of Federal Regulations, to protect and enhance air quality in the coastal area, (31 TAC §501.14(q)). This proposal will adopt by reference, without changes, five federal MACT standards contained in 40 CFR Part 63, and is therefore consistent with this policy. Interested persons may submit comments on the consistency of the proposed rules with the CMP during the public comment period.

**PUBLIC HEARING** A public hearing on this proposal will be held in Austin on August 13, 1998 at 10:00 a.m. in Building F, Room 5108 of the commission's central office, located at 12100 North IH-35, Park 35 Technical Center, Austin, Texas 78753. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

**SUBMITTAL OF COMMENTS** Written comments may be mailed to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98014-113-AI. Comments must be received by 5:00 p.m., August 17, 1998. For further information or questions concerning this proposal, contact Ann Hammer, Office of Policy and Regulatory Development, (512) 239-6255.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearings should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

## Subchapter C. National Emission Standards for Hazardous Air Pollutants for Source Categories (FCAA §112, 40 CFR 63)

### Division 1. General Provisions

#### 30 TAC §113.100

**STATUTORY AUTHORITY** The amendment is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The amendment is being proposed to obtain delegation from EPA under 40 CFR 63, Subpart E, which implements the FCAA Amendments, §112(l).

*§113.100. General Provisions (40 CFR 63, Subpart A).*

The General Provisions for the National Emission Standards for Hazardous Air Pollutants for Source Categories as specified in 40 CFR 63, Subpart A, as amended through May 4, 1998 [~~December 15, 1995~~], are incorporated by reference with the following exceptions:

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

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

Filed with the Office of the Secretary of State, on July 2, 1998.

TRD-9810488

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: October 7, 1998

For further information, please call: (512) 239-1970



## Division 2. Hazardous Organic NESHAP

### 30 TAC §§113.110, 113.120, 113.130, 113.140

These amendments are proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

These amendments are being proposed to obtain delegation from EPA under 40 CFR 63, Subpart E, which implements the FCAA Amendments, §112(l).

*§113.110. Synthetic Organic Chemical Manufacturing Industry (40 CFR 63, Subpart F).*

The Synthetic Organic Chemical Manufacturing Industry Maximum Achievable Control Technology standard as specified in 40 CFR 63, Subpart F, as amended through May 12, 1998 [~~June 20, 1996~~] is incorporated by reference.

*§113.120. Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater (40 CFR 63, Subpart G).*

The Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater Maximum Achievable Control Technology standard as specified in 40 CFR 63, Subpart G, as amended through January 17, 1997 [~~February 29, 1996~~], is incorporated by reference.

*§113.130. Organic Hazardous Air Pollutants for Equipment Leaks (40 CFR 63, Subpart H).*

The Organic Hazardous Air Pollutants for Equipment Leaks Maximum Achievable Control Technology standard as specified in 40 CFR 63, Subpart H, as amended through January 17, 1997 [~~January 4, 1996~~], is incorporated by reference.

*§113.140. Certain Processes Subject to the Negotiated Regulation for Equipment Leaks (40 CFR 63, Subpart I).*

The Certain Processes Subject to the Negotiated Regulations for Equipment Leaks Maximum Achievable Control Technology standard as specified in 40 CFR 63, Subpart I, as amended through January 17, 1997 [~~January 17, 1996~~], is incorporated by reference.

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

Filed with the Office of the Secretary of State, on July 2, 1998.

TRD-9810489

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: October 7, 1998

For further information, please call: (512) 239-1970



## Division 4. Chromium Emissions From Hard And Decorative Chromium Electroplating And Chromium Anodizing Tanks

### 30 TAC §113.190

This amendment is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

This amendment is being proposed to obtain delegation from EPA under 40 CFR 63, Subpart E, which implements the FCAA Amendments, §112(l).

*§113.190. Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (40 CFR 63, Subpart N).*

The Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks Maximum Achievable Control Technology standard as specified in 40 CFR 63, Subpart N, as amended through August 11, 1997 [~~January 30, 1997~~], is incorporated by reference.

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

Filed with the Office of the Secretary of State, on July 2, 1998.

TRD-9810490

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: October 7, 1998

For further information, please call: (512) 239-1970



## Division 6. Industrial Process Cooling Towers

### 30 TAC §113.220

This amendment is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

This amendment is being proposed to obtain delegation from EPA under 40 CFR 63, Subpart E, which implements the FCAA Amendments, §112(l).

*§113.220. Industrial Process Cooling Towers (40 CFR 63, Subpart Q).*

The Industrial Process Cooling Towers Maximum Achievable Control Technology standard as specified in 40 CFR 63, Subpart Q, September 8, 1994 [~~1996~~], is incorporated by reference.

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

Filed with the Office of the Secretary of State, on July 2, 1998.

TRD-9810491

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: October 7, 1998

For further information, please call: (512) 239-1970



## Division 7. Gasoline Distribution Facilities

### 30 TAC §113.230

This amendment is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

This amendment is being proposed to obtain delegation from EPA under 40 CFR 63, Subpart E, which implements the FCAA Amendments, §112(l).

*§113.230. Gasoline Distribution Facilities (40 CFR 63, Subpart R).*

The Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations) Maximum Achievable Control Technology standard as specified in 40 CFR 63, Subpart R, as amended through January 16, 1998 [~~February 28, 1997~~], is incorporated by reference.

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

Filed with the Office of the Secretary of State, on July 2, 1998.

TRD-9810492

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: October 7, 1998

For further information, please call: (512) 239-1970



## Division 8. Halogenated Solvent Cleaning

### 30 TAC §113.250

This amendment is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

This amendment is being proposed to obtain delegation from EPA under 40 CFR 63, Subpart E, which implements the FCAA Amendments, §112(l).

*§113.250. Halogenated Solvent Cleaning (40 CFR 63, Subpart T).*

The Halogenated Solvent Cleaning Maximum Achievable Control Technology standard as specified in 40 CFR 63, Subpart T, as amended through May 5, 1998 [~~June 6, 1996~~], is incorporated by reference.

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

Filed with the Office of the Secretary of State, on July 2, 1998.

TRD-9810493

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: October 7, 1998

For further information, please call: (512) 239-1970



## Division 9. Group I Polymers and Resins

### 30 TAC §113.260

The new rule is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

This rule is being proposed to obtain delegation from EPA under 40 CFR 63, Subpart E, which implements the FCAA Amendments, §112(l).

*§113.260. Group I Polymers and Resins (40 CFR 63, Subpart U).*

The Group I Polymers and Resins Maximum Achievable Control Technology standard as specified in 40 CFR 63, Subpart U, as amended through July 15, 1997, is incorporated by reference.

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

Filed with the Office of the Secretary of State, on July 2, 1998.

TRD-9810494

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission



Proposed date of adoption: October 7, 1998  
For further information, please call: (512) 239-1970



## Division 11. Secondary Lead Smelting

### 30 TAC §113.290

This amendment is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

This amendment is being proposed to obtain delegation from EPA under 40 CFR 63, Subpart E, which implements the FCAA Amendments, §112(l).

*§113.290. Secondary Lead Smelting (40 CFR 63, Subpart X).*

The Secondary Lead Smelting Maximum Achievable Control Technology standard as specified in 40 CFR 63, Subpart X, as amended through June 13, 1997 [~~December 12, 1996~~], is incorporated by reference.

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

Filed with the Office of the Secretary of State, on July 2, 1998.

TRD-9810495

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: October 7, 1998

For further information, please call: (512) 239-1970



## Division 14. Offsite Waste and Recovery Operations

### 30 TAC §113.350

The new rule is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

This rule is being proposed to obtain delegation from EPA under 40 CFR 63, Subpart E, which implements the FCAA Amendments, §112(l).

*§113.350. Offsite Waste and Recovery Operations (40 CFR 63, Subpart DD).*

The Offsite Waste and Recovery Operations Maximum Achievable Control Technology standard as specified in 40 CFR 63, Subpart DD, as amended through July 1, 1996, is incorporated by reference.

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

Filed with the Office of the Secretary of State, on July 2, 1998.

TRD-9810496

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: October 7, 1998

For further information, please call: (512) 239-1970



## Division 15. Magnetic Tape Manufacturing Operations

### 30 TAC §113.360

This amendment is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

This amendment is being proposed to obtain delegation from EPA under 40 CFR 63, Subpart E, which implements the FCAA Amendments, §112(l).

*§113.360. Magnetic Tape Manufacturing Operations (40 CFR 63, Subpart EE).*

The Magnetic Tape Manufacturing Operations Maximum Achievable Control Technology standard as specified in 40 CFR 63, Subpart EE, December [~~September~~] 15, 1994, is incorporated by reference.

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

Filed with the Office of the Secretary of State, on July 2, 1998.

TRD-9810497

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: October 7, 1998

For further information, please call: (512) 239-1970



## Division 16. Aerospace Manufacturing and Re-work Facilities

### 30 TAC §113.380

This amendment is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; and §382.017, which provides the

commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

This amendment is being proposed to obtain delegation from EPA under 40 CFR 63, Subpart E, which implements the FCAA Amendments, §112(l).

§113.380. Aerospace Manufacturing and Rework Facilities (40 CFR 63, Subpart GG).

The Aerospace Manufacturing and Rework Facilities Maximum Achievable Control Technology standard as specified in 40 CFR 63, Subpart GG, as amended through March 27, 1998 [~~December 17, 1996~~], is incorporated by reference.

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

Filed with the Office of the Secretary of State, on July 2, 1998.

TRD-9810498

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: October 7, 1998

For further information, please call: (512) 239-1970



## Division 17. Shipbuilding and Ship Repair (Surface Coating)

### 30 TAC §113.400

The new rule is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

This rule is being proposed to obtain delegation from EPA under 40 CFR 63, Subpart E, which implements the FCAA Amendments, §112(l).

§113.400. Shipbuilding and Ship Repair (Surface Coating) (40 CFR 63, Subpart II).

The Shipbuilding and Ship Repair (Surface Coating) Maximum Achievable Control Technology standard as specified in 40 CFR 63, Subpart II, as amended through December 17, 1996, is incorporated by reference.

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

Filed with the Office of the Secretary of State, on July 2, 1998.

TRD-9810499

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: October 7, 1998

For further information, please call: (512) 239-1970



## Division 18. Printing and Publishing

### 30 TAC §113.420

The new rule is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The rule is being proposed to obtain delegation from EPA under 40 CFR 63, Subpart E, which implements the FCAA Amendments, §112(l).

§113.420. Printing and Publishing (40 CFR 63, Subpart KK).

The Printing and Publishing Maximum Achievable Control Technology standard as specified in 40 CFR 63, Subpart KK, as amended through May 30, 1996, is incorporated by reference.

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

Filed with the Office of the Secretary of State, on July 2, 1998.

TRD-9810500

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Proposed date of adoption: October 7, 1998

For further information, please call: (512) 239-1970



## Division 19. Group IV Polymers and Resins

### 30 TAC §113.670

The new rule is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The rule is being proposed to obtain delegation from EPA under 40 CFR 63, Subpart E, which implements the FCAA Amendments, §112(l).

§113.670. Group IV Polymers and Resins (40 CFR 63, Subpart JJJ).

The Group IV Polymers and Resins Maximum Achievable Control Technology standard as specified in 40 CFR 63, Subpart JJJ, as amended through March 31, 1998, is incorporated by reference.

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

Filed with the Office of the Secretary of State, on July 2, 1998.

TRD-9810501

Kevin McCalla

Director, Legal Division  
Texas Natural Resource Conservation Commission  
Proposed date of adoption: October 7, 1998  
For further information, please call: (512) 239-1970

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## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### Part III. Texas Youth Commission

#### Chapter 93. Youth Rights and Remedies

##### 37 TAC §93.1

The Texas Youth Commission (TYC) proposes an amendment to §93.1, concerning basic youth rights. The amendment, as adopted on an emergency basis on April 27, 1998, will provide for the restriction of the flow of mail among TYC youth when there is reason to believe there is a threat to the security and order of the facility and thus the safety of staff and youth. Specific detail for the handling of youth mail is deleted in this rule.

Terry Graham, Assistant Deputy Executive Director for Financial Support, 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. Graham 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 safety for staff and youth in TYC facilities. 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. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to determine the appropriate treatment and restriction of youth in custody.

The proposed rule implements the Human Resource Code, §61.034.

§93.1. *Basic Youth Rights.*

(a)-(g) (No change.)

(h) Right of Access to Mail and Telephone. Youth have the right to correspond freely through the mails except when correspondence between youth presents a risk to facility security and order. Staff may not read incoming or outgoing mail, but may open incoming mail in the youth's presence to inspect it for contraband. Youth may seal outgoing correspondence. [~~incoming and outgoing letters are not held for more than 24 hours, packages for more than 48 hours, excluding weekends and holidays. First class letters and packages are forwarded to a youth who has been transferred or released.~~ ] See (GAP) §93.15 of this title (relating to Youth Mail). Youth will be provided access to telephones to the extent possible within plant limitations, with equal opportunities for telephone use being provided to all residents within a facility. Youth will have access to a telephone in the event of an emergency. TYC

does not have a responsibility to pay for incoming or outgoing long-distance calls, except in an emergency. See (GAP) §93.13 of this title (relating to Use of Telephone).

(i)-(o) (No change.)

(p) Right to Express Grievances and Appeal Decisions. Youth have the right, without fear of reprisal, to have access to a prompt and fair [~~some~~] method of resolving complaints [~~which is prompt and fair, without fear of reprisal.~~] Youth have the right to appeal to the executive director from any decision made regarding them. See (GAP) §93.31 of this title (relating to Youth Complaint Resolution System).

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

Filed with the Office of the Secretary of State on July 1, 1998.

TRD-9810444

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: August 16, 1998

For further information, please call: (512) 424-6244

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## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 3. Income Assistance Services

##### Subchapter CC. Claims

##### 40 TAC §3.2901

The Texas Department of Human Services (DHS) proposes to amend §3.2901, concerning client responsibility to repay, in its Income Assistance Services chapter. The purpose of the amendment is to comply with an agency initiative and the Program Simplification Workgroup by making Temporary Assistance for Needy Families (TANF) policies more compatible with current Food Stamp policies. The primary change is in determining the first month of overpayment as the first month in which a change would have been effective had it been reported and processed in a timely manner.

Eric M. Bost, commissioner, has determined that for the first five-year period the proposed amendment will be in effect there will be fiscal implications as a result of enforcing or administering the amendment. The effect on state government for the first five-year period the proposed amendment will be in effect is an estimated reduction in cost of \$0 in fiscal year (FY) 1998; \$1,139,972 in FY 1999; \$1,240,625 in FY 2000; \$1,237,976 in FY 2001; and \$1,231,021 in FY 2002. There will be no fiscal implications for local government as a result of enforcing or administering the amendment.

Mr. Bost also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be that the amount collected for overpayment of TANF benefits will decrease. The change will not decrease the number of overpayment referrals

processed but the amount of overpayments to be collected will be significantly reduced. The impact on workload will be minimal as the specialized staff who perform this task are centrally located within the regions. It is not anticipated that these changes will affect small businesses. This change will neither drastically increase or decrease client eligibility/benefits to the point that local businesses would be impacted. There is no anticipated economic cost to individuals who are required to comply with the proposed amendment.

Questions about the content of this proposal may be directed to Rita King at (512) 438-4148 in DHS's Client Self-Support Services Department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-306, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 31, which provides the department with the authority to administer public and financial assistance programs.

The amendment implements the Human Resources Code, §§22.001-22.030 and §§31.001-31.0325.

§3.2901. *Client Responsibility to Repay.*

(a) Temporary Assistance for Needy Families (TANF) [Aid to Families with Dependent Children]. Clients must repay any benefits they ~~receive that they~~ are not entitled to receive.

(1) The first month of overpayment is the first month in which a change would have been effective had it been reported and processed in a timely manner. The first month of overpayment can be no later than two months from the month the change occurred.

(2) An overpayment occurs because of

(A) an agency error;

(B) a client error; or

(C) an intentional program violation.

(3) Benefits can be repaid through restitution or by recoupment.

(b) (No change.)

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

Filed with the Office of the Secretary of State, on June 30, 1998.

TRD-9810329

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: October 1, 1998

For further information, please call: (512) 438-3765



Subchapter NN. Electronic Benefit Transfer  
40 TAC §3.4011

The Texas Department of Human Services (DHS) proposes to amend §3.4011, concerning expunging benefits, in its Income Assistance Services chapter. The purpose of the amendment is to comply with state legislation relating to expunging Temporary Assistance for Needy Families (TANF) benefits after the account has been dormant for 12 months.

Eric M. Bost, commissioner, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section.

Mr. Bost also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the state will be in compliance with state legislation and will be compatible with the expungement policy in the Food Stamp Program. It is not anticipated that these changes will affect small businesses. These changes are technical in nature and neither drastically increase or decrease client eligibility/benefits to the point that local businesses would be impacted. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Rita King at (512) 438-4148 in DHS's Client Self-Support Services Department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-315, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 31, which provides the department with the authority to administer public and financial assistance programs.

The amendment implements the Human Resources Code, §§22.001-22.030 and §§31.001-31.0325.

§3.4011. *Expunging Benefits.*

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

(c) DHS expunges all the Temporary Assistance for Needy Families (TANF) benefits in an Electronic Benefit Transfer (EBT) account if the account has not been accessed by the household for one year.

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

Filed with the Office of the Secretary of State, on June 30, 1998.

TRD-9810308

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Earliest possible date of adoption: October 1, 1998

For further information, please call: (512) 438-3765



# ADOPTED RULES

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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.

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## TITLE 4. AGRICULTURE

### Part VII. Texas Agriculture Resources Protection Authority

#### Chapter 101. General Rules

##### Subchapter A. Routine Procedures

###### 4 TAC §101.2, §101.20

The Texas Agriculture Resources Protection Authority (the Authority) adopts amendments to §101.2, concerning meetings of the Authority, and §101.20 concerning submission of reports by agencies. Section 101.2 is adopted with changes to the proposal published in the May 22, 1998 issue of the *Texas Register* (23 TexReg 5291). Section 101.20 is adopted without changes and will not be republished.

The reference to a "regular quarterly meeting" has been changed to delete the term "quarterly" from the last phrase of subsection (a), to make that subsection consistent with other amendments made to the section. The amendments are adopted to make §101.2 consistent with changes made by the 75th Legislature and to correct an error in §101.20. House Bill 1144, 75th Legislature, 1997, changed the meeting requirement of the Authority from quarterly to annually. The amendment to §101.2 changes to annually all references to quarterly meetings and establishes the annual meeting date as the first Monday of June each year. The amendment to §101.20 corrects an error to clarify when reports are to be filed.

No comments were received on the proposal.

The amendments are adopted under the Texas Agriculture Code, §76.009, as amended by House Bill 1144, 75th Legislature, 1997, which provides the Texas Agriculture Resources Protection Authority with the authority to adopt rules to carry out its duties.

###### §101.2. Meetings.

(a) The required annual meetings of the Texas Agriculture Resources Protection Authority (the Authority) shall be held on the first Monday of June each year at 10 a.m. at a location designated by the commissioner for use of the Authority unless a different date, hour, or place is specified by call for the regular meeting to be held alternatively at another place, date, or hour.

(b) Alternative annual meetings or special meetings may be called by the presiding officer of the Authority or by a majority of the members of the Authority. A call by a majority of the members must be in writing and delivered to the commissioner at least ten days in

advance of the anticipated meeting date. The call shall state the time, place, and purpose of the meeting, including a proposed agenda.

(c)-(e) (No change.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 2, 1998.

TRD-9810502

Dolores Alvarado Hibbs

Deputy General Counsel, Texas Department of Agriculture

Texas Agriculture Resources Protection Authority

Effective date: July 22, 1998

Proposal publication date: May 22, 1998

For further information, please call: (512) 463-7541

## TITLE 16. ECONOMIC REGULATION

### Part I. Railroad Commission of Texas

#### Chapter 3. Oil and Gas Division

###### 16 TAC §3.83

The Railroad Commission of Texas adopts amendments to §3.83 regarding tax exemption for three-year inactive wells without changes to the proposed text published in the April 3, 1998 issue of the *Texas Register* (23 TexReg 3403). The adopted amendments add the two-year inactive well incentive provided for under Senate Bill 126 (75th Legislature). As the rule will be administered, the operator of a well that has not produced oil or gas in more than one month in the two years preceding the date of application for severance tax exemption will receive notice from the commission that the well has been designated as a candidate for certification. The operator shall apply for two-year inactive well certification during the period of September 1, 1997, through August 31, 1999, to qualify for the tax exemption.

The Commission received no comments on the proposal.

These amendments are adopted pursuant to the Texas Natural Resources Code §§81.051, 81.052, 85.055, 85.201 - 85.202, 86.011, 86.012, 86.041, 86.042, 86.081, 86.083 - 86.090, 111.083, 111.090 and 111.133 which authorize the Railroad Commission of Texas to adopt rules for the following purposes: to govern and regulate persons and their operations under the jurisdiction of the Railroad Commission; to determine the status of gas production from all gas reservoirs, to distribute, prorate

and apportion allowable production, to determine the lawful market demand for gas to be produced from each reservoir; to adjust correlative rights and opportunities; to determine the daily allowable production for each gas well; to effectuate the provisions and purposes of Chapter 86 of the Natural Resources Code; and to conserve and prevent waste of gas.

The Texas Natural Resources Code, Chapter 86, is affected by the amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 1, 1998.

TRD-9810410

Mary Ross McDonald

Deputy General Counsel

Railroad Commission of Texas

Effective date: July 21, 1998

Proposal publication date: April 3, 1998

For further information, please call: (512) 463-7008



## Chapter 5. Rail Division

### Subchapter J. Rail Safety

#### 16 TAC §5.802

The Railroad Commission of Texas adopts amendments to §5.802, concerning reports of railroad accidents/incidents, without changes to the proposed version published in the February 13, 1998, issue of the *Texas Register* (23 TexReg 1254). Currently, railroads are required to notify the commission immediately of any collision, derailment, fire, explosion, act of God, or other event occurring in the state of Texas that: results in the death of any railroad passenger or railroad employee; results in the death or injury of two or more persons; involves a passenger train; or involves a commodity classified as a hazardous material under 49 Code of Federal Regulations Part 172. The amendments require the railroads to notify the commission immediately upon the occurrence of any of the described events that results in the death of one or more persons.

The commission received no comments from groups or associations. The commission received one comment, from United Transportation Union, which supports the amendments as proposed.

The commission adopts the amendments pursuant to Texas Civil Statutes, Article 6448a, which authorizes the commission to issue rules as permitted by the Federal Railroad Safety Act of 1970.

Texas Civil Statutes, Article 6448a, is the statute affected by the amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 1, 1998.

TRD-9810411

Mary Ross McDonald

Deputy General Counsel

Railroad Commission of Texas

Effective date: July 21, 1998

Proposal publication date: February 13, 1998

For further information, please call: (512) 463-7008



## Part II. Public Utility Commission of Texas

### Chapter 22. Practice and Procedure

The Public Utility Commission of Texas adopts amendments to §22.31 relating to Classification in General; §22.33 relating to Tariff Filings; §22.35 relating to Informal Disposition; §22.51 relating to Notice for Public Utility Regulatory Act §2.211, §2.212, §3.210 and §3.211 Proceedings; §22.52 relating to Notice in Licensing Proceedings; and §22.56 relating to Notice of Unclaimed Funds with no changes to the proposed text as published in the April 3, 1998 *Texas Register* (23 TexReg 3405). The proposed amendments correct citations to the Public Utility Regulatory Act due to codification in the Texas Utilities Code and update the sections to reflect changes in state government and commission organization. Project Number 17709 has been assigned to these proposed amendments.

The Appropriations Act of 1997, HB 1, Article IX, Section 167 (Section 167) requires that each state agency review and consider for re adoption each rule adopted by that agency pursuant to Government Code, Chapter 2001. Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or re adopting the rule continues to exist. The commission had invited specific comments regarding the Section 167 requirement, as to whether the reason for adopting the rules continues to exist, in the comments on these amendments. No parties commented on the Section 167 requirement or on the proposed amendments. The commission finds that the reason for adopting these sections continues to exist.

### Subchapter C. Classification of Applications or Other Documents Initiating a Proceeding

#### 16 TAC §§22.31, 22.33, 22.35

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Index to Statutes: Public Utility Regulatory Act §14.002 and §14.052.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 2, 1998.

TRD-9810517

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Effective date: July 22, 1998

Proposal publication date: April 3, 1998

For further information, please call: (512) 936-7308

◆ ◆ ◆  
Subchapter D. Notice

**16 TAC §§22.51, 22.52, 22.56**

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Index to Statutes: Public Utility Regulatory Act §14.002 and §14.052.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 2, 1998.

TRD-9810518

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Effective date: July 22, 1998

Proposal publication date: April 3, 1998

For further information, please call: (512) 936-7308

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**TITLE 22. EXAMINING BOARDS**

**Part XVI. Texas Board of Physical Therapy Examiners**

**Chapter 341. License Renewal**

**22 TAC §341.8**

The Texas Board of Physical Therapy Examiners adopts the repeal of §341.8 and new §341.8, concerning License Renewal, without changes to the proposed text as published in the April 24, 1998, issue of the *Texas Register* (23 TexReg 3994).

The repeal and replacement of this section will clarify and update the requirements regarding inactive status.

The repeal of this section will eliminate the printed copy of the board's inactive roster, which is no longer necessary due to electronic tracking.

The new section will add the requirement that a licensee must notify the board of the desire to remain in inactive status at the end of each renewal cycle, and that a late fee will be charged if the notification is not timely. It also adds the requirement that the licensee must be in good standing to enter inactive status and to reinstate active status.

No comments were received regarding the repeal and adoption of this section.

The section is repealed under the Physical Therapy Practice Act, Texas Civil Statutes Annotated, Article 4512e, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 1998.

TRD-9810275

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Effective date: July 19, 1998

Proposal publication date: April 24, 1998

For further information, please call: (512) 305-6900

◆ ◆ ◆  
The new section is adopted under the Physical Therapy Practice Act, Texas Civil Statutes Annotated, Article 4512e, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 1998.

TRD-9810276

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Effective date: July 19, 1998

Proposal publication date: April 24, 1998

For further information, please call: (512) 305-6900

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**TITLE 25. HEALTH SERVICES**

**Part XVI. Texas Health Care Information Council**

**Chapter 1301. Health Care Information**

**Subchapter A. Hospital Discharge Date Rules**

**25 TAC §§1301.12, 1301.17-1301.19**

The Texas Health Care Information Council (Council) adopts amendments to §§1301.12, 1301.17-1301.19, concerning the procedures and types of bills required for submission, the submission of comments by the providers, the addition of data elements in the minimum data set and the removal of a reporting requirement for the public use data file. Section 1301.19 is adopted with changes to the proposed text as published in the March 20, 1998, issue of the *Texas Register* (23 TexReg 2943). Sections 1301.12, 1301.17, and 1301.18 are adopted without changes and will not be republished.

The amended sections are being adopted to ease the burden on reporting hospitals and to produce a more accurate data file. The adopted amendment to §1301.12 includes new language to allow for the option of reporting billing claims reports or consolidated discharge reports. The adopted amendment to §1301.17 requires providers to submit comments electronically and to assure that these comments contain no information that could identify an individual patient or physician. The adopted



amendment to §1301.18 removes the requirement that the Executive Director convert employer name and address to a Standard Industrial Classification code. Finally, the adopted amendment to §1301.19 increases the number of data elements to the minimum data set and clarifies source of payment code listing.

The amended sections are adopted, in part, to increase the accuracy of the data, reduce the burden to the hospitals and clarify inconsistencies in the Council's original and amended hospital discharge data rules, published in the August 12, 1997 and December 19, 1997 issues of the *Texas Register* (22 TexReg 7490 and 22 TexReg 12493, respectively). Changes in the adopted amendments respond to non-substantive variations from the proposed amendments. The Council's representative from the Office of the Attorney General has advised that the changes affect no new persons, entities, or subjects other than those given notice and that compliance with the adopted sections will be less burdensome than under the proposed sections. Accordingly, republication of the adopted sections as proposed amendments is not required.

Amended §1301.12 recognizes that hospitals are provided an option of submitting a consolidated bill or individual claims' bills. The amendment to §1301.17 establishes procedures and a timeline for comment submission and signifies that commenters are responsible for removing patient and physician identifying information. Section 1301.18 removes the reporting requirement, of converting the employer name and address data and assigning a Standard Industrial Code, from the Public Use Data File. The amendment to §1301.19 requires providers to submit the treating facility name, address and city. Finally §1301.19 clarifies the Third Party Payer Data to be submitted, and assigns standard sources of payment codes and non-standard source of payment codes.

The Council did not hold a public hearing and none was requested on the proposed amendments. Additionally, the Council did not receive any written comments on the proposed amendments.

The amendments are adopted under the Health and Safety Code, §§108.006, and 108.009. The Council interprets §108.006 as authorizing it to adopt rules necessary to carry out Chapter 108, including rules concerning data collection requirements and rules prescribing a process for providers to submit data. The Council interprets §108.009 as authorizing it to collect data elements relating to facility name, facility address, and facility city.

*§1301.19. Discharge Reports - Records, Data Fields and Codes.*

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

(c) In addition to the data elements contained in the Texas UB-92 Manual, the Council has defined the following data elements shown in this subsection and has defined the location in the HCFA UB-92 Electronic Format (Versions 004.1 and 004.0) where each element is to be reported.

(1)-(5) (No change)

(6) Facility Name - This data element shall be the name of the hospital where the services were rendered and shall be reported at Record Type 10, Field 12.

(7) Facility Address - This data element shall be the actual physical address of the hospital where the services were rendered and shall be reported at Record Type 10, Field 13.

(8) Facility City - This data element shall be the name of the city where the hospital that rendered the services is located and shall be reported in Record Type 10, Field 14.

(d) (No change)

(e) Hospitals shall submit the required minimum data set for all patients for which a discharge file is required by this title. For patients with any form of insurance, hospitals shall submit to the Council all data elements submitted to any third party payer in addition to data elements in the required minimum data set. The required minimum data set includes the following data elements as listed in paragraphs (1)-(47) of this subsection:

(1)-(44) (No change.)

(45) Facility Name;

(46) Facility Address;

(47) Facility City.

(f) A submission will consist of a set of the following types of records from the HCFA UB-92 Electronic Format (Versions 004.1 and 004.0) specification as shown in paragraphs (1)-(13) of this subsection.

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

(4) Third Party Payer Data (Record 30). The third party payer record identifies the primary insurance payer information and the secondary insurance payer for each patient. If the patient has no third party payer and is paying with personal finances, the hospital shall submit one Record 30 01 (or first Record 30) with Field 04 = A and Record 22 01 Field 09 shall be left "blank". If a non-standard source of payment code is selected, the hospital shall submit a Record 30 with Field 04 = I (Other) or "the most appropriate corresponding standard source of payment code" and the selected non-standard source of payment code shall appear in Record 22, Field 09. For example: If the patient has no third party payer and is treated as a charity patient, where no reimbursement is expected. The hospital shall submit one Record 30 01 with Field 04 = I and a Record 22 01 with Field 09 = Z, if the patient has a commercial PPO plan as the primary payer and Medicare Managed Care Plan for a secondary source of payment, the hospital shall submit two Record 30s'; Record 30 01 Field 04 = F (Commercial) and Record 22 01 Field 09 = U (Commercial PPO), Record 30 02 Field 04 = C (Medicare) and Record 22 Field 09 = V (Medicare Managed Care). Records must be in the correct payer priority sequence. The '01' (First Record 30 and Record 22) Record determines which source of payment code will be considered as primary.

(5)-(9) (No change.)

(10) Physician Data (Record 80). This record is for the Texas physician license number as assigned by the state licensing boards and name or Unique Physician Identification Number (UPIN) assigned by HCFA and name.

(11)-(13) (No change.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 6, 1998.

TRD-9810624

Jim Loyd

Executive Director

Texas Health Care Information Council

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**TITLE 28. INSURANCE**

**Part II. Texas Workers' Compensation Commission**

**Chapter 166. Accident Prevention Services**

**28 TAC §166.4**

The Texas Workers' Compensation Commission (the Commission) adopts an amendment to §166.4, concerning required accident prevention services, with a clerical change to the proposed text as published in the May 1, 1998, issue of the *Texas Register* (23 TexReg 4205).

As required by the Government Code, §2001.033(1), the Commission's reasoned justification for this rule is set out in this order which includes the preamble, which in turn includes the rule. The reasoned justification is contained in this preamble, and throughout this preamble, including how and why the Commission reached the conclusions it did, why the rule is appropriate, the factual, policy, and legal bases for the rule, a restatement of the factual basis for the rule, a summary of comments received from interested parties, names of those groups and associations who commented and whether they were for or against adoption of the rule, and the reasons why the Commission disagrees with some of the comments and proposals.

Only one change, a clerical correction, was made to the text of the rule amendment as proposed. In subsection (c)(2)(E), the reference in the last sentence to "paragraph (7)" has been corrected to read "paragraph (8)".

The amendment is adopted to clarify the requirements of subsection (c)(6) of the rule relating to the provision of written notification of claims experience and provision of a loss analysis to policyholders.

Previously subsection (c)(6) provided that as part of a minimum accident prevention service program, policyholders must be provided written notification at least every 12 months of actual claims experience and must be provided a loss analysis if the policyholder meets the criteria of subsection (c)(2)(B) and (C). The use of the word "and" between subsection (c)(2)(B) and (C) implied simultaneous compliance with the requirements of all four subparagraphs. These criteria overlap which caused confusion as to which policyholders were required to receive a loss analysis.

It was noted during insurance company inspections that some carriers were interpreting subsection (c)(6) to mean that the premium criteria under subsection(c)(2)(B) and (C) should be used to determine which policyholders must receive a written notification of claims experience as well as which policyholders must receive a loss analysis. This was not the intention of the subsection. All policyholders are to receive a written notice of claims experience at least every 12 months. In addition, there has been misinterpretation regarding whether the "every 12 months" applied to both the notification of actual claims experience and the loss analysis.

Previously subsection (c)(6) was also difficult to read because it required the reader to reference another subsection of the rule to determine which policyholders must be provided with a loss analysis. The adopted amendment will eliminate the need for the reader to cross-reference subsection (c)(2)(B) and (c)(2)(C) of §166.4 and provides a clearer description of which policyholders must be provided with a written loss analysis at least once each 12 months.

The adopted amendments delete from subsection (c)(6) the requirement to provide a loss analysis to certain policyholders and places that requirement in a separate subsection which has been added as new subsection (c)(7). Previous subsections (c)(7) and (c)(8) have been renumbered accordingly. This change separates the requirement for provision of actual claims experience from the requirement for provision of a loss analysis making it clearer which policyholders are to be provided which information and how often the information is required to be provided. New subsection (c)(7) requires written documentation of loss analysis to be provided only to policyholders with a premium of \$25,000 or more, or a premium between \$5,000 and \$24,999, inclusive, and a loss ratio of greater than 250%.

Previous subsection (c)(2)(C)(ii) was revised to add the word "inclusive" after the words "between \$5,000 and \$24,999" to make it clear that the limits mentioned are included. Therefore, a policyholder with a premium of \$5,000 is entitled to a mandatory on-site visit every 12 months as is a policyholder with a premium of \$24,999 if their loss ratio is greater than 250%. This is a clarification of the previous rule, not a change.

The Compliance and Practices division of the Commission has received violation referrals due to some carriers' misinterpretation of previous subsection (c)(6) in a way that resulted in the carriers' failure to provide written notice of claims experience to all policyholders every 12 months and/or failure to provide loss analyses to the specified policyholders every 12 months. The adopted change is expected to reduce the cost to the Commission by reducing the number of notices of alleged violations processed and sent. There may be a loss of revenue to the state if the amount of administrative penalties assessed is reduced. An analysis of the referrals to the Compliance and Practices division by the Workers' Health and Safety division revealed that 18% of these referrals for the period September 1996 to August 1997 were for non-compliance with subsection(c)(6). The administrative penalties collected for violations of subsection(c)(6) have totaled \$17,511 to date for referrals made since September 1996.

The public benefit anticipated as a result of enforcing the amended rule will be clarification of which policyholders must be provided a loss analysis and which policyholders must be provided written notification of actual claims experience; simplification of the wording of the rule which will make it easier to understand; and increased compliance with the rule.

Health care providers are not affected by the rule. There will be no anticipated increases in costs to persons who are required to comply with the rule as amended because no additional services are required to be provided. Those carriers who have been interpreting the rule as requiring the provision of accident prevention services to all policyholders may realize a reduction in costs. There may be a reduction of administrative penalties imposed for violation of subsection (c)(6) and a reduction in the costs for insurance carriers as a result of fewer enforcement proceedings.

The adopted amendment will reduce the administrative time necessary for insurance carriers to provide required loss analyses to policyholders. Some carriers have interpreted the current rule to require provision of loss analyses to practically all policyholders. The amendment clarifies and limits the policyholders that must be provided a loss analysis to policyholders with high loss ratios who fall within specific premium parameters. Policyholders with premiums of less than \$5,000 or between \$5,000 and \$24,999, inclusive, and with a loss ratio between 100% and 250%, will no longer meet the criteria for required provision of a loss analysis. This will reduce the carriers' administrative time and costs allocated for providing loss analyses.

The Commission received no public comment regarding the adoption of this amendment.

The amendment is adopted under the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act; the Texas Labor Code, §411.061, which requires an insurance company to provide accident prevention facilities which are adequate to provide accident prevention services required by the nature of its policyholder operations and sets out what a facility must include; the Texas Labor Code, §411.062, which mandates the commission to establish qualifications for field safety representatives; the Texas Labor Code, §§411.063 - 411.068, which require an insurance company to provide qualified accident prevention personnel and to provide notice of the accident prevention services, set certain specifications for the program, require an insurance company to annually submit information to the commission, require biennial inspections by the division, and provide for an administrative penalty for violation of the requirements.

These statutory provisions authorize the amendments to the rule by requiring the Commission to adopt rules necessary to administer the implementation of accident prevention services by insurance carriers providing workers' compensation insurance in Texas. The amendment to §166.4 clarifies the minimum requirements for an accident prevention program.

*§166.4. Required Accident Prevention Services.*

(a) An insurance company writing workers' compensation insurance in Texas shall maintain or provide accident prevention facilities and services and shall have them inspected by the division. An insurance company writing only excess or reinsurance is not required to maintain or provide such facilities or services.

(b) An insurance company shall provide accident prevention services to policyholders at no additional charge.

(c) An accident prevention service program as required by the Texas Labor Code, §411.061, shall provide, at a minimum:

(1) an evaluation of the policyholder's need for accident prevention services every 12 months based on the following criteria:

(A) hazard, including classification by hazard group, probability of serious or catastrophic type accidents, probability of frequent accidents, and probability of occupational illness or disease;

(B) experience, including loss ratio, experience modifiers, frequency rate, and severity rate; and

(C) size, including total number of employees, number of locations per policyholder business and number of employees per location.

(2) service in accordance with the following requirements:

(A) provide services requested by policyholders within 15 days of the date services were first requested, if appropriate services can be provided from the insurance company offices and within 30 days of the date of first request, if the services require an on-site visit. Services may be provided at a later time if circumstances require and the time is agreed upon by the policyholder.

(B) an on-site visit, or provision of other appropriate services, on a periodic basis and at least every 12 months to each policyholder with:

(i) a premium of less than \$25,000 and a loss ratio greater than 100%; or

(ii) a premium of \$25,000 or more;

(C) a mandatory on-site visit on a periodic basis and at least every 12 months to each policyholder with:

(i) a premium of \$25,000 or more and a loss ratio greater than 100%; or

(ii) a premium between \$5,000 and \$24,999, inclusive, and a loss ratio greater than 250%;

(D) a visit to the insured within three working days of notification and/or knowledge of a fatality. If the fatality occurred outside of Texas or was the result of an accident on a common carrier, no visit is required; and

(E) written solicitation of comments from each policyholder, at least every 12 months, to determine the need for safety information or assistance. Such letter shall specifically explain that accident prevention services, including surveys, recommendations, training programs, consultations, analysis of accident causes, industrial hygiene and industrial health services are available at no additional charge and shall be provided upon request directly to the policyholder. This requirement is in addition to the requirements in paragraph (8) of this subsection;

(3) a sufficient number of qualified personnel performing the duties of field safety representative to provide service at the frequency required in paragraph (2) of this subsection;

(4) written procedures for:

(A) determining the appropriate accident prevention services to be provided to a policyholder;

(B) the time frame and manner in which the services identified under paragraph (2) of this subsection will be delivered to a policyholder;

(C) providing safety training to policyholders and providing promotional and course materials that are available for each safety training program; and

(D) providing written reports to the insurance company and the policyholders which identify hazardous conditions and work practices on the policyholders' premises;

(5) written records, reports, and evidence of all accident prevention services provided to each policyholder;

(6) written notification at least every 12 months to each policyholder of actual claims experience;

(7) written documentation of loss analysis at least every 12 months to each policyholder with:

(A) a premium of \$25,000 or more; or

(B) a premium between \$5,000 and \$24,999, inclusive, and a loss ratio of greater than 250%;

(8) evidence that each workers' compensation insurance policy delivered or issued for delivery in Texas contains the following notice on the declarations page or on the front of the policy in at least 10 point bold type: "(Name of company) is required by law to provide its policyholders with certain accident prevention services as required by the Texas Labor Code, §411.066, at no additional charge. If you would like more information call (insurance company's loss control division or provider's telephone number). If you have any questions about this requirement, call the Division of Workers' Health and Safety, Texas Workers' Compensation Commission at 1-800-452-9595."; and

(9) annual reports as required by §166.3 of this title (relating to Annual Report to the Commission).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 6, 1998.

TRD-9810622

Susan M. Cory

General Counsel

Texas Workers' Compensation Commission

Effective date: July 26, 1998

Proposal publication date: May 1, 1998

For further information, please call: (512) 440-3972

## TITLE 30. ENVIRONMENTAL QUALITY

### Part I. Texas Natural Resource Conservation Commission

#### Chapter 335. Industrial Solid Waste and Municipal Hazardous Waste

##### Subchapter K. Hazardous Substance Facilities Assessment and Remediation

###### 30 TAC §§335.341-335.351

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §§335.341-335.351 and the repeal of §335.352, concerning the assessment and remediation of State Superfund sites that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. Sections 335.342, 335.343, 335.345, 335.346, 335.348, 335.349, and 335.351 are adopted with changes to the proposed text as published in the January 23, 1998, issue of the *Texas Register* (23 TexReg 515). Sections 335.341, 335.344, 335.347, 335.350, and the repeal of §335.352 are adopted without changes and will not be republished.

**EXPLANATION OF ADOPTED RULE.** Chapter 335, Subchapter K sets forth requirements for the State Superfund program. The rule changes to these sections will enhance the implementation of certain provisions of House Bill (HB) 2776 passed by the 75th Texas Legislature, streamline current assessment and remediation procedures of State Superfund sites, and ensure

consistency with the existing cleanup standards of the Risk Reduction Rules in Chapter 335, Subchapter S.

Section 335.341, concerning Purpose and Scope, establishes that Chapter 335, Subchapter K addresses the State Superfund program, and sets forth the general process for listing on the State Superfund Registry. The commission proposed to amend §335.341 to recognize the commission's Voluntary Cleanup Program (VCP) as a viable alternative to listing a site on the State Superfund Registry. Changes to §335.343 and §335.344 were proposed to be consistent with the amendment to §335.341. The commission did not receive any comments on the proposed changes to §335.341, and the section is adopted as proposed.

Section 335.342 contains definitions specific to the State Superfund program. The commission proposed adding, amending, and deleting a number of terms and definitions in Subchapter K. In response to comments, several proposed definitions were amended in the final rule, and one proposed definition, "Unilateral order," was deleted based on comments. In addition, the commission identified several grammatical changes that were necessary. Finally, the definitions in Subchapter K are numbered to comply with Secretary of State rules for rulemakings adopted after the Subchapter K amendments were proposed.

Section 335.343 establishes requirements for the ranking of facilities. The commission proposed to clarify the agency's use of the same Hazardous Ranking System (HRS) as the U.S. Environmental Protection Agency (EPA) for scoring State Superfund sites, and provide that criteria other than the HRS be considered in prioritizing sites. In addition, the commission proposed that an updated state registry identifying each facility and relative priority be published annually. The commission adopts the section as proposed, and, based on comments, has listed some of the relative priority factors other than the HRS score that might be considered such as community interests, simplicity, costs, and time.

Section 335.344, concerning Delisting and Modifications, discusses the procedures for delisting a facility from the State Superfund Registry, modifying a facility's ranking, or modifying information on a facility. The commission proposed to amend §335.344 to delete the language that allowed "any interested person" to request a delisting or modification. This is consistent with the statutory language which does not include "interested persons." The commission did not receive any comments on this section, and the changes to the section are adopted as proposed.

Section 335.345, concerning Requests for Information or Production of Documents, provides that the executive director may submit requests for information from persons with information on a site listed on the State Registry. Documents submitted under the request are public record. The commission proposed amending §335.345 to replace much of the existing language in the section with language that establishes clear, succinct requirements that prescribe requested documents to be delivered within 45 days. In addition, the commission proposed identifying the Public Information Act as the effective law for making records public. The commission adopts the subsection (b) as proposed. Based on comments, the commission adopts proposed new language in subsection (a), but retains the previous language that set forth a specific process.

Section 335.346, concerning Removals and Preliminary Site Investigations, establishes the procedures for conducting re-

removals at State Superfund sites, including the requirement that no person may conduct a removal without the authorization of the executive director and already existed in statute and rule. In addition, the section authorizes the use of the Hazardous and Solid Waste Remediation Fee Account to fund removals. The commission proposed amending §335.346 to provide that the executive director may conduct early planned removals at sites to substantially reduce the overall cost of cleaning up the site. There were no public comments on this section; however, the commission did make two editorial changes for purposes of consistency.

Section 335.347, concerning Financial Capability Determinations, sets forth the criteria used for the agency's determination of financial capability of a potentially responsible party (PRP) to participate in an investigation and/or remediation. The commission proposed amending §335.347 to clarify portions of the section and to no longer require that notice of capability be provided to all PRPs. The commission did not receive any comment on this section, and the section is adopted as proposed.

Section 335.348, concerning General Requirements for Remedial Investigations, establishes the requirements for investigation at State Superfund sites. The commission proposed several amendments to §335.348. The most notable change was the removal of the baseline risk assessment as a comparison standard for remedial action alternatives. Instead, the commission proposed that a PRP evaluate health-based and ecological risks, and then calculate cleanup levels to the satisfaction of the executive director before the remedial action is selected. This was proposed to be consistent with the proposed Texas Risk Reduction Program (TRRP) rule. The commission also proposed clarifying that the scope of the health and safety plan to include the general public in addition to on-site personnel; allowing a PRP to choose a presumptive remedy in lieu of the feasibility study to expedite the remedial process; and requiring all engineering evaluations, plans, and specifications of the feasibility study to be prepared in accordance with the Texas Engineering Practice Act. The commission adopts the three proposed changes noted above, but still retains the Baseline Risk Assessment. Although removal of the baseline risk assessment was supported by the commenters, the commission retains the baseline risk assessment because no alternative exists until the TRRP rule is adopted. In addition, the final rule incorporates grammatical changes and other changes based on comments received.

Section 335.349, concerning General Requirements for Remedial Activities, discusses the agency's acceptance of the remedial action plan, public notice of the plan, modifications to the plan, and general standards for the substance of the plan. The commission proposed to change the current time frames for selecting the proposed remedial action to add procedures for modifying the proposed remedial action after the date of the initial public meeting, and to require that all documents submitted in connection with the remedial design and remedial action be prepared in accordance with the Texas Engineering Practice Act. Except for one editorial change, the section is adopted as proposed.

Section §335.350, concerning Defense to Liability and Claims of Divisibility, establishes eligibility and procedures for defense of liability and claims of divisibility. The commission proposed several simple cleanup changes to the section to be consistent with other changes in the proposed rule. No comments were

received on this section, and the commission adopts this section as proposed.

Section 335.351, concerning Settlement Agreements, provides detail on the development and approval of settlement agreements between the commission and PRPs. Specifically, the section discusses mixed funding, de minimus settlements, covenants not to sue, and discharge of liability for other PRPs. The commission proposed deleting language specifically addressing partial settlements, but proposed adding subsections on remedial investigation settlements and remedial action settlements. For remedial investigation settlements, the commission proposed that in the case of a settlement offer that is less than a good faith offer to fund or perform a remedial investigation, the executive director shall consider the party's ability to pay. Based on comment, the adopted rule combines the discussion of remedial investigation and remedial action settlements into one subsection, and does not contain the proposed language on a party's ability to pay as the exclusive basis for the executive director's consideration of the offer for remedial investigation settlements.

Section 335.352, concerning Adoption by Reference, referred to the federal HRS and agency and EPA guidance documents. The commission proposed repealing this section because the reference to the HRS is no longer necessary given the amendments to §335.343, and to allow guidance documents to be added or taken off the list administratively. The commission received no comments on the repeal of §335.352, and the adopted rule no longer contains the section.

FINAL REGULATORY IMPACT ANALYSIS. The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act, and it does not meet any of the four applicability requirements listed in §2001.0225(a). The rule does not meet the definition of major environmental rule, because the rule is not expected to adversely affect the economy, a sector of the economy, the environment, productivity, competition, jobs, or the public health and safety of the state or a sector of the state. Investigation and remediation of State Superfund sites will be streamlined and expedited by the final rule while retaining measures protective of human health and safety. This, in turn, will improve environmental protection and may have positive economic benefits, as well, as sites are more quickly restored to an active and productive use.

The final rule does not meet any of the four specific applicability requirements. It does not exceed a federal standard or a requirement of delegation because the program is a state program not governed by federal law or regulation. As such, there is not a federal delegation program for State Superfund. The final rule does not exceed an express state statutory requirement because the rule changes are consistent with HB 2776, Acts of the 75th Legislature, affecting the State Superfund statute in Health and Safety Code, Chapter 361, Subchapter F. Finally, the final rule is adopted under authority provided by statutes in addition to state law providing general rulemaking authority to the commission. The other statutes are Health and Safety Code, §361.017 and §361.024, which provide authority to adopt rules governing industrial solid waste under the Solid Waste Disposal Act and the specific rulemaking authority of Health and Safety Code, Subchapter F.

TAKINGS IMPACT ASSESSMENT. The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code, Annotated, §2007.043. The specific purpose of the rule is to enhance the existing State Superfund program and to implement provisions of HB 2776, Acts of the 75th Legislature. The rules will substantially advance this specific purpose by clarifying portions of the rule, by streamlining the assessment and remediation procedures, and by implementing certain provisions in HB 2776 where rulemaking is necessary. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because the rules are intended to streamline existing procedures to facilitate removals and remedial actions at affected sites. These streamlining measures should reduce the administrative burden of remediating a site within the State Superfund program while continuing to be protective of human and ecological receptors.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW. Title 31 Texas Administrative Code §505.11, relating to Actions and Rules Subject to the CMP, requires the commission to evaluate proposed rules to ensure consistency with the CMP. The commission has reviewed this rulemaking for consistency with the CMP goals and policies. The rulemaking does not consist of actions or rules subject to the CMP identified in §505.11(a)(6) and §505.11(b)(2) for the Texas Natural Resource Conservation Commission; therefore, the proposed rule is not subject to the CMP.

HEARINGS AND COMMENTERS. The commission did not hold a public hearing on the proposed rule changes. The comment period for the proposed rules closed at 5:00 p.m., February 23, 1998. Amoco Corporation (Amoco), Association of Chemical Industry of Texas (ACIT), and the Texas Chemical Council (TCC) submitted comments on the proposed rule, and the three commenters generally supported the proposed changes.

#### ANALYSIS OF TESTIMONY

GENERAL COMMENTS. ACIT, Amoco, and TCC commented that many of the changes proposed by the commission will facilitate cleanups and greater environmental benefit will result from the limited funds available for State Superfund. In addition, both ACIT and Amoco support the comments of TCC.

§335.342. DEFINITIONS. Regarding proposed §335.342, the commission received several comments. In addition, the final rule numbers all definitions in Subchapter K to comply with the rules of the Secretary of State.

Concerning the definition of "Agreed order or agreed administrative order," the commission did not receive any comments, but has replaced the term "remediation" with "remedial action" for purposes of consistency.

Concerning the definition of "Divisible," ACIT and TCC recommended that the definition be revised to include releases "from" a facility in addition to releases "at" a facility. In addition, ACIT and TCC also recommended removing the reference to "remedial action plan," since that term is no longer used in the rules, and adding "that" before "are capable" as a grammatical correction.

The commission concurs that "at or from" a facility clarifies the definition and has made the change. The commission has also made the grammatical correction suggested. However, the commission disagrees with the comment to remove the reference to remedial action plan. The term is used in the

definition to be consistent with statutory language in Health and Safety Code, §361.276(b).

Concerning the definition of "Good Faith Offer," TCC commented that the addition of "fully and" to the existing term "effectively" adds no value and could make individual staff members feel compelled to require unreasonable activities and expenditure of funds. TCC further commented that the existing language of "effectively" is more than adequate. As such, TCC recommended removing the proposed addition in subparagraphs (A) and (B). Also concerning "Good Faith Offer," TCC recommended removing the proposed addition of "The executive director will not consider an offer a good faith offer unless it is an offer to fully fund or perform the remedial investigation/remediation" in subparagraphs (A) and (B) because it questions whether such a statement is appropriate in a definition and questions whether or not this is appropriate under existing law and the commission's rules. Specifically, TCC referred to "divisible" sites under Texas Health and Safety Code, §361.187(f), "mixed funding" under §361.199, and "settlements" under §361.200 in questioning the appropriateness of the additional language. TCC recommended that the executive director retain discretion to determine what is a "good faith offer."

With the exception of divisibility, the commission disagrees with TCC's comments on the definition of good faith offer and has not removed the proposed additions to subparagraphs (A) and (B). Statutory time periods when there is a good faith offer should not be invoked by settlement offers less than the full amount except in the case of divisibility. The commission is concerned that removing the requirement will lead to offers that are intended to initiate statutory timeframes effectively delaying cleanup of Superfund sites and resulting in the inefficient use of state resources. The commission emphasizes that this does not in any way change the current practice of individual PRPs voluntarily joining together early in the process to develop their own good faith offers which, when taken together, would result in full funding; although individuals within the group would remain jointly and severally liable. In fact, the commission encourages PRPs to form groups in this manner and make good faith offers utilizing combined resources. In addition, settlements can occur prior to or after an order is issued, and the commission emphasizes that the inclusion of this requirement does not have the consequence of removing partial settlements. As noted earlier, the commission agrees that divisibility can be an exception to fully fund or perform the remedial investigation or remedial action, and the adopted rule includes a claim of divisibility as an exception.

Concerning the definition of "Health and safety plan," ACIT and TCC commented that "the public" should be removed from the Health and Safety Plan. ACIT commented that public protection is an issue for the spill contingency plan. TCC noted that the plan should only address the protection of on-site personnel, as implied by the reference to Occupation and Safety Administration (OSHA) regulations to protect workers. TCC emphasized that while it fully supports protection of the public from activities at contaminated sites, the Health and Safety Plan comes into effect long after the public has been excluded from the contaminated property. For purposes of clarification, ACIT also recommended changing "...from potential hazards particular to a facility while implementing the remedial investigation or remedial action" to "...from potential hazards associated with implementing the remedial investigation or the remedial action at a particular facility." In addition, ACIT commented that the Health

and Safety Plans should conform to the relevant portions of OSHA regulations.

The commission disagrees with the recommendation to remove the public from the Health and Safety Plan because the commission is tasked with protecting the public. Although activities in the remedial investigation and remedial action stage should protect the public, the Health and Safety Plan should address contingencies in the event that activities and/or controls fail. For example, emissions can migrate off-site or the public can enter the facility if it is not properly secured. The commission agrees with the clarification changes and ACIT's comment on referencing the relevant portions of the OSHA regulations, and has made those changes.

Concerning the definition of "Implementation schedule," ACIT and TCC recommended clarifying the definition by revising it to read, "A document describing the sequence, duration and interdependency of each activity to be conducted during a remedial investigation or remedial action."

The commission agrees that the recommended change adds clarity, and the change is incorporated in the adopted rule.

Concerning the definition of "Potentially responsible party," the commission did not receive any comments, but has added Health and Safety Code, §361.275(g), as another section in the statute that defines PRPs.

Concerning the definition of "Quality assurance project plan (QAPP)," TCC recommended removing "comprehensive" from "comprehensive detail" because the term might make individual staff members feel compelled to make unreasonable demands of PRPs. ACIT and TCC recommended replacing "data quality goals" with "data quality objectives," since most existing guidance refers to objectives rather than goals.

The commission agrees that changing data quality goals to data quality objectives is more accurate, and the change has been made to the adopted rule. In addition, "remedial" has been added before investigation for consistency. The commission disagrees with removing "comprehensive," because the QAPP should be comprehensive. If a person believes unreasonable demands are being made by staff, the person should notify the appropriate manager at the agency to discuss his concerns. However, the commission expects that staff's review of a QAPP will be reasonable in most, if not all, cases.

Concerning the definition of "Remedial action," the commission did not receive any comments but has deleted "migrate to" before "cause an imminent and substantial danger" for clarity.

Concerning the definition of "Remedial action drawings and specifications," ACIT and TCC recommended minor wording changes to clarify the definition. Specifically, TCC and ACIT recommended deleting "the" before "work," and changing "as applied to the remedial action" to "to be applied during the remedial action."

The commission agrees that the suggested changes clarify the definitions, and the adopted rule incorporates the changes.

Concerning the definition of "Remedial design," ACIT and TCC recommended changes to clarify the definition. First, the commenters recommended changing "engineering drawings and technical specifications" to "the remedial action drawings and specifications." Second, the commenters recommended listing the specific items for a remedial design.

The commission concurs with the first suggestion and has changed "engineering drawings and technical specifications" to "the remedial action drawings and specifications." However, the commission does not concur with the recommendation to add the list of items contained in the remedial action plan because this simply repeats what is in §335.349. The commission has added subsection (d) to the cite for §335.349 to provide more specificity.

Concerning the definition of "Remedial investigation," TCC commented that the proposed definition implies that all remedial investigations will include the elements in the definition, which is not consistent with §335.348. TCC recommended modifying the definition to read, "An investigative study, which may include, removals...."

The commission agrees with TCC and has incorporated the change to the adopted rule.

Concerning the definition of "Settlement offer," no comments were received, but the commission has made a grammatical change by removing a comma before "and/or."

Concerning the definition of "Unilateral order," TCC recommended removing the definition because it seems inappropriate to include a definition of a new type of commission order in a subchapter on waste. TCC also commented that it was unable to determine where "unilateral order" was used in the rule.

The commission agrees with the comment, and has deleted the definition of Unilateral order.

§335.343. RANKING OF FACILITIES. Concerning proposed §335.343(a), TCC commented that it supports the concept of not determining the relative priorities of the sites solely on the basis of the HRS; however, TCC noted that the proposed rule is not clear on what other factors would be considered. Therefore, TCC recommended deleting subsection (a) and suggested changes to proposed subsection (c): TCC recommended adding the following language to the end of subsection (c), "The relative priority will be based on, but not limited to, such factors as the Superfund HRS scores, relative costs of investigation and remediation, and estimated time to complete the remedial actions." ACIT commented that nothing in HB 2776 changed the need to move from a mandatory priority scheme using the HRS to a discretionary system.

Regarding ACIT's comment, the commission acknowledges that HB 2776 did not address the prioritization of facilities; however, as the preamble to the proposed rule noted, HB 2776 was one of several reasons for proposing amendments to the Superfund rules. The rules were also proposed to streamline current assessment and remediation procedures for State Superfund sites. The Health and Safety Code does address prioritization in §361.181(b), but does not specify relative factors to be considered. Therefore, the commission may establish by rule the relative factors. The commission contends that criteria such as community interests and simplicity are legitimate criteria to consider when prioritizing sites, and that the commission should have the flexibility to consider these factors.

The commission generally agrees with TCC comments, except that it does not concur with the removal of subsection (a). Subsection (a) establishes the HRS as an integral part of the ranking of facilities. The rule does state that priority listing on the State Registry "may be" based on the HRS rather than "is" based on the HRS to clarify that it is not the only criteria for ranking. The recommended change to proposed subsection

(c) to identify some of the relative factors is incorporated into subsection (a). The commission has also added community interests and simplicity as other relative factors.

§335.345. REQUESTS FOR INFORMATION OR PRODUCTION OF DOCUMENTS. Concerning proposed §335.345(a), ACIT and TCC commented that while proposed additions to subsection (a) are appropriate, the portions of subsection (a) proposed for deletion, language specifying the procedures that the agency must follow if a party does not comply with the initial request for information, should be retained. The commenters stated that nothing in these procedures has been changed by new law, and there is not basis for deleting this language.

The commission agrees with the commenters. Health and Safety Code §361.182 is clear concerning the requirement that the commission adopt rules regarding notice and opportunity so a hearing before the commission on whether the requested information or documents should be produced. The commission adopts the language proposed to be added and retains the existing language regarding notice and hearing.

§335.346. REMOVALS AND PRELIMINARY SITE INVESTIGATIONS. Concerning proposed §335.346, no comments were received, but two changes have been made. In proposed subsection (b), reference was made to "a safety and health" plan. To be consistent, the adopted rule refers to "a health and safety plan." In subsection (c), a reference to "sampling, testing" has been removed to be consistent with other changes in the subsection.

§335.348. GENERAL REQUIREMENTS FOR REMEDIAL INVESTIGATIONS. TCC submitted a general comment on proposed §335.348 that the proposed section does not fit or flow together very well because the section is a combination of revisions to current provisions and additions of new provisions.

The commission acknowledges that all the proposed changes to the §335.348 may have appeared confusing; however, the *Texas Register* has a prescribed format for proposing amendments to rules. The adopted rule presents the section without all of the underlines and brackets, and the commission considers the structure of the section to be well organized.

In another general comment, TCC noted that the removal of the title "Feasibility Study" from "Remedial Investigation/Feasibility Study," is inconsistent with the exact language of the statute; however, it is a concept that is understandable and consistent with the intent of the statute.

The commission agrees there may be an inconsistency with the specific statutory term, but not the underlying concepts; therefore, the removal of "Feasibility Study" from the title of "Remedial Investigation/Feasibility Study" does not result in a substantive change.

TCC commented that the feasibility study, the health-based risk assessment, and the ecological risk assessment are included in the definition of "Remedial investigation" in proposed §335.342 but are not included as one of the elements of a remedial investigation in proposed §335.348(d). TCC recommended including these items as potential components of the remedial investigation in subsection (d).

The commission agrees with TCC's comment, and has made the changes. The feasibility study and the baseline risk assessment are included as §335.348(d)(7) and (8), respectively. A baseline risk assessment is included rather than a health-

based assessment for reasons noted in the response to comments on proposed §335.348(f). The ecological risk assessment has been added to paragraph (5) where the existing rule already addressed ecological concerns.

Concerning proposed §335.348(e), the commission did not receive any comments, but has made a grammatical change in paragraph (2). The adopted rule now states, "a quality assurance project plan to ensure the integrity of all samples;" rather than stating, "...to assure the integrity of all samples...."

Regarding proposed §335.348(f), TCC supported the removal of the baseline risk assessment and implementation of a health-based assessment because the baseline risk assessment serves no useful purpose and only adds to the cost and time required to complete the cleanup. The commission did not receive comment on the requirement for an ecological risk assessment.

The commission proposed removing the baseline risk assessment from §335.348(e) and deleting the subsection. The proposed rule replaced the baseline risk assessment requirement with a general requirement to conduct a health-based risk assessment or similar study. The reason for doing so was to be consistent with the planned TRRP rule, proposed 30 TAC Chapter 350. As proposed, the TRRP rule will specify mandatory and contingent exposure pathways eliminating the need for a baseline risk assessment. The commission proposed the TRRP rule on May 15, 1998, and the rule is not expected to be final and effective until November, 1998, if adopted. Therefore, removing the baseline risk assessment would result in a 4-5 month time period in which agency staff and PRPs would not have clear regulatory direction in establishing exposure pathways and points of exposure at State Superfund sites. In addition, removing the baseline assessment would have created an inconsistency between the State Superfund program and other programs such as Voluntary Cleanup Program sites, Corrective Actions, and Closures when Risk Reduction Standard 3 remediations are performed. Standard 3 requires a baseline risk assessment for these other programs, and some may consider removing the baseline for State Superfund to be an inequity. To maintain continuity and consistency at this time, the commission is not removing the baseline risk assessment as proposed; therefore, the commission is retaining existing subsection (e), which establishes the requirement for the baseline risk assessment, and deleting proposed subsection (f).

The ultimate goal, though, is to remove the baseline assessment from State Superfund and be consistent with the TRRP rule; therefore, the commission will propose amending the Subchapter K rule after it is final to remove the baseline risk assessment and reference the proposed TRRP rule. Adoption of the rule amendment would be concurrent with the adoption of the TRRP rule. This should put the two rules on the same schedule and resolve the inconsistency issue.

The portion of proposed subsection (f) addressing ecological risks has been added to subsection (e). As a result, proposed subsection (e) is subsection (f).

In another comment concerning proposed §335.348(f), Amoco and TCC supported the concept of not requiring the evaluation when standards are apparent, except that TCC recommended "and undisputed" be removed. TCC argued that someone may take issue with a determination by the agency whether that person has a valid basis or not for disputing the standards.



In retaining subsection (e), the commission is also retaining the concept of not requiring the evaluation when standards are apparent. The commission agrees with the commenters concerning removal of "undisputed" for the reasons noted in the comment, and the term does not appear in the final rule.

Concerning proposed §335.348(g), ACIT and TCC commented that the subsection was too vague to be enforceable because there is no way to define what guidance material has "credible authority." ACIT and TCC recommended removing subsection (g) until the Texas Risk Reduction Program, 30 TAC Chapter 350, rules are adopted.

The commission agrees with the commenters for the reasons noted and has deleted proposed subparagraph (g).

Concerning proposed new §335.348(i), ACIT and TCC commented that the requirement should be modified so that EPA technical guidance documents must be identified at the workplan stage so that their requirements can be incorporated into the development of the remedial investigation and not used as a method to disapprove a report after the work has been completed.

The commission acknowledges that technical guidance should be identified early so that everyone has a clear understanding of the appropriate guidance to be used. In practice, the agency will recognize the requirements of the guidance in the workplan stage for the remedial investigation. However, the commission also recognizes that a significant change in a guidance document could occur that would render the previous guidance questionable in regard to protection of public health, safety, and the environment. In these extenuating circumstances, the commission wishes to retain the ability to consider other guidance documents that are protective. Therefore, the commission does not agree that the rule specifically state that guidance documents be identified at the workplan stage.

Concerning proposed §335.348(j), ACIT and TCC recommended removing the public from the scope of the Health and Safety Plan and suggested that the requirement track changes based on comments concerning the definition of "Health and safety plan" in §335.342.

For reasons noted earlier in response to comments on the Health and Safety Plan in §335.342, the commission disagrees with the commenters, and has not removed public from the Health and Safety Plan. Consistent with other changes to the definition of Health and Safety Plan, the commission has made changes to this subsection.

Concerning proposed new §335.348(l), TCC supports presumptive remedies as a first choice in the remedy selection.

Concerning proposed §335.348(n), ACIT and TCC commented that there is no legal basis for requiring that a feasibility study be prepared under the supervision of a licensed engineer, because any engineering evaluation included in a feasibility study is conceptual only.

The commission disagrees with the commenters, noting that the requirement is consistent with the requirements of the Texas Board of Professional Engineers and the Texas Engineering Practice Act. Furthermore, the executive director received a letter from the Texas Board of Professional Engineers stating that feasibility studies must be prepared and submitted in accordance with the Texas Engineering Practice Act. The commission has edited the proposed subsection to be more

clear that the entire Act applies to the preparation of these documents.

§335.349. GENERAL REQUIREMENTS FOR REMEDIAL ACTIVITIES. Regarding proposed §335.349(f), ACIT and TCC recommended that language be added so that the requirement for engineering plans and specifications to be prepared under the supervision of a licensed engineer and sealed by a licensed engineer is only necessary for final approved remedial design or other reports submitted and approved by the executive director. The commenters argued that draft documents should not have to be sealed.

The commission disagrees with the commenters for the same reasons noted in response to comments on proposed §335.348(n). The commission, though, has edited subsection (f) to be consistent with changes to proposed §335.348(n).

§335.351. SETTLEMENT AGREEMENTS. Regarding proposed §335.351(a), the commission did not receive any comments, but has clarified that settlements may be made after an order is issued. Regarding proposed §335.351(b), ACIT and TCC commented that new language stating that, "In the case of an offer which is less than a good faith offer to fund or perform a remedial investigation, the executive director's consideration of the offer shall be based on a party's ability to pay" is not supported by any legislative authority. ACIT and TCC recommended combining subsections (b) and (c), which discusses remedial action settlements, because the same factors that apply to the executive director's consideration of a less than 100% offer for remedial actions should also apply to remedial investigations.

The commission agrees with the commenters for the reasons stated in the comment, and the adopted rule does not contain the proposed language. The settlement factors identified for remedial actions will be applicable to remedial investigations as well. The commission also concurs with the comment to combine the discussion of remedial investigation and remedial action settlements into one subsection. In the adopted rule, proposed subsection (b) has been deleted and proposed subsection (c) is now subsection (b). Subsequent subsections are renumbered. Also, the title of new subsection (b) has been changed to "Settlements" from "Remedial action settlements" to be consistent with inclusion of remedial investigation in this subsection. The commission also made a grammatical change in §335.351(b)(1)(D) to correct the spelling of "non-cooperation."

Concerning proposed §335.351(d)(1), the commission did not receive any comments, but has removed "plan" from "remedial action plan" for consistency.

The commission has edited §335.351(c)(5)(B) for clarity.

STATUTORY AUTHORITY. The amendments are adopted under the Texas Water Code, §5.103 and §26.011, which provide the commission with authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. The amendments are also adopted under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, §361.017, and §361.024, which provide the commission the authority to regulate industrial solid waste and municipal hazardous wastes and all other powers necessary or convenient to carry out its responsibilities. The Texas Solid Waste Disposal Act, Texas Health and Safety Code, Subchapter F provides additional authority to adopt rules specific to the registry and cleanup of certain hazardous waste facilities.

§335.342. *Definitions.*

Definitions set forth in the Act that are not specifically included in this section shall also apply. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agreed order or agreed administrative order - An administrative order issued by the commission and agreed to by one or more PRPs for the purpose of settling potential liability for the remedial investigation and/or remedial action concerning a facility proposed for listing, or listed on, the State Registry.

(2) Divisible - Hazardous substance(s) released or threatened to be released at or from a facility that are capable of being managed separately under a remedial action plan.

(3) Facility - In accordance with the Act, §361.181(c), a facility means:

(A) (No change.)

(B) any site or area where a hazardous substance has been, deposited, stored, disposed of, or placed or otherwise come to be located, but does not include any consumer product in consumer use or any vessel.

(4) Feasibility study (FS) - A study which describes and evaluates a set of remedial action alternatives for effectively mitigating or minimizing damage to, and for providing adequate protection of, the public health and safety and the environment in accordance with the requirements of §335.348 of this title (relating to General Requirements for Remedial Investigations).

(5) Good faith offer - A written proposal by one or more PRPs which is not contingent on participation of other PRPs which, in the judgment of the executive director, will:

(A) in the case of a good faith offer to fund or perform a remedial investigation, fully and effectively determine the nature and extent of the release or threatened release of hazardous substances and its impact on air, soils, groundwater, and surface water, both within and beyond the boundaries of the facility. The executive director will not consider an offer a good faith offer unless it is an offer to fully fund or perform the remedial investigation except in a claim of divisibility; or

(B) in the case of a good faith offer to fund or perform a remedial action, fully and effectively mitigate or minimize damage to, and provide adequate protection of, the public health and safety and the environment. The executive director will not consider an offer a good faith offer unless it is an offer to fully fund or perform the remedial action except in a claim of divisibility.

(6) Hazard ranking system - The method used by the Environmental Protection Agency and the agency to evaluate the relative potential of hazardous substance releases to cause health or safety problems, ecological or environmental damage. The scoring system was developed by the United States Environmental Protection Agency as set out in 40 Code of Federal Regulations Part 300, Appendix A, as amended.

(7) Hazardous and Solid Waste Remediation Fee Account - The fund as described in the Act, §361.133.

(8) Health and safety plan - A document that addresses the protection of on-site personnel and the public from potential hazards associated with implementing the remedial investigation or remedial action at a particular facility. The plan shall conform to applicable Occupational Safety and Health Administrative Rules,

including but not limited to relevant portions of 29 Code of Federal Regulations §1910 and §1926.

(9) Imminent and substantial endangerment - A danger is imminent if, given the entire circumstances surrounding each case, exposure of persons or the environment to hazardous substances is more likely than not to occur in the absence of preventive action. A danger is substantial if, given the current state of scientific knowledge, the harm to public health and safety or the environment which would result from exposure could cause adverse environmental or health effects.

(10) Implementation schedule - A document describing the sequence, duration and interdependency of each activity to be conducted during a remedial investigation or remedial action.

(11) Nonparticipating PRPs - Potentially responsible parties who:

(A) are unwilling or unable to join in the making of a good faith offer;

(B) are unwilling or unable to become a party to an agreed order to perform an RI/FS, similar study, or remedial action; or

(C) intentionally violate the terms of an agreed order so as to substantially interfere with the achievement of the purposes of the agreed order.

(12) Operation and maintenance plan - A document detailing the necessary operation and maintenance, inspection, and monitoring activities, including schedules, required to maintain the attainment of performance goals after completion of the implementation phase of the remedial action.

(13) Oversight costs - All administrative costs and costs for technical and legal services incurred by the agency, or agents or contractors for the agency, incurred in the determination of superfund eligibility, identification of PRPs, oversight of the remedial investigation and remedial action, plus all such costs incurred in verifying compliance by PRPs with the terms of any agreed order which may be issued and costs incurred by the agency for delisting a site from the State Registry and cost recovery costs.

(14) Potentially responsible party (PRP) - A person potentially responsible for solid waste as defined in the Act §361.271 and §361.275(g).

(15) Presumptive remedy - A remedy in a commission document titled "Presumptive Remedies" which describes site specific remedial alternatives for a facility in lieu of a full feasibility study as required by §335.348 of this title (relating to General Requirements for Remedial Investigations).

(16) Quality assurance project plan (QAPP) - A document describing in comprehensive detail the necessary quality assurance, quality control, and other technical activities that must be implemented to meet the data quality objectives during a remedial investigation or remedial action.

(17) Remedial action (RA) - An action, including remedial design and post-closure care, consistent with a remedy taken instead of or in addition to a removal action in the event of a release or threatened release of hazardous substances into the environment to prevent or minimize the release of a hazardous substance so that the hazardous substance does not cause an imminent and substantial danger to present or future public health and safety or the environment.

(18) Remedial action drawings and specifications - Documents that include the drawings showing the scope, extent, and character of the work to be performed during the remedial action and the written technical descriptions of materials, equipment, remediation systems, standards and workmanship to be applied during the remedial action.

(19) Remedial design (RD) - A design consisting of the remedial action drawings and specifications and other documents developed for the remedial action in accordance with the requirements of §335.349(d) of this title (relating to General Requirements For Remedial Activities).

(20) Remedial investigation (RI) - An investigative study which may include removals, feasibility study, baseline risk assessment, ecological risk assessment, or similar study, designed to adequately determine the nature and extent of a release or threatened release of hazardous substances and, as appropriate, its impact on air, soils, groundwater, and surface water, both within and beyond the boundaries of the facility in accordance with the requirements of §335.348 of this title (relating to General Requirements for Remedial Investigations).

(21) Responsible party (RP) - A person responsible for solid waste as defined in the Act, §361.271 and §361.275(g).

(22) Sampling and analysis plan (SAP) - A document describing the specific sampling and analytical protocols to be implemented during a remedial investigation or remedial action.

(23) Settlement offer - A written offer by a potentially responsible party to fund or perform less than a full and complete remedial investigation and/or remedial action.

(24) Spill/release contingency plan - A document describing the sequences, procedures, and requirements to be implemented to protect both workers at the facility and the public from hazardous exposure to releases or spills resulting from the remedial action.

(25) Substantial change in use - A physical or functional alteration of a facility, the effect of which is to interfere significantly with a proposed or ongoing remedial investigation, proposed, ongoing, or completed remedial action or to expose public health and safety or the environment to a significantly increased threat of harm. The term includes, but is not limited to, actions such as the erection or razing of a building or other structure at the facility, the use of a facility for agricultural production, the paving over of a facility, the creation of a park or other public or private recreational use on the facility, and any other alteration of the site or activity which could interfere with the performance of a remedial investigation or remedial action.

#### §335.343. *Ranking of Facilities.*

(a) The relative priority for action needed at a facility investigated by the executive director for possible listing on the State Registry may be based on the following relevant factors:

(1) A superfund hazard ranking system (HRS). The Superfund HRS is a methodology designed to determine a numerical score for a facility based on the judgment of the executive director concerning various factors which may impact the public health and safety or the environment.

(2) Other relevant factors including:

- (A) community interests;
- (B) simplicity;
- (C) costs of investigation and remedial action;

(D) estimated time to complete the remedial action;

or

(E) any other factor that the executive director determines is relevant and significant to the priority ranking of the facility.

(b) Upon appropriate investigation by the executive director, a facility will be assigned a Superfund HRS score. A facility may be proposed for listing on the State Superfund Registry if it is assigned a Superfund HRS score 5.0 or greater.

(c) The relative priority for action at facilities listed on the State Registry will be periodically reviewed and revised by the executive director as necessary to accurately reflect the need for action at the facilities.

(d) The commission shall annually publish an updated state registry identifying each facility and the relative priority for action at each listed facility.

(e) If a facility has been deleted in accordance with §335.344 of this title (relating to Delisting and Modifications) based, in whole or in part, on the facility being addressed pursuant to Chapter 333 of this title (relating to Voluntary Cleanup Programs), and the executive director determines that the facility is no longer being adequately addressed, the facility shall automatically revert to the status the facility had immediately before the facility was deleted from the Registry in accordance with the Act, §361.189. No public meeting is required under this subsection.

#### §335.345. *Requests for Information or Production of Documents.*

(a) The executive director may submit requests for information and requests for production of documents as authorized by the Act, §361.182 to any person who has information or documents which in the executive director's opinion are necessary for the adequate investigation or remediation of a facility listed on the Registry or that the executive director has reason to believe should be listed on the State Registry. The requested information or documents shall be produced within forty-five days from the date of request. If the requested information or documents are not produced within forty-five days, the executive director may petition the commission to issue an order directing compliance with the requests for information or production of documents. The executive director shall serve a copy of the petition on the person to whom the request for information or production of documents was directed at least 20 days prior to the scheduled date of commission action on the petition. The person to whom the request for information or production of documents was directed may appear before the commission and present evidence and argument on the petition or in support of a claim asserted under subsection (b) of this section, or the commission may refer the matter to the office of hearings examiners for the taking of evidence.

(b) Information or documents provided to the executive director in accordance with this section are subject to the Public Information Act and its exceptions.

#### §335.346. *Removals and Preliminary Site Investigations.*

(a) For facilities listed on the Registry or proposed for listing on the Registry, no person may perform any partial or total removals at such facility or conduct preliminary investigations of any type at such facility without the advance written authorization of the executive director after notice and opportunity for comment to all other potentially responsible parties.

(b) To expedite the executive director's consideration of a proposal to conduct removals or preliminary investigations at a facility, the person proposing such actions shall submit to the executive director a workplan describing the removal and/or investigation ac-

tivities proposed, a health and safety plan, a quality assurance project plan, and an implementation schedule for completing various sub-tasks identified in the workplan.

(c) Any authorization by the executive director to perform preliminary investigations, investigation activities, or partial or total removals at a facility does not constitute a finding or determination by the executive director that such preliminary investigation constitutes an approved remedial investigation or that the removal constitutes the final remedial action. An authorization by the executive director to perform any partial or total removals or investigation activities also does not constitute a determination or finding by the executive director that any release or threatened release attributed to the removed materials is divisible as defined in the Act, §361.276.

(d) Pursuant to the Act, §361.133(c)(1)-(4) and (g), the executive director may use money in the Hazardous and Solid Waste Remediation Fee Account for necessary and appropriate removal and remedial action at sites at which solid waste or hazardous substances have been disposed if funds from a liable party, independent third party, or the federal government are not sufficient for the removal or remedial action. The executive director may also perform removals under the Act, §361.133(c)(5) to protect human health and the environment.

*§335.348. General Requirements for Remedial Investigations.*

(a) Unless otherwise directed by the commission, a remedial investigation as approved by the executive director shall be completed before the executive director's selection of the remedial action, except for removals and preliminary site investigations pursuant to §335.346 of this title (relating to Removals and Preliminary Site Investigations).

(b) A similar study may be approved by the executive director as an appropriate alternative to the performance of a full remedial investigation when necessary to avoid delay, to make more effective use of resources or when such similar study is sufficient to adequately characterize a site.

(c) The contents of the remedial investigation as approved by the executive director, will depend on the particular circumstances of each specific facility. Under any remedial investigation; however, sufficient information must be collected and evaluated to allow the executive director to select an appropriate remedial action.

(d) A remedial investigation may include the following, as appropriate to a particular facility, for the purpose of allowing the executive director to select an appropriate remedial action:

(1) (No change.)

(2) investigations to adequately characterize the nature and extent of hazardous substances in the soils encompassing the facility. Properties associated with the soils which would influence the type and rate of hazardous substance migration or affect the ability to implement alternative remedial actions shall be characterized.

(3) investigations of hydrogeology and geology to adequately characterize the nature and extent of hazardous substances in the ground water and the features which affect the fate and transport of those hazardous substances. This should include, but is not limited to, the physical properties and distribution of bedrock and unconsolidated materials, groundwater flow rate and gradient for contaminated and potentially contaminated aquifers, groundwater divides, areas of groundwater recharge and discharge, and location of public and private groundwater wells.

(4) (No change.)

(5) an ecological risk assessment

(6) descriptions of the location, quantity, horizontal and vertical extent, concentrations and sources of hazardous substances. Information on the physical and chemical characteristics and the toxicological effects of hazardous substances shall be provided, if available.

(7) a feasibility study.

(8) a baseline-risk assessment.

(e) A baseline risk assessment will be conducted in accordance with the Environmental Protection Agency's Risk Assessment Guidance for Superfund - Volume 1: Human Health Evaluation Manual or other equivalent EPA guidance document. An ecological risk assessment shall also be completed before the executive director's selection of the proposed remedial action. The evaluation may not be required when the executive director determines that remediation standards are apparent and adequately protective of human health and the environment.

(f) A workplan for a remedial investigation shall be submitted to the executive director for final review and possible modifications and shall include the following:

(1) a sampling and analysis plan covering all sampling activities to be undertaken pursuant to the remedial investigation;

(2) a quality assurance project plan to ensure the integrity of all samples taken pursuant to the remedial investigation; and

(3) a health and safety plan to describe steps to be taken to assure the health and safety of all personnel engaged in implementing the remedial investigation; and

(4) an implementation schedule for all aspects of the remedial investigation.

(g) Treatability studies may be required as necessary to provide information to evaluate remedial action alternatives.

(h) In evaluating the acceptability of a remedial investigation, the executive director may require the utilization of published agency and EPA technical guidance documents.

(i) A health and safety plan shall be prepared that addresses the protection of on-site personnel and the public from potential hazards associated with implementing the remedial investigation at a particular facility.

(j) A report shall be prepared at the completion of the remedial investigation and submitted to the executive director for review, possible modification and final approval.

(k) The selection of the remedial alternative shall be made according to the process outlined in the guidance document "Presumptive Remedies for Soils at Texas State Superfund Sites" or other applicable presumptive remedy documents, unless the executive director determines that a feasibility study must be conducted.

(l) The remedial action for a particular facility shall be selected based on the remedial alternative that the executive director determines to be the lowest cost alternative which is technologically feasible and reliable, effectively mitigates and minimizes damage to the environment, and provides adequate protection of the public health and safety and the environment.

(m) All engineering evaluations, plans, and specifications included in the feasibility study or similar study must be prepared and submitted in accordance with the Texas Engineering Practice Act.

*§335.349. General Requirements For Remedial Activities.*

(a) Based on the proposals set forth in the feasibility study, the presumptive remedy, or other similar study, elements from different remedial action alternatives as proposed in a remedial investigation as well as any other information available to the executive director, the executive director shall select a proposed remedial action. After the selection of the proposed remedial action, the executive director shall hold a public meeting to discuss the proposed action, as required by the Act, §361.187. This meeting is not a contested case hearing within the meaning of Texas Government Code, Chapter 2001. Persons desiring to submit comments are encouraged to do so prior to the public meeting. Written comments should be submitted to the executive director at least 5 days prior to the date set for public meeting. All other comments shall be presented in the public meeting.

(b) This subsection describes the administrative procedures for modifying the proposed remedial action after the date of the initial public meeting to discuss the remedial action for the site.

(1) A minor change in the proposed remedial action is one that does not significantly affect the scope, performance, or cost of the proposed remedial action. The executive director will document minor changes in the project records without the necessity of another public meeting.

(2) A significant change in the proposed remedial action is one that materially affects the scope, performance, or cost of the proposed remedial action, but uses the same approach and results in a remedial action as least as protective as originally proposed. For significant changes, the executive director shall notify the PRPs by certified mail of the changes and issue a public notice in the *Texas Register* and in a newspaper of general circulation in the county in which the facility is located. The notice shall provide information regarding the significant changes in the proposed remedial action; however, a public meeting or opportunity for public comment is not required. If the commission has not entered into an administrative order to perform the remedial action, a significant change will extend the schedules provided in the Act, §361.187(d).

(3) A fundamental change in the proposed remedial action is one that uses a different approach to achieve the remedial action goals, or one that uses the same approach, but results in a remedial action that is less protective than that originally proposed. A major change in technology to address the contamination is a fundamental change. For fundamental changes, the executive director shall hold another public meeting to discuss the proposed changes in accordance with the Act, §361.187, and as described in subsection (a) of this section. This newly proposed remedial action shall supersede the remedial action originally proposed in the initial public meeting.

(c) Engineering documents submitted in connection with the remedial action must be approved by the executive director and must demonstrate compliance with relevant cleanup standards, except as provided in the Act, §361.193. The scope of these documents will depend on the nature and complexity of the proposed remedial action and may vary from facility to facility.

(d) The executive director shall establish the minimum requirements for the remedial design, based on the specific characteristics of the facility and the remedial action. If appropriate, the executive director may waive any of the requirements in this subsection for a particular facility. Typical remedial design requirements include, but are not limited to:

- (1) remedial action drawings and specifications;
- (2) quality assurance project plan;

- (3) sampling and analysis plan;
- (4) spill/release contingency plan;
- (5) implementation schedule; and
- (6) an operations and maintenance plan.

(e) A health and safety plan shall be prepared that addresses the protection of on-site personnel and the public from potential hazards particular to a facility while implementing the remedial action.

(f) All engineering plans and specifications prepared for remedial activities must be prepared and submitted in accordance with the Texas Engineering Practice Act.

#### §335.351. Settlement Agreements.

(a) General purpose. The commission encourages PRPs to enter into negotiated settlement agreements which shall include an agreed administrative order with the commission so that an effective remedial investigation and remedial action of a facility can be quickly implemented while at the same time resolving PRP's apparent liability for the facility. The goal of the executive director in negotiating PRP settlements is to obtain a complete remedial investigation and remedial action of the facility by PRPs, or to collect from PRPs 100% of the agency's cost of performing a complete remedial investigation and remedial action of the facility. PRPs shall have 60 days after the end of the good faith offer period to negotiate a settlement/final administrative order. Settlement negotiations shall run concurrently with agreed order negotiations. Settlements may also be made after an order is issued.

(b) Settlement.

(1) In the case of an offer which is less than a good faith offer to fund or perform a remedial investigation or remedial action, the executive director's consideration of the offer may be based on:

(A) the relationship between the parties' actions in storing, processing, and disposing of hazardous substances and the remedial action required to eliminate the release or threatened release;

(B) the volume of hazardous substances each party is responsible for at the site to the extent that the costs of the remedial action are based on the volume of waste present;

(C) consideration of toxicity or other waste characteristics if those characteristics affect the cost to eliminate the release or threatened release;

(D) a party's cooperation with state agencies, its cooperation or non-cooperation with the pending efforts to eliminate the release or threatened release, or a party's actions concerning storing, processing, or disposing of hazardous substances, as well as the degree of care that the party exercised; and

(E) a party's ability to pay.

(2) The commission may consider a settlement proposal for remedial investigation and/or remedial action of less than 100% of a facility's remedial investigation and/or remedial action costs. Upon settling with cooperative parties, the commission will vigorously seek all remaining relief, including full cost recovery of monies expended from the Hazardous and Solid Waste Remediation Fee Account, including penalties, damages, and interest where appropriate, as well as the agency's oversight costs, from parties whose non-cooperation prevented the achievement of a complete settlement.

(c) Mixed funding. Mixed Funding means use of funds from federal, state, and private party sources, or any combination of those

sources, to fund a timely remedial action. Mixed funding may be used in the following circumstances.

(1) In order to achieve an expeditious remedial action of a facility listed on the Registry, the commission may agree to reimburse parties to a settlement agreement from the Hazardous and Solid Waste Remediation Fee Account with interest, for certain costs incurred as a result of the timely implementation of the remedial action that the parties agree to perform but which the commission agrees to finance in whole or in part. The commission may agree to utilize funds from whatever other federal or state sources are available to the commission for the funding of a facility remediation.

(2) Mixed funding shall be provided only to PRPs whom the commission has found to be eligible and who have entered into an agreed administrative order with the commission. The agreed administrative order shall identify remedial action tasks to be addressed by the mixed funding, costs to be borne by the Hazardous and Solid Waste Remediation Fee Account and the terms of agreement.

(3) A PRP must submit sufficient documentation, as requested by the executive director, to support its request for mixed funding.

(4) The commission's granting of a request for mixed funding does not diminish or alter the standard and scope of liability as set out in the Act. The commission will not approve mixed funding based solely on the grounds that a share of wastes at a site may be attributable to an unknown or financially nonviable party. In addition, the availability or the amount of any fund-financing for a particular site will not be dependent on consistency with any volumetric allocation.

(5) Good faith negotiations and early cooperation of settlers will be considered in mixed funding requests. The executive director shall only consider mixed funding for remedial action if the PRP meets the following conditions:

(A) the PRP participated in the remedial investigation;

or  
(B) the PRP did not participate in the remedial investigation and the PRP agreed to reimburse all agency expenses associated with the remedial investigation.

(6) If a PRP is found to be eligible for mixed funding, the executive director shall make an initial determination regarding the amount of funding to be provided. This determination is solely within the discretion of the executive director and is not subject to adjudication in an administrative hearing or appeal to the commission. A determination of eligibility is not a funding commitment as actual funding will depend on availability of funds and approval of the commission

(7) Where a remedial action has been completed at a facility pursuant to a mixed funding agreement, the Hazardous and Solid Waste Remediation Fee Account shall be subject to an obligation for subsequent remedial actions at the same facility only to the extent that such subsequent actions are necessary by reason of failure of the original remedial action. Such obligation shall be in a proportion equal to, but not exceeding, the proportion contributed by the fund for the original remedial action. The fund's obligation for such future remedial action may be met through fund expenditures, or through payment by parties who were not signatories to the original agreement.

(d) De minimis settlements. The commission may reach a final settlement with a PRP for only a minor portion of the response

costs at a facility if the conditions in either of the following paragraphs (1) or (2) of this subsection are met.

(1) A PRP can demonstrate the following:

(A) the amount of the hazardous substances contributed by a particular PRP is minimal in comparison to the amounts of other hazardous substances at the facility; or

(B) the toxicity or other hazardous effects of the hazardous substances contributed by a particular PRP are minimal in comparison to the toxicity or other hazardous effects of other hazardous substances at the facility.

(2) The PRP can demonstrate that it:

(A) is the owner of the real property on or in which the facility is located;

(B) did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substance at the facility; and

(C) did not contribute to the release or threatened release of a hazardous substance at the facility through any action or omission.

(3) Paragraph (2) of this subsection does not apply if the PRP purchased the real property with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance.

(e) Covenants not to sue.

(1) The commission may, in its discretion, provide any PRP with a covenant not to sue concerning any existing or future liability resulting from a release or threatened release of a hazardous substance addressed by a remedial action if each of the following conditions is met:

(A) the covenant not to sue is in the public interest as determined by criteria set forth in paragraph (2) of this subsection;

(B) the granting of the covenant not to sue would expedite a remedial action approved by the commission; and

(C) the PRP is in full compliance with the terms of any order issued by the commission for response to the release or threatened release for the facility concerned.

(2) In assessing the appropriateness of granting a covenant not to sue and in determining the appropriate legal scope of such a covenant, the commission shall consider whether the covenant is in the public interest on the basis of such factors as the following:

(A) the effectiveness and reliability of the remedial action, in light of other alternative remedies considered for the facility concerned;

(B) the nature of the environmental risks remaining at the facility;

(C) the extent to which performance standards are included in the order or decree;

(D) the extent to which the response provides a complete remedial action for the facility, including a reduction in the hazardous nature of the substances at the facility;

(E) the extent to which the technology used in the remedial action is demonstrated to be effective;

(F) whether the Hazardous and Solid Waste Remediation Fee Account or other sources of funding would be available for

any additional remedial actions that might eventually be necessary at the facility; and

(G) whether the remedial action will be carried out, in whole or in significant part, by the PRPs themselves.

(3) A covenant not to sue shall be subject to the satisfactory performance by the PRP of its obligations under any order issued by the commission for remedial actions to address the release or threatened release of a hazardous substance at the facility. A covenant not to sue concerning future liability for remediation of the facility shall not take effect until the executive director certifies that the remedial action has been completed or the ordered action has been performed in accordance with any such order issued by the commission.

(4) A covenant not to sue a PRP concerning future liability for remediation of a facility may include an exception to the covenant that allows the commission to sue such person where such liability arises out of conditions which are unknown to the executive director at the time he certifies under paragraph (3) of this subsection that the remedial action has been completed at the facility. A covenant not to sue may provide that such future liability may be limited to the same proportion as that established in the original settlement agreement or order issued by the commission.

(f) Discharge of liability for other PRPs. Any settlement agreement with the commission which resolves a PRP's liability for remediation of a facility does not discharge the liability of any other PRP unless its terms so provide, but it reduces the potential liability of the other PRPs by the amount of the settlement. A PRP will be afforded the opportunity to comment on any settlement agreement with the commission to which it is not a party.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 2, 1998.

TRD-9810533

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Effective date: July 22, 1998

Proposal publication date: January 23, 1998

For further information, please call: (512) 239-6087

### 30 TAC §335.352

The repeal is adopted under the Texas Water Code, §5.103 and §26.011, which provide the commission with authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. The repeal is also adopted under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, §361.017, and §361.024, which provide the commission the authority to regulate industrial solid waste and municipal hazardous wastes and all other powers necessary or convenient to carry out its responsibilities. The Texas Solid Waste Disposal Act, Texas Health and Safety Code, Subchapter F provides additional authority to adopt rules specific to the registry and cleanup of certain hazardous waste facilities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 2, 1998.

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Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Effective date: July 22, 1998

Proposal publication date: January 23, 1998

For further information, please call: (512) 239-6087

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### Part II. Texas Parks and Wildlife Department

#### Chapter 53. Finance

##### Subchapter A. License Fees and Boat and Motor Fees

###### 31 TAC §53.1

The Texas Parks and Wildlife Commission, in a regularly scheduled public hearing June 4, 1998 adopted amendment of §53.1, concerning License Issuance Procedures, Fees, Possession and Exemption Rules without change to the proposed text as published in the May 1, 1998 issue of the *Texas Register* (23 TexReg 4213). The adopted amendment implements statutory changes and agreements reached with Louisiana that simplify licensing requirements for anglers fishing waters along the Texas-Louisiana border.

Legislative changes in HB 2542 gave the Commission authority to enter into agreements to allow persons who hold valid Louisiana non-resident fishing licenses to fish all waters that form a common boundary between Texas and Louisiana without obtaining a Texas non-resident license. Louisiana representatives have agreed to this action.

The amendment allows residents of Louisiana who meet the licensing requirements of their state to fish all waters that form a common boundary between Texas and Louisiana. This action is contingent on Louisiana allowing the same privileges to persons who hold valid Texas resident fishing licenses which they have done in the past. Legislative changes in HB 2542 deleted specific references to licensing requirements for border waters with Louisiana. Changes to §53.1(d) are needed to reinstate these agreements in our regulations.

The Department received no public comment concerning the proposed amendment.

The new amendments are adopted under Parks and Wildlife Code, §§41.003-41.006, which provides the Parks and Wildlife Commission with the authority to enter into reciprocal license agreements with states having a common border with Texas to govern the issuance and fees for fishing and migratory waterfowl hunting licenses.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 1998.

TRD-9810293  
Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife Department  
Effective date: September 1, 1998  
Proposal publication date: May 1, 1998  
For further information, please call: (512) 389-4642

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**TITLE 34. PUBLIC FINANCE**

**Part I. Comptroller of Public Accounts**

**Chapter 3. Tax Administration**

**Subchapter N. County Sales and Use Tax**

**34 TAC §3.251**

The Comptroller of Public Accounts adopts an amendment to §3.251, concerning adopting or abolishing county tax, without changes to the proposed text as published in the February 20, 1998, issue of the *Texas Register* (23 TexReg 1515).

House Bill 92, 75th Legislature, 1997, amended the Local Government Code effective September 1, 1997, by adding Chapter 334 and Chapter 335 concerning sports and community venue projects and districts. The amendment explains that the notification requirements, effective dates, and contested election provisions in §3.251 apply to an election to impose sales and use tax for a sports and community venue project that increases a county tax rate.

The amendment also replaces all references to Texas Civil Statutes, Articles 1118x or 1118y with references to the Transportation Code, Chapters 451 or 452. The provisions in Articles 1118x and 1118y have been recodified in the Transportation Code.

No comments were received regarding adoption of the amendment.

This 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.

The amendment implements acts by the 75th Legislature, 1997, amending the Local Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 1, 1998.

TRD-9810390  
Martin Cherry  
Chief, General Law  
Comptroller of Public Accounts  
Effective date: July 21, 1998  
Proposal publication date: February 20, 1998  
For further information, please call: (512) 463-4062

◆ ◆ ◆  
**Subchapter O. State Sales and Use Tax**

**34 TAC §3.285**

The Comptroller of Public Accounts adopts an amendment to §3.285, concerning resale certificate; sales for resale, without changes to the proposed text as published in the February 20, 1998, issue of the *Texas Register* (23 TexReg 1515).

The Tax Code was amended effective October 1, 1997, by adding §151.154(f) as a clarification. The amendment clarifies that a retailer is liable for sales tax on the original purchase price of a taxable item if the retailer purchases the taxable item tax free for resale and then uses the taxable item as a trade-in on the purchase of another taxable item.

No comments were received regarding adoption of the amendment.

This 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.

The amendment implements the acts of the 75th Legislature, 1997, amending the Tax Code, §151.154.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 6, 1998.

TRD-9810617  
Martin Cherry  
Chief, General Law  
Comptroller of Public Accounts  
Effective date: July 26, 1998  
Proposal publication date: February 20, 1998  
For further information, please call: (512) 463-4062

◆ ◆ ◆  
**34 TAC §3.298**

The Comptroller of Public Accounts adopts an amendment to §3.298, concerning amusement services, with changes to the proposed text as published in the February 20, 1998, issue of the *Texas Register* (23 TexReg 1516).

The Tax Code was amended effective October 1, 1997, to add §151.432, concerning the deduction of tax on a ticket or admission document to an amusement service. The amendment allows resellers of tickets or admission documents to amusement services to deduct from reported taxable sales the adjusted value of tickets purchased from non-permitted purchasers provided the tickets or admission documents had the tax included.

Non-substantive grammatical corrections were made in subsections (a)(1)(A)(vii), (a)(1)(D)(xv), and (i)(3)(A).

No comments were received regarding adoption of the amendment.

This 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.

The amendment implements acts by the 75th Legislature, 1997, amending the Tax Code by adding §151.432, effective October 1, 1997.

§3.298. *Amusement Services.*



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

(1) Amusement services - Entertainment, recreation, sport, pastime, diversion, or enjoyment that is a pleasurable occupation of the senses. Amusement services and places offering amusement services include, but are not limited to, the following:

(A) live or recorded performances, whether by individual ticket or by season tickets:

- (i) ballet performances;
- (ii) circuses;
- (iii) ice skating shows;
- (iv) motion pictures;
- (v) musical concerts;
- (vi) opera performances;
- (vii) outdoor theatres; and
- (viii) theatres (movies and plays);

(B) exhibitions or displays:

- (i) animal shows (contests, exhibitions);
- (ii) antique shows;
- (iii) aquatic shows;
- (iv) arts and crafts, and art shows (fairs);
- (v) auto shows;
- (vi) museums (displaying art objects, wax figures, antique autos, etc.); and
- (vii) zoos;

(C) spectator sports:

- (i) dragstrip operation;
- (ii) horse shows (horse riding exhibitions);
- (iii) motorcycle races;
- (iv) automobile races (full size and miniature cars);
- (v) rodeo;
- (vi) sporting events such as football, baseball, basketball, hockey, and soccer games; and
- (vii) wrestling, boxing, or arm wrestling;

(D) participatory sports or games:

- (i) athletic clubs;
- (ii) bowling games;
- (iii) court fees - tennis, racketball, handball, etc.;
- (iv) domino games (including by the hour);
- (v) go-cart raceways;
- (vi) golf courses;
- (vii) golf driving ranges;
- (viii) health clubs (spas), (admissions and memberships);
- (ix) miniature golf courses;

(x) chartered boat or party boat excursions (see paragraph (2) of this subsection for excursions of more than one day duration and for excursions on which fishing guide services are provided);

(xi) pool (billiards) games (by the game or by the hour);

(xii) skate board tracks;

(xiii) skating rinks (roller skating and ice skating);

(xiv) swimming pools;

(xv) water slides; and

(xvi) physical fitness centers;

(E) fairs or carnivals:

(i) amusement parks;

(ii) carnivals;

(iii) fairs;

(iv) games of skill, at circus, carnival, etc.;

(v) shooting galleries (ranges); and

(vi) side shows;

(F) other:

(i) except as provided by subsection (e)(4) of this section, cover charges (for admission to night clubs, dance halls, discos, etc., providing dancing, music, or other entertainment);

(ii) hot tub concessions;

(iii) parties (New Year's Eve) sponsored by radio stations, hotels, etc. Ticket price includes meal, set-ups, entertainment, party favors;

(iv) rides for pleasure (in hot-air balloons, helicopters, trains, ships, boats, etc.);

(v) tour trains and buses, whose primary purpose is to show tourist sights along a route as opposed to regular transportation;

(vi) tours of tourist attractions, such as ships, buildings, and monuments, and natural wonders such as caves and caverns; and

(vii) palm reading, fortune telling, and astrological chart preparation;

(G) country clubs and other private clubs and organizations that provide entertainment, recreation, sports, dining, or social facilities to members.

(2) Nonamusement services - Activities which are primarily instructional in nature or nontaxable personal services. Places, services, and clubs not covered by the tax on amusement services include, but are not limited to:

(A) hobby clubs (stamp collecting clubs, toastmaster clubs, camera clubs, amateur radio clubs);

(B) instructions for any sport or musical discipline;

(C) camps for children (day camps or boarding camps);

(D) video cassette clubs;

(E) political fundraisers;

- (F) campground admissions;
- (G) cruises which last longer than 24 hours and extend offshore outside Texas territorial limits;
- (H) fishing and hunting leases and guide services; and
- (I) membership in sororities and fraternities.

(3) Occasional sale - The sale of not more than 10 admissions for amusement services during a 12- month period by a person who does not hold himself out as engaging, or does not habitually engage, in the selling of amusement services.

(4) Provider of an amusement service - The person who has legal rights of ownership over or the legal right to provide, present, or offer an amusement, entertainment, or recreation that is rendered on a regular basis at a fixed location and for which admissions are sold, such as the owner of the wax figure display at a wax museum. The provider of an amusement service is also the person who has legal rights of ownership to an amusement, entertainment, or recreation that will not be rendered on a regular basis at a fixed location and for which amusement service admissions will be sold, such as the provider of a one-night live performance by a singer. A provider of an amusement service may be, but is not always, the owner of the facility (land and/or building) at which the amusement service is offered or performed. A provider of an amusement service may gain the right of providing an amusement service by virtue of a contract or agreement (lease, rental, concession right) with the performer(s) of the entertainment or with a facility owner when the use of that facility constitutes the amusement service. Terms used within the amusements industry to refer to a provider include manager, promoter, concessionaire, tenant, or association (or club) president.

(5) Sales price of an amusement service - The fee charged for admission to an amusement, including a convenience fee, handling charge, service charge, or other amount over and above the amount that would be charged for an amusement admission at the ticket counter of the facility at which the amusement service will be rendered. Also included are dues, initiation fees, and other charges, assessments, and fees required for a special privilege, status, or membership classification in a private club or organization. Receipts subject to tax under the Texas Alcoholic Beverage Code, §202.02, are not included in the sales price of an amusement service.

(6) Sales price of membership to country clubs, including clubs described by the Internal Revenue Code of 1986, §501(c)(7) - The sales price includes dues, initiation fees, and other charges, assessments, and fees required for a special privilege, status, or membership classification in a private club or organization. Whether or not the club has its own facilities is not relevant. Receipts subject to tax under the Texas Alcoholic Beverage Code, §202.02, are not included in the sales price of an amusement service.

(7) Seller of admissions to amusement services - A person who sells more than ten admissions to amusement services during a 12-month period and includes those persons who hold themselves out as engaging, or who habitually engage, in the selling of admissions to amusement services.

(8) Sale of an amusement service admission - The transfer of title to or possession of a ticket or other admission document for a consideration or the collection of an admission, membership, or enrollment fee, whether by individual performance, subscription series, or membership privilege, or through the use of a coin-operated or credit-card-operated machine. The consideration paid may secure the admission privilege for an individual or a group of individuals. The contract or agreement whereby the right is secured

for a provider to offer an amusement, recreation, or entertainment as an amusement service is not the sale of an admission to an amusement service and is not subject to sales tax, such as the paying of a fee to a singer for a performance that will be provided by the payer of the fee as an amusement service through the sales of tickets.

(b) Charges to private club members and guests. The membership dues, initiation fees, and other assessments and fees charged for a special privilege, status, or membership classification in a private club or organization, including organizations described by the Internal Revenue Code of 1986, §501(c)(7), if the organizations provide amusements, are taxable. Taxable fees for special privileges in the organization include, but are not limited to, liquor pool dues, boat slip rental fees, golf cart storage fees, locker rental fees, locker room use fees, and fees for access to the restaurant and bar. Separate charges for amusement services by persons operating clubs or other facilities over and above amounts received for membership or initiation fees, such as green fees or fees for admissions to swimming pools, racketball courts, or tennis courts, are also taxable. Initiation fees which are refundable, as evidenced by a written agreement, are not taxable.

(c) Entry fees. Entry fees will not be taxable as amusements if:

(1) the fee substantially exceeds what would normally be paid for using the facility and a person is paying to compete in a contest, and part of the fee goes toward the cost of conducting the contest and for prizes; or

(2) an individual would not normally use the facility, or pay a fee except for the purpose of participating in a contest.

(d) Travel agencies.

(1) Tickets to amusements sold by travel agencies as part of a travel package are taxable only if:

(A) the price of the ticket is separately stated from the price for the remainder of the package; or

(B) though not separately stated, the surrounding additional costs are inconsequential.

(2) If the sales tax is not required to be collected by the travel agency, sales tax must be paid at the time the travel agency purchases the tickets originally.

(e) Imposition of tax.

(1) Sales tax is due on the sale of an admission to an amusement service if the event or location of the service is within the State of Texas. Sales tax is also due on admissions to gambling ships that operate outside Texas waters if they depart from and return to Texas ports. Sales tax is not due on the sale of an admission to an amusement service if the event or location of the service is outside Texas.

(2) Use tax is due on an out-of-state sale of an admission to an amusement event that will take place in Texas.

(3) When there is a sale of an amusement service which does not involve the transfer of a ticket or other physical evidence of admission, possession of or title to the admission is to be regarded as taking place at the seller's place of business. An example would be when admission is secured by a reservation made by the seller for the purchaser.

(4) Sales or use tax is not due on cover charges which are taxable under the Texas Alcoholic Beverage Code, §202.02.

(f) Taxable item sold or transferred with amusement service.

(1) Sellers of service may issue a resale certificate in lieu of tax to suppliers of tangible personal property only if care, custody, and control of the property is transferred to the client. For example, a taxpayer purchases padlocks to transfer to customers when lockers are rented. The padlock is transferred to customers, and the customers use the padlock when renting the locker. Taxpayer may purchase the padlock tax free by issuing a resale certificate. Tax is due on the total amount charged the customer, including amounts for the padlock and for the services.

(2) A resale certificate may be issued for a service if the buyer intends to transfer the service as an integral part of taxable services. A service will be considered an integral part of a taxable service if the service purchased is essential to the performance of the taxable service and without which the taxable service could not be rendered.

(3) A resale certificate may be issued for a taxable service if the buyer intends to incorporate the service into tangible personal property which will be resold. If the entire service is not incorporated into the tangible personal property, it will be presumed the service is subject to tax and the service will only be exempt to the extent the buyer can establish the portion of the service actually incorporated into the tangible personal property. If the buyer does not intend to incorporate the entire service into the tangible personal property, no resale certificate may be issued, but credit may be claimed at the time of sale of the tangible personal property to the extent the service was actually incorporated into the tangible personal property.

(4) Any item, such as machinery or equipment, purchased to be used in the providing of an amusement service is not an item transferred with an amusement service and is subject to sales tax.

(5) A reseller of a ticket or admission document to an amusement service may deduct from taxable sales reported the "adjusted value" of the ticket or admission document purchased for resale from a non-permitted purchaser of the ticket or admission document. The "adjusted value" is the face value of the ticket or admission document, less the included sales tax. A reseller is allowed the deduction from taxable sales when filing a sales tax report if all of the following criteria are met:

(A) the sales tax was paid by the purchaser and the purchaser does not hold a Texas Sales and Use Tax Permit;

(B) the language on the ticket or admission document purchased for resale states that all taxes have been included in the price of the ticket or admission document;

(C) the ticket or admission document for which a deduction is claimed was not purchased tax-free by use of a resale or exemption certificate; and

(D) the ticket or admission document is actually resold.

(g) Exemptions.

(1) Sales tax is not due on the sale of an amusement service if the service is provided exclusively:

(A) by a nonprofit organization, corporation, or association, other than organizations described by the Internal Revenue Code of 1986, §501(c)(7), if the proceeds do not go to the benefit of an individual, except as a part of the services of a purely public charity. Initiation and membership fees and other assorted fees charged by such a nonprofit organization, corporation, or association are not taxable. Examples would include: organizations, corporations, or

associations recognized as nonprofit organizations under the Internal Revenue Code, §501(c), Kiwanis clubs, labor unions, and ex-students organizations. Organizations described by the Internal Revenue Code of 1986, §501(c)(7), that provide amusements, do not qualify for this exemption even though organized as nonprofit organizations;

(B) by a nonprofit corporation organized under the laws of this state for the purpose of encouraging agriculture by the maintenance of public fairs and exhibitions;

(C) by an educational, religious, law enforcement, or charitable association or organization as long as no part of the proceeds goes to the benefit of a private individual;

(D) by the United States, the State of Texas, a municipality, county, school district, special district, or other political subdivision of the State of Texas. An amusement service is not "exclusively provided" by a governmental entity if the entity contracts with an entity not listed in the Tax Code, §151.3101(a)(1), for the provision of the amusement;

(E) in a place that is included in the National Register of Historic Places; or

(F) in a place that is designated as a Recorded Texas Historic Landmark by the Texas Historical Commission.

(2) Sales tax is not due on the sale of an amusement service by a ticket service, ticket agent, ticket outlet, or any other seller of amusement services when the provider of the amusement service is exempt as set forth in paragraph (1) of this subsection.

(3) Except as provided by subsection (h) of this section, a nonprofit group may hire a for-profit organization to provide the expertise to produce an event without loss of the exemption provided by paragraph (1)(A) of this subsection. The nonprofit organization must hold itself out as the provider of the amusement and may not be a joint venturer with the for-profit entity.

(4) Amusement services provided through coin-operated machines that are operated by the consumer are exempt from sales tax. The coin used to operate the machine may be a token as well as a United States coin. Examples are coin-operated:

(A) pinball machines;

(B) video games and motion pictures;

(C) pool tables;

(D) televisions;

(E) shuffleboard;

(F) jukeboxes; and

(G) batting cages.

(5) Sales tax is not due on the occasional sale of an amusement service.

(6) Sales tax is not due on the purchase of an amusement service by an exempt entity for its own amusement or for the amusement of its members. See §3.322 of this title (relating to Exempt Organizations). The seller must secure a valid exemption certificate.

(7) Sales tax is not due on the purchase of the admission to an activity which may be classified as an amusement, entertainment, or recreation if purchased under a written prescription of a licensed practitioner of the healing arts for the primary purpose of health maintenance or improvement. The written prescription must specify the type of the treatment needed. If a membership privilege

is purchased pursuant to a written prescription, a new prescription must be obtained each time the membership is renewed.

(h) Governmental entities.

(1) Entities recognized as governmental entities are subject to the provisions of this subsection even though the entities may also be classified under the Tax Code, §151.3101(a)(3), (4), or (5).

(2) Unless an event is solely for educational purposes, this state, an institution owned or operated by the state, an agency of this state, city, county, school district, special district, political subdivision of this state, or the United States that contracts with a person, a for-profit organization, or any other organization not listed in the Tax Code, §151.3101(a)(1), to provide the expertise to produce or provide a musical concert or other amusement event loses the exemption provided in subsection (g) of this section. These organizations must collect sales tax on admissions to amusement events provided by or in conjunction with a person, a for-profit organization, or other organizations not listed in the Tax Code, §151.3101(a)(1).

(3) An amusement is not solely for educational purposes unless either: 100% of the proceeds from the admissions go to the educational organization; or students at the educational institution actually perform the amusement.

(i) Collection of the tax.

(1) Persons who sell admissions to an amusement service for resale may accept a resale certificate from the purchaser of the amusement in lieu of tax. The resale certificate will cover all convenience fees, handling charges, service charges, etc., added to the sales price of the admission by promoters, ticket services, and others.

(2) Each seller of amusement services selling to the final consumer must collect and remit the tax to the comptroller on the total receipts from all taxable sales. A seller will be responsible for remitting the correct amount of tax based on the total sales price of admissions including any charges added by others.

(3) The comptroller may regard any seller of an admission to an amusement service as the agent of the person from whom he obtains the tickets or other admission document if the comptroller determines that the tax will be collected more efficiently. The seller of an admission to amusement service will be regarded as agent if:

(A) the person providing the tickets or other admission documents obtains written authorization from the comptroller to assume responsibility for the tax collection of his agent;

(B) the person providing the tickets includes in the sales price of the admission any convenience fee, handling charge, etc., added on by his agent; and

(C) the provider of the tickets gives to the seller/agent a written statement that the provider holds a tax permit issued by the comptroller and is assuming responsibility for tax collection and reporting for his agent.

(j) Records. Every seller of admissions to amusement services is responsible for keeping accurate records of all sales and purchases. See §3.281 of this title (relating to Records Required; Information Required). Every seller of admissions to amusement services must hold a sales tax permit and must file reports as required by §3.286 of this title (relating to Seller's and Purchaser's Responsibilities). A reseller of a ticket or admission document to an amusement service that is deducting the "adjusted value" of the ticket

or admission document purchased for resale from a non-permitted purchaser, as provided in subsection (f)(5) of this section, must have records verifying the deduction that include:

(1) the name and address of the non-permitted purchaser;

(2) the face value of any ticket or admission document purchased by a non-permitted purchaser;

(3) proof (such as a copy of the ticket or admission document) showing that sales tax is included in the price of the ticket or admission document;

(4) the sales of tickets or admission documents; and

(5) the remaining inventory of unsold tickets or admission documents.

(k) Local tax. City, county, transit authority, and special purpose district tax should be allocated to the city, county, transit authority, and/or special purpose district where the amusement event occurred.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 6, 1998.

TRD-9810616

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Effective date: July 26, 1998

Proposal publication date: February 20, 1998

For further information, please call: (512) 463-4062



## Subchapter P. Municipal Sales and Use Tax

### 34 TAC §3.372

The Comptroller of Public Accounts adopts an amendment to §3.372, concerning adopting, increasing, decreasing, or abolishing city tax, without changes to the proposed text as published in the February 20, 1998, issue of the *Texas Register* (23 TexReg 1518).

House Bill 92, 75th Legislature, 1997, amended the Local Government Code effective September 1, 1997, by adding Chapter 334 and Chapter 335 concerning sports and community venue projects and districts. The amendment explains that the notification requirements, effective dates, and contested election provisions in §3.372 apply to an election to impose sales and use tax for a sports and community venue project that increases a city tax rate or that reduces a tax rate for industrial development to allow the imposition of the tax for the sports and community venue project within the 2.0% cap on local taxes.

The amendment also replaces all references to Texas Civil Statutes, Articles 1118x, 1118y, or 1118z with references to the Transportation Code, Chapters 451, 452, or 453. The provisions in Articles 1118x, 1118y, and 1118z have been recodified in the Transportation Code.

No comments were received regarding adoption of the amendment.

This 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.

The amendment implements acts by the 75th Legislature, 1997, amending the Local Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 1, 1998.

TRD-9810391

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Effective date: July 21, 1998

Proposal publication date: February 20, 1998

For further information, please call: (512) 463-4062



## Subchapter R. Transit Sales and Use Tax

### 34 TAC §3.422

The Comptroller of Public Accounts adopts an amendment to §3.422, concerning adopting, increasing, decreasing, or abolishing transit (MTA) tax, without changes to the proposed text as published in the February 20, 1998, issue of the *Texas Register* (23 TexReg 1519).

House Bill 92, 75th Legislature, 1997, amended the Local Government Code effective September 1, 1997, by adding Chapter 334 and Chapter 335 concerning sports and community venue projects and districts. The amendment explains that the notification requirements, effective dates, and contested election provisions in §3.422 apply to an election to impose sales and use tax for a sports and community venue project that reduces a transit tax rate.

The amendment also replaces all references to Texas Civil Statutes, Articles 1118x, 1118y, or 1118z with references to the Transportation Code, Chapters 451, 452, or 453. The provisions in Articles 1118x, 1118y, and 1118z have been recodified in the Transportation Code.

No comments were received regarding adoption of the amendment.

This 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.

The amendment implements acts by the 75th Legislature, 1997, amending the Local Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 1, 1998.

TRD-9810392

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Effective date: July 21, 1998

Proposal publication date: February 20, 1998

For further information, please call: (512) 463-4062



## Subchapter II. Telecommunications Infrastructure Fund Assessment

### 34 TAC §§3.1101-3.1103

The Comptroller of Public Accounts adopts the repeal of §§3.1101-3.1103, concerning the telecommunications infrastructure fund, without changes to the proposed text as published in the April 3, 1998, issue of the *Texas Register* (23 TexReg 3421).

The comptroller has determined the consolidation of sections dealing with similar subject matter will benefit taxpayers by providing a more effective means of obtaining information. These sections are being repealed in order to simplify the consolidation of related sections into a single section. The new §3.1101, concerning telecommunications receipts, assessment determination, due date for assessment report and payment, auditing, records, and assessments, includes the substance of the current §3.1101, concerning due date for assessment report and payment, the substance of the current §3.1102, concerning telecommunications receipts and assessment determination, and the substance of the current §3.1103, concerning auditing, records, and assessments.

No comments were received regarding adoption of the repeals.

These repeals are adopted under the Tax Code, §111.002 and §111.0022, which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions assigned the comptroller by law.

The repeals implement the Texas Utility Code, §§57.041, 57.042, 57.043, and 57.048.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 1, 1998.

TRD-9810388

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Effective date: July 21, 1998

Proposal publication date: April 3, 1998

For further information, please call: (512) 463-4062



### 34 TAC §3.1101

The Comptroller of Public Accounts adopts a new §3.1101, concerning telecommunications receipts, assessment determination, due date for assessment report and payment, auditing, records, and assessments, without changes to the proposed text as published in the April 3, 1998, issue of the *Texas Register* (23 TexReg 3421).

The Public Utility Regulatory Act of 1995, Title III, §3.606 (Texas Civil Statutes, Article 1446c-0), was amended in Senate Bill 249, 75th Legislature, 1997, to impose a Telecommunications Infrastructure Fund (TIF) Assessment at a rate of 1.25%. The Public Utility Regulatory Act of 1995 was recodified in Senate Bill 1751, 75th Legislature, 1997, into the Utilities Code, Title 2, titled the Public Utility Regulatory Act, in a nonsubstan-

tive recodification. The Utility Code, Title 2, §§57.041-57.051, deal with the Telecommunications Infrastructure Fund. The assessment is on sales taxable telecommunications revenue from both telecommunications utilities and commercial mobile service providers. Information regarding telecommunications receipts, reporting due dates, penalty for late filing, interest rates, and audits is moved from §§3.1101-3.1103 of this title (relating to Due Date for Assessment Report and Payment, Telecommunications Receipts and Assessment Determination, and Auditing, Records, Assessments) which are proposed for repeal. Senate Bill 862 redefined "Telephone Prepaid Calling Cards" as tangible personal property and excluded them from the definition of telecommunications services effective September 1, 1997. Accordingly, subsection (a)(9) defining "Telecommunications Utility" excludes sales of telephone prepaid calling cards made after September 1, 1997.

No comments were received regarding adoption of the new section.

This new section is adopted under the Tax Code, §111.002 and §111.0022, which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions assigned the comptroller by law.

The new section implements the Public Utility Regulatory Act, §§57.041-57.051.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 1, 1998.

TRD-9810389

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Effective date: July 21, 1998

Proposal publication date: April 3, 1998

For further information, please call: (512) 463-4062



## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### **Part XI. Texas Juvenile Probation Commission**

#### **Chapter 349. Standards for Child Abuse and Neglect Investigations in Secure Juvenile Facilities**

The Texas Juvenile Probation Commission adopts new §§349.101-349.119 and §§349.501-349.508, concerning child abuse and neglect investigations in secure juvenile facilities. Sections 349.101 through 349.119 and sections 349.501 through 349.508 are adopted without changes as published in the April 10, 1998 issue of the Texas Register (23TexReg3657) and will not be republished.

The new standards are adopted in order to provide uniform procedures for investigating allegations of child abuse and neglect, and they identify whom and under what circumstances the Texas Juvenile Probation Commission (TJPC) may disclose

information made confidential under §261.201 of the Texas Family Code.

The new rules will ensure prompt and proper investigation of alleged child abuse or neglect in secure juvenile facilities.

No public comments were received during the proposal period.

### **Subchapter A. Intake, Investigation, and Assessment**

#### **37 TAC §§349.101-349.119**

The standards are adopted under §261.401(b) of the Family Code and §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules, including those which provide uniform procedures for investigating child abuse and neglect and which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 30, 1998.

TRD-9810330

Lisa Capers

Deputy Executive Director

Texas Juvenile Probation Commission

Effective date: July 20, 1998

Proposal publication date: April 10, 1998

For further information, please call: (512) 424-6681



### **Subchapter B. Confidentiality and Release of Records**

#### **37 TAC §§349.501-349.508**

The standards are adopted under §261.401(b) of the Family Code and §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules, including those which provide uniform procedures for investigating child abuse and neglect and which provide minimum standards for juvenile boards.

No other code or article is affected by these new standards.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 30, 1998.

TRD-9810331

Lisa Capers

Deputy Executive Director

Texas Juvenile Probation Commission

Effective date: July 20, 1998

Proposal publication date: April 10, 1998

For further information, please call: (512) 424-6681



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 15. Medicaid Eligibility

##### Subchapter F. Budgets and Payment Plans

###### 40 TAC §15.503

The Texas Department of Human Services (DHS) adopts an amendment to §15.503 without changes to the proposed text as published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5389).

The justification for the amendment is to correct the formula for determining the increased protected resource amount at appeal.

The amendment will function by ensuring that the formula will be applied correctly statewide.

The department received no comments regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.030 and §§32.001-32.042 of the Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 2, 1998.

TRD-9810531

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Effective date: September 1, 1998

Proposal publication date: May 22, 1998

For further information, please call: (512) 438-3765



#### Chapter 19. Nursing Facility Requirements for Licensure and Medicaid Certification

##### Subchapter U. Inspections, Surveys, and Visits

###### 40 TAC §19.2009

The Texas Department of Human Services (DHS) adopts an amendment to §19.2009, concerning inspection, surveys, and visits, without changes to the proposed text as published in the May 29, 1998, issue of the *Texas Register* (23 TexReg 5643).

Justification for the amendment is to resolve nurse aide cases for a proposed finding of abuse, neglect, or misappropriation of a resident's property in a more timely manner, which will ensure better protection for nursing facility residents.

The amendments will implement a part of the change in the appeal process for nurse aides by clarifying that the hearing required by 42 CFR §488.335, to be provided by the state survey agency prior to referring a nurse aide for inclusion on the registry for abuse or neglect of a resident or misappropriation of resident property, is a formal hearing. Relating to this policy change, DHS adopted new formal hearing rules in Chapter 79, Legal Services, in the May, 15, 1998, issue of the *Texas Register* and is repealing the informal hearing rules in Chapter 79, Legal Services, in this issue of the *Texas Register*. Also in this issue of the *Texas Register*, DHS is adopting related policy in Chapter 94, Nurse Aides, to implement the rest of the changes in the nurse aides appeal process.

The department received no comments regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs, and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 6, 1998.

TRD-9810621

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Effective date: August 1, 1998

Proposal publication date: May 29, 1998

For further information, please call: (512) 438-3765



#### Chapter 52. Emergency Response Services

##### Subchapter C. Provider Agency Staff Requirements

###### 40 TAC §52.301

The Texas Department of Human Services (DHS) adopts amendments to §§52.301, 52.401, 52.402, and 52.503, without changes to the proposed text as published in the May 8, 1998, issue of the *Texas Register* (23 TexReg 4532).

The justification for the amendments is to clarify how provider agencies must comply with contract/program service control and fiscal monitoring requirements.

The amendments will function by ensuring that quality services are provided to clients and ensuring accurate billing for services.

No comments were received regarding adoption of the amendments.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code §531.021, which

provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.030 and §§32.001-32.042 of the Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 3, 1998.

TRD-9810594

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Effective date: August 1, 1998

Proposal publication date: May 8, 1998

For further information, please call: (512) 438-3765



## Subchapter D. Service Delivery Requirements

### 40 TAC §52.401, §52.402

The amendments 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 Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement §§22.001-22.030 and §§32.001-32.042 of the Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 3, 1998.

TRD-9810595

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Effective date: August 1, 1998

Proposal publication date: May 8, 1998

For further information, please call: (512) 438-3765



## Subchapter E. Claims

### 40 TAC §52.503

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.030 and §§32.001-32.042 of the Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 3, 1998.

TRD-9810596

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Effective date: August 1, 1998

Proposal publication date: May 8, 1998

For further information, please call: (512) 438-3765



## Chapter 79. Legal Services

### Subchapter K. Informal Hearings

#### 40 TAC §§79.1001-79.1007

The Texas Department of Human Services (DHS) adopts the repeal of §§79.1001-79.1007, without changes to the proposed text as published in the February 6, 1998, issue of the *Texas Register* (23 TexReg 939). DHS is also repealing Subchapter K, Informal Hearings.

The justification for the repeals is to organize and simplify the formal hearing rules that are used when appearing before and participating in a hearing before an administrative law judge. The formal hearing rules were adopted in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4920).

The repeals will function by ensuring that a party to a hearing will be able to consult one set of hearing rules to determine how to proceed before an administrative judge in contested cases involving adverse actions by DHS.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

The repeals implement the Human Resources Code, §§22.001-22.030.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 6, 1998.

TRD-9810620

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Effective date: August 1, 1998

Proposal publication date: February 6, 1998

For further information, please call: (512) 438-3765



## Chapter 94. Nurse Aides

### 40 TAC §94.11

The Texas Department of Human Services (DHS) adopts an amendment to §94.11, without changes to the proposed text as published in the May 29, 1998, issue of the *Texas Register* (23 TexReg 5644).

Justification for the amendment is to resolve nurse aide cases for a proposed finding of abuse, neglect, or misappropriation of a resident's property in a more timely manner, which will ensure better protection for nursing facility residents.



The amendment will function by modifying the appeal process provided by DHS to nurse aides before being listed on the Nurse Aide Registry as having abused or neglected a resident or having misappropriated resident property.

The department received no comments regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs, and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 6, 1998.

TRD-9810619

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Effective date: August 1, 1998

Proposal publication date: May 29, 1998

For further information, please call: (512) 438-3765



# TEXAS DEPARTMENT OF INSURANCE

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## **Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L**

As required by the Insurance Code, Article 5.96 and 5.97, the *Texas Register* publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the *Texas Register* not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the *Texas Register* not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

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## Texas Department of Insurance

### Proposed Actions

The Commissioner of Insurance or his designee at a public hearing under Docket Number 2371, scheduled for August 18, 1998 at 9:00 a.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas will consider amendments proposed by the Staff of the Workers' Compensation Division to the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance (the Manual). The purpose of these proposed amendments to the Manual is to combine certain classifications with like or similar hazards, to eliminate clerical and outside salespersons from the classification wordings for several classifications, to eliminate conflicting language within the classification wordings and footnotes, and to provide clarification to some of the classification wordings by amending the language.

The proposed changes by the staff are summarized as follows:

1. Combination of the following classifications with like or similar hazards: \* Code 2150 Ice Manufacturing into Code 6504 Food Sundries Manufacturing \* Code 2883 Furniture Manufacturing into Code 2881 Furniture Assembly - Wood \* Code 3076 Aluminum Awning Manufacturing into Code 3066 Aluminum Door, Window and Frame Manufacturing; \* Code 3093 Pipe or Tube Manufacturing - Cast Iron into Code 3028 Pipe or Tube Manufacturing - Iron or Steel; \* Code 4113 Cathedral or Art Glass Window Manufacturing into Code 4101 Glass Manufacturing - Polished Plate; \* Code 7389 Ice Manufacturing Drivers into Code 7380 - Drivers, Chauffeurs and their Helpers; \* Code 8038 Restaurant - Fast Food and Code 9078 Commissary Work into Code 9079 Restaurant NOC; \* Code 8393 Automobile Body Repair into Code 8391 Automobile Repair Shop; \* Code 8605 Oil or Gas Geologist or Scout into Code 8601 Surveyors; \* Code 9403 Garbage and Refuse Collection - Containerized into Code 9402 Sewer Cleaning;

2. Removal of the inclusion of clerical employees from the following classifications: \* Code 4360 Motion Picture: Production & Development of Negatives \* Code 4362 Motion Picture: Film Exchange & projection rooms \* Code 7610 Radio or Television Broadcasting Station \* Code 8832 Physician \* Code 8838 Museum or Public Library \* Code 8868 School or Church \* Code 9033 Housing

Authority \* Code 9060 Club - Country, golf, fishing or yacht \* Code 9061 Club NOC \* Code 9063 Health Clubs, YMCA;

3. Removal of the inclusion of salespersons from the following classifications: \* Code 4361 Photographer \* Code 5192 Vending Machines \* Code 7230 News Agent or Distributor of Magazines or Other Periodicals \* Code 8288 Stockyards \* Code 9033 Housing Authority \* Code 9052 Hotel;

4. Changes in the following classifications to classifications with lower relativities: \* Golf Cart Rental or Repair from Codes 8385 and 8002 to Code 8017 \* News Agent or Dealer of Magazines, Newspapers or Other Periodicals from Code 7230 to Code 8017 if retail or Code 8018 if wholesale;

5. Editorial changes to the footnotes and classifications wordings in the Classification Section of the Manual due to other changes made or for clarification.

6. Amending the footnote under Codes 9015 and 9032 to allow Managers/Directors performing clerical duties exclusively to be rated as Code 8810; Managers/Directors or leasing agents performing outside salesperson duties such as showing, leasing or inspecting property to be rated as Code 8742; and Managers/Directors performing maintenance duties or directly supervising maintenance work to be rated as either 9015 or 9032.

The Commissioner has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.96 and 5.60.

A copy of the amendments containing the full text of the proposed amendments is available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street in Austin, Texas. For further information or to request copies of the amendments, please contact Ms. Angie Arizpe (512) 322-4147, (refer to Reference Number W-0798-16-I).

The staff and the Commissioner request that written comments to these proposed amendments be submitted prior to the public hearing on August 18, 1998. The written comments should be directed to Lynda Nesenholtz, General Counsel and Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of the comments is to be submitted to Nancy Moore, Deputy Commissioner, Workers' Compensation Division, Texas Department of Insurance, P. O. Box

149092, Austin, Texas 78714-9092. Public testimony at the hearing on August 18, 1998, is also invited and encouraged.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

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

TRD-9810549

Lynda H. Nesenholtz

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: July 2, 1998



The Commissioner of Insurance (Commissioner) will hold a public hearing under Docket Number 2372 on August 18, 1998 at 9: 00 a.m., in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas to consider a petition by the staff of the Texas Department of Insurance (TDI) proposing the adoption of revised Texas Workers' Compensation Classification Relativities (classification relativities) to replace those adopted in Commissioner's Order Number 96-1038 dated September 12, 1996, and the adoption of a revised table to amend the Texas Basic Manual of Rules, Classification, and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance (Manual).

The petition requests consideration of a schedule of the revised classification relativities and a table amending the Manual. The revised classification relativities schedule is proposed to replace the classification relativities adopted by TDI in Commissioner's Order 96-1038 effective January 1, 1997. The table amending the Manual concerns the Expected Loss Rates and Discount Ratios. The revised table is proposed to replace Table II, pages ER-21 through ER-29 of the Manual.

The petition requests that the proposed revised classification relativities be available for adoption by insurers immediately, but that their use be mandatory for all policies with an effective date on or after January 1, 1999. The petition requests that the revised table amending the Manual be made effective for workers' compensation policies with an effective date on or after January 1, 1999.

Article 5.60(a) of the Texas Insurance Code authorizes the Commissioner to determine hazards by classes and fix classification relativities applicable to the payroll in each class for workers' compensation insurance. Article 5.60(d) provides that the Commissioner revise the classification system at least once every five years.

The classification relativities currently in effect were based on experience data reflecting workers' compensation experience from policies with effective dates in 1991 through 1993. That data reflected experience subsequent to the Texas Workers' Compensation Reform Legislation (Reform Legislation) which became effective on January 1, 1991. The Reform Legislation has had a dramatic effect on workers' compensation experience due to the adoption of revised medical schedules, permanent and partial disability ratings, and increases in maximum weekly benefits payable to injured workers.

The proposed classification relativities are based on the analysis of experience data from policies with effective dates in 1991 through 1995. In addition to changes in experience due to legislative changes, the staff's proposed classification relativities also reflect changes in experience that occur over time, due to such things as technological advances and improvement in safety programs.

The indicated resulting relativities were initially balanced to the level of the current relativities through the application of off-balance factors. This provides for a revenue neutral set of relativities in relation to the current relativities. The staff proposes to limit changes in the classification relativities that have been balanced overall to the level of the current relativities to +25% and -25%. This would help to minimize possible rate shock due to large indicated changes in the relativities.

The individual company rates currently on file with TDI are, on average, approximately 22% below the level of the current relativities. In addition, the application of schedule rating plans produces an average credit of almost 13% based on TDI's most recent information. This suggests that the level of premiums actually charged are approximately 32% below the level of the existing relativities, without considering other competitive tools available to insurers such as negotiated deductibles credits and negotiated experience modifications.

The rating system in Texas is somewhat unique in that it does not include approved or promulgated loss costs, nor approved or advisory rates. Instead, the Texas rating system has classification relativities, which bear no necessary relationship to what insurers should charge, or are charging. However, people not familiar with the system frequently mistake the classification relativities for guideline rates and may also use them inappropriately to prepare cost comparisons with other jurisdictions. Such comparisons can place Texas at a competitive disadvantage in attracting new industry.

Staff therefore proposes that all of the classification relativities be reduced by 30%. This reduction would produce numbers more in line with what is actually charged, and would maintain a known benchmark against which insurers could measure their own rate needs. This recommended change has no obvious affect on insurer pricing strategies. With the knowledge of the level of the classification relativities, insurers could adjust the factor applied to the classification relativities to produce adequate rates.

Modifications to the classification relativities require concurrent changes in the table of Expected Loss Rates and Discount Ratios. The table is contained in the Manual as part of the uniform experience rating plan. The current Table II of the Manual concerning Experience Loss Rates and Discount Ratios was adopted on September 12, 1996 and became effective on January 1, 1997. The current expected loss rates are essentially based on the level of losses used to experience rate a policy effective on July 1, 1997. Staff proposes an adjustment to be more reflective of the level of losses that would be used to experience rate policies that would be effective in 1999.

The Reform Legislation has had the effect of significantly reducing the indicated expected loss rates in relation to the current loss rates. Staff proposes to cap changes in the new expected loss rates to +25% and -25%. This would help minimize possible premium shock, which could otherwise occur based solely on the changes in the classification relativities, the expected loss rates, and the discount ratios.

The Commissioner has jurisdiction of this matter pursuant to the Texas Insurance Code, Article 5.60 and 5.96.

Copies of the full text of the staff petition and the proposed revised schedule and table are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. For further information or to request copies of the petition and proposed revised schedule and table, please contact Angie Arizpe at (512) 322-4147 (refer to Reference Number W-0798-17-I.)

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the Texas Register to the Office of Chief Clerk, P. O. Box 149104, MC 113-2A, Austin, Texas, 78714-9104. An additional copy of the comment should be submitted to Philip Presley, Chief Property and Casualty Actuary, P. O. Box 149104, MC 105-5F, Austin, Texas, 78714-9104.

This notification is made pursuant to the Texas Insurance Code, Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, Chapter 2001).

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

TRD-9810550

Lynda H. Nesenholtz  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Filed: July 2, 1998



#### Adopted Actions

The Commissioner of Insurance, at a public hearing under Docket Number 2359 held at 9:00 a.m., July 1, 1998 in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, adopted amendments proposed by Staff to the Texas Automobile Rules and Rating Manual (the Manual), Rule 75.C.1.a., involving surcharges under the Texas Driving Insurance Plan. Staff's petition (Reference Number A-0598-13-I) was published in the May 22, 1998 issue of the *Texas Register* (23 TexReg 5461-5462).

This order changes the thresholds for assigning surcharge points for auto accidents by amending Manual Rule 75.C.1.a., Texas Driving Insurance Plan. Specifically, bodily injury will no longer be a factor, and the property damage threshold is changed from \$500 to \$1000.

Manual Rule 75.C.1.a. (Rule 75) currently requires assignment of a surcharge point to an insured who has an at-fault auto accident resulting in any bodily injury. An example would be minimal expenses for a doctor's examination for very minor injuries resulting from an auto accident. It is a matter of concern that those minimal expenses significantly affect the insured's premiums. There would be many practical problems in establishing a specific dollar amount threshold for bodily injury, as explained in some of the comments filed in this proceeding. To avoid the above problems, bodily injury (including death) is hereby eliminated as a factor in regard to surcharges. Generally speaking, an accident that results in serious bodily injury will also result in property damage exceeding the \$1000 threshold, resulting in a surcharge.

Currently Rule 75 requires assignment of a surcharge point to an insured who has an at-fault auto accident resulting in property damage in excess of \$500, regardless of whether anyone is injured. The rule formerly provided for a property damage threshold of \$200 for accidents occurring prior to February 1, 1985. Since 1985, repair costs have increased significantly and the distribution of automobiles on the road has changed dramatically. Consequently, very minor damage can easily exceed \$500. Therefore, the \$500 property damage threshold is changed to \$1000. This amount is supported by data and methodology explained in Staff's petition.

Rule 75 requires assignment of a surcharge point when there is an auto accident resulting in property damage in excess of \$500, without further description. This order adopts new wording in Rule 75.C.1.a.,

to specify that the property damage amount is to be established by claims paid in regard to the accident. The new wording also specifies that claims paid are determined according to requirements for loss reporting under the Texas Private Passenger Automobile Statistical Plan. This new standard should be more readily ascertainable than the total amount of damage caused by the at-fault driver, resulting in more consistency in determining whether the surcharge is applicable in any given case.

The amendments as adopted by the Commissioner of Insurance are shown in an exhibit on file with the Chief Clerk under Reference Number A-0598-13-I, which is incorporated by reference into Commissioner's Order Number 98-0795.

The Commissioner of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.10, 5.96, 5.98, and 5.101.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

Consistent with the Insurance Code, Article 5.96(h), the Department will notify all insurers writing automobile insurance of this adoption by letter summarizing the Commissioner's action.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the Manual is amended as described herein, and the amendments are adopted to become effective on September 1, 1998.

This agency hereby certifies that the amendment as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

TRD-9810644

Lynda H. Nesenholtz  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Filed: July 6, 1998



The Commissioner of Insurance, at a public hearing under Docket Number 2363 held at 9:00 a.m., July 1, 1998 in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, adopted amendments proposed by the Texas Insurance Organization (TIO) to the Texas Automobile Rules and Rating Manual (the Manual) and the Texas Standard Provisions for Automobile Policies (the Standard Provisions) to eliminate the use of pre-printed dates in various forms. TIO's petition (Reference Number A-0598-14) was published in the May 29, 1998 issue of the *Texas Register* (23 TexReg 5739).

Many of the prescribed forms for insuring automobiles utilize pre-printing of the century so that the year can be completed by supplying the last two digits. These forms have places where dates are to be supplied and they use "19\_\_." There is a need to change these prescribed forms because of the approaching turn of the century. This order adopts the TIO proposal and prescribes a blank for the entire year as "\_\_\_\_." The prescribed forms (endorsements in the Manual except where otherwise indicated) being amended are the following: Endorsement 4M. Mobilowners Policy - Limited Period Collision (to become 4M-1.) Endorsement 29A. Experience Modification (to become 29B.) Endorsement 29C. Experience Modification Change (to become 29D.) Endorsement TE 99 24A - Experience Modification (to become TE 99 24B.) Endorsement TE 99 25A - Experience Modification Change (to become TE 99 25B) Mobilowners Policy Declarations (in the Standard Provisions).

The amendments as adopted by the Commissioner of Insurance are shown in exhibits on file with the Chief Clerk under Reference Number A-0598-14, which are incorporated by reference into Commissioner's Order Number 98-0796.

The Commissioner of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.06, 5.10, 5.96, and 5.98.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

Consistent with the Insurance Code, Article 5.96(h), the Department will notify all insurers writing automobile insurance of this adoption by letter summarizing the Commissioner's action.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the Manual and the Standard Provisions are amended as described

herein, and the amendments are adopted to become effective for policies issued on and after September 1, 1998.

This agency hereby certifies that the amendment as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

TRD-9810645

Lynda H. Neseholtz  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: July 6, 1998



# == REVIEW OF AGENCY RULES ==

This Section contains notices of state agency rules review as directed by the 75th Legislature, Regular Session, House Bill 1 (General Appropriations Act) Art. IX, Section 167. Included here are: (1) notices of *plan to review*; (2) notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the ***Texas Register*** office.

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## **Agency Rule Review Plans**

Texas Alcoholic Beverage Commission

### **Title 16, Part III**

Filed: June 24, 1998

Employees Retirement System of Texas

### **Title 34, Part IV**

Filed: June 25, 1998

Texas Youth Commission

### **Title 37, Part III**

Filed: June 25, 1998

Texas Board of Veterinary Medical Examiners

### **Title 22, Part XXIV**

Filed: June 26, 1998

Texas Council on Purchasing from People with Disabilities

### **Title 40, Part VII**

Filed: June 29, 1998

Texas Department of Agriculture

### **Title 4, Part I**

Filed: July 1, 1998

Texas Board of Professional Engineers

### **Title 22, Part VI**

Filed: July 1, 1998

Fire Fighters' Pension Commission

### **Title 34, Part XI**

Filed: July 1, 1998

Texas Funeral Service Commission

### **Title 22, Part X**

Filed: July 1, 1998

Texas Department of Protective and Regulatory Services

### **Title 40, Part XIX**

Filed: July 1, 1998

Texas Historical Commission

### **Title 13, Part II**

Filed: July 3, 1998

Texas Juvenile Probation Commission

### **Title 37, Part XI**

Filed: July 3, 1998

Executive Council of Physical Therapy and Occupational Examiners

### **Title 22, Part XXVIII**

Filed: July 3, 1998

Texas State Board of Examiners of Professional Counselors

### **Title 22, Part XXX**

Filed: July 3, 1998

Texas Workers' Compensation Commission

### **Title 28, Part II**

Filed: July 6, 1998

Texas Municipal Retirement System

### **Title 34, Part IV**

Filed: July 7, 1998

State Council on Competitive Government

### **Title 1, Part XVI**

Filed: July 8, 1998

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## Proposed Rule Reviews

Texas State Board of Examiners of Professional Counselors

### Title 22, Part XXX

Notice of Intention to Review

The Texas State Board of Examiners of Professional Counselors (board) will review and consider for readoption, revision or repeal rules in 22 Texas Administrative Code, Part XXX, Chapter 681, Professional Counselors. The review and consideration is being conducted in accordance with the General Appropriations Act, Article IX, Rider 167, passed by the 75th Legislature.

The board will review its rules which became effective prior to September 1, 1997. The assessment made by the agency at this time indicates that the reasons for adopting or readopting these rules continues to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the board. The review of all rules must be completed by August 31, 2001.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the Texas Register to John Luther, Professional Licensing and Certification, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

TRD-9810559

Anthony P. Picchioni, Ph.D.

Chairperson

Texas State Board of Examiners of Professional Counselors

Filed: July 3, 1998



Texas Public Finance Authority

### Title 34, Part X

The Texas Public Finance Authority (Authority) proposes to review Chapter 221, relating to Distribution of Bond Proceeds; Chapter 222, relating to Public Records; Chapter 223, relating to the Master Equipment Lease Purchase Program; and Chapter 225, relating to the Master Equipment Lease Purchase Program, Series B, pursuant to Section 167, Article IX of the Appropriations Act of 1997 (Section 167). The Authority proposes to amend Chapters 221 and 225 and to repeal chapters 222 and 223. The proposed amendments and repeals may be found in the Proposed Rules section of the *Texas Register*.

The Authority will accept comments regarding the Section 167 requirement as to whether the reasons for adopting Chapters 221 and 225 continue to exist in the comments filed on the proposed amendments.

Questions concerning this notice may be submitted electronically to Judith Porras, General Counsel, at [jporras@tpfa.state.tx.us](mailto:jporras@tpfa.state.tx.us).

TRD-9810455

Judith M. Porras

General Counsel

Texas Public Finance Authority

Filed: July 1, 1998



Public Utility Commission of Texas

### Title 16, Part II

The Public Utility Commission of Texas files this notice of intention to review Procedural Rules, Subchapter K (relating to Hearings), §§22.201 relating to Place and Nature of Hearings; 22.202 relating to Presiding Officer; 22.203 relating to Order of Procedure; 22.204 relating to Transcript and Record; 22.205 relating to Briefs; 22.206 relating to Consideration of Contested Settlements; and 22.207 relating to Referral to State Office of Administrative Hearings pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167 (Section 167). Project Number 17709 has been assigned to this proceeding.

As part of this review process, the commission is proposing an amendment to §22.202. The proposed amendments may be found in the Proposed Rules section of the *Texas Register*. The commission will accept comments on the Section 167 requirement as to whether the reason for adopting this section continues to exist in the comments filed on the proposed amendment.

The commission is not proposing any changes to §§22.201, 22.203, 22.204, 22.205, 22.206 and 22.207. Comments regarding the Section 167 requirement as to whether the reason for adopting these sections continues to exist may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 N. Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326 within 30 days after publication of this notice of intention to review. All comments should refer to Project Number 17709.

Any questions pertaining to this notice of intention to review should be directed to Rhonda Dempsey, Rules Coordinator, Office of Regulatory Affairs, Public Utility Commission of Texas, 1701 N. Congress Avenue, Austin, Texas 78711-3326 or at voice telephone (512) 936-7308.

16 TAC §22.201. Place and Nature of Hearings

16 TAC §22.202. Presiding Officer

16 TAC §22.203. Order of Procedure

16 TAC §22.204. Transcript and Record

16 TAC §22.205. Briefs

16 TAC §22.206. Consideration of Contested Settlements

16 TAC §22.207. Referral to State Office of Administrative Hearings

TRD-9810578

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: July 3, 1998



Texas Veterinary Medical Diagnostic Laboratory (TVMDL)

### Title 4, Part IX

Chapter 162, Pullorum Disease and Fowl Typhoid Program

TVMDL proposes to re-adopt Chapter 162, Pullorum Disease and Fowl Typhoid Program Rules, in accordance with the appropriations Act, 167.

The agency's reasons for adopting the rules contained in this chapter continue to exist.

Comments on the proposals may be submitted to Dr. Konrad Eugster, Associate Vice Chancellor of Agriculture, TVMDL, P.O. Drawer 3040, College Station, TX 77841-3040, FAX (409) 845-1794, or by e-mail to keugster@tvmdl.tamu.edu.

TRD-9810474

Dr. A. Konrad Eugster  
Associate Vice Chancellor of Agriculture  
Texas Veterinary Medical Diagnostic Laboratory  
Filed: July 2, 1998



## Adopted Rule Review

Public Utility Commission of Texas

### Title 16, Part II

The Public Utility Commission of Texas (commission) has completed the review of all sections of Procedural Rules Subchapter C relating to Classification of Applications or Other Documents Initiating a Proceeding, and Subchapter D relating to Notice as noticed in the April 3, 1998 *Texas Register* (23 TexReg 3543). The commission readopts these sections, pursuant to the requirements of the Appropriations Act of 1997, HB 1, Article IX, Section 167 (Section 167) and finds that the reason for adopting these rules continues to exist. Project Number 17709 is assigned to this proceeding.

The commission received no comments on the Section 167 requirement as to whether the reason for adopting the rules continues to exist. As part of this review process, the commission proposed amendments to §§22.31, 22.33, 22.35, 22.51, 22.52, and 22.56 as published in the *Texas Register* on April 3, 1998 (23 TexReg 3405). No comments were received on the proposed amendments.

These rules are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §14.052.

16 TAC §22.31. Classification in General

16 TAC §22.32. Administrative Review

16 TAC §22.33. Tariff Filings

16 TAC §22.34. Consolidation and Severance

16 TAC §22.35. Informal Disposition

16 TAC §22.51. Notice for Public Utility Regulatory Act §2.211, §2.212, §3.210 and §3.211 Proceedings

16 TAC §22.52. Notice in Licensing Proceedings

16 TAC §22.53. Notice of Regional Hearings

16 TAC §22.54. Notice to be Provided by the Commission

16 TAC §22.55. Notice in Other Proceedings

16 TAC §22.56. Notice of Unclaimed Funds

TRD-9810519

Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 2, 1998



# TABLES & GRAPHICS

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Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

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**VENTILATION AND PRESSURE RELATIONSHIP REQUIREMENTS<sup>1</sup>**

Area designation	Pressure relationship to adjacent areas <sup>2</sup>	Minimum changes of outdoor air per hour <sup>3</sup>	Minimum total air changes per hour <sup>4</sup>	All air exhausted directly to outdoors <sup>5</sup>	Recirculated by means of room units <sup>6</sup>
Operating room	P	3	15	---	No
Examination, treatment and pre-op rooms	V	---	6	---	---
Post-anesthesia recovery	P	2	6	---	No
Medication room	P	---	4	---	---
Pharmacy	P	---	4	---	---
Radiology	E	---	6	---	---
Darkroom	N	---	10	Yes	---
Soiled workroom or soiled holding	N	---	10	Yes	No
Clean workroom or clean holding	P	---	4	---	---
Toilet room	N	---	10	Yes	No
Bathroom	N	---	10	Yes	No
Janitor's closet	N	---	10	Yes	No
Sterilizer equipment room	N	---	10	Yes	No
Linen and trash chute room	N	---	10	Yes	No
Laboratory	N	---	6	---	---
Soiled linen sorting and storage	N	---	10	Yes	No
Clean linen storage	V	---	2	---	---
Anesthesia storage	V	---	8	Yes	No
Decontamination room	N	---	6	Yes	No
Equipment storage	V	---	2	---	---

Notes applicable to Table 1:  
 "Ventilation and Pressure Relationship Requirements

<sup>1</sup> The ventilation rates in this table cover ventilation for comfort, as well as for asepsis and odor control

in areas of acute care that directly affect patient care and are determined based on healthcare facilities being predominantly "No Smoking" facilities. Where smoking may be allowed, ventilation rates will need adjustment. Areas where specific ventilation rates are not given in the table shall be ventilated in accordance with American Society of Heating Refrigeration and Air-conditioning Engineers Standard 62-1989, Ventilation for Acceptable Indoor Air Quality, and American Society of Heating Refrigeration and Air-conditioning Engineers, Handbook of Applications, 1991 edition. Specialty procedure rooms shall have additional ventilation provisions for air quality control as may be appropriate. Occupational Safety and Health Administration (OSHA) standards and/or National Institute for Occupational Safety and Health (NIOSH) criteria require special ventilation requirements or employee health and safety within health care facilities.

<sup>2</sup> Design of the ventilation system shall provide air movement which is generally from clean to less clean areas. Required pressure relationship of the different space with respect to adjacent areas is indicated by the following:

- P = positive pressure relationship with respect to adjacent areas
- N = negative pressure relationship with respect to adjacent areas
- E = equal pressure relationship with respect to adjacent areas
- V = pressure relationship with respect to adjacent areas may vary

If any form of variable air volume or load shedding system is used for energy conservation, it must not compromise the minimum air changes required by the table.

<sup>3</sup> To satisfy exhaust needs, replacement air from the outside is necessary. Table 1 does not attempt to describe specific amounts of outside air to be supplied to individual spaces except for certain areas such as those listed. Distribution of the outside air, added to the system to balance required exhaust, shall be as required by good engineering practice. Minimum outside air quantities shall remain constant while the system is in operation.

<sup>4</sup> Number of air changes may be reduced when the room is unoccupied if provisions are made to ensure that the number of air changes indicated is reestablished any time the space is being utilized. Adjustments shall include provisions so that the pressure relationship shall remain the same when the number of air changes is reduced. Areas not indicated as requiring either a positive or negative pressure relationship with adjacent areas may have ventilation systems shut down when space is unoccupied and ventilation is not other wise needed, if the maximum infiltration or exfiltration permitted in Note 2 is not exceeded and if adjacent pressure balancing relationships are not compromised.

<sup>5</sup> Air from areas with contamination and/or odor problems shall be exhausted to the outside and not recirculated to other areas. Note that individual circumstances may require special consideration for air exhaust to the outside.

<sup>6</sup> Recirculating room Heating, Ventilating, and Air Conditioning (HVAC) units refers to those local units that are used primarily for heating and cooling of air, and not disinfection of air. Because of cleaning difficulty and potential for buildup of contamination, recirculating room units shall not be used in areas marked "No." Gravity-type heating or cooling units such as radiators or convectors shall not be used in operating rooms and other special care areas.

**FILTER EFFICIENCIES FOR VENTILATING AND AIR CONDITIONING SYSTEMS**

Area Designation	Minimum number of filter beds	Filter efficiencies (%)*	
		Filter bed No. 1	Filter bed No. 2
Operating and recovery rooms	2	30	90
Laboratories	1	80	---
All other areas	1	30	---

\* The filter efficiency ratings are based on American Society of Heating Refrigeration and Air Conditioning Engineers, Standard 52-92.

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**STATION OUTLETS FOR OXYGEN, VACUUM (SUCTION), AND MEDICAL AIR SYSTEMS**


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Location	Number of outlets*		
	Oxygen	Vacuum	Medical Air
Operating room (general, cardio-vascular, neurological and orthopedic surgery)	2	3	1
Operating room (minor, cystoscopic and endoscopic surgery)	1	3	--
Operating room (eye surgery)	1	1	--
Recovery room	1	3	--
Decontamination room	-	1	1

\*Number of outlets required for each recovery bed location or treatment unit.

**FLAME SPREAD AND SMOKE PRODUCTION LIMITATIONS FOR INTERIOR FINISHES**

	Flame Spread Rating	Smoke Production Rating
Walls and Ceilings		
Exitways, storage rooms, and areas of unusual hazard	25 or less ASTM STD E84	450 or less <sup>1</sup> NFPA 255
All other Areas	75 or less ASTM STD E84	450 or less NFPA 255
Floors <sup>2</sup>	Minimum of 0.45 watts/cm <sup>2</sup> (NFPA 253, Floor Radiant Panel Test)	

<sup>1</sup> Average of flaming and non flaming values.

<sup>2</sup> See §135.52(c)(4) and §135.52(c)(5) of this title (relating to State Handicapped requirements and Federal Americans with Disabilities Act or requirements relative to carpeting in areas that may be subject to use by handicapped individuals. Such areas include offices and waiting spaces as well as corridors that might be used by handicapped employees, visitors, or staff.



# OPEN MEETINGS

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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 before 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 listed 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. All emergency meeting notices filed by governmental agencies will be published.

**Posting of open meeting notices.** All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a 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).

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**Texas State Board of Public Accountancy**

Wednesday, July 15, 1998, 10:00 a.m.

333 Guadalupe Street, Tower III, Suite 900, Room 910

Austin

By Teleconference Qualifications Committee

**AGENDA:**

A. Review of information relating to the May 1998 CPA examination. Audit of the examination results and approval to release grades.

This meeting is scheduled as a teleconference because of budget restrictions in the Appropriations Act which limited the Board's authority to plan to reimburse the travel expenses of committee members made it difficult or impossible for a quorum of the committee members to convene in one location. However, immediate action on the agenda items is necessary to review and release the grades on the CPA exam.

Contact: Amanda G. Birrell, 333 Guadalupe Tower III, Suite 900, Austin, Texas 78701-3900, 512/305-7848.

Filed: July 3, 1998, 11:26 a.m.

TRD-9810570



Wednesday, July 15, 1998, 1:00 p.m.

333 Guadalupe Street, Tower III, Suite 900, Room 910

Austin

Major Case Enforcement Committee

**AGENDA:**

1. File No. 95-08-39L and 95-08-40L
2. File No. 98-03-31L
3. File No. 98-01-64L Approval of Consultant's Contract.
4. File No's. 95-101-03L and 95-10-04L
5. File No. 96-06-09L
6. Status reports on cases pending. Major cases summary.

(All discussion of investigative files will be in Executive Session.)

Contact: Amanda G. Birrell, 333 Guadalupe Tower III, Suite 900, Austin, Texas 78701-3900, 512/305-7848.

Filed: July 3, 1998, 11:26 a.m.

TRD-9810572



Wednesday, July 15, 1998, 2:00 p.m.

333 Guadalupe Street, Tower III, Suite 900, Room 910

Austin

Continuing Professional Education Committee

AGENDA:

A. Consideration of 2-hour ethics courses.

Richard Forrest, JD, CPA

Raymond J. Clay, Jr., DBA, CPA

W.N. Cargill, Ph.D., CPA

B. Consideration of proposal from Bill Reeb CPA regarding PASS ethics course as interactive.

C. Consideration of proposed change to Rule 523.32 Ethics Course.

D. Consideration of the opinion survey to be printed in the Board Report.

E. Consideration of recommendation from Rule Committee to change CPE rules to require specified number of live-classroom presentations.

F. Consideration of the NASBA Quality Assurance Proposal

G. Consideration of request from Lydia A. Luna, CPA, for credit for system administrator training provided by Avid Technology, Inc.

H. Consideration of date for next meeting.

Contact: Amanda G. Birrell, 333 Guadalupe Tower III, Suite 900, Austin, Texas 78701-3900, 512/305-7848.

Filed: July 3, 1998, 11:27 a.m.

TRD-9810573



Wednesday, July 15, 1998, 3:30 p.m.

333 Guadalupe Street, Tower III, Suite 900, Room 910

Austin

Rules Committee

AGENDA:

Consideration of amendments to:

A. Rules 523.32; 511.61; 511.63; Ethics Course

B. Rules 501.41: Discreditable Acts

C. Rule 511.122: Acceptable Work Experience

D. Rules 511.73, 521.2(b) and 501.48: Housekeeping Changes

E. Chapter 519

F. Other proposed rules to be considered by the Board

Contact: Amanda G. Birrell, 333 Guadalupe Tower III, Suite 900, Austin, Texas 78701-3900, 512/305-7848.

Filed: July 3, 1998, 11:26 a.m.

TRD-9810571



Wednesday, July 15, 1998, 4:00 p.m.

333 Guadalupe Street, Tower III, Suite 900, Room 910

Austin

Executive Committee

AGENDA:

A. Consultation to seek the advice of the Board's attorney concerning pending or contemplated litigation (Executive Session)

B. Review of AICPA/NASBA matters

1. Discussion of the Mississippi Board of Accountancy's questionnaire about NASBA operations

2. Report on the NASBA regional meetings and review of plans for the NASBA annual meeting

3. Request for qualifications from examination providers

C. Report on the fifth-year accounting student scholarship program

D. Consideration of request to continue operation of deceased CPA's practice

Contact: Amanda G. Birrell, 333 Guadalupe Tower III, Suite 900, Austin, Texas 78701-3900, 512/305-7848.

Filed: July 3, 1998, 11:27 a.m.

TRD-9810574



Thursday, July 16, 1998, 9:00 a.m.

333 Guadalupe Street, Tower III, Suite 900, Room 910

Austin

Board

AGENDA:

Consideration of committee reports and recommendations from: executive, regulatory compliance, rules, behavioral enforcement, technical standards review, major case enforcement, qualifications, quality review, continuing professional education and peer assistance oversight committee. Consideration of adoption of board rules. Consideration of agreed consent orders, board orders and proposals for decision. Review of future meetings.

Contact: Amanda G. Birrell, 333 Guadalupe Tower III, Suite 900, Austin, Texas 78701-3900, 512/305-7848.

Filed: July 3, 1998, 11:32 a.m.

TRD-9810576



**State Office of Administrative Hearings**

July 13, 1998, 10:00 a.m.

1700 North Congress Avenue

Austin

Utility Division

AGENDA:

A prehearing conference is scheduled for the above date and time is SOAH Docket No. 473-98-1215; PUC Docket No. 18389; Application of Pedernales Electric Cooperative, Inc., to amend its certificate of convenience and necessity and necessity to construct proposed transmission line within Hays and Travis, Counties.

Contact: William G. Newchurch, 300 West 15th Street, Suite 502, Austin, Texas 78701-1649, Austin, Texas 78701-1649, 512/936-0728. Filed: July 2, 1998, 2:34 p.m.

TRD-9810514



**Texas Commission on Alcohol and Drug Abuse**

Friday, July 10, 1998, 10:00 a.m.

911B Pegues Place, Woodbine Treatment Center

Longview

Regional Advisory Consortium (RAC), Region 4

AGENDA:

Call to order; welcome and introduction of guests; public comments; approval of minutes; old business: nominating committee report, election of officers, and TCADA update; new business; and adjournment.

Contact: Albert Ruiz, 9001 North IH35, Suite 105, Austin, Texas 78753-5233, 512/349-6669 or 800/832-9623 Ext. 6669.

Filed: July 3, 1998, 10:37 a.m.

TRD-9810503



Thursday, July 16, 1998, 10:30 a.m.

550 West Texas, Faskin Center, Tower 2, Southwest Mediation, Suite 1155

Midland

Regional Advisory Consortium (RAC), Region 9

AGENDA:

Call to order; welcome and introduction of guests; public comments; approval of minutes; old business: TCADA update; new business; and adjournment.

Contact: Albert Ruiz, 9001 North IH35, Suite 105, Austin, Texas 78753-5233, 512/349-6669 or 800/832-9623 Ext. 6669.

Filed: July 2, 1998, 1:14 p.m.

TRD-9810510



### **Texas Alternative Fuels Council**

Thursday, July 9, 1998, 1:30 p.m.

State Capitol Extension Building, Room E1.104, 1100 Congress Avenue

Austin

AGENDA:

Pursuant to the Texas Government code, Chapter 551, the following matters will be taken up for discussion and/or decision by the Texas Alternative Fuels Council (the "Council") at the State Capitol Extension, Room E1.014, Austin, Texas on the 9th day of July, 1998 commencing at 1:30 p.m. The council may enter into executive session on any of the items listed below as authorized by the Texas Government Code, Chapter 551

1) call to order; 2) consideration of minutes from April 3, 1998 meeting; 3) consideration and potential action to set date for review of the Texas Alternative Fuels Council rules, pursuant to the General Appropriations Act, House Bill 1, Article IX, Section 167; 4) consideration and potential action to amend the contract with Baylor University; 5) consideration and potential action to amend the contract with the Texas Natural Resource Conservation Commission; 6) consideration and potential action to amend the contract with the General Services Commission State Energy Conservation Office; 7) consideration and potential action on the amendment and extension of the contract with the El Paso Chamber of Commerce Foundation/Paso de Norte Clean Cities; 8) consideration and potential action on the extension of existing and proposed contracts through August 31, 1999; 9) consideration and potential action as to the disposition of unexpended Texas Alternative Fuels Council Funds; 10) information

items: (a) contract status report, (b) state auditor's recommendations status report; 11) public comments; 12) adjournment.

Contact: Frank Higgerson, 200 East 10th Street, Austin, Texas 78701, 512/463-3262.

Filed: July 1, 1998, 3:18 p.m.

TRD-9810461



### **Texas School for the Blind and Visually Impaired**

Tuesday, June 14, 1998, 1:00 p.m.

1100 West 45th Street, Room 116

Austin

Board of Trustees

AGENDA:

Approval of minutes of May 21, 1998, board meeting; consideration of approval of dates for 1998-1999 board meetings; consideration of approval of legislative appropriations request for 2000/2001; consideration of approval of consultative services contracts over \$5,000.

Contact: Marjorie L. Heaton, 1100 West 45th Street, Austin, Texas 78756-9133, 512/206-9133.

Filed: July 3, 1998, 10:17 a.m.

TRD-9810564



### **Texas Bond Review Board**

Tuesday, July 14, 1998, 10:00 a.m.

Clements Building, Committee Room #5, 300 West 15th Street

Austin

Board/Committee

AGENDA:

I. Call to order

II. Approval of minutes

III. Discussion of proposed issues

A. Texas Public Finance Authority-General Obligation Commercial Paper Notes for Texas Department of Criminal Justice

B. Texas State University System-Revenue Financing System and Refunding Bonds

C. Texas State Affordable Housing Corporation (doing business as Texas Star Mortgage)-collateralized mortgage loan (President's Corner Apartments

IV. Other business

A. Report of Texas Public Finance Authority bond defeasance (Super Collider and Worker's Compensation debt)

B. Briefing on agency State and Local Debt Report development

C. Discussion of plan to review agency rules

D. Briefing on agency legislative appropriation request

V. Adjourn

Contact: Jose A. Hernandez, 300 West 15th Street, Suite 409, Austin, Texas 78701, 512/463-1741.

Filed: July 6, 1998, 2:12 p.m.

TRD-9810650

◆ ◆ ◆  
**Children's Trust Fund of Texas Council**

Monday, July 13, 1998, 9:30 a.m.

8929 Shoal Creek Boulevard, Suite 200

Austin

Council

AGENDA:

Call to order, approval April 6, 1998, minutes

Discuss and take possible action

Draft policy for CTF Council Investment Options, Dan Sachowitz, Investment Officer Treasury Operations, Texas Comptroller of Public Accounts

Review and possibly adopt the agency rule review plan

Discuss and take action:

Council approval of Family PRIDE Council recommendation for funding new grants for FY 1999

Council approval of Family PRIDE Council recommendations for funding renewal of FY 1998 grants

Council approval of new respite care grants for FY 1999

Council approval for renewal of FY 1998 demonstration grants

Council approval for renewal of FY 1998 Shaken Baby Syndrome grants

Council approval of El Paso Family PRIDE Council recommendation to continue local CTF funding from contributions received through KHEY Cares for Kid fundraiser

Council approval to sponsor the 3rd International Border conference of Children and Violence

Council approval to co-sponsor the 13th Annual Governor's Conference on Child Abuse and Neglect with Prevention Child Abuse Texas

Council approval of funding for Interactive on-line Family Support/Parenting Education Database

Council approval of funding Texas CASA newsletter

Council approval of the FY 1999-2003 Strategic Plan

Council approval of the FY 2000-2001 Legislative Appropriations Request

General Decision

Staff Reports

Set next board meeting date

Adjourn

Contact: Sarah Winkler, 8929 Shoal Creek Boulevard, Suite 200, Austin, Texas 78757-6854, 512/458-1281.

Filed: July 2, 1998, 4:54 p.m.

TRD-9810545

◆ ◆ ◆  
**Comptroller of Public Accounts**

Monday, July 13, 1998, 9:00 a.m.

111 East 17th Street, Room 114

Austin

Texas Prepaid Higher Education Tuition Board Investment Committee

AGENDA:

Pursuant to Texas Government Code, Chapter 551, the following matters, not necessarily in the order noted, will be taken up for discussion and/or decision by the Texas Prepaid Higher Education Tuition Board Investment Committee at the Lyndon B. Johnson Building, 111 East 17th Street, Room 114, Austin, Texas on the 13th day of July, 1998, commencing at 9:00 a.m.

I. Program update

II. Discussion and possible vote on amending investment guidelines

III. Discussion and possible vote on implementation of commission recapture program

IV. Oral presentation from investment consultant candidates

V. Discussion and possible vote on investment consultant

VI. Update and discussion on international fund manager selection and contract negotiations; possible vote to change recommendation to the Board

VII. Discussion on fixed income investments

Contact: Todd Morgan, 111 East 17th Street, Room 1114, Austin, Texas 78774, 512/475-1735.

Filed: July 3, 1998, 2:54 p.m.

TRD-9810593

◆ ◆ ◆  
Tuesday, July 21, 1998, 10:00 a.m.

111 East 17th Street, Room 114, LBJ Building

Austin

Funds Review Advisory Committee

AGENDA:

I. Request of items for review from committee members

II. Discussion of proposed standards language for creating fund, accounts, and revenue dedications

III. Discussion proposed clarifications of Section 403.095, Gov't Code

IV. Adjourn

Contact: Ken Welch, 1111 East 17th Street, Room 901, Austin, Texas 78774, 512/475-0549.

Filed: July 8, 1998, 9:17 a.m.

TRD-9810762

◆ ◆ ◆  
**Texas Commission for the Deaf and Hard of Hearing**

Friday, July 17, 1998, 9:00 a.m.

4900 North Lamar, Room 7320

Austin

Commission

AGENDA:

Establish a quorum; call to order; public comments; approval of minutes from May 29, 1998, meeting; executive director report including appointment of deafness task force member (action), approval of legislative appropriations request (action), and approval of the commission rule review plan (action); board for evaluation of interpreters report including discussion and possible action on proposal of amendment to 40 TAC §183.573, fees (action), approval of licenses, license renewal (action), reinstatement of level II Interpreter (action) and approval of oral evaluator applicant (action); direct services report including hearing aid contracts update, council contracts (action), interpreter/mentor contracts (action), early intervention project contract (action), and East Texas Pilot project (action); specialized telecommunications devises assistance program report including discussion and possible action on adoption of amendment to 40 TAC §182.4, basic equipment; information items; adjournment.

Contact: David Myers, 4900 North Lamar, Room 7230, Austin, Texas 78751, 512/407-3250.

Filed: July 7, 1998, 3:03 p.m.

TRD-9810729



**Texas Diabetes Council**

Friday, July 17, 1998, 9:00 a.m.

University Dialysis West Conference Room, University Center for Community Health, 701 South Zaramora

Austin

AGENDA:

The council will discuss and possibly act on: approval of the minutes of the April 17, 1998, meeting; director's report; update on federal and state legislation; status report of the Managed Care Work Group (recommendation for adoption regarding the pharmacological treatment Algorithm for Type 2 Diabetes; nutrition and exercise Algorithm; and Diabetes curriculum for medical schools); status report funding and budget (fiscal year '98 quarterly expenditures; and fiscal year '99 proposed initiatives); status report on diabetes projects (Diabetes mobile van and other South Texas Hospital projects; community-based Diabetes programs; school health programs; Diabetic Eye Disease Program; and public information campaign); and public comments.

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at 512/458-7627 or TDD at 512/458-7708 at least four days prior to the meeting.

Contact: Amy Pearson, 1100 West 49th Street, Austin, Texas 78756, 512/458-7490.

Filed: July 7, 1998, 10:37 a.m.

TRD-9810698



**Interagency Council on Early Childhood Intervention**

Thursday-Friday, July 16-17, 1998, 9:30 a.m. and 8:30 a.m. (respectively)

4900 North Lamar

Austin

Committee

AGENDA:

Sign-in; coffee talk; call to order; chair report; natural environmental discussion, presented by Mary Elder; lunch; program perspective, presented by John Delgado, Program Director for Parent and child Education services (PACES). Report on NEC\*TAC Finance Meeting, presented by Tanya Hureta. Staff Report. Subcommittee meetings. Presentation on ECI's Legislative Appropriations Request. Break. Subcommittee reports. FYI. Adjournment.

Persons with disabilities who plan to attend the meeting and who may need auxiliary aids or services are requested to contact Linda Hill at least three days prior to the meeting so that arrangements can be made.

Contact: Linda B. Hill, 4900 North Lamar, Austin, Texas 78751, 512/424-6754.

Filed: July 7, 1998, 3:03 p.m.

TRD-9810733



**Texas Department of Economic Development**

Friday, July 17, 1998, 2:00 p.m.

1201 Leopard Street

Corpus Christi

Texas Strategic Military Planning Commission

AGENDA:

2:00 p.m. call to order, introduction of commission members

2:10 recess into executive session

2:30 approval of minutes

2:31 open for public comments

2:45 update on the Office of Defense Affairs

2:50 Texas Strategic Military Plan

3:10 Report on Military in the State of Texas

3:30 Legislative Issues

3:45 Direction of the TSMPC for the next fiscal year

4:00 Adjourn

Contact: Yolanda Adams, 1201 Leopard Street, Corpus Christi, Texas 512/936-0171.

Filed: July 6, 1998, 3:31 p.m.

TRD-9810658



**Advisory Commission on State Emergency Communications Programs Committee**

Monday, July 13, 1998, 1:30 p.m.

333 Guadalupe, Room 2-225

Austin

Programs Committee

AGENDA:

The Committee will call the meeting to order and recognize guests, hear public comment, hear reports, discuss reports, discuss and take committee action, as needed; approval of rule review, rule 255.4, definition of equivalent local access line; proposed rule 251.4, guidelines for the provisioning of accessibility equipment; and adoption equipment; and adoption of rule 251.9 guidelines for addressing maintenance funds and rule 251.3, guidelines for addressing funds: attorney general opinion on resell of addressing data; consider revisions to the capital area planning council's strategic plan; Brazos Valley Council of Governments' Plan Amendment; FY 1999 Administrative Budget approvals for council of Governments: Alamo Area Council of Governments, Ark-Texas Council of Governments, Brazos Valley Council of Governments, Capital Area Planning Council, Central Texas Council of Governments, Coastal Bend Council of Governments, Concho Valley Council of Governments, Deep East Texas Council of Governments, East Texas Council of Governments, Golden Crescent Regional Planning Commission, Heart of Texas Council of Governments, Houston-Galveston Area Council, Lower Rio Grande Valley Council of Governments, Middle Rio Grande Development Council, Nortex Regional Planning Commission, North Central Texas Council of Governments, Panhandle Regional Planning Commission, Permian Basin Regional Planning Commission, Rio Grande Council of Governments, South East Texas Regional Planning Commission, South Plains Association Governments, South Texas Development Council, Texoma Council of Governments West Central Texas Council of Governments; Poison Control Financial Report; Poison Grant Review for Texas Department of Health; Poison Control Answering Point Grant Review; Poison Control Coordinating Committee Report; Phase III, Telecommunications Implementation; Approval of October 8, 1997, Poison Meeting Minutes and November 9, 1997, January 14 and April 16, 1998, Planning and Implementation Meeting Minutes. The Commission may meet in Executive Session on any of the items as authorized per Texas Open Meetings Act, and pursuant to Government Code 551. Subchapter D, 551.071, consultation with staff attorney on pending or contemplated litigation or to seek legal advice. Adjourn.

Persons requesting interpreter service for the hearing- and speech-impaired should contact Vella Williams at 512/305-6933 at least two working days prior to the meeting.

Contact: Vella Williams, 333 Guadalupe Street, Austin, Texas 78701, 512/306-6933.

Filed: July 3, 1998, 2:06 p.m.

TRD-9810582



Monday, July 13, 1998, 4:30 p.m.

333 Guadalupe, Room 2-225

Austin

Executive Committee

AGENDA:

The Committee will call the meeting to order and recognize guest; hear public comment; hear reports. Discuss and take committee action, as necessary: Capital Area Planning Council Plan. The Commission may meet in Executive Session on any of the items as authorized per Texas Open Meetings Act, and pursuant to Government code, 551, Subchapter D, 551.071, consultation with staff attorney or pending or contemplated litigation or to seek legal advice. Adjourn.

Persons requesting interpreter service for the hearing- and speech-impaired should contact Vella Williams at 512/305-6933 at least two working days prior to the meeting.

Contact: Vella Williams, 333 Guadalupe Street, Austin, Texas 78701, 512/306-6933.

Filed: July 3, 1998, 2:06 p.m.

TRD-9810583



Tuesday, July 14, 1998, 8:30 a.m.

333 Guadalupe, Room 2-225

Austin

Operations Committee

AGENDA:

The Committee will call the meeting to order and recognize guests; hear public comment; hear reports. Discuss and take Committee action, as necessary: ACESEC financial report; ACSEC agency budget amendments update; update on state auditor's report; GTE service fee remittance and collection; agency rule review pursuant to section 167 of the current appropriations act; approval of ACSEC's affirmative action plan; PUC project no. 19203, "9-1-1 Rulemaking"; other Public Utility Commission and Federal Communications Commission Regulatory Activity; Legislative Activity Impacting 9-1-1 Emergency Communications; approval of April 16, 1998, meeting minutes. The Commission may meeting in Executive Session on any of the items as authorized per Texas Open Meetings Act, and pursuant to Government Code, 551, Subchapter D, 551.071, consultation with staff attorney on pending or contemplated litigation or to seek legal advice. Adjourn.

Persons requesting interpreter service for the hearing- and speech-impaired should contact Vella Williams at 512/305-6933 at least two working days prior to the meeting.

Contact: Vella Williams, 333 Guadalupe Street, Austin, Texas 78701, 512/306-6933.

Filed: July 3, 1998, 2:06 p.m.

TRD-9810584



Tuesday, July 14, 1998, 10:15 a.m.

333 Guadalupe, Room 2-225

Austin

Commission

AGENDA:

The Committee will call the meeting to order and recognize guests; hear public comment; hear reports. discuss and take Committee action, as necessary: COMMISSION RECESSES AND GOES INTO EXECUTIVE SESSION: City of Corpus Christ's proposed withdrawn from the Coastal Bend Council of Governments' 9-1-1 Regional Plan and Potential Amendment to Regional Plan; Exempt Positions Salary Review Pursuant to the General Appropriations Act, Article IX, General Provisions; COMMISSION RECONVENES AND CALL MEETING TO ORDER: Presentation by the Ethics Commission; Election of Commission Vice-Chair; ACSEC 9-1-1 and Poison Control Financial Reports; GTE Service fee Remittance and Collection; Approval of FY'98 Internal Audit Plan; State of Texas Auditor's Office Audit of the Emergency Service (9-1-1) System in Texas; Agency Rule Review Pursuant to Selection 167 of the Current Appropriations Act; Executive Committee Report; Operations Committee Reports; Programs Committee Report; ACSEC Meeting Schedule; Approval of February 19, 1998 Commission Meeting

Minutes. The Commission may meet in Executive Session on any of the items as authorized per Texas Open Meetings Act, and pursuant to Government Code 551, Subchapter D, 551.071, consultation with staff attorney or pending contemplated litigation or to seek legal advice. Adjourn.

Persons requesting interpreter service for the hearing- and speech-impaired should contact Vella Williams at 512/305-6933 at least two working days prior to the meeting.

Contact: Vella Williams, 333 Guadalupe Street, Austin, Texas 78701, 512/306-6933.

Filed: July 3, 1998, 2:05 p.m.

TRD-9810581



## State Employee Charitable Campaign

Monday, July 13, 1998, 3:30 p.m.

301 University-Room 4.114, Administration Annex

Galveston

Local Employee Committee Galveston

AGENDA:

I. call to order

II. consider and take action regarding June 15, 1998, meeting minutes

III. consider and take action regarding campaign materials-brochure, posters, banners, etc.

IV. review publicity for SECC; agency organs; community news

V. consider and take action on recommendation of nomination of Robert Skaggs, chair of the Galveston LEC: SECC - to the State Policy Committee, SECC

VI. Local Campaign Manager's report-budget status - agency participation progress, etc.

VII. chair's report — timeline progress (training, Kickoffs, etc.)

VIII. schedule for future meetings

Contact: Frank Jackson, 1902 Mechanic, Galveston, Texas 77550, 409/762-4357.

Filed: July 1, 1998, 4:53 p.m.

TRD-9810468



Wednesday, July 15, 1998, 9:00 a.m.

University of Texas Permian Basin, Mesa Building-Room 461, 4901 East University Boulevard

Odessa

Local Employee Committee Odessa

AGENDA:

I. call to order

II. reading and approval of the minutes of April 15 and June 17, 1998 meetings

III. discuss and take action regarding new officers and committee members

IV. discuss training for employee campaign coordinators August 13 and 18, 1998

V. discuss and take action regarding campaign kickoff event

VI. complete review and take action regarding conditionally accepted agencies

VII. view and discuss "Higher Education Convocation Video Conference"

Contact: Carl Zapora, 1209 West Wall, Midland, Texas 79701, 915/685-7707.

Filed: July 7, 1998, 1:09 p.m.

TRD-9810717



Wednesday, July 15, 1998, 9:30 a.m.

201 West Seventh Street, First Floor

Austin

State Policy Committee Austin

AGENDA:

I. call to order and discuss of the meeting agenda — Issac Jackson

II. review and adoption of the June 9, 1998, meeting minutes — Issac Jackson

III. state policy committee chair's report — Issac Jackson

IV. state advisory committee report — Joe LeBourgeois and Joe Way

V. state campaign manger's report — Laura Lucinda and Mike Terry

1. update regarding local campaign areas

2. finance report

3. projects

VI. program report — John Anderson

VII. operations report — Lisa Price

VIII. public comment period — Issac Jackson

IX. consider and take action regarding nomination for Midland/Odessa LEC chair — Issac Jackson

X. consider and take action regarding suggestions for SPO candidate(s) Issac Jackson

XI. consider and take action regarding letter thanking Ms. Judy Mims-Hurks for her service on the State Policy Committee — Issac Jackson

XII. consider and take action regarding letter thanking Ms. Anne Murphy for her services as Local Campaign Manager — Issac Jackson

XIII. consider and take action regarding next meeting date — Issac Jackson

XIV. adjourn

Contact: Laura Lucinda, 823 Congress, Suite 1103, Austin, Texas 78701, 512/478-6601.

Filed: July 6, 1998, 4:59 p.m.

TRD-9810685



Tuesday, July 21, 1998, 11:30 a.m.

Ben E. Keith Community Room, 2801 IH-35 West Service Road  
Denton



Local Employee Committee Denton

AGENDA:

- I. welcome and introduction
  - II. best points about 1997 — Dr. Derrell Bulls
  - III. training for 1998 campaign
  - IV. speaker to be announced
  - V. strategies for success — Pat Gobble and Diana Shenberger
  - VI. calendar for campaign and due date for materials
- Contact: Pat Gobble, 625 Dallas Drive, Suite 525, Denton, Texas 76201, 940/566-5851.  
Filed: July 6, 1998, 5:00 p.m.  
TRD-9810686



**Texas Energy Coordination Council (TECC)**

Wednesday, July 15, 1998, 10:00 a.m.

1200 Congress Avenue, Capitol Extension Room E1.012

Austin

Council

AGENDA:

- I. call to order and verification of a quorum
  - II. introductions
  - III. consideration of and formal action on TECC minutes of June 10, 1998, and July 1, 1998
  - IV. receive public comment on Senate Interim Committee on Electric Utility Restructuring Study: "Market-based Methods of Providing Renewable Energy and Energy Efficiency Programs"
  - V. discussion and possible action on public comment on Senate Interim Committee on Electric Utility Restructuring Study: "Market-based Methods of Providing Renewable Energy and Energy Efficiency Programs"
  - VI. discussion and possible action on Senate Interim Committee on Electric Utility Restructuring Study: "Market-based Methods of Providing Renewable Energy and Energy Efficiency Programs"
  - VII. recommendations for Agenda items for next meeting
  - VIII. set next meeting date and site
  - IX. adjourn
- Contact: Dr. Jerry Matthews, 1200 Congress Avenue, Austin, Texas 78701, 512/475-6774.  
Filed: July 3, 1998, 10:20 a.m.  
TRD-9810567



Wednesday, July 15, 1998, 10:00 a.m.

1200 Congress Avenue, Capitol Extension Room E1.012

Austin

Council

REVISED AGENDA:

- I. call to order and verification of a quorum

II. introductions

III. consideration of and formal action on TECC minutes of June 10, 1998, and July 1, 1998

IV. consideration of and formal action on TECC strategic plan

V. receive public comment on Senate Interim Committee on Electric Utility Restructuring Study: "Market-based Methods of Providing Renewable Energy and Energy Efficiency Programs"

VI. discussion and possible action on public comment on Senate Interim Committee on Electric Utility Restructuring Study: "Market-based Methods of Providing Renewable Energy and Energy Efficiency Programs"

VII. discussion and possible action on Senate Interim Committee on Electric Utility Restructuring Study: "Market-based Methods of Providing Renewable Energy and Energy Efficiency Programs"

VIII. recommendations for Agenda items for next meeting

IX. set next meeting date and site

X. adjourn

Contact: Dr. Jerry Matthews, 1200 Congress Avenue, Austin, Texas 78701, 512/475-6774.

Filed: July 7, 1998, 5:43 p.m.

TRD-9810696



**Texas Commission on Fire Protection**

Friday, July 17, 1998, 9:00 a.m.

12675 Research Boulevard

Austin

Fire Fighter Advisory Committee

AGENDA:

- 1. Discussion and possible action concerning pending changes to 37 TAC Chapter 421, concerning standards for certification, including, but not limited to, the definition of years of experience.
- 2. Discussion and possible action on future meeting dates, agenda items, and locations.

Contact: Joyce Spencer, 12675 Research Boulevard, Austin, Texas 78759, 512/918-7100.

Filed: July 3, 1998, 3:26 p.m.

TRD-9810599



Friday, July 17, 1998, 9:00 a.m.

12675 Research Boulevard

Austin

Fire Fighter Advisory Committee

REVISED AGENDA:

- 1. Discussion and possible action concerning pending changes to 37 TAC Chapter 421, concerning standards for certification, including, but not limited to, the definition of years of experience.
- 2. Discussion and possible action concerning pending changes to 37 TAC Chapter 449, concerning head of a fire department.

3. Discussion and possible action on future meeting dates, agenda items, and locations.

Contact: Joyce Spencer, 12675 Research Boulevard, Austin, Texas 78759, 512/918-7100.

Filed: July 6, 1998, 4:23 p.m.

TRD-9810667



Friday, July 17, 1998, 1:00 p.m.

12675 Research Boulevard

Austin

Commission

AGENDA:

I. Discussion and possible action concerning the agency's legislative appropriations request for Fiscal Year 2000-2001 and related agency operation budget.

II. Discussion and possible final adoption of proposed new sections of 37 TAC Chapter 421, Standards for Certification.

III. Discussion and possible action on future meeting dates, agenda items, and locations.

Contact: Joyce Spencer, 12675 Research Boulevard, Austin, Texas 78759, 512/918-7100.

Filed: July 3, 1998, 3:26 p.m.

TRD-9810600



Friday, July 17, 1998, 1:00 p.m.

12675 Research Boulevard

Austin

Commission

REVISED AGENDA:

I. Discussion and possible action concerning the agency's legislative appropriations request for Fiscal Year 2000-2001 and related agency operating budget.

II. Discussion and possible final adoption of proposed repeals and new sections as follows:

A. Discussion and possible action on new sections of 37 TAC Chapter 421, Standards for Certification;

B. Discussion and possible action on new sections of 37 TAC Chapter 449, Head of a Fire Department;

C. Discussion and possible action on the repeal 37 TAC Chapter 421, Standards for Certification;

D. Discussion and possible action on the repeal of 37 TAC Chapter 449, Head of a Fire Department.

III. Discussion and possible action on future meeting dates, agenda items, and locations.

Contact: Joyce Spencer, 12675 Research Boulevard, Austin, Texas 78759, 512/918-7100.

Filed: July 6, 1998, 4:21 p.m.

TRD-9810666



## Texas Department of Health

Wednesday, July 15, 1998, 10:00 a.m.

Tower Building, Room T-407, 1100 West 49th Street

Austin

Animal Friendly Advisory Committee

REVISED AGENDA:

The committee will discuss and possibly act on: purpose of the committee; introductions; designation of presiding officer and assistant presiding officer; stagger terms of office; meeting protocol; marketing strategy for animal friendly license plates; sharing of information regarding similar programs in other states and local programs within Texas. The committee will continue with a working lunch at noon to discuss guidelines for expenditure of funds in the animal friendly account. The committee will then discuss and possibly act on: public comments; announcements; and setting the date for the next advisory committee meeting.

To request an accommodation under the ADA, please contact Suzzana C. Currier, ADA Coordinator in the Office of Civil Rights at 512/458-7627 or TDD at 512/458-7708 at least four days prior to the meeting.

Contact: Jeanne M. Lain, 1100 West 49th Street, Austin, Texas 78756, 512/458-7255.

Filed: July 7, 1998, 3:03 p.m.

TRD-9810730



## Texas Health Care Information Council

Thursday, July 16, 1998, 1:00 p.m.

Brown Heatley Building, Room 3501, 4900 North Lamar Boulevard

Austin

Health Information Systems Technical Advisory Committee

AGENDA:

The Committee will convene in open session, deliberate, and possibly take formal action on the following items: minutes of May 27, 1998; discussion and recommendations concerning data correction and certification software package; discussion and recommendations on hospital discharge data specifications, requirements, edit, and edit processes; and setting of future meeting dates.

Contact: Jim Loyd, 4900 North Lamar, Room 3407, Austin, Texas 78751, 512/424-6492 or fax 512/424-6491.

Filed: July 8, 1998, 11:23 a.m.

TRD-9810792



## Texas Health Insurance Risk Pool (Health Pool)

Friday, July 17, 1998, 8:00 a.m.

301 Congress Avenue, Suite 360

Austin

Board of Directors, Combined Strategic Planning Committee and Staffing Committee, Grievance Committee

AGENDA:

I. Executive Session: Committees or the Board of Directors may meet in Executive Sessions in accordance with Texas Open Meetings Act to discuss personnel matters or to seek advice of counsel.

II. Board of Directors: 1. Reduction in NYL Care 1998 Interim Assessment; 2. 1998 Interim Assessment and notices; 3. Committee Reports; 4. Third Party Administrator; 5. Report on Website; 6. Treasurer's Report; 7. Other Management or Administrative matters; 8. Public comment; 9. Setting of next meeting.

III. Committee Meetings: A. Combined Strategic Planning and Staffing Committees: 1. Interview of candidates for Executive Director, hiring of Executive director, posting and bid review, other staffing matters; 2. Discussion and possible action on extension of current management contract. B. Grievance Committee: 1. Grievance procedures; 2. Review of filed grievances

Contact: C.S. LaShelle, 301 Congress, Suite 500, Austin, Texas 78701, 512/499-0775.

Filed: July 8, 1998, 10:54 a.m.

TRD-9810785



## Texas Health Reinsurance System

Wednesday, July 15, 1998, 9:00 a.m.

Hyatt Regency DFW Hotel, 300 International Parkway, East Tower, 31st Floor

DFW Airport

Board of Directors

AGENDA:

Consideration and possible action on minutes of May 20, 1998, board meeting.

Report from the Administrator of the Texas Health Reinsurance System.

Report on Assessments.

Report on Company Responses to Board inquiry Regarding Premium Reports.

Report on \$1,000 "penalty" assessment to companies failing to respond to requests for premium data.

Report to the Commissioner of Insurance.

Reports from Committees of the Board.

Consideration and possible action on administration of Texas Health Reinsurance System's cash flow including consideration of assessments and letters of credit.

Consider Action on Reinsurance Rates.

Consider Applications requesting waiver of the 60 day notice of reinsuring an eligible risk.

Consideration of other matter, including next meeting that are deemed necessary by the Board for the administration of the System.

Contact: Bernice Ross, 333 Guadalupe Street, Austin, Texas 78701, 512/463-6328.

Filed: July 3, 1998, 2:07 p.m.

TRD-9810586



## Texas Healthy Kids Corporation

Tuesday, July 14, 1998, 9:45 a.m.

333 Guadalupe, Hobby Building, Room 100 (off Lobby)

Austin

Board of Directors

AGENDA:

Call to order; approval of minutes of June 30, 1998 meeting. THKC staff presentation, possible recommendations, and possible THKC Board deliberation and action/approval/award regarding the following:

Underwriting/evidence of insurability standards for THKC health benefits program:

Scoring of Proposals in response Request for Proposal for Group Health Benefit Plan Vender(s) RFP No. THKC98-003;

Budget for upcoming fiscal year;

Protest of Award of Invitation for Bid for Marketing Service (IFB No. THKC98-002);

Other marketing issues such as logos;

Commissioner's approval of THKC health benefit plan;

Miscellaneous corporate operation issues, including moving of THKC offices, timelines, future meetings, general updates, other administrative, procedural matters.

Public Comment

The THKC Board may meet in Executive Session in accordance with the Texas Open Meetings Act to discuss any matters appropriate for an Executive Session.

Contact: Tyrette Hamilton, P.O. Box 1506, Austin, Texas 78767-1506, 512/424-6565 or fax 512/424-6601.

Filed: July 6, 1998, 5:45 p.m.

TRD-9810687



## Texas Higher Education Coordinating Board

Wednesday, July 15, 1998, 5:00 p.m.

Chevy Chase Office Complex Building 5, Room 5.212, 7700 Chevy Chase Drive

Austin

Campus Planning Committee

AGENDA:

Briefing on the Commissioner's Recommendations for Changes in the Space Projection Model.

Contact: Roger Elliott, P.O. Box 12788, Capitol Station, Austin, Texas 78711, 512/483-6130.

Filed: July 3, 1998, 10:19 a.m.

TRD-9810565



## Texas Department of Insurance

Thursday, July 16, 1998, 9:30 a.m.

333 Guadalupe, Room 102

Austin

Advisory Committee for the Interim Study for Agents and Agents' Licensing Statutes

AGENDA:

Public comment regarding the reports from the Life and Health and Property and Casualty Working Groups concerning the Working Groups' discussions and recommendations on the streamlining and consolidation of license types. Property and Casualty comments to be received from 9:30 to 11:30 a.m. Life and Health comments to be received from 1:30 to 3:30 p.m. Discussion and possible action regarding the Advisory Committee's recommendations to streamline and consolidate license types. Work on the proposed draft of the Advisory Committee's recommendations to the Commissioner. Deliberation and possible action regarding timelines, future meetings, other administrative or procedural matters.

Contact: Matt Ray, 333 Guadalupe, Austin, Texas 78701, 512/463-6328.

Filed: July 3, 1998, 9:56 a.m.

TRD-9810553



Tuesday, August 11, 1998, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress, Suite 1100

Austin

AGENDA:

Docket Number 454-98-0852.C to consider whether disciplinary action should be taken against Paul David Evans, Moscow, Texas who holds Group 1 Insurance Agent's License and Local Recording Agent's License issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Austin, Texas 78701, 512/463-6328.

Filed: July 7, 1998, 3:03 p.m.

TRD-9810728



Monday, August 17, 1998, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress, Suite 1100

Austin

AGENDA:

Docket Number 454-98-1022.C to consider the application of Gloria M. Nieves, Weatherford, Texas, for an Accident and Health and HMO License (formerly known as an "HMO Agent's License") to be issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Austin, Texas 78701, 512/463-6328.

Filed: July 7, 1998, 3:01 p.m.

TRD-9810724



Tuesday, August 18, 1998, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress, Suite 1100

Austin

AGENDA:

Docket Number 454-98-1008.H to consider whether disciplinary action should be taken against Phase I Electronics of West Texas,

Inc., which holds a certification of registration issued by the State Fire Marshal's Office.

Contact: Bernice Ross, 333 Guadalupe Street, Austin, Texas 78701, 512/463-6328.

Filed: July 7, 1998, 3:02 p.m.

TRD-9810725



Tuesday, August 18, 1998, 1:00 p.m.

Stephen F. Austin Building, 1700 North Congress, Suite 1100

Austin

AGENDA:

Docket Number 454-98-1036.C to consider whether disciplinary action should be taken against William J. Gebhard, III, Lakeway, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Austin, Texas 78701, 512/463-6328.

Filed: July 7, 1998, 3:03 p.m.

TRD-9810726



Thursday, August 20, 1998, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress, Suite 1100

Austin

AGENDA:

Docket Number 454-98-1174.C to consider whether disciplinary action should be taken against Mark A. Brown, Plano, Texas, who holds a Group I Life, Health, Accident and HMO Agent's license issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Austin, Texas 78701, 512/463-6328.

Filed: July 7, 1998, 3:03 p.m.

TRD-9810727



## Board of Law Examiners

Monday, July 13, 1998, 9:30 p.m.

Suite 500, Tom C. Clark, 205 West 14th Street

Austin

Executive Committee

AGENDA:

The executive committee will consider the following: requests for waivers, rule interpreters, appeals, and nonstandard testing accommodations filed by the following declarants or applicants: Sushil Adhikari, Timothy Anderson, Glenna Cordray, John Garcia, Sally Gary, Sangeeta Ghosh, Kelly Heitkamp, Richard Hornbeck, Lara Jital, Tira Hones, Bipin Manuel, Vicki, McFadden, Sofia Perches, Darla Regnery, Patricia Ryan, and Karen Swan.

Contact: Rachel Martin, P.O. Box 13486, Austin, Texas 78711-3486, 512/463-1621.

Filed: July 3, 1998, 2:07 p.m.

TRD-9810587

◆ ◆ ◆  
Tuesday, July 14, 1998, 9:30 p.m.

Suite 500, Tom C. Clark, 205 West 14th Street

Austin

Executive Committee

REVISED AGENDA:

The executive committee will consider the following: requests for waivers, rule interpreters, appeals, and nonstandard testing accommodations filed by the following declarants or applicants: Sushil Adhikari, Timothy Anderson, Glenna Cordray, John Garcia, Sally Gary, Sangeeta Ghosh, Kelly Heitkamp, Richard Hornbeck, Lara Jital, Tira Hones, Bipin Manuel, Vicki, McFadden, Sofia Perches, Darla Regnery, Patricia Ryan, and Karen Swan.

Contact: Rachel Martin, P.O. Box 13486, Austin, Texas 78711-3486, 512/463-1621.

Filed: July 3, 1998, 2:08 p.m.

TRD-9810588

◆ ◆ ◆  
Wednesday, July 15, 1998, 9:30 p.m.

Suite 500, Tom C. Clark, 205 West 14th Street

Austin

Executive Committee

REVISED AGENDA:

The executive committee will consider the following: requests for waivers, rule interpreters, appeals, and nonstandard testing accommodations filed by the following declarants or applicants: Sushil Adhikari, Timothy Anderson, Glenna Cordray, John Garcia, Sally Gary, Sangeeta Ghosh, Kelly Heitkamp, Richard Hornbeck, Lara Jital, Tira Hones, Bipin Manuel, Vicki, McFadden, Sofia Perches, Darla Regnery, Patricia Ryan, and Karen Swan.

Contact: Rachel Martin, P.O. Box 13486, Austin, Texas 78711-3486, 512/463-1621.

Filed: July 3, 1998, 2:08 p.m.

TRD-9810589

◆ ◆ ◆  
Thursday, July 16, 1998, 8:30 a.m.

Suite 500, Tom C. Clark, 205 West 14th Street

Austin

Panel Hearings

AGENDA:

The panel hearings will hold public hearings and conduct deliberations, on the character and fitness of the following applicants, declarants and/or probationary licensees: Terry L. Hampton; Cynthia L. Best; Norman Chapa; Paul J. Zoeller; Steven B. Offutt; Shawn T. Storey; Michael L. Almaraz; William R. Harry; Josh P. Norrell; Gregory P. Supan (character and fitness deliberations may be conducted in executive session, pursuant to Sec. 82.003(a), Texas Government Code.)

Contact: Rachel Martin, P.O. Box 13486, Austin, Texas 78711-3486, 512/463-1621.

Filed: July 6, 1998, 3:00 p.m.

TRD-9810655

◆ ◆ ◆  
Friday, July 17, 1998, 8:30 a.m.

Suite 500, Tom C. Clark, 205 West 14th Street

Austin

Panel Hearings

AGENDA:

The panel hearings will hold public hearings and conduct deliberations, on the character and fitness of the following applicants, declarants and/or probationary licensees: Gregory Dorst; Joseph Greco; Stephen Abbott; John Shumaker; Edward Dawkins; Jason Gibson, Arturo McDonald; Josian Passalcqua (character and fitness deliberations may be conducted in executive session, pursuant to Sec. 82.003(a), Texas Government Code.)

Contact: Rachel Martin, P.O. Box 13486, Austin, Texas 78711-3486, 512/463-1621.

Filed: July 7, 1998, 4:22 p.m.

TRD-9810751

◆ ◆ ◆  
**Texas Department of Licensing and Regulation**

Thursday, July 23, 1998, 9:30 a.m.

E.O. Thompson State Office Building, 920 Colorado Street, 4th Floor Conference Room

Austin

Water Well Drillers Advisory Council

AGENDA:

- A. Call to order
- B. Roll call and certification of quorum-approval of minutes-meeting of May 14, 1998
- C. Report on Investigations and Complaints
- D. Discussion of qualifications and recommendations on applicants for certification in water driller and pump installer programs
- E. Discussion and recommendations on applications for driller and pump installer-trainee registration
- F. Council will make recommendations to the Department on consumer complaints.
  - 1. Greg Isaac complaint on Cory Miller #2464WI
  - 2. Sam Andrade complaint on Joe Carroll #2689W
  - 3. William Thomashide complaint on Dicky Long #1462W
  - 4. Dennis Lugg complaint on Marion Heisler #2449WI
  - 5. David Person complaint on Todd Moore #2901WPK
  - 6. Elizabeth Young complaint on Randy Roberts #2450WI
  - 7. Robert Waltrip complaint on J.O. Siegert #897WI
- G. Staff reports
- H. Open Session/Public Comment
- I. Discussion of date, time and location of next Council meeting
- J. Adjournment

Person who plan to attend this meeting and required ADA assistance are requested to contact Caroline Jackson at 512/463-7348 two working days prior to the meeting so that appropriate arrangement can be made.

Contact: Steven Wiley, 920 Colorado, Austin, Texas 78711, 512/463-8876.

Filed: July 6, 1998, 2:44 p.m.

TRD-9810654



Tuesday, August 4, 1998, 9:30 a.m.

920 Colorado, E. O. Thompson Building, 4th Floor, Room 420

Austin

Enforcement Division, Auctioneers

AGENDA:

The Department will hold an Administrative Hearing to consider possible revocation of license of the Auctioneer, Larry William Dunn, for the following violation: the Texas Commission of Licensing and Regulation issued a Final Order, In the Matter of Larry William Dunn, Docket No. ACR199600673C, assessing: an administrative penalty of \$3,000, reimbursement to the Texas Auctioneer Education and Recovery Fund in the amount of \$20,000.00 plus 8% interest; payment of \$612.20 plus 8% interest each to John E. Prothro, Jr., Thomas Prothro, Jennifer Prothro and Karen Prothro Puckett; and a one year license suspension, probated for one year under the condition that Mr. Dunn report his auctioneering activity to the Department on a regular basis. The Respondent has failed to comply with the order adopted by the Commissioner by failing to pay the \$3,000 administrative penalty, failing to reimburse the fund as agreed, and failing to pay all Claimants, in violation of Texas Revised Civil Statutes, Annotated Article 9100, §17, and Texas Revised Civil Statutes Annotated Article 8700 §§5C, 7, and 9, pursuant to Texas Government Code, Annotated, §§2001.001-2001.902; Texas Revised Civil Statutes Annotated, Articles 9100, §§1-19; and 16 Texas Administrative Code, §§60.1-60.95.

Contact: Jackie Sager, 920 E.O. Thompson Building, Austin, Texas 78701, 512/463-3192.

Filed: July 2, 1998, 10:02 a.m.

TRD-9810480



## **Texas Lottery Commission**

Saturday, July 11, 1998, 9:00 a.m.

611 East 6th Street, Grant Building, Commission Auditorium

Austin

Commission

AGENDA:

The Commission will call the meeting to order; report on lottery sales; report, discussion and possible action on promotional and advertising efforts, including processes and expenditures; report on state audit report of Texas Lottery Commission; report on lottery operator audit; report on legislative interim committee hearings; report on 76th Legislative Session proposals; report on FY 1998 and FY 1999 capital expenditures; Report on FY 2000 and 2001 Legislative Appropriations Requests; report on Year 2000 compliance; consideration of amendments to 16 TAC §401.369; consideration of 16 TAC

§401.229; consideration of and possible action regarding Bingo Advisory Committee, including recommendation of an abolition date by Bingo Advisory Committee and possible action, including proposal of an amendment to administrative rule 16 TAC §402.567; consideration of Bingo Advisory Committee nominations; consideration of appointment, employment and duties of Charitable Bingo Operations; report of scope of use of automated bingo services; consideration of amendment(s) to Chapter 2, Personnel Policy Manual; report by Division Directors on Divisions' resources; Commission may meet in Executive Session; return to open session to further deliberation and possible action on any matter discussed in Executive Session; consideration of orders in contested cases; consideration of Motions for Rehearing; report Executive Director, report by the Acting Charitable Bingo Operations Director; and, adjournment.

For ADA assistance, call Michelle Bernal-Guerrero at 512/344-5113 at least two days prior to meeting.

Contact: Michelle Bernal Guerrero, P.O. Box 16630, Austin, Texas 78761-6630, 512/344-5113.

Filed: July 3, 1998, 3:05 p.m.

TRD-9810598



## **Texas Mental Health and Mental Retardation Board**

Thursday, July 9, 1998, 9:30 a.m.

909 West 45th Street (Auditorium)

Austin

Business and Asset Management Committee

AGENDA:

1. Citizens Comments
2. Update on Real Property Transactions Previously Approved by the Board: Implementation of the Asset Management Policy
3. Status of Major Construction Projects
4. Update on Workers Compensation and Risk Management
5. Update on the Agency's Work on the Year 2000 Issue
6. Consideration of Approval of FY 1998 Operating Budget Adjustments
7. Consideration of Approval of the Operating Budget and the Operating Plan for FY 1999
8. Consideration of Approval of the FY 2000-2001 Legislative Appropriations Request
9. Consideration of Acceptance of Donations in Excess \$500 as listed on the attached agenda
10. Consideration of a Resolution to Amend the Summary of Lease Terms for Community Facilities for Persons with Mental Retardation
11. Action/discussion of the following items is conditioned upon actions of the Special Board of Review Consideration of Items Pertaining to Triangle Square: A. Modification of the Development Plan; B. Amendment to Lease Terms; C. Approval of a Sublease; D. Declaration of Surplus Property; E. Possible Executive Session Under Texas Government Code Section 551.071 to Discuss Possible Contemplated Litigation and Attorney Advice Concerning the Triangle Project.

If ADA assistance or deaf interpreters are required, notify TXMHMR, 512/206-4506, (voice or Relay Texas), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, 512/206-4506.

Filed: July 1, 1998, 5:03 p.m.

TRD-9810472



Thursday, July 9, 1998, 11:00 a.m.

909 West 45th Street (Auditorium)

Austin

Audit and Financial Oversight Committee

AGENDA:

1. Citizens Comments
2. Audit Activity Update
3. FY 1997 Community Center Financial Ratios

If ADA assistance or deaf interpreters are required, notify TXMHMR, 512/206-4506, (voice or Relay Texas), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, 512/206-4506.

Filed: July 1, 1998, 5:02 p.m.

TRD-9810469



Thursday, July 9, 1998, 1:00 p.m.

909 West 45th Street (Auditorium)

Austin

Medicaid Committee

AGENDA:

1. Citizens Comments
2. Update on the Implementation of the New Rate Setting Methodology
3. Update on the NorthSTAR Project
4. Review and Recommendation of Medicaid Reimbursement Rates for Institutions for Mental Diseases Effective May 1, 1998-April 30, 1999

If ADA assistance or deaf interpreters are required, notify TXMHMR, 512/206-4506, (voice or Relay Texas), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, 512/206-4506.

Filed: July 1, 1998, 5:02 p.m.

TRD-9810470



Thursday, July 9, 1998, 1:30 p.m.

909 West 45th Street (Auditorium)

Austin

Planning and Policy Development Committee

AGENDA:

1. Citizens Comments
2. Legislative Update
3. Briefing on the Children's Health Insurance Program (CHIP)
4. Update on the Implementation of the Recommendations Contained in the Ad Hoc Committee on Mental Retardation and Managed Care Final Report
5. Consideration of Approval of the Appointment of New Members to the following Advisory Committees: TXMHMR Inpatient Mental Health Services Committee; Citizens Planning Advisory Committee; TDMHMR Ethics committee on Clinical Care and Treatment
6. Consideration of Approval of the Agency Long Range Strategic Plan for Information Resources
7. Consideration of Acceptance of the HB 1734 Committee Report for Transmittal to the Senate Health and Human Services Committee and the Public Health Committee of the House of Representatives

Additional items to be considered per attached agenda.

If ADA assistance or deaf interpreters are required, notify TXMHMR, 512/206-4506, (voice or Relay Texas), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, 512/206-4506.

Filed: July 1, 1998, 5:02 p.m.

TRD-9810471



Friday, July 10, 1998, 9:30 a.m.

909 West 45th Street (Auditorium)

Austin

Business and Asset Management Committee

AGENDA:

- I. Call to order; roll call; II. citizens comments; III. approval of the minutes of the June 12, 1998 meeting. IV. issues to be considered.
  1. Chairman's report: update on the commissioner selection process; announcement of appointments to advisory committees: TDMHMR Ethics Committee on Clinical Care and Treatment; TXMHMR Inpatient Mental Health Service Committee; Citizen Planning Advisory Committee.
2. Commissioner's Report: Medical Director's Report; Sunset Review of TDMHMR Rules

Items 3-18 Action on Committee Reports per attached agenda

19. Executive Session under Texas Government Code Section 551.071 to Discuss Potential and Pending Litigation including possible contemplated litigation and Attorney advice concerning the Triangle Project.

If ADA assistance or deaf interpreters are required, notify TXMHMR, 512/206-4506, (voice or Relay Texas), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, 512/206-4506.

Filed: July 1, 1998, 5:03 p.m.

TRD-9810473

◆ ◆ ◆  
**Texas Natural Resource Conservation Commission**

Wednesday, July 15, 1998, 8:30, 9:30 a.m. and 1:00 p.m.  
(respectively.)

Building E, Room 201S, 12100 Park 35 Circle

Austin

**AGENDA:**

The Commission will consider approval the following matters on the attached agenda: executive sessions; hearing request; district matters; superfunds; air enforcement agreed orders; municipal waste discharge enforcement agreed orders; public water supply enforcement agreed orders; agricultural enforcement agreed order; petroleum storage tank enforcement agreed order; contract; municipal solid waste enforcement agreed orders; rules; executive session; modify, affirm, or set aside and emergency order; 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. (Registration for 9:30 agenda starts 8:45 a.m. until 9:25) The commission will consider approving the following matters on its 1:00 p.m. agenda; administrative law judge's proposal for decision and order; motion for rehearing. (Registration for the 1:00 p.m. agenda starts at 12:30 until 1:00 p.m.).

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, 512/239-3317.

Filed: July 6, 1998, 4:32 p.m.

TRD-9810668

◆ ◆ ◆  
Wednesday, July 15, 1998, 9:30 a.m.

Building E, Room 201S, 12100 Park 35 Circle

Austin

**REVISED AGENDA:**

The Commission will consider approving the following matter on the attached addendum to the agenda: Superfund

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, 512/239-3317.

Filed: July 7, 1998, 1:09 p.m.

TRD-9810715

◆ ◆ ◆  
Thursday, July 16, 1998, 1:30 p.m.

Building E, Room 201S, 12100 Park 35 Circle

Austin

**AGENDA:**

This meeting is a work session for discussion between commissioners and staff. No public testimony or comment will be accepted except by invitation of the commission.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, 512/239-3317.

Filed: July 8, 1998, 11:00 a.m.

TRD-9810786

◆ ◆ ◆  
Thursday, July 30, 1998, 10:00 a.m.

Suite 1100 of the Stephen F. Austin Building, 1700 North Congress Avenue

Austin

**AGENDA:**

SOAH Docket No. 582-98-1222; TNRCC Docket No. 97-0691-PST-E; Permian Petroleum Company; The purpose of the hearing will be to consider the Executive director's preliminary report and petition mailed March 27, 1998, concerning assessing administrative penalties against and requiring certain actions of Permian Petroleum Company for violation of 30 Texas Administrative Code, Sections 334.7(a)(1), 334.22(a), 334.6(b)(2), 334.401, 334.414, 334.55(a)(4), 334.55(b)(4), 334.55(e)(1) in Andrews County, Texas.

Contact: Blas Coy, P.O. Box 13087, Austin, Texas 78711-3087, 512/239-6363.

Filed: July 1, 1998, 4:19 p.m.

TRD-9810465

◆ ◆ ◆  
Thursday, August 4, 1998, 7:00 p.m.

Sheraton Tyler, 5701 South Broadway

Tyler

**AGENDA:**

For an informal public meeting concerning an application by United Disposal Service to the Texas Natural Resource Conservation Commission for Proposed Registration No. MSW40146 to construct and operate a Type V. municipal solid waste transfer station. The proposed site contains about 11.528 acres of land and, if approved, will receive 75 tons of municipal solid waste per day. The proposed facility will be located outside the city limits of Tyler on the north side of the City inside Loop 323 and County Road 35.

Contact: Annie Tyrone P.O. Box 13087, Austin, Texas 78711-3087, 1/800/687-4040.

Filed: July 2, 1998, 10:02 a.m.

TRD-9810478

◆ ◆ ◆  
Monday, August 10, 1998, 10:00 a.m.

Suite 1100 of the Stephen F. Austin Building, 1700 North Congress Avenue

Austin

**AGENDA:**

SOAH Docket No. 582-98-1223; TNRCC Docket No. 97-0583-AGR-E; Derrel Hungerford; The purpose of the hearing will be to consider the Executive director's preliminary report and petition mailed April 3, 1998, concerning assessing administrative penalties against and requiring certain actions of Derrel Hungerford for violation of Texas Water Code, Sections 26.121 and 30 TAC Sections 321. and 321.35 in Comanche County, Texas.

Contact: Blas Coy, P.O. Box 13087, Austin, Texas 78711-3087, 512/239-6363.

Filed: July 1, 1998, 4:53 p.m.

TRD-9810466



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## Texas Board of Orthotics and Prosthetics

Wednesday, July 15, 1998, 10:00 a.m.

Exchange Building, Room S-402, Texas Department of Health, 8407 Wall Street

Austin

### AGENDA:

The board will introduce members, guests, and staff and will discuss and possibly act on: approval of the minutes of the June 29, 1998, meeting; formalize committee appointments; review, discussion, and possible action on board seal, administrative forms, mission and vision statements; review and discussion of consumer/public information materials for presentations by the board; proposed rule review relating to the regulation of orthotics and prosthetics (22 TAC, Chapter 821); other matters not requiring board action; public comment; and setting future agenda items and future meeting dates for the board.

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at 512/458-7627 or TDD at 512/458-7708 at least four days prior to the meeting.

Contact: Donna Flippin or Steven Lowenstein, 1100 West 49th Street, Austin, Texas 78756, 512/834-4520.

Filed: July 3, 1998, 9:56 a.m.

TRD-9810554

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## Texas State Board of Plumbing Examiners

Monday, July 13, 1998, 8:30 a.m.

929 East 41st Street

Austin

Board

### AGENDA:

Texas Board will convene in open session, deliberate and possibly take formal action on any of the following items. 1) roll call-8:30 a.m. 2) recognize staff and visitors 3) public comment 4) May 11, 1998, board meeting minutes 5) hardship cases 6) committee reports/personnel committee: establish procedures for any action needed to hire a new administrator including committee assignments, meeting times, etc., regarding considering redeveloping the criteria necessary to obtain a journeyman's plumbing license and a plumbing inspector's license and addressing the shortfall of certified qualified plumbers in the industry. 8. make up of committees and subcommittee assignments 9) Attorney General's Report: complaint procedures, designate temporary management contact in addition to Mr. Kissling. 10) discussion and possible action of the letter from the City of Pasadena regarding City Plumbing Inspector 11) discussion and possible action on the letter from the City of Irving regarding compliance with TNRCC regulations. 12) Examinations translated in a language other than English. 13) Executive Session to deliberate the appointment, pursuant to Section 551.074(a)(1). 14) Report on "Duplication of Services, Occupational Licensing" 15) Letter from the Attorney General's Office regarding legal representation at Committee meetings. 16) approval of TSBPE Strategic Plan 17) field/citation report the Texas State Board of Plumbing Examiners may go

into executive session on any agenda item if authorized by the Open Meeting Act, Government Code, Chapter 551.

Contact: Stephenie A. Spiars, 929 East 41st Street, Austin, Texas 512/458-2145 Ext. 222.

Filed: July 2, 1998, 3:47 p.m.

TRD-9810536

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Monday, July 13, 1998, 8:30 a.m.

929 East 41st Street

Austin

Board

### REVISED AGENDA:

9.(4) Training

Contact: Stephenie A. Spiars, 929 East 41st Street, Austin, Texas 512/458-2145 Ext. 222.

Filed: July 2, 1998, 4:36 p.m.

TRD-9810544

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## State Preservation Board

Monday, July 13, 1998, 8:45 a.m.

Capitol Extension, Room E1.010, 1400 North Congress Avenue

Austin

Board

### AGENDA:

1.0 call to order

2.0 approval of minutes

2.1 approval of minutes from December 1, 1997

3.0 old or unfinished — none

4.0 new business

4.1 approve Texas State History Museum schematic design

4.2 grant executive director authority to negotiate and execute large format theater system contract

4.3 grant executive director authority to negotiate and execute museum site excavation contract

4.4 approve solicitation of request for proposal for construction management and grant executive director authority to negotiate and execute contract

4.5 approve proposed amendments to 13 TAC §111.26, Use of Gift Shop Funds

4.6 approve 13 TAC §111.31, Display of Flags

4.7 Final acceptance of Pioneer Woman Monument

4.8 approve capitol collections acquisitions

4.9 report on contracts

4.10 report on building change requests

4.11 report on capitol fund

Contact: Rick Crawford, 201 East 14th Street, (Sam Houston Building), Austin, Texas 78701, 512/463-5495.

Filed: July 3, 1998, 3:41 p.m.

TRD-9810601



## Texas State Board of Examiners of Psychologists

Wednesday, July 29, 1998, 8:30 a.m.

333 Guadalupe Suite 2-400A

Austin

Disciplinary Review Panel #1

AGENDA:

The Board will meet to discuss, consider and vote on recommendations for disposition of various complaints. The Panel will also go into Executive Session to take confidential interviews concerning pending complaints pursuant to §551.084, Texas Government Code, VTCS, 1996, as well as Executive Session to seek legal advice pursuant to §551.071, Texas Government Code, VTCS, 1996.

Contact: Sherry L. Lee, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, 512/305-7700.

Filed: July 8, 1998, 10:37 a.m.

TRD-9810781



## Texas Department of Public Safety

Thursday, July 16, 1998, 10:00 a.m.

DPS Headquarters, Building A, Commission Conference Room 5805 North Lamar

Austin

Commission

AGENDA:

Approval of minutes

Public Comment

Internal Audit Report

Misc and Other Unfinished Business

Open session for discussion and possible action regarding legal advice on pending and contemplated litigation, employment law, and personnel matters

Executive session to meet with attorneys to seek legal advice regarding pending and contemplated litigation, employment law, and personnel matters pursuant to Government Code, §551.071; executive session to receive information from employees pursuant to Government Code, §551.075

Open session to consider status of the purchase of real property and possible action

Executive session to consider status of the purchase of real property pursuant to the provisions of Texas Government Code, §551.072

Discharge appeal hearing of DPS employee Gloria Almanza Perez

Discharge appeal hearing of DPS employee Joe L. Salinas

Action in discharge appeal hearing of DPS employee Esteban Ortiz

Action in discharge appeal hearing of DPS employee Jeff House

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 Dorothy Wright at 512/453-3929 two working days prior to the meeting so that appropriate arrangements can be made.

Contact: Dudley M. Thomas, 5805 North Lamar Boulevard, Austin, Texas 78752, 512/424-2000, Ext. 3700.

Filed: July 6, 1998, 11:20 a.m.

TRD-9810569



## Public Utility Commission of Texas

Thursday, July 16, 1998, 8:00 a.m.

1701 North Congress Avenue

Austin

AGENDA:

There will be an open meeting for discussion, consideration, and possible action regarding: Project No. 18515, compliance proceeding for implementation of the Texas High Cost Universal Service Plan.

Contact: Dianne Prior, 1701 North Congress Avenue, Austin, Texas 78701, 512/936-7007.

Filed: July 6, 1998, 2:40 p.m.

TRD-9810652



Thursday, July 16, 1998, 8:00 a.m.

1701 North Congress Avenue

Austin

AGENDA:

In addition to previously submitted open meeting agenda please add the following items for discussion, consideration and possible action regarding: Docket No 16705, Application of Entergy Gulf States, Inc., for Approval of its Transition to Competition Plan and the Tariffs Implementing the Plan, and for the Authority to Reconcile Fuel Costs, to set revised fuel factors, and to recover an surcharge for under-recovered fuel costs; and Docket No. 18290, Gulf State Utilities Company Remand to Actual Texas Paid Issues.

Contact: Dianne Prior, 1701 North Congress Avenue, Austin, Texas 78701, 512/936-7007.

Filed: July 7, 1998, 3:03 p.m.

TRD-9810731



Friday, July 17, 1998, 9:30 a.m.

1701 North Congress Avenue

Austin

AGENDA:

There will be an open meeting for discussion, consideration, and possible action regarding: Docket Nos. 16705, Application of Entergy Gulf State Inc. for Approval of its Transition to Competition Plan and the Tariffs Implementing the Plan, and for the Authority to Reconcile fuel Costs, to Set Revised Fuel Factors, and to Recover an Surcharge for Under-Recovered Fuel Costs; Docket Number 17899, Remand of Docket No 7195, Application of GSU for Authority

to Change Rates; and Docket Number 18290, Gulf States Utilities Company Remand of Actual Taxes Paid Issues.

Contact: Dianne Prior, 1701 North Congress Avenue, Austin, Texas 78701, 512/936-7007.

Filed: July 6, 1998, 2:41 p.m.

TRD-9810653



Thursday, July 23, 1998, 9:00 a.m.

1701 North Congress Avenue

Austin

AGENDA:

There will be an open meeting/workshop for discussion, consideration, and possible action regarding: Project No. 18703, review of transmission access rules, Public Substantive Rule 23.67 and 23.70.

Contact: Dianne Prior, 1701 North Congress Avenue, Austin, Texas 78701, 512/936-7007.

Filed: July 6, 1998, 3:27 p.m.

TRD-9810656



## **Railroad Commission of Texas**

Tuesday, July 14, 1998, 9:30 a.m.

1701 North Congress Ave, 1st Floor Conference Room 1-111

Austin

AGENDA:

The Commission will consider various applications and other matters within the jurisdiction of the agency including oral arguments at the time specified on the attached agenda. The Railroad Commission of Texas 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 may meet in Executive Session on any items listed above as authorized by the Open Meetings Act.

Contact: Lindil C. Fowler, Jr., P.O. Box 12967, Austin, Texas 78711-2967, 512/463-7033.

Filed: July 3, 1998, 3:00 p.m.

TRD-9810597



## **Texas Real Estate Research Center**

Thursday, July 16, 1998, 3:00 p.m.

1000 Ballpark Way

Austin

Advisory Committee

AGENDA:

1. Open Remarks
2. Approval of Minutes
3. Current Budget Report
4. Review and approval of 1998-1999 Recommended Budget
5. Date of Next Meeting

6. Update on Endowment Campaign

7. Video on Paragraph 701

8. Other Business

9. Adjourn

Contact: R. Malcolm Richards, Texas A&M University, College Station, Texas 77843-2115, 409/845-9691.

Filed: July 6, 1998, 1:53 p.m.

TRD-9810646



## **Texas Rehabilitation Commission**

Monday, July 27, 1998, 10:00

Brown-Heatly Building, 4900 North Lamar Boulevard, Room No. 4501

Austin

Comprehensive Rehabilitation Service (CRS) Advisory Committee

AGENDA:

10:00 a.m. call to order

I. Introductions

II. Approval of Minutes

III. Public Comments

IV. Discussion of CRS Policy

V. Other discussion Items

5:00 p.m. Adjourn

Person 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 Mel Fajkus at 512/424-4133.

Contact: Mel Fajkus, 4900 North Lamar Boulevard, Austin, Texas 78751, 512/424-4133.

Filed: July 6, 1998, 3:34 p.m.

TRD-9810659



## **Rural Community Health System**

Friday-Saturday, July 17-18, 1998, 1:00 p.m. and 9:00 a.m. (respectively.)

4350 Ridgmont Drive

Abilene

Full Board

AGENDA:

The Board will hold a facilitated strategy session to develop a long range operational plan and budget as well as other technical development plans needed by the System.

The Board will hear a presentation by Dr. Bruce Admundson on the Washington State community health plan at 6:00 p.m. or July 17.

The board reserves the right to hold an executive meeting as needed and as defined in SB1246 and the Texas Open Meetings act.

Contact: Victoria Ford, P.O. Box 13556, Austin, Texas 78711, 512/463-0119.

Filed: July 6, 1998, 11:37 a.m.

TRD-9810639



### **Center for Rural Health Initiatives**

Friday, July 10, 1998, 9:00 a.m.

Southwest Tower Building, 211 East 7th Street, 7th Floor Conference Room

Austin

Executive Committee

REVISED AGENDA:

I. call to order

II. welcome and introductions

III. discuss Sunset Committee report

IV. executive session to deliberate the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the executive director(s).

V. action in open session on the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the current executive director.

VI. action in open session on the appointment, employment, evaluation, reassignment, or duties of an interim executive director.

V. adjournment

Contact: Susan Morgan, 211 East 7th Street, Austin, Texas 78701, 512/479-8891.

Filed: July 2, 1998, 4:20 p.m.

TRD-9810542



Friday, July 10, 1998, 10:00 a.m.

Southwest Tower Building, 211 East 7th Street, 7th Floor Conference Room

Austin

Executive Committee

AGENDA:

I. call to order

II. welcome and introductions

III. discuss Sunset Committee report

IV. executive session to discuss personnel

V. adjournment

Contact: Susan Morgan, 211 East 7th Street, Austin, Texas 78701, 512/479-8891.

Filed: July 2, 1998, 12:24 p.m.

TRD-9810507



### **State Securities Board**

Wednesday, August 19, 1998, 9:00 a.m.

Stephen F. Austin Building, 1700 North Congress, Suite 1100

Austin

Administrative Hearing

AGENDA:

A hearing will be held in SOAH Docket No. 312-98-1293 before an Administrative Law Judge for the purpose of determining whether the dealer registration of Duke & Co., Inc. should be revoked.

Contact: David Grauer, 200 East 10th Street, 5th Floor, Austin, Texas 78701, 512/305-8392.

Filed: July 7, 1998, 3:18 p.m.

TRD-9810739



### **Texas State Soil and Water Conservation Board**

Tuesday, July 14, 1998, 9:00 a.m.

311 North 5th Street, Hearings Room

Austin

AGENDA:

Minutes from May 20, 1998, Board Meeting; District Director Appointments; Expenditure Report for 10-minutes period ending June 30, 1998; fiscal year 1999 operating budget; allocation of fiscal year 1999 technical assistance grant funds; allocation of fiscal year 1999 conservation assistance grant funds; 2000-2001 legislative appropriation request; travel report; board member travel; district capacity building; 1998 annual state meeting and soil and water conservation district directors; future state meeting sites; conservation award program; open records request; director training report; public information/education report; NACD South Central Region meeting; South Padre Island, Texas; Reports from agencies and guests; Senate Bill 503 status report; establishment of fiscal year 1999 SB 503 priority watersheds; allocation of fiscal year 1998 SB 503 Cost Share Funds; allocation of fiscal year 1999 SB Cost Share Funds; amendment to the approved costshare practice list; section 319 status report for fiscal year 1998 and 1999; TMDL update; unified watershed assessment; human resources staffing update; re-adoption plan for agency rules; coastal management program-Coastal Coordination Council, Coastal nonpoint source management program; source water protection activities; next regular state board meeting-September 16, 1998; North Concho River Brush Control Study; State Drought Response Committee.

Contact: Robert G. Buckley, P.O. Box 658, Temple, Texas 76503, 254/773-2250 or TEX-AN 820-1250.

Filed: July 2, 1998, 3:08 p.m.

TRD-9810534



### **Stephen F. Austin State University**

Monday, July 13, 1998, 11:00 a.m.

1936 North Street, Austin Building, Room 307

Nacogdoches

Board of Regents Finance Committee

AGENDA:

I. Classified Employee Pay Plan Policy

II. Resolution Authorizing Sale of Revenue Bonds

III. Perkins Loan-Servicing Contract

IV. Credit Card Merchant Services

V. University Insurance Program

VI. Construction Bids-Miller Science Building

Contact: Dan Angel, P.O. Box 6078, Nacogdoches, Texas 75962-6078, 409/468-2201.

Filed: July 7, 1998, 3:08 p.m.

TRD-9810734



Monday, July 13, 1998, 1:30 p.m.

1936 North Street, Austin Building, Room 307

Nacogdoches

Board of Regents

AGENDA:

I. Open Session-Committee of the Whole

II. Executive Session

A. Review of Pending Litigation (551.071)

1. Ginn v. SFA, et al

2. Weber v. NAH, Inc., et al

3. Trahan v. SFA

4. Fowler v. SFA

5. Dudley v. SFA

6. Hoover, et al v. Morales, et al

B. Personnel Matters Regarding Specific University Employees (551.074/551.075)

1. Basketball Coaches

C. Real Estate

III. Open Discussion of Tuesday Board items

(Where appropriate, and permitted by law, Executive Sessions may be held for the above listed subjects.)

Contact: Dan Angel, P.O. Box 6078, Nacogdoches, Texas 75962-6078, 409/468-2201.

Filed: July 7, 1998, 3:08 p.m.

TRD-9810736



Tuesday, July 14, 1998, 9:00 a.m.

1936 North Street, Austin Building, Room 307

Nacogdoches

Board of Regents

AGENDA:

I. Executive Session

A. Report on Pending Litigation

1. Pending lawsuits

B. Personnel Matters Regarding Specific University Employees

1. Basketball Coaches

C. Real Estate

(Possible action may be taken in Open Session on matters considered in Executive Session)

II. Approval of April 21, 1998 minutes

III. Personnel

A. Faculty and Staff Appointments for 1998-1999

B. Changes in Status

C. Retirements

D. Voluntary Modification of Employment

E. Holiday Schedule for 1998-1999

VI. Academic and Student Affairs

A. Underenrolled Class Report

B. Last Class Day Report

C. Incident Fees

D. Proposal to Change Name of Counseling and Special Education Program Department to Human Services Department

E. New Mission Statement

V. Financial Affairs

A. Network Upgrade and Expansion

B. Replacement of Central Academic Computer

C. University Mini-Bus

D. Perkins Loan Services Contract

E. Credit Card Merchant Services

F. University Insurance Coverage

G. Approval of the 1998-1999 HEAF Allocation

H. Budget Changes Less Than \$50,000

I. Resolution Authorizing Sale of Board of Regents of SFASU Revenue Financing System Revenue Bonds, Series 1998

VI. Buildings and Grounds

A. Renovation of Miller Science Building

B. Renovation of Central Stores

C. Naming of the SFA Arboretum

D. Naming of the Music Concert Hall

E. Naming of the SFA Wellness Center

VII. University Policies and Procedures

A. Updated Policies

VIII. Report

A. Chair, Faculty Senate

B. President, Student Government Association President

(Where appropriate, and permitted by law, Executive Sessions may be held for the above listed subjects.)

Contact: Dan Angel, P.O. Box 6078, Nacogdoches, Texas 75962-6078, 409/468-2201.

Filed: July 7, 1998, 3:08 p.m.

TRD-9810735

◆ ◆ ◆  
**Teacher Retirement System of Texas**

Tuesday, July 14, 1998, Noon

1000 Red River, Room 420E

Austin

Medical Board

AGENDA:

Discussion of 1) the files of members who are currently applying for disability retirement and 2) the files of disability retirees who are due a re-examination report.

For ADA assistance, contact John R. Mercer 512/397-6400 or T.D.D 512/397-6444 or 800/841-4497 at least two days prior to the meeting.

Contact: Don Cadenhead, 1000 Red River, Austin, Texas 78701-2698, 512/397-6400.

Filed: July 3, 1998, 3:52 p.m.

TRD-9810602

◆ ◆ ◆  
**Texas Association of Counties**

Thursday, July 16, 1998, 9:00 a.m.

1204 San Antonio Street

Austin

Insurance Trust Fund

AGENDA:

Approval of April 23, 1998, minutes

Finance Report — Mr. Terry Wyatt

Annual Audit Report — Ernst and Young

Investment Report — Mr. Ron Schultz/Mr. Paul Williams

Program Administration Report

Status of other TAC Managed Funds — Mr. Jim Jean

Update on Your 2000 Program — Mr. Jim Jean

Personnel Requirements — Mr. Jim Jean

Marketing GH Program/Healthcare Markets — Mr. Bill Norwood

Discussion on Merging the Two Health Funds — Mr. Bill Norwood

Update — Vision Care Program — Ms. Lauren Henry

Ancillary Products Development — Long Term Care, Short Term Medical, Individual Medical — Ms. Lauren Henry

Database Update including Renewal Process — Ms. Kristi Lopez

Retiree Programs including Long Term Care — Mr. Kristi Lopez

Healthwide, Wellness and Disease Management Programs Ms. Jennifer Hoff

BlueCross and Blueshield of Texas Report — Mr. Bob English

Annual Trust Rerate — Mr. Bill Norwood

Annual Member Rerate and Pricing Allocation Options — Mr. David Wilkes/Mr. Bill Norwood

Adjourn

Contact: James W. Jean, 1204 San Antonio, Austin, Texas 78701, 412/478-8753.

Filed: July 1, 1998, 2:20 p.m.

TRD-9810446

◆ ◆ ◆  
**Texas Department of Transportation**

Monday, August 3, 1998, 9:30 a.m.

200 East Riverside Drive, Room 101

Austin

Household Goods Carrier Advisory Committee

AGENDA:

Convene, Review and approval of minutes from July 13, 1998, meeting, Discussion and recommendations for modernizing and streamline department rules adopted under Transportation code, Chapter 643, Subchapter D as amended by House Bill 11418, 75th Legislature, 1997, Agenda and date of next meeting. Adjourn.

Contact: Diane Northam, 125 East 11th Street, Austin, Texas 78701, 512/463-8630.

Filed: July 3, 1998, 10:16 a.m.

TRD-9810563

◆ ◆ ◆  
**Trinity Higher Educational Facilities Corporation**

Wednesday, July 8, 1998, 12:30 p.m.

2612 Washington Avenue

Waco

Board of Directors

AGENDA:

Contact: Murray Watson, Jr. 2600 Washington Avenue, Waco, Texas 76710, 254/753-0913.

Filed: July 1, 1998, 12:06 p.m.

TRD-9810441

◆ ◆ ◆  
**University of Houston System**

Monday, July 13, 1998, 11:00 a.m.

3100 Cullen Boulevard, UH Athletic/Alumni Facility, Melcher Board Room

Houston

Board of Regents Executive Committee (Conference Call Meeting)

AGENDA:

1. call to order

2. contract for consolidated food services program, including management agreement for Conrad N. Hilton College of Hotel and restaurant management-UH System

3. Adjourn

Contact: Peggy Cervenka, 3100 Cullen, Suite 205, Houston, Texas 77204-6732.

Filed: July 7, 1998, 11:48

TRD-9810711



### University of Texas System

Tuesday, July 7, 1998, 1:00 p.m.

201 West 7th Street, 9th Floor, Ashbel, Smith Hall, Regents' Conference Room

Austin

Board of Regents' Academic Affairs Committee

#### AGENDA:

The Committee will meet in open session to consider major institutional goals and objectives, review of agenda items for July Coordinating Board and August Board of Regents' meetings, and reorganization of the Office of Academic Affairs.

Contact: Francie A. Frederick, 201 West Seventh Street, Austin, Texas 78701-2981, 512/499-4402.

Filed: July 1, 1998, 12:09 p.m.

TRD-9810443



### Texas Veterans Commission

Wednesday, July 15, 1998, 10:00 a.m.

E.O. Thompson Building, 6th Floor, 10th and Colorado Street

Austin

Special Meeting

#### AGENDA:

Special meeting to receive a presentation by Komatsu Architecture and consider for approval Komatsu's proposal to conduct a State Veterans Cemetery Study. The Commission will also discuss the impending retirement of the Executive Director of the Texas Veterans Commission and take any necessary action to proceed with the process of selecting a successor. The Commission will take action on the above stated matters as it deem appropriate.

Contact: Douglas K. Brown, P.O. Box 12277, Austin, Texas 78711, 512/463-5538.

Filed: July 6, 1998, 2:22 p.m.

TRD-9810651



### Texas Water Development Board

Tuesday-Wednesday, July 14-15, 1998, 3:00 p.m. and 8:30 a.m. (respectively)

Stephen F. Austin Building, Room 513F, 1700 North Congress

Austin

Board

#### AGENDA:

Consider elements of the Board's legislative appropriations request, policy issues related to the overall mission of the Board, and other current statewide water-related issues.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, 512/463-7847.

Filed: July 6, 1998, 1:11 p.m.

TRD-9810642



Wednesday, July 15, 1998, 3:00 p.m.

Stephen F. Austin Building, Room 513F, 1700 North Congress

Austin

Finance Committee

#### AGENDA:

1. Consider approval of the minutes of the meeting of June 17, 1998.
2. Consider approving a \$2,532,617 grant/loan to Windmill Water Supply Corporation (Uvalde County) for design and construction of improvements to the water system from the Economically Distressed Area Program.
3. Briefing and discussion on status of Lower Valley Water District project.
4. Briefing and discussion on the capacity of the Clean Water State Revolving Fund for fiscal year 1999.
5. Briefing and discussion on activities of the Border Project Management Division including present and future EDAP projects.
6. May consider items on the agenda of the July 16, 1998, Board or TWRFAs meeting.

\* Additional non-committee Board members may be present to deliberate but will not vote in the Committee meeting.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, 512/463-7847.

Filed: July 7, 1998, 11:01 a.m.

TRD-9810702



### Texas Windstorm Insurance Association

Wednesday, July 15, 1998, 1:30 p.m.

Texas Windstorm Insurance Association Office, 2028 East Ben White Boulevard, Suite 200

Austin

Board of Director

#### AGENDA:

- I. Call to order-reminder of the anti-trust statement
- II. Commercial rate filing
- III. Adjourn

Contact: Charles F. McCullough, 2028 East Ben White Boulevard, Suite 200, Austin, Texas 7874, 512/444-9612.

Filed: July 1, 1998, 2:38 p.m.

TRD-9810454



### Texas Youth Commission

Wednesday, July 15, 1998, 5:30 p.m.

4900 North Lamar, TYC Executive Conference Room

Austin

Board Audit Committee

AGENDA:

Approval of modifications to Internal Audit FY 98 Workplan (Action)

Presentation of plans for Annual Risk Assessment (Information)

Status of Projects (Information)

Contact: Eleanor Bryant, 4900 North Lamar, Austin, Texas 78751, 512/424-6004.

Filed: July 7, 1998, 11:01 a.m.

TRD-9810703



Wednesday, July 15, 1998, 5:30 p.m.

4900 North Lamar, TYC Human Resources Conference Room

Austin

Board Audit Committee

AGENDA:

Approval of minutes of May 20, 1998 Meeting (Action)

Presentation of FY 99 Operating Budget (Information)

Motion for Approval of FY 99 Operating Budget and Associated Transfers (Action)

Presentation of Legislative Appropriations Request for FY 2000-2001 (Information)

Motion for Approval of Legislative Appropriations Request for FY 2000-2001 Biennium (Action)

Contact: Eleanor Bryant, 4900 North Lamar, Austin, Texas 78751, 512/424-6004.

Filed: July 7, 1998, 11:01 a.m.

TRD-9810704



Thursday, July 16, 1998, 8:15 a.m.

4900 North Lamar, TYC Executive Conference Room

Austin

Board Construction Committee

AGENDA:

Approval of Minutes of May 20, 1998 Meeting (Action)

FY 96-97 Construction Program Update (Information)

FY 98-99 Construction Program Update (Information)

Approval of Marlin Orientation and Assessment Unit Conversion Project (Action)

Approval of Contract between the Texas Youth Commission and the City of Gainesville for the Gainesville Water Tower System (Action)

Contact: Eleanor Bryant, 4900 North Lamar, Austin, Texas 78751, 512/424-6004.

Filed: July 7, 1998, 11:02 a.m.

TRD-9810706



Thursday, July 16, 1998, 8:15 a.m.

4900 North Lamar, TYC Executive Conference Room

Austin

Board Construction Committee

AGENDA:

Approval of Minutes May 21, 1998 Board Meeting (Action)

Approval of Easement to City of Mart, Texas — Water Tower (Action)

Approval of Contract between TYC and City of Gainesville for Gainesville Water Tower System (Action)

Approval of Capital Construction Budget and Related Transfers to Fund Marlin Orientation and Assessment Unit Conversion Project (Action)

Approval of FY 99 Operating Budget and Associated Transfer (Action)

Approval of Legislative Appropriations Request for 2000-2001 Biennium (Action)

Approval of Conveyance of Portion of Parrie Haynes to Bell County for Construction of Bridge (Action)

Approval of Expenditure of Funds to Retain Surveyor to Survey Wende Property (Action)

Approval of FY 1999 Trust Fund Budgets (Action)

Approval of Trust Fund Investment Strategy (Action)

Approval of Modifications to Internal Audit FY 98 Workplan (Action)

Presentation of Plans for Annual Risk Assessment (Information)

Review of Alleged Mistreatment Investigations (Information)

Statistical Summary (Information)

Report of Contract Monitoring Process (Information)

Contact: Eleanor Bryant, 4900 North Lamar, Austin, Texas 78751, 512/424-6004.

Filed: July 7, 1998, 11:01 a.m.

TRD-9810705



Thursday, July 16, 1998, 2:00 p.m.

4900 North Lamar, Public Hearing Rooms 1420 and 1430

Austin

TJPC/TYC Joint Board Committee

AGENDA:

Approval of the minutes of the January 16, 1997 Joint Board Meeting (Action)

Selection of New TJPC Joint Board Co-Chair (Action)

Introduce of New Joint Board Subcommittee Member (Information)

History of Joint Board Subcommittee (Information)

Status of TJPC Construction Bond Projects (Information)

Status of TYC Expansion (Information)

Commitment Rates/Juvenile Crime Statistics and Arrest Rates/Referrals (Information)

TJPC/TYC Joint Strategic Plan Staff Assignments (Action)

Date of Next Meeting (Action)

Contact: Patricia Hayes, 4900 North Lamar, Austin, Texas 78751, 512/424-6706.



Filed: July 7, 1998, 4:58 p.m.

TRD-9810694



## Regional Meetings

Meetings filed July 1, 1998

Atascosa County Appraisal District, Board of Directors, Budget Committee met at 4th and Avenue J, Poteet, July 6, 1998, at 8:00 a.m. Information may be obtained from Curtis Stewart, P.O. Box 139, Poteet, Texas 78065-0139. TRD-9810453.

Atascosa County Appraisal District, Appraisal Review Board met at 4th and Avenue J, Poteet, July 6, 1998, at 8:00 a.m. Information may be obtained from Curtis Stewart, P.O. Box 139, Poteet, Texas 78065-0139. TRD-9810452.

Atascosa County Appraisal District, met at 4th and Avenue J, Poteet, July 10, 1998, at 8:00 a.m. Information may be obtained from Curtis Stewart, P.O. Box 139, Poteet, Texas 78065-0139. TRD-9810450.

Atascosa County Appraisal District, Appraisal Review Board met at 4th and Avenue J, Poteet, July 14, 1998, at 8:00 a.m. Information may be obtained from Curtis Stewart, P.O. Box 139, Poteet, Texas 78065-0139. TRD-9810451.

Bastrop Central Appraisal District, Appraisal Review Board met at 1200 Cedar Street, Bastrop, July 7, 1998, at 8:30 a.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, 512/303-3536. TRD-9810464.

Bell-Milam-Falls WSC, Board met at FM 485, West-Corporation Office, Cameron, July 9, 1998, at 8:30 a.m. Information may be obtained from Dwayne Jekel, P.O. Box 150, Cameron, Texas 76520, 254/697-4016. TRD-9810467.

Concho Valley Council of Governments, Executive Committee met at 5002 Knickerbocker Road, San Angelo, July 8, 1998, at 7:00 p.m. Information may be obtained from Robert R. Weaver, P.O. Box 60050, San Angelo, Texas 76906, 915/944-9666. TRD-9810463.

Gonzales County Appraisal District, Appraisal Review Board met at 928 St. Paul Street, Gonzales, July 7, 1998, at 9:00 a.m. Information may be obtained from Lona Haile, 928 St. Paul, Gonzales, Texas 78629, 830/672-2879 or fax 830/672-8345. TRD-9810445.

Grand Parkway Association, Board of Directors met at 4544 Post Oak Place, Suite 222, Houston, July 9, 1998, at 8:30 a.m. Information may be obtained from L. Diane Schenke, 4544 Post Oak Place, Suite 222, Houston, Texas 77027, 713/965-0871. TRD-9810449.

Riceland Regional Mental Health Authority, Board of Trustees met at 3007 North Richmond Road, Wharton, July 9, 1998, at 9:00 a.m. Information may be obtained from Marjorie Dornak, P.O. Box 869, Wharton, Texas 77488, 409/532-3098. TRD-9810447.

Taylor County Central Appraisal District, Board of Directors met at 1534 South Treadaway, Abilene, July 8, 1998, at 3:30 p.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, 915/676-9381, Ext. 24 or fax 915/676-7877. TRD-9810460.

Meetings filed July 2, 1998

Aqua Board of Directors, Board of Directors met at 305 Eskew, Bastrop, July 6, 1998, at 7:30 p.m. Information may be obtained from Carol Ducloux, P.O. Drawer P, Bastrop, Texas 78602, 512/303-3943. TRD-9810506.

Austin Travis County MHMR Center, Human Resources Board Committee, met at 1700 South Lamar, Building One, Suite 102A, Austin, July 8, 1998, at 4:30 p.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, 512/440-4031. TRD-9810508.

Bastrop Central Appraisal District, Appraisal Review Board met at 1200 Cedar Street, Bastrop, July 9, 1998, at 8:30 a.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, 512/305-3536. TRD-9810481.

Bosque County Central Appraisal District, Appraisal Review Board met at 202 South Highway 6, Meridian, July 9, 1998, at 9:00 a.m. Information may be obtained from Janice Henry, P.O. Box 393, Meridian, Texas 76665-0393, 817/435-2304. TRD-9810535.

Brazos Educational Assistance, Inc., Board of Directors met at 2612 Washington Avenue, Waco, July 8, 1998, at 10:45 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, 817/753-0913. TRD-9810546.

Brazos River Authority, Lake Management Committee, Board of Directors met at Possum Kingdom Lake, Supervisor's Office, 301 Observation Point Road, Possum Kingdom, July 9, 1998, at 10:00 a.m. Information may be obtained from P.O. Box 7555, Waco, Texas 76714-7555, 254/776-1441. TRD-9810505.

Brazos Valley Council of Governments met at 1706 East 29th Street, Bryan, July 8, 1998, at 1:30 p.m. Information may be obtained from Nelda Thompson, P.O. Drawer 4128, Bryan, Texas 77805-4128, 409/775-4244. TRD-9810539.

Capital Area Planning Council, Executive Committee met at 2520 IH-35 South, Suite, #100, Austin, July 8, 1998, at 10:00 a.m. Information may be obtained from Betty Voights, 2512 South IH-35, Suite #200, Austin, Texas 78704, 512/443-7653. TRD-9810477.

Coleman County Water Supply Corporation, Board of Directors met at 214 Santa Anna Avenue, Coleman, July 8, 1998, at 1:30 p.m. Information may be obtained from Davey Thweatt, 214 Santa Anna Avenue, Coleman, Texas 76834, 915/625-2133. TRD-9810541.

Concho Valley Council of Governments, Solid Waste Grant Scoring Management, met at 5014 Knickerbocker Road, San Angelo, July 8, 1998, at 3:00 p.m. Information may be obtained from Robert R. Weaver, P.O. Box 60050, San Angelo, Texas 76906, 915/944-9666. TRD-9810516.

Concho Valley Workforce Development Board met at 1621 University, San Angelo, July 9, 1998, at 2:00 p.m. Information may be obtained from Hayden Woodward, P.O. Box 87, Junction, Texas 76849, 915/446-2526 or fax 915/446-3964. TRD-9810547.

Coryell County Appraisal District, Appraisal Review Board met at 107 North 7th Street, Gatesville, July 6, 1998, at 9:30 a.m. Information may be obtained from Darrell Lisenbe, P.O. Box 142, Gatesville, Texas 76528, 254/865-6593. TRD-9810504.

Texas Court Reporters Certification Board met at 1414 Colorado Street, Room 202, Texas Law Center, Austin, July 11, 1998, at 9:00 a.m. Information may be obtained from Peg Liedtke, 205 West 14th Street, Suite 101, Austin, Texas 78701, 512/463-1747. TRD-9810509.

Gray County Appraisal District, Appraisal Review Board met at 815 North Sumner, Pampa, July 9-10, 1998, at 9:00 a.m. Information may be obtained from Jennifer Read, P.O. Box 836, Pampa, Texas 79066-0836, 806/665-0791. TRD-9810485.

Hale County Appraisal District, Appraisal Review Board met at the Hale County Appraisal District, 303 West 8th, Plainview, July 8, 1998, at 9:00 a.m. Information may be obtained from Linda Jaynes, 302 West 8th, Plainview, Texas 79072, 806/293-4226. TRD-9810476.

Harris County Appraisal, Appraisal Review Board met at 2800 North Loop West, Houston, July 10, 1998, at 8:00 a.m. Information may be obtained from Bob Gee, 2800 North Loop West, Houston, Texas 77092, 713/957-5222. TRD-9810482.

Hays County Appraisal District, Appraisal Review Board met at 21001 North IH35, Kyle, July 6, 1998, at 9:00 a.m. Information may be obtained from Lynnell Sedlar, 21001 North IH35, Kyle, Texas 78640, 512/268-2522. TRD-9810475.

Hickory Underground Water Conservation District Number One, Board and Advisors met at 111 East Main, Brady, July 9, 1998, at 7:00 p.m. Information may be obtained from Stan Reinhard, P.O. Box 1214, Brady, Texas 76825, 915/597-2785. TRD-9810513.

Hunt County Appraisal District, Regular Meeting, Board of Directors met at 4801 King Street, Greenville, July 9, 1998, at Noon. Information may be obtained from Shirley Smith, P.O. Box 1339, Greenville, Texas 75403, 903/454-3510. TRD-9810479.

Jones County Appraisal District, Appraisal Review Board met at 1137 East Court Plaza, Anson, July 14, 1998 at 8:30 a.m. Information may be obtained from Susan Holloway, P.O. Box 348, Anson, Texas 79501, 915/823-2422. TRD-9810515.

Jones County Appraisal District, Appraisal Review Board met at 1137 East Court Plaza, Anson, July 16, 1998 at 8:30 a.m. Information may be obtained from Susan Holloway, P.O. Box 348, Anson, Texas 79501, 915/823-2422. TRD-9810512.

Lower Neches Valley Authority, Executive Committee of the Board of Directors met at 7850 Eastex Freeway, Beaumont, July 7, 1998, at 9:30 a.m. Information may be obtained from A.T. Hebert, Jr., P.O. Box 5117, Beaumont, Texas 77726, 409/892-4011. TRD-9810511.

Manville Water Supply Corporation, Regular Board met at 108 North Commerce Street, Coupland, July 9, 1998, at 7:00 p.m. Information may be obtained from Tony Graf, P.O. Box 248, Coupland, Texas 78615, 512/272-4044. TRD-9810486.

Texas Municipal Power Agency, Audit and Budget Committee met at Gibbons Creek Steam Electric Station, Administration Building, 2 1/2 miles North of Carlos FM 244, Grimes, July 9, 1998, at 8:00 a.m. Information may be obtained from Carl Shahady, P.O. Box 7000, Bryan, Texas 77805, 409/873-1131. TRD-9810483.

Texas Municipal Power Agency, Board of Directors met at Gibbons Creek Steam Electric Station, Administration Building, 2 1/2 miles North of Carlos FM 244, Grimes, July 9, 1998, at 10:00 a.m. Information may be obtained from Carl Shahady, P.O. Box 7000, Bryan, Texas 77805, 409/873-1131. TRD-9810484.

Nortex Regional Planning Commission, General Membership Committee met at the Galaxy Center, #2, North, Suite 200, 4309 Jackson Highway, Wichita Falls, July 16, 1998, at Noon. Information may be obtained from Dennis Wilde, P.O. Box 5144, Wichita Falls, Texas 76307, 76307-5144, 940/322-5281 or fax 940/322-6743. TRD-9810540.

Meetings filed July 3, 1998

Lavaca County Central Appraisal District, Appraisal Review Board will meet at 113 North Main Street, Hallettsville, July 20, 1998, at

9:00 a.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, 512/798-4396. TRD-9810577.

Panhandle Ground Water Conservation District Number 3, Board of Director Public Meeting met at the District Office, 201 West 3rd Street, White Deer, July 8, 1998, at 8:00 p.m. Information may be obtained from C. W. Williams, P.O. Box 637, White Deer, Texas 79097, 806/883-2501. TRD-9810585.

San Antonio River Authority, Executive Committee of the South Central Texas Regional Water Planning Group met at 100 East Guenther Street, Boardroom, San Antonio, July 9, 1998, at 9:00 a.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78723-0027, 210/227-1373. TRD-9810562.

San Antonio River Authority, South Central Texas Regional Water Planning Group met at 100 East Guenther Street, Boardroom, San Antonio, July 9, 1998, at 10:00 a.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78723-0027, 210/227-1373. TRD-9810561.

San Antonio River Authority, Board of Directors met at 100 East Guenther Street, Boardroom, San Antonio, July 15, 1998, at 2:00 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78723-0027, 210/227-1373. TRD-9810560.

Swisher County Appraisal District, Appraisal Review Board met at 130 North Armstrong, Tulia, July 7, 1998, at 10:30 a.m. Information may be obtained from Rose Lee Powell, 130 North Armstrong, Tulia, Texas 79088, 806/995-4118. TRD-9810568.

Taylor County Central Appraisal District met at 1543 South Treadaway, Abilene, July 8-10, 1998, at 1:30 p.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79064, 915/676-9381, Ext. 24. TRD-9810580.

Wise County Appraisal District, Wise County Appraisal Review Board met at 206 South State, Decatur, July 16, 1998, at 8:30 a.m. Information may be obtained from Freddie Triplett, 206 South State, Decatur, Texas 76234, 940/627-3081. TRD-9810555.

Meetings filed July 6, 1998

Bandera County Appraisal District, Appraisal Review Board met at the Bandera County Appraisal District, 1206 Main Street, Bandera, July 16, 1998, at 9:00 a.m. Information may be obtained from P.H. Coates, IV, P.O. Box 1119, Bandera, Texas 78003, 830/796-3039 or fax 830/460-3672. TRD-9810640.

Barton Springs/Edwards Aquifer Conservation District, Board of Director-Executive Session met at 1124A Regal Row, Austin, July 9, 1998, at 4:30 p.m. Information may be obtained from Bill E. Couch, 1124A Regal Row, Austin, Texas 78748, 512/282-8441 or fax 512/282-7016. TRD-9810604.

Barton Springs/Edwards Aquifer Conservation District, Board of Director-Called Session/Public Hearing met at 1124A Regal Row, Austin, July 9, 1998, at 6:00 p.m. Information may be obtained from Bill E. Couch, 1124A Regal Row, Austin, Texas 78748, 512/282-8441 or fax 512/282-7016. TRD-9810603.

Central Texas Water Supply Corporation, Negotiating Committee met at FM 2410 9/10 of mile past Simmons Road, Intersection, Belton, July 9, 1998, at 10:00 a.m. Information may be obtained from Delores Hamilton, 4020 Lake Cliff Drive, Harker Heights, Texas 76548, 254/698-2779. TRD-9810657.

Central Texas Council of Governments, K-TUTS Transportation Planning Policy Board met at 302 East Central, Belton, July 14, 1998,

at 9:00 a.m. Information may be obtained from Jim Reed, P.O. Box 729, Belton, Texas 76513, 254/939-0885, Ext. 203. TRD-9810665.

Cypress Springs Water Supply Corporation, Board of Director met at the Office of Cypress Springs, 4430 Highway 115, South of Mount Vernon, July 14, 1998, at 7:00 p.m. Information may be obtained from Richard Zachary, P.O. Box 591, Mount Vernon, Texas 75457, 903/860-3400. TRD-9810615.

Deep East Texas Council of Governments, Board of Director and Grants Application Review Committee will meet at 1002 Milam Street, Hemphill High School, Hemphill, July 23, 1998, at 11:00 a.m. Information may be obtained from Walter G. Diggles, 274 East Lamar Street, Jasper, Texas 75951, 409/384-5704. TRD-9810632.

Dewitt County Appraisal District, Appraisal Review Board met at 103 Bailey Street, Cuero, July 14, 1998, at 9:00 a.m. Information may be obtained from Kay Rath, P.O. Box 4, Cuero, Texas 512/275-5753. TRD-9810606.

Erath County Appraisal District, Appraisal Review Board met at 1390 Harbin Drive, Stephenville, July 16, 1998, at 9:00 a.m. Information may be obtained from Lisa Chick, 1390 Harbin Drive, Stephenville, Texas 76401, 254/965-5434. TRD-9810641.

Hall County Appraisal District, Board of Directors met at 721 Robertson Street, Memphis, July 9, 1998, at 7:00 p.m. Information may be obtained from Anita Phillips, 721 Robertson Street, Memphis, Texas 806/259-2393. TRD-9810664.

Henderson County Appraisal District, Appraisal Review Board met at 1751 Enterprise Street, Athens, July 13-15, 1998, at 8:00 a.m. Information may be obtained from Lori Hembree, 1751 Enterprise Street, Athens, Texas 75751, 903/675-9296. TRD-9810648.

Henderson County Appraisal District, Appraisal Review Board met at 1751 Enterprise Street, Athens, July 17, 1998, at 8:00 a.m. Information may be obtained from Lori Hembree, 1751 Enterprise Street, Athens, Texas 75751, 903/675-9296. TRD-9810649.

Kempner Water Supply Corporation, Board of Directors met at Highway 190, Kempner Water Supply Corporation, Kempner, July 9, 1998, at 6:30 p.m. Information may be obtained from Donald W. Guthrie, P.O. Box 103, Kempner, Texas 76539, 512/932-3701. TRD-9810608.

Leon County Central Appraisal District, Appraisal District Board met at the District Office, 114 North Commerce-NW Corner Highway 7 and 75, Centerville, July 9, 1998, at 9:00 a.m. Information may be obtained from Jeff Beshears, P.O. Box 536, Centerville, Texas 75833-0536, 903/536-2252. TRD-9810607.

Pecos Higher Education Authority, Inc., Board of Directors met at 2612 Washington Avenue, Waco, July 8, 1998, at 11:15 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, 817/753-0913. TRD-9810638.

Rockwall County Central Appraisal District, Appraisal Review Board met at 106 North San Jacinto, Rockwall, July 7, 1998, at 8:30 a.m. Information may be obtained from Ray E. Helm, 106 North San Jacinto, Rockwall, Texas 75087, 972/771-2034. TRD-9810633.

Rockwall County Central Appraisal District, Appraisal Review Board met at 106 North San Jacinto, Rockwall, July 9, 1998, at 8:30 a.m. Information may be obtained from Ray E. Helm, 106 North San Jacinto, Rockwall, Texas 75087, 972/771-2034. TRD-9810634.

San Antonio-Bexar County Metropolitan Planning Organization, Technical Advisory Committee met at 233 North Pecos, (Vista Verde) 4th Floor, Conference Room, Bexar County Public Works, San

Antonio, July 10, 1998, at 1:30 p.m. Information may be obtained from Janet A. Kennison, 603 Navarro, Suite 904, San Antonio, Texas 78204, 210/227-8651. TRD-9810630.

Sulphur-Cypress Soil and Water Conservation District #419, met at 1809 West Ferguson, Suite D, Mt. Pleasant, July 9, 1998, at 9:30 a.m. Information may be obtained from Beverly Amerson, 1809 West Ferguson, Suite D, Mt. Pleasant, Texas 75455, 903/572-5411, Ext. 202. TRD-9810605.

Texas Underground Facility Notification Corporation, One Call Board of Texas met at 1400 North Congress Avenue, Capitol Extension, Room E2.206, Austin, July 10, 1998, at 1:00 p.m. Information may be obtained from Donald M. Ward, P.O. Box 6844562, Austin, Texas 78768-4562, 512/477-2255. TRD-9810669.

Tyler County Appraisal District, Board of Directors met at 806 West Bluff, Woodville, July 14, 1998, at 10:00 a.m. Information may be obtained from Eddie Chalmers, Tyler, P.O. Drawer 9, Woodville, Texas 75979, 409/283-3736. TRD-9810635.

Tyler County Appraisal District, Board of Directors met at 806 West Bluff, Woodville, July 15, 1998, at 9:00 a.m. Information may be obtained from Eddie Chalmers, Tyler, P.O. Drawer 9, Woodville, Texas 75979, 409/283-3736. TRD-9810610.

Tyler County Appraisal District, Board of Directors met at 806 West Bluff, Woodville, July 16, 1998, at 9:00 a.m. Information may be obtained from Eddie Chalmers, Tyler, P.O. Drawer 9, Woodville, Texas 75979, 409/283-3736. TRD-9810611.

Tyler County Appraisal District, Board of Directors will meet at 806 West Bluff, Woodville, July 17, 1998, at 9:00 a.m. Information may be obtained from Eddie Chalmers, Tyler, P.O. Drawer 9, Woodville, Texas 75979, 409/283-3736. TRD-9810636.

Tyler County Appraisal District, Board of Directors will meet at 806 West Bluff, Woodville, July 20, 1998, at 9:00 a.m. Information may be obtained from Eddie Chalmers, Tyler, P.O. Drawer 9, Woodville, Texas 75979, 409/283-3736. TRD-9810612.

Tyler County Appraisal District, Board of Directors will meet at 806 West Bluff, Woodville, July 21, 1998, at 9:00 a.m. Information may be obtained from Eddie Chalmers, Tyler, P.O. Drawer 9, Woodville, Texas 75979, 409/283-3736. TRD-9810613.

Tyler County Appraisal District, Board of Directors met at 806 West Bluff, Woodville, July 22, 1998, at 9:00 a.m. Information may be obtained from Eddie Chalmers, Tyler, P.O. Drawer 9, Woodville, Texas 75979, 409/283-3736. TRD-9810614.

Meetings filed July 7, 1998

Bosque County Central Appraisal District, Appraisal Review Board met at 202 South Highway 6, Meridian, July 14, 1998, at 9:00 a.m. Information may be obtained from Janice Henry, P.O. Box 393, Meridian, Texas 76665-0393, 81/435-2304. TRD-9810697.

Canyon Regional Water Authority, Regular Board met in a revised agenda at the Guadalupe Fire training Facility, 320 Fire Field Road, New Braunfels, July 13, 1998, at 7:00 p.m. Information may be obtained from Paul Taggart, 850 Lakeside Pass, New Braunfels, Texas 78130, 830/609-0543. TRD-9810741.

Carson County Appraisal District, Appraisal Review Board met at 102 Main Street, Panhandle, July 10, 1998, at 8:30 a.m. Information may be obtained from Donita Davis, P.O. Box 970, Panhandle, Texas 79068, 806/537-3569. TRD-9810690.

Erath County Appraisal District, Board of Directors met at 1390 Harbin Drive, Stephenville, July 14, 1998, at 8:00 a.m. Information

may be obtained from Angi Couch, 1390 Harbin Drive, Stephenville, Texas 76401, 254/965-5434. TRD-9810691.

Golden Crescent Workforce Development Board, Executive Committee met at 2401 Houston Highway, Victoria, July 10, 1998, at 2:00 p.m. Information may be obtained from Laura Sanders, 2401 Houston Highway, Victoria, Texas 77901, 512/573-5872. TRD-9810719.

Gulf Bend Center, Board Personnel and Finance Committee met at 1502 East Airline, Victoria, July 16, 1998, at Noon. Information may be obtained from Agnes Moeller, 1502 East Airline, Victoria, Texas 77901, 512/582-2306. TRD-9810750.

Henderson County Appraisal District, Board of Director met at 1751 Enterprise Street, Athens, July 14, 1998, at 5:00 p.m. Information may be obtained from Lori Hembree, 1751 Enterprise Street, Athens, Texas 75751, 903/675-9296. TRD-9810721.

Henderson County Appraisal District, Board of Director met at 1751 Enterprise Street, Athens, July 14, 1998, at 5:30 p.m. Information may be obtained from Lori Hembree, 1751 Enterprise Street, Athens, Texas 75751, 903/675-9296. TRD-9810720.

High Plains Underground Water Conservation District Number One, Board met at 2930 Avenue Q, Board Room, Lubbock, July 14, 1998, at 10:00 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, 806/762-0181. TRD-9810743.

Johnson County Central Appraisal District, Board of Directors met at 109 North Main, Suite 201, Room 202, Cleburne, July 16, 1998, at 4:30 p.m. Information may be obtained from Don Gilmore, 109 North Main, Cleburne, Texas 76031, 817/558-8100. TRD-9810716.

Kendall Appraisal District, Appraisal Review Board will meet at 121 South Main Street, Boerne, July 20, 1998, at 9:00 a.m. Information may be obtained from Leta Schlinke, P.O. Box 788, Boerne, Texas 78006, 830/249-8012 or fax 830/249-3975. TRD-9810744.

Lavaca Regional Water Planning Group, Region P met at 7059 State Highway, 111 East Edna, July 16, 1998, at 9:00 a.m. Information may be obtained from Emmett Gloyna, 7059 State Highway 111 East, Edna, Texas 512/782-5529. TRD-9810701.

Northeast Texas Municipal Water District, Board of Directors met at Highway 250 South, Hughes Springs, July 13, 1998, at 10:00 a.m. Information may be obtained from Walt Sears, Jr., P.O. Box 955, Hughes Springs, Texas 75656, 903/639-7538. TRD-9810722.

Red Bluff Water Power Control District, Board of Directors met at 111 West Second Street, Pecos, July 13, 1998, at 1:00 p.m. Information may be obtained from Jim Ed Miller, 111 East Second Street, Pecos, Texas 79772, 915/445-2037. TRD-9810710.

Region G, Regional Water Planning Group 4400 Cobbs Drive, Waco, July 23, 1998, at 10:00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, 254/776-1441. TRD-9810732.

Swisher County Appraisal District, Appraisal Review Board met at 130 North Armstrong, Tulia, July 10, 1998, at 8:30 a.m. Information may be obtained from Rose Lee Powell, 130 North Armstrong, Tulia, Texas 79088, 806/995-4118. TRD-9810740.

TML Group Benefits Risk Pool, Finance and Investment Committee met at 1821 Rutherford Lane, Austin, July 10, 1998, 11:00 a.m. Information may be obtained from Gayle Gardner, 1821 Rutherford Lane, Suite 300, Austin, Texas 78754, 512/719-6521. TRD-9810713.

TML Group Benefits Risk Pool, Budget and Audit Committee met at 1821 Rutherford Lane, Austin, July 10, 1998, 1:00 p.m. Information

may be obtained from Gayle Gardner, 1821 Rutherford Lane, Suite 300, Austin, Texas 78754, 512/719-6521. TRD-9810714.

Tri County Special Utility District, Board of Directors met at Highway 7 East, Marlin, July 13, 1998, at 7:30 p.m. Information may be obtained from Patsy Booher, P.O. Box 976, Marlin, Texas 76661, 254/803-3553. TRD-9810718.

Wood County Appraisal District, Appraisal Review Board met and will meet at 210 Clark Street, Quitman, July 13-17, 1998, at 8:45 a.m. Information may be obtained from Los McKibben or Rhonda Powell, P.O. Box 518, Quitman, Texas 75783-0518, 903/763-4891. TRD-9810689.

Meetings filed July 8, 1998

Bosque County Central Appraisal District, Appraisal Review Board met at 202 South Highway 6, Meridian, July 16, 1998, at 9:00 a.m. Information may be obtained from Janice Henry, P.O. Box 393, Meridian, Texas 76665-0393, 817/435-2304. TRD-9810790.

Brown County Appraisal District, Board of Directors met at 403 Fisk Avenue, Brownwood, July 13, 1998, at Noon. Information may be obtained from Doran E. Lemke, 403 Fisk Avenue, Brownwood, Texas 76801, 915/643-5676. TRD-9810763.

Colorado County Appraisal District, Board of Directors Budget Hearing met at 400 Spring County Courtroom, 1st Floor, Columbus, July 14, 1998, at 1:30 p.m. Information may be obtained from Billy Youens, P.O. Box 10, Columbus, Texas 78934, 409/732-8222. TRD-9810767.

Colorado County Appraisal District, Board of Directors met at 400 Spring County Courtroom, 1st Floor, Columbus, July 14, 1998, at 2:00 p.m. Information may be obtained from Billy Youens, P.O. Box 10, Columbus, Texas 78934, 409/732-8222. TRD-9810768.

Dallas Central Appraisal District, Appraisal Review Board met at 2949 North Stemmons Freeway, Second Floor Community Room, Dallas, July 15, 1998, at 10:00 a.m. Information may be obtained from Rick Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, 214/631-0520. TRD-9810772.

East Texas Council Governments, Workforce Center Committee of the Workforce Development Board met at 1306 Houston Street, Kilgore, July 14, 1998, at 9:00 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, 903/984-8641. TRD-9810789.

Region VII Education Service Center, Board of Directors will meet 440 Highway 79 South, Henderson, July 23, 1998, at Noon. Information may be obtained from Eddie J. Little, 818 East Main Street, Kilgore, Texas 75662, 903/984-3071. TRD-9810773.

Guadalupe-Blanco River Authority, Retirement and Benefit Committee, met at GBRA Office, 933 East Court Street, Seguin, July 14, 1998, at 1:30 p.m. Information may be obtained from W.E. West, Jr., 933 East Court Street, Seguin, Texas 78155, 830/379-5822. TRD-9810765.

Guadalupe-Blanco River Authority, Board of Directors met at Seguin Independent School District, Board Room, 1221 East Kingsbury, Seguin, July 15, 1998, at 10:00 p.m. Information may be obtained from W.E. West, Jr., 933 East Court Street, Seguin, Texas 78155, 830/379-5822. TRD-9810766.

Guadalupe-Blanco River Authority, Board of Directors met in a revised agenda at Seguin Independent School District, Board Room, 1221 East Kingsbury, Seguin, July 15, 1998, at 10:00 p.m. Infor-

mation may be obtained from W.E. West, Jr., 933 East Court Street, Seguin, Texas 78155, 830/379-5822. TRD-9810770.

High Plains Underground Water Conservation District Number One, Board met in a revised agenda at 2930 Avenue Q, Board Room, Lubbock, July 14, 1998, at 10:00 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, 806/762-0181. TRD-9810788.

Scurry County Appraisal District, Appraisal Review Board met at 2612 College Avenue, Snyder, July 15, 1998, at 8:00 a.m. Information may be obtained from L.R. Peveler, 2612 College Avenue, Snyder, Texas 79549, 915/573-8549. TRD-9810782.

Scurry County Appraisal District, Appraisal Review Board met at 2612 College Avenue, Snyder, July 16, 1998, at 9:00 a.m.

Information may be obtained from L.R. Peveler, 2612 College Avenue, Snyder, Texas 79549, 915/573-8549. TRD-9810787.

Trinity River Authority of Texas, Resources Development Committee met at 5300 South Collins Street, Arlington, July 15, 1998, at 2:00 p.m. Information may be obtained from James L. Murphy, P.O. Box 60, Arlington, Texas 76004, 817/467-4343. TRD-9810754.

Upshur County Appraisal District, Board of Directors met at 1711 Latch Road, Gilmer, July 13, 1998, at 1:00 p.m. Information may be obtained from Louise Stracener, P.O. Box 280, Gilmer, Texas 75644-0280, 903/843-3041. TRD-9810757.



# IN ADDITION

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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.

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## Texas Department of Agriculture

### Notice of Public Hearing

The Texas Department of Agriculture will hold two public hearings to take public comment on proposed new 4 Texas Administrative Code, §3.115, concerning the designation by rule of the El Paso/Trans Pecos Boll Weevil Eradication Zone, as published in the July 3, 1998, issue of the *Texas Register* (23 TexReg 6803). The hearings will be held on Tuesday, July 28, 1998 as follows: beginning at 10:00 a.m., at the El Paso Research Center Auditorium, 1380 A&M Circle, El Paso, Texas; and, beginning at 4:00 p.m., at the Pecos Research Center, Mile Marker #33 on IH-20, 7 miles west of Pecos, Texas.

For more information, please contact Katie Dickie Stavinoha, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, 512/463-7593.

TRD-9810647

Dolores Alvarado Hibbs  
Deputy General Counsel  
Texas Department of Agriculture  
Filed: July 6, 1998

## Office of the Attorney General

### Access and Visitation Grant Funding

The Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) provides to state Title IV-D (Child Support) agencies grants for access and visitation programs. These grants may be used to establish and administer programs to support and facilitate noncustodial parent's access to and visitation with their children. Eligible activities include: mediation, counseling, education, development of parenting plans, visitation enforcement (including monitoring, supervision and neutral drop-off and pickup), and development of guidelines for visitation and alternative custody arrangements. Projects funded under this program do not have to run on a statewide basis. Entities eligible for funding include: courts, local public entities, and private non-profit organizations. Matching funds (cash or in-kind) are required.

The Office of the Attorney General, as the state's Title IV-D agency, invites written expressions of interest in this grant program from

eligible entities postmarked no later than 5:00 p.m. CDST, July 24, 1998. Hand delivered, electronic or facsimile transmission letters are not acceptable. Respondents will be sent a complete application package.

Letters of interest must be sent to: Scott Smith Office of the Attorney General Child Support Division, Mail Code 052 P. O. Box 12017 Austin, Texas 78711-2017 (512) 460-6422

TRD-9810631

Sarah Shirley  
Assistant Attorney General  
Office of the Attorney General  
Filed: July 6, 1998

## Cameron Works, Inc.

### Request for Proposal

The Board seeks one contractor to operate and manage the services offered in its Texas Workforce Centers. The workforce centers operate under the One-Stop concept, and are the key point of access to clients wishing available employment and training services. The selected contractor shall be responsible for: (A) the intake, eligibility, certification, assessment, counseling, case management, and referral of JTPA clients to training; (B) the assessment, counseling, – including state mandated orientation–referral to training, and/or the job placement of TANF, WtW, and Food Stamp recipients (separate from FSE&T); (C) the coordination of supportive services to eligible clients, including CCMS child care services, limited dental or eye care services, and transportation (mass transit or gas coupons); (D) the coordination of client referrals to Sec. 123 (8%), Older Worker Programs, Job Corps, or other available federal or non-federal employment and training programs; (E) providing data bases and Internet access to job banks and other employment related data; (F) providing employer services including Outreach and Recruitment to determine community employer needs, dissemination of information of job openings to Texas Workforce Centers, coordination with TWC computerized job banks, organizing job fairs, and referrals of qualified applicants to employers.

Proposers/contractors eligible to compete for funds include private and public, for profit and not for profit agencies, Community Based

Organizations (CBO's), and other state, county, and city agencies. Partnerships or consortiums may respond, but details of which member organization has fiscal responsibilities for any resulting contract and how any such partnership or consortium will operate must be worked out in advance, in writing, and included in the proposal. The Board is prohibited from awarding a contract or federal funds to any party "excluded from Federal procurement or non-procurement programs" by the U.S. General Services Administration.

RFP proposal packets may be obtained from the Procurement/Contracts department at CWI's administrative offices located at 955 Paredes Line Road, Brownsville, TX 78521. Contact person is Nelda Gonzalez, (956) 548-6710. The RFP application packet will be released on July 14, 1998 at 1:00 p.m. (CST).

CWI reserves the right to accept or reject any or all proposals received, to waive any informalities or technicalities, and to cancel and/or reissue this RFP, in part or its entirety. CWI also reserves the right to negotiate the final terms and conditions of the contract awarded to the selected provider.

#### MANDATORY BIDDER'S CONFERENCE

A Mandatory Bidders' Conference shall be held at 10:00 a.m. (CST) at the Texas Workforce Center, 245 E. Levee, Brownsville, TX on Monday, July 27, 1998. Attendance shall be required of any and all entities responding to this RFP. Failure to attend this mandatory bidder's conference will render the submission of proposal by proposer as non-responsive and shall not be accepted by CWI. This will be the only opportunity afforded prospective bidders to ask questions regarding the RFP. Questions must be presented in writing. Proposal submission deadline will be no later than 5:00 p.m. (CST) August 14, 1998.

Funding for the services being solicited by this RFP shall be budgeted from the estimated \$23 million PY'98 allocation.

Solicitation of CWI Board members by subcontracts, service providers, or bidders concerning proposals, bid and contract awards shall be prohibited. Any solicitation of Board members may result in rejection of the proposal, bid and contract award, and disqualification, suspension or debarment from activities, and programs funded by the corporation.

TRD-9710761

Louis Tatum

Finance Division Manager

Cameron Works, Inc.

Filed: July 8, 1998



### Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC 501. Requests for federal consistency review were received for the following projects(s) during the period of June 29, 1998, through July 7, 1998:

#### FEDERAL AGENCY ACTIONS:

Applicant: Harris County Water Control District #50; Location: From the treatment plant located at 1122 Cedar Lane, El Lago,

into the Clear Lake Watershed thence into Clear Lake in Segment Number 2425 of the Bays and Estuaries, Harris County, Texas; Project Number: 98-0297-F1; Description of Proposed Action: The applicant requests renewal of a National Pollutant Discharge Elimination System permit to expire September 30, 2003; Type of Application: U.S. Environmental Protection Agency NPDES permit #TX0027146 under the Clean Water Act (33 U.S.C.A. §1251).

Applicant: LLOG Exploration Offshore; Location: In the Galveston Anchorage Area, Galveston Area Block 191, offshore Texas, Gulf of Mexico; Project Number: 98-0300-F1; Description of Proposed Action: The applicant proposes to install, operate and maintain structures and appurtenances and drill and produce multiple wells from a common surface location to produce oil and gas; Type of Application: U.S.C.O.E. permit application #21331 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: Texas Department of Transportation; Location: Along the State Highway 6/Interstate Highway 45 interchange right-of-way, extending from the intersection of State Highway 6 with Interstate Highway 45 to the Texas City Terminal Railway, approximately 4.6 miles northwest of Galveston, Galveston County, Texas; Project Number: 98-0301-F1; Description of Proposed Action: The applicant proposes to raise State Highway 6 (SH 6) - Interstate Highway 45 (IH 45) interchange to an elevation of 7 feet mean sea level (MSL), construct berms, and install drainage improvements, including culverts, concrete piping, and a lift station to reduce the effects of tidal flooding within the IH 45 interchange area. A total of 50,000 cubic yards of material will be required for this project. The berms are required to prevent high tide waters from closing the interchange. The lift station will be used to pump runoff, due to rainwater from the interchange area, to prevent flooding during storm events. Approximately 12 acres of tidal wetlands will be impacted by the project. Approximately 9.9 acres will be filled and graded and 2.5 acres will be graded to form drainage and side slopes. Safety requirements for slopes, adjacent to roadways, necessitate filling these tidal areas and relocating them further from the roadway. Approximately 13,600 cubic yards of material will be required to raise these wetland areas to 2 feet MSL; Type of Application: U.S.C.O.E. permit application #21037 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: U.S. Army Corps of Engineers; Location: All water of the United States within the regulatory boundary of the Galveston District within the State of Texas; Project Number: 98-0302-F1; Description of Proposed Action: The applicant proposes an extension of time to complete work until 31 December 2003, under General Permit 19708. The General Permit would authorize the Railroad Commission of Texas to place fill material into isolated pods created by surface mining activities. The fill would eliminate steep slopes that are hazardous to public safety and not capable of sustaining vegetation. A high quality, productive wetland would be created that would improve wildlife habitat; Type of Application: U.S.C.O.E. permit application #19708(01) under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action should be referred to the Coastal Coordination Council for review and whether the action is or is not consistent with the Texas Coastal Management Program goals and policies. All comments must be received within 30 days of publication of this notice and addressed to Ms. Janet Fatheree, Council Secretary, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495.

TRD-9810780



Garry Mauro  
Chairman  
Coastal Coordination Council  
Filed: July 8, 1998



## Comptroller of Public Accounts

### Notice of Request for Proposals

Notice of Request for Proposals: Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of a Request for Proposals (RFP) for the purpose of hiring a consultant to assist in conducting a management and performance review of the El Paso Independent School District. From the review, findings and recommendations will be developed for containing costs, improving management strategies, and ultimately promoting better education for Texas children through school district management efficiency. The successful proposer will be expected to begin performance of the contract on or about September 2, 1998.

Contact: Parties interested in submitting a proposal should contact the Comptroller of Public Accounts, Legal Counsel's Office, 111 E. 17th St., Room G24, Austin, Texas 78774, (512) 305-8673, to obtain a copy of the RFP. The RFP will be available for pick-up at the above-referenced address on July 17, 1998, between 4 p.m. and 5 p.m. Central Zone Time (CZT), and during normal business hours thereafter. All written inquiries and mandatory letters of intent to propose must be received at the above-referenced address prior to 4 p.m. (CZT) on Friday, July 28, 1998.

Closing Date: Proposals must be received in Legal Counsel's Office no later than 4 p.m. (CZT), on August 17, 1998. Proposals received after this time and date will not be considered.

Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria set forth in the RFP. The committee will determine which proposal best meets these criteria and will make a recommendation to the Deputy Comptroller, who will then make a recommendation to the Comptroller. The Comptroller will make the final decision. A proposer may be asked to clarify its proposal, which may include an oral presentation, prior to final selection.

The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller of Public Accounts is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits the Comptroller to pay for any costs incurred prior to the execution of a contract.

The anticipated schedule of events is as follows: Issuance of RFP - July 17, 1998, 4 p.m., CZT; Mandatory Letter of Intent and Questions Due - July 28, 1998, 4 p.m. CZT; Proposals Due - August 17, 1998, 4:00 p.m. CZT; Contract Execution - August 28, 1998, or as soon thereafter as practical.

TRD-9810760  
Walter Muse  
Legal Counsel  
Comptroller of Public Accounts  
Filed: July 8, 1998



## 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 Articles 1D.003 and 1D.009, Title 79, Revised Civil Statutes of Texas, as amended (Articles 5069-1D.003 and 1D.009, Vernon's Texas Civil Statutes).

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 07/13/98 - 07/19/98 is 18% for Consumer <sup>1</sup>/Agricultural/Commercial <sup>2</sup>/credit thru \$250,000.

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 07/13/98 - 07/19/98 is 18% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

TRD-9810699  
Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: July 7, 1998



## Texas Department of Criminal Justice

### Notice to Bidders

The Texas Youth Commission, by and through its construction project manager, The Texas Department of Criminal Justice invites bids for The Lock Replacement, Texas Youth Commission - Marlin & San Saba, Texas project. The project includes the 1) replacement of pneumatic locks with electro-mechanical locks, 2) re-hab of the existing control console, 3) replacement of door position (D.P.) switches and, 4) adjustment, and permanent setting of some existing D.P. switches. This project includes: an Alternate for the complete replacement of the control console, and an Alternate for new D.P. switches. The work will be awarded under one lump sum contract for both sites. The successful bidder will be required to meet the following Contractor qualifications and submit evidence of same to Owner within five days after receiving notice of intent to award from the Owner:

- (1) Contractor must have worked in his trade for at least five years;
- (2) Contractor must have completed at least three projects of a dollar volume equal to or greater than the job being bid;
- (3) Contractor must be bondable as provided in the General and Special Conditions;
- (4) Contractor must be insurable as provided in the General and Special Conditions;
- (5) Contractor must provide references from at least three similar jobs.

All Bid Proposals must be accompanied by a Bid Bond in the amount of 5.0% of greatest amount bid. Bid Documents can be purchased from the Architect/Engineer at a cost of \$35 (non-refundable) per set, including mailing/delivery costs, or they may be viewed at various plan rooms as listed in the Information to Bidders. Payment checks for documents should be made payable to the Architect/Engineer: BMW Engineering, Inc., 710 South Enterprize Pkwy., Corpus Christi, Texas 78405, Attention: Bob Ray, Phone: (512) 299-1801, Fax: (512) 299-1804.

A Pre-Bid conference and Site Visit will be held on July 22, 1998, at 1pm at the TYC Facility in Marlin, Texas. Attendance by all prime

bidders is mandatory. A site visit will immediately follow the Pre-Bid conference at same facility.

Bids will be publicly opened and read at 3pm on August 11, 1998, in the large Conference Room at the Facilities Division offices located in the warehouse building of the TDCJ Administrative Complex (formerly Brown Oil Tool) on Spur 59 off of Highway 75 North, Huntsville, Texas. The Owner reserves the right to reject any or all bids, and to waive any informality or irregularity.

The Texas Youth Commission requires the Contractor to make a good faith effort to include Historically Underutilized Businesses (HUBs) in at least 26.1% of the total value of this construction contract award. Attention is called to the fact that not less than the minimum wage rates prescribed in the Special Conditions must be paid on these projects.

TRD-9810793  
Carl Reynolds  
General Counsel  
Texas Department of Criminal Justice  
Filed: July 8, 1998

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## Texas Planning Council for Developmental Disabilities

Request for Proposals

### Inclusive Education Demonstration Project.

This announces the availability of funds to be awarded on behalf of the Texas Planning Council for Developmental Disabilities (TPCDD) by the Texas Rehabilitation Commission. The purpose and expected outcome of this grant is to demonstrate inclusion in middle schools.

Project Components.

1. Each project will develop a district/campus strategic plan for inclusive education at that district/campus.
2. Applicants will devise effective ways to educate their communities, middle school administrators and teachers on best practices for including middle school students with disabilities in regular classrooms with age-appropriate peers.
3. Each project will create a local project advisory committee to provide ongoing support, feedback and guidance to project activities.
4. Projects will identify federal, state and local statute, policy, regulation and practice that need to be revised to achieve system's change.
5. Each project will evaluate the impact of project activities.

Funds may not be used to provide direct services. Eligible applicants are to be public school districts in the state of Texas.

Three projects will be funded for three to five years. Continuation funding will be contingent upon an annual review of performance, availability of federal funding and TPCDD funding priorities. The initial funding period is anticipated to be December 1, 1998, to May 31, 1999. Estimated funding to be determined not to exceed \$150,000 for the first year and up to \$150,000 for years two through five. Nonfederal match of 25% is required for the first year. A project located in counties designated as a federal poverty area require a minimum of 10% matching resources for the first year. Increasing nonfederal match will be required in years two through five.

For the application packet containing the full request for proposals, application forms and instructions, please submit a written or fax request to: Grants Management Director, Texas Planning Council for Developmental Disabilities, 4900 North Lamar Boulevard, Austin, Texas 78751-2399, (512) 424-4084 phone, or (512) 424-4097 Fax.

Deadline. Proposals will be accepted at the Texas Planning Council Office, 4900 North Lamar Boulevard, Office #4435, Fourth Floor, Austin, Texas until 4:00 p.m. on Friday, September 4, 1998. No fax copies of proposals will be accepted. Copies of the application kit may not be faxed to applicants.

TRD-9810783  
Charles Schiesser  
Chief of Staff  
Texas Planning Council for Developmental Disabilities  
Filed: July 8, 1998

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School To Work Demonstration Project.

This announces the availability of funds to be awarded on behalf of the Texas Planning Council for Developmental Disabilities (TPCDD) by the Texas Rehabilitation Commission. The purpose and expected outcome of this project is to effect local level policy and practice changes that result in demonstration projects targeting successful transition from school-to-work for students with developmental disabilities in a rural community and in South Texas.

Project Components.

1. Each project will develop a strategic plan for school to work transition for its identified community.
2. Each project will devise effective ways to educate communities, public school administrators and teachers, students, parents, employers, community leaders, adult services agency personnel, and other key stakeholders on best practices concerning school to work transition for students with developmental disabilities.
3. Projects will identify federal, state and local statute, policy, regulation and practice that need to be revised to achieve systems change.
4. Each project will establish a local advisory committee to provide ongoing support, feedback and guidance to project activities.
5. Each project will evaluate the impact of project activities.

Funds may not be used to provide direct services. Eligible applicants can be organizations which are public agencies, private nonprofit organizations, or private for-profit organizations.

Two projects will be funded for up to five years. Continuation funding will be contingent upon an annual review of performance, availability of federal funding and TPCDD funding priorities. The initial funding period is projected to be December 1, 1998 to May 31, 1999. Funding to be determined but not to exceed \$75,000 per year for each year of the project. Nonfederal match of 25% is required for the first year except for projects located in counties designated as a federal poverty area for which a minimum of 10% matching resources is required. Increasing nonfederal match will be required in years two through five.

For the application packet containing the full request for proposals, application forms and instructions, please submit a written or fax request to: Grants Management Director, Texas Planning Council for Developmental Disabilities, 4900 North Lamar Boulevard, Austin, Texas 78751-2399, (512) 424-4084 phone, or (512) 424-4097 Fax.

Deadline. Proposals will be accepted at the Texas Planning Council Office, 4900 North Lamar Boulevard, Office #4435, 4th Floor, Austin, Texas until 4:00 p.m. on Friday, September 4, 1998. No fax copies of proposals will be accepted. Copies of the application kit may not be faxed to applicants.

TRD-9810784  
Charles Schiesser  
Chief of Staff  
Texas Planning Council for Developmental Disabilities  
Filed: July 8, 1998

## Texas Education Agency

### Notice of Intent

Description. The Texas Education Agency (TEA) solicited a contractor through Request for Proposals (RFP) #701-97-010 for identifying and managing approximately 35 qualified persons to collect and report information to TEA for its monitoring of local educational agencies and other entities providing special education services. The purpose of this monitoring is to determine compliance with state and federal special education requirements. Approximately 250 school districts are scheduled for on-site monitoring during the 1998-1999 school year. The activities to be conducted by the contractors are detailed in the RFP. The RFP notice appeared in the April 11, 1997, issue of the *Texas Register* (22 TexReg 3483).

The contractor, Oak Hill Technology, Inc., successfully completed the 1997-1998 contract year, meeting personnel identification and employment needs, and providing the logistical support necessary to achieve project goals. The EA, in accordance with RFP #701-97-010, initiated negotiations to extend Oak Hill Technology's contract. The contractor agreed to modify the existing contract by: (1) increasing the number of contracted monitors by five full-time equivalents (FTE) bringing the total number of contracted professionals to 40 FTEs; (2) reconfiguring contract monitors' assigned leader responsibilities and team member responsibilities to reflect 30 Team Leader assignments, 9 Team member assignments, and 1 Project Coordinator (totaling 40); (3) purchasing ten additional notebook computers with software and hardware support compatible with agency specifications as shown in the RFP; and (4) making the necessary logistical, administrative, and travel support adjustments to adequately accomplish project goals. Therefore, the TEA under the provisions of RFP #701-97-010, intends to award the contract to the previous contractor, Oak Hill Technology, Inc., of Austin, Texas, in accordance with negotiated contract modifications.

Dates of Project. All services and activities related to this contract will be conducted within specified dates. The selected contractor should plan for a starting date of no earlier than July 1, 1998, and an ending date of no later than June 30, 1999.

Project Amount. The contractor may receive funding not to exceed \$2,150,808 during the contract period. This project is funded 100% from IDEA, Part B, federal funds.

The issuance of this notice does not obligate the TEA to award a contract or to pay any costs incurred in preparing a response.

Further Information. For clarifying information, contact Dr. Forrest A. Novy, Division of Accountability Development and Support, Texas Education Agency, (512) 463-9515 or e-mail at: fnovy@tmail.tea.state.tx.us.

TRD-9810774  
Criss Cloudt

Associate Commissioner, Policy Planning and Research  
Texas Education Agency  
Filed: July 8, 1998

## Request for Proposal for the Production of Braille Textbook Copies for Texas Public Schools

Eligible Proposers. The Texas Education Agency (TEA) is requesting proposals under Request for Proposals (RFP) #701-98-020 from nonprofit organizations, private companies, and regional education service centers to copy (i.e., emboss), bind, and deliver Braille textbook copies from textbooks that are to be adopted by the State Board of Education in November 1998 along with the ancillaries accompanying these state-adopted textbooks. Additionally, contractors will be responsible for copying and delivering Braille teacher editions of instructional materials upon demand. Historically underutilized businesses (HUBs) are encouraged to submit proposals.

Description. The purpose of this RFP is to ensure that Texas students receive quality Braille textbooks, delivered on time, at an economical price.

The adopted textbooks and ancillaries to be copied (i.e., embossed), bound, and distributed have been arranged into four production packages of various sizes. These are designated Copy Packages A, B, C, and D. Braille producers may submit a proposal for all four packages or any combination of them. However, the TEA reserves the right to select the number of packages contracted to each applicant. For example, all four packages could be awarded to one applicant or four applicants could be awarded one package each or any combination thereof.

Dates of Project. All services and activities related to this RFP will be conducted within specified dates. Proposers should plan for a starting date of no earlier than January 4, 1999, and an ending date of no later than August 31, 2005.

Project Amount. The project, consisting of all four production packages, will receive funding at a level not to exceed \$1 million for the first year and not to exceed \$1.5 million for the entire period of adoption, normally six years.

Selection Criteria. Proposals will be selected based on the ability of each proposer to carry out all requirements contained in this RFP. The TEA will base its selection on, among other things, the demonstrated competence and qualifications of the proposer. The TEA reserves the right to select from the highest-ranking proposals those that address all requirements in this RFP considering the outcomes desired.

The TEA is not obligated to execute a resulting contract, provide funds, or endorse any proposal submitted in response to this RFP. This RFP does not commit TEA to pay any costs incurred before a contract is executed. The issuance of this RFP does not obligate TEA to award a contract or pay any costs incurred in preparing a response.

Requesting the Proposal. A complete copy of RFP #701-98-020 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, or by calling (512) 463-9304. Please refer to the RFP number in your request.

Further Information. For clarifying information about this RFP, please contact Charles E. Mayo, Division of Textbook Administration, Texas Education Agency, Room 3-118, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9601, or e-mail at: cmayo@tmail.tea.state.tx.us.

Deadline for Receipt of Proposals. Proposals must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Friday, September 9, 1998, to be considered.

TRD-9810778

Criss Cloudt

Associate Commissioner, Policy Planning and Research

Texas Education Agency

Filed: July 8, 1998



### Request for Proposal for the Production of Braille Masters for Texas Public Schools

Eligible Proposers. The Texas Education Agency (TEA) is requesting proposals under Request for Proposals (RFP) #701-98-019 from nonprofit organizations, private companies, and regional education service centers to produce Braille textbook masters from textbooks that are to be adopted by the State Board of Education in November 1998 along with the ancillaries accompanying these state-adopted textbooks. Contractors will be responsible for brailleing additional instructional materials on demand. Historically underutilized businesses (HUBs) are encouraged to submit proposals.

Description. The purpose of this RFP is to ensure that Texas students receive quality Braille textbooks, delivered on time, at an economical price.

The adopted textbooks and ancillaries to be brailled have been arranged into four packages of various sizes. These are designated Master Packages A, B, C, and D. Braille producers may submit a proposal for all four packages or any combination of them. However, the TEA reserves the right to select the number of packages contracted to each applicant. For example, all four packages could be awarded to one applicant or four applicants could be awarded one package each or any combination thereof.

Proposers selected for contracts will be responsible for producing Braille masters of instructional materials designated in this RFP. Contractors will be responsible for brailleing additional instructional materials upon request, including previously adopted ancillaries, teacher editions, and student editions.

Dates of Project. All services and activities related to this RFP will be conducted within specified dates. Proposers should plan for a starting date of no earlier than January 4, 1999, and an ending date of no later than August 31, 2005.

Project Amount. The project's overall estimated cost, consisting of all four production packages, will not exceed \$2 million for the first year and not exceed \$3 million for the entire period of adoption, normally six years.

Selection Criteria. Proposals will be selected based on the ability of each proposer to carry out all requirements contained in this RFP. The TEA will base its selection on, among other things, the demonstrated competence and qualifications of the proposer. The TEA reserves the right to select from the highest-ranking proposals those that address all requirements in this RFP considering the outcomes desired.

The TEA is not obligated to execute a resulting contract, provide funds, or endorse any proposal submitted in response to this RFP. This RFP does not commit TEA to pay any costs incurred before a contract is executed. The issuance of this RFP does not obligate TEA to award a contract or pay any costs incurred in preparing a response.

Requesting the Proposal. A complete copy of RFP #701-98-019 may be obtained by writing the: Document Control Center, Room 6-108,

Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, or by calling (512) 463-9304. Please refer to the RFP number in your request.

Further Information. For clarifying information about this RFP, please contact Charles E. Mayo, Division of Textbook Administration, Texas Education Agency, Room 3-118, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9601 or e-mail at: cmayo@tmail.tea.state.tx.us.

Deadline for Receipt of Proposals. Proposals must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Friday, September 9, 1998, to be considered.

TRD-9810779

Criss Cloudt

Associate Commissioner, Policy Planning and Research

Texas Education Agency

Filed: July 8, 1998



### General Services Commission

Notice to Bidders for Project Number 97-004K-303

SEALED BIDS WILL BE RECEIVED BY GENERAL SERVICES COMMISSION (GSC) FACILITIES CONSTRUCTION SPACE MANAGEMENT (FCSM), AUSTIN, TEXAS, ON AUGUST 11, 1998 AT 3:00 PM CDT FOR:

**Project Number 97-004K-303.** Demolition of select existing buildings, new parking lot, and minor site utility work at Phase II portion of the Texas School for the Deaf, Austin, Texas.

**Bid Receipt Location:** General Services Commission/FCSM Division, 1711 San Jacinto, Bid Tabulation Room, Austin, Texas.

**Contractor Qualifications:** Prime contractors should submit information to the FCSM Division on Contractor Qualification Form, provided by FCSM, no later than 5:00PM, CDT, August 4, 1998 to document compliance with contractor's qualifications requirement for this project. Information is to be used in determining if a contractor is qualified to receive a Contract Award for the project. A review by FCSM Division of contractor qualification statement is required prior to obtaining bid documents from Consultant.

**Bid Documents:** Plans and specifications will be available after July 9, 1998 for prime contractors from Barnes Architects, Inc., 1508 West Fifth Street, Suite 200, Austin, Texas 78703, telephone (512) 476-7133. Plan deposit is \$100.00 per set. Bid documents will be available for review at the FCSM Division office, 1711 San Jacinto, Suite 202M, Austin, Texas 78711, telephone (512) 475-2494, Barnes Architects, Inc., the Plan Rooms of Associated General Contractors, the Builders Exchange of Texas, F.W. Dodge Corporation, and Associated Builders and Contractors in Austin and San Antonio.

**Pre-Bid Conference:** There will be a MANDATORY Pre-Bid Conference on July 28, 1998 AT 10:00 AM, CDT, in Temporary Building #3, Texas School for the Deaf, 1102 S. Congress Ave., Austin, Texas 78704.

Any questions or concerns should be directed to Rob Parnell at (512) 475-2494.

BIDS ARE TO BE MADE IN ACCORDANCE WITH STATE PROCEDURES.

TRD-9810538

Judy Ponder

General Counsel  
General Services Commission  
Filed: July 2, 1998



**Texas Department of Health**

Licensing Action 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.

Licensing Actions for Radioactive Materials

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location -----	Name ----	License# -----	City ----	Amend- ment # -----	Date of Action -----
ABILENE	HENDRICK MEDICAL CENTER	L02433	ABILENE	56	06/17/98
ABILENE	NATIONAL CENTRAL PHARMACY	L04781	ABILENE	15	06/17/98
AMARILLO	THE DON & SYBIL HARRINGTON CANCER CENTER	L03053	AMARILLO	26	06/17/98
ARANSAS PASS	COSTAL BEND HOSPITAL INC	L03446	ARANSAS PASS	14	06/22/98
AUSTIN	AUSTIN CARDIOVASCULAR ASSOCIATES	L05172	AUSTIN	1	06/22/98
BAYTOWN	BAYER CORPORATION	L01577	BAYTOWN	45	06/23/98
BEAUMONT	ST ELIZABETH HOSPITAL	L00269	BEAUMONT	70	06/22/98
BEAUMONT	LAMAR UNIVERSITY	L04047	BEAUMONT	11	06/18/98
BEAUMONT	LIFESHARE BLOOD CENTERS	L04884	BEAUMONT	2	06/29/98
BORGER	PHILLIPS CHEMICAL COMPANY	L05181	BORGER	0	06/26/98
BUFFALO	A L HELMCAMP INC	L05171	BUFFALO	0	06/25/98
CORPUS CHRISTI	QUALITECH STEEL CORPORATION	L05157	CORPUS CHRISTI	0	06/15/98
DALLAS	METHODIST HOSPITALS OF DALLAS	L00659	DALLAS	35	06/29/98
DALLAS	BAYLOR UNIVERSITY MEDICAL CENTER	L01290	DALLAS	43	06/26/98
DALLAS	BAYLOR UNIVERSITY MEDICAL CENTER	L01290	DALLAS	42	06/24/98
DALLAS	MEDICAL CITY HOSPITAL DALLAS	L01976	DALLAS	106	06/18/98
DALLAS	LITTON ELECTRO-OPTICAL SYSTEMS	L02155	DALLAS	27	06/23/98
EDINBURG	THE UNIVERSITY OF TEXAS PAN AMERICAN	L00656	EDINBURG	18	06/17/98
EDINBURG	THE UNIVERSITY OF TEXAS PAN AMERICAN	L00656	EDINBURG	19	06/29/98
EDINBURG	MCALLEN EDINBURG LP	L04262	EDINBURG	10	06/18/98
EL PASO	SYNCOR INTERNATIONAL CORPORATION	L01999	EL PASO	87	06/15/98
FORT WORTH	TEXAS STEEL COMPANY	L00163	FORT WORTH	37	06/17/98
HARLINGEN	VALLEY BAPTIST MEDICAL CENTER	L00154	HARLINGEN	24	06/15/98
HILLSBORO	HILL REGIONAL HOSPITAL	L01949	HILLSBORO	25	06/22/98
HOUSTON	MEMORIAL HERMANN HOSPITAL SYSTEM	L01168	HOUSTON	48	06/17/98
HOUSTON	H & G INSPECION COMPANY INC	L02181	HOUSTON	121	06/18/98
HOUSTON	BEAR CREEK MIR & DIAGNOSTIC CENTER LTD	L04450	HOUSTON	5	06/29/98
HOUSTON	QUANTUM MRI WEST LOOP & DIAGNOSTIC CENTER	L04598	HOUSTON	3	06/29/98
HOUSTON	CHAMPIONS MRI & DIAGNOSTIC CENTER	L04859	HOUSTON	6	06/29/98
HOUSTON	HEALTHSOUTH HOSPITAL FOR SPECIALIZED SURGERY	L05164	HOUSTON	0	06/17/98
HOUSTON	HEALTHSOUTH HOSPITAL FOR SPECIALIZED SURGERY	L05164	HOUSTON	1	06/22/98
HUMBLE	NORTHEAST MEDICAL CENTER HOSPITAL	L02412	HUMBLE	42	06/18/98
KERRVILLE	SID PETERSON MEMORIAL HOSPITAL	L01722	KERRVILLE	22	06/16/98
KERVILLE	GUADALUPE PHYSICIANS GROUP	L05173	KERRVILLE	0	06/16/98
KILGORE	ROY H LAIRD MEMORIAL HOSPITAL	L03496	KILGORE	12	06/17/98
LONGVIEW	EASTMAN CHEMICALS COMPANY	L00301	LONGVIEW	85	06/16/98
LUBBOCK	UNIVERSITY MEDICAL CENTER	L04719	LUBBOCK	21	06/18/98
LUBBOCK	UNIVERSITY MEDICAL CENTER	L04719	LUBBOCK	21	06/18/98
LUBBOCK	WELCO INC	L04787	LUBBOCK	2	06/16/98

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location -----	Name ----	License# -----	City ----	Amend- ment # -----	Date of Action -----
MESQUITE	PHYSICIAN RELIANCE NETWORK INC	L04914	MESQUITE	4	06/25/98
MISSOURI CITY	FORT BEND HOSPITAL INC	L03457	MISSOURI CITY	18	06/18/98

ORANGE	E I DUPONT DE MEMOURS & SABINE RIVER WORKS	L00005	ORANGE	620	06/19/98
PLANO	COLUMBIA MEDICAL CENTER OF PLANO SUBSIDIARY LP	L02032	PLANO	39	06/26/98
PORT ARTHUR	ST MARY HOSPITAL OF PORT ARTHUR	L01212	PORT ARTHUR	57	06/22/98
SAN ANTONIO	THE UNIVERSITY OF TEXAS HEALTH SCIENCE CENTER AT SA	L01279	SAN ANTONIO	76	06/16/98
SAN ANTONIO	TRINITY UNIVERSITY	L01668	SAN ANTONIO	26	06/15/98
SAN ANTONIO	CTRC CLINICAL FOUNDATION	L01922	SAN ANTONIO	47	06/18/98
SAN ANTONIO	METHODIST HEALTHCARE SYSTEM OF SAN ANTONIO LTD	L02266	SAN ANTONIO	63	06/18/98
SAN ANTONIO	RADIOLOGY ASSOCIATES OF SAN ANTONIO PA	L04305	SAN ANTONIO	19	06/24/98
SAN ANTONIO	MEDI + PHYSICS INC	L04764	SAN ANTONIO	9	06/29/98
SAN ANTONIO	HEART AND VASCULAR INSTITUTE OF TEXAS	L04799	SAN ANTONIO	2	06/18/98
SAN ANTONIO	MEDLAB	L04824	SAN ANTONIO	2	06/29/98
SAN ANTONIO	RADIOLOGY ASSOCIATES OF SAN ANTONIO PA	L04927	SAN ANTONIO	8	06/23/98
SHERMAN	COLUMBIA MEDICAL CENTER OR SHERMAN SUBSIDIARY LP	L02372	SHERMAN	17	06/17/98
THROUGHOUT TEXAS	MQS INSPECTION INCORPORATED	L00087	HOUSTON	73	06/17/98
THROUGHOUT TEXAS	LUBBOCK LABS	L01558	LUBBOCK	11	06/18/98
THROUGHOUT TEXAS	DIGITAL SURVEYS INC	L01611	ALVIN	27	06/23/98
THROUGHOUT TEXAS	COSTAL TESTING LABORATORIES INC	L01945	HOUSTON	24	06/17/98
THROUGHOUT TEXAS	METCO	L03018	HOUSTON	77	06/29/98
THROUGHOUT TEXAS	BROWN AND ROOT INC	L03391	HOUSTON	24	06/16/98
THROUGHOUT TEXAS	D ARROW INSPECTION INC	L03816	HOUSTON	56	06/29/98
THROUGHOUT TEXAS	PROTECHNICS DIVISION OF CORE LABORATORIES INC	L03835	HOUSTON	33	06/24/98
THROUGHOUT TEXAS	J D RAMMING PAVING CO INC	L04666	AUSTIN	2	06/29/98
THROUGHOUT TEXAS	CITY OF KILEEN	L04668	KILEEN	2	06/23/98
THROUGHOUT TEXAS	ALL TECH INSPECTION	L04974	CORPUS CHRISTI	4	06/16/98
THROUGHOUT TEXAS	HENLEY ENTERPRISES	L04976	HEWITT	0	06/25/98
THROUGHOUT TEXAS	MAROCK INC	L05036	DALLAS	4	06/24/98
THROUGHOUT TEXAS	ICI TRACEERCO	L03096	HOUSTON	47	06/24/98
TYLER	STEWART REGIONAL BLOCK CENTER	L04826	TYLER	2	06/22/98
WEIMAR	COLORADO FAYETTE MEDICAL CENTER	L03470	WEIMAR	12	06/17/98

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
-----	----	-----	----	-----	-----
HOUSTON	UNIVERSITY OF TEXAS M D ANDERSON	L02972	HOUSTON	18	06/16/98
THROUGHOUT TEXAS	SIGMA INDUSTRIES INC	L03753	CORPUS CHRISTI	6	06/24/98

EXEMPTIONS ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
-----	----	-----	----	-----	-----
HALE CENTER	HI PLAINS HOSPITAL	L03438	HALE CENTER	0	06/18/98

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 Richard A. Ratliff, P.E., 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, Exchange Building, 8407 Wall Street, Austin, Texas, from 8:00 a.m. to 5:00 p.m. Monday-Friday (except holidays).

TRD-9710707

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: July 7, 1998



#### Notice of Request for Proposals for Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)

The Texas Department of Health (department), Bureau of Clinical and Nutrition Services, is accepting requests for proposals (RFP's) for the provision of women, infants, and children (WIC) program services for Cass, Harrison, Marion, Rusk and Panola counties. Eligible applicants include governmental and private nonprofit organizations. Eligible applicants must be providers of ongoing obstetric and pediatric care or have written agreements with other agencies to provide such services to WIC participants. WIC Program services include the provision of supplemental foods, nutrition education, and referral to health care for low-income pregnant, postpartum, and lactating women, and infants and children up to five years of age. An applicant may apply to serve one, all, or any combination of the five counties cited above. Notification of awards will be determined by September 25, 1998. Contracts which may be awarded as a result of this process will have a start date of November 1, 1998 and go through September 30, 1999.

If none of the applicants satisfactorily meet the criteria, the department reserves the right to refrain from making a selection. The department reserves the right not to make an award because of changing funding priorities. After application review and evaluation, an applicant or applicants will be selected to negotiate a contract or contracts. Contractors are referred to as "local agencies". Funds are provided to local agencies through monthly reimbursement of actual program expenses. Actual WIC expenditures are reimbursed at a participant rate established annually by the department. The department reserves the

right to adjust the funding allocation during the term of the contract pursuant to the terms of the contract.

Individuals or agencies interested in submitting a proposal may request a copy of the RFP from Carl W. Clark, M.P.H., Bureau of Clinical and Nutrition Services, at (512) 458-7111, extension 6705, or an electronic copy may be obtained from the Internet site, TEXAS MARKETPLACE at <http://www.texas-one.org> (maintained by the Texas Department of Economic Development). The original and five copies of the proposal must be received by 5:00 p.m. central daylight saving time, on August 21, 1998, at The WIC Program, Bureau of Clinical and Nutrition Services, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, or must be postmarked not later than 11:59 p.m. central daylight saving time, on August 21, 1998.

Incomplete proposals and proposals received after the deadline, or postmarked later than 11:59 p.m. central daylight saving time on August 21, 1998, will not be evaluated.

TRD-9810709

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: July 7, 1998



## Texas Department of Housing and Community Affairs

### Notice of Public Hearing

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS MULTIFAMILY HOUSING REVENUE BONDS (GREENS OF HICKORY TRAIL APARTMENTS ) SERIES 1998

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs ("the Department") at the Polk Wisdom Branch Library, 7151 Library Lane, Dallas, Texas at 12:00 p.m. on Monday, August 10, 1998, with respect to an issue of multifamily residential rental project revenue bonds (the "Bonds") to be issued in one or more series in the aggregate principal amount not to exceed \$13,500,000, by the Texas Department of Housing and Community Affairs (the "Issuer"). The proceeds of the Bonds will be loaned to Brisben Hickory Limited Partnership (the "Borrower"), to finance a portion of the acquisition, construction and equipping of a multifamily housing project (the "Project") described as follows: 250 unit multifamily residential rental development to be constructed on a tract of land located in the 8600 Block of Old Hickory Trail, approximately one-quarter mile south of the intersection of Old Hickory Trail and East Wheatland Road, Dallas, Texas 75237. The Project will be owned and operated by Brisben Hickory Limited Partnership. The Project will be managed by National Realty Management Limited Partnership.

All interested parties are invited to attend such public hearing to express their views with respect to the Project and the issuance of the Bonds. Questions or requests for additional information may be directed to Robert Onion at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-3872.

Persons who intend to appear at the hearing and express their views are invited to contact Robert Onion in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robert Onion prior to the date scheduled for the hearing.



Individuals who require auxiliary aids in order to attend this meeting should contact Gina Arenas, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at 1 800 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

<http://www.tdhca.state.tx.us/hf.htm>

Individuals who require child care to be provided at this meeting should contact Dina Gonzalez at (512) 475-3757 at least five days before the meeting so that appropriate arrangements can be made.

TRD-9810758

Larry Paul Manley

Executive Director

Texas Department of Housing and Community Affairs

Filed: July 7, 1998



## Houston-Galveston Area Council

### Request for Proposal

The Houston-Galveston Area Council (H-GAC) is requesting written proposals to conduct a cost and information update for candidate 2000-2002 Transportation Improvement Program (TIP) projects. This project will involve the evaluation and estimation of actual project costs (preliminary engineering, environmental analysis, right-of-way, and construction) associated with candidate 2000-2002 TIP Projects. The selected consultant will be required to analyze and research approximately 650 TIP candidate project files, and update with accurate capital project cost information. The Request for Proposal (RFP) can be reviewed on the H-GAC web page at [www.hgac.cog.tx.us](http://www.hgac.cog.tx.us). The closing date for proposal submissions is July 23, 1998, at 5:00 p.m. All submissions should be delivered to the H-GAC offices located at 3555 Timmons Lane, Suite 500, Houston, Texas 77027, Attention: Mr. Rick Beverlin, Transportation Planner. All questions regarding the scope of work to be performed should be submitted in writing to the attention of Rick Beverlin, Transportation Planner, Houston-Galveston Area Council, P.O. Box 22777, Houston, Texas 77227-2777; Fax: (713) 993-4508; E-mail: [rick.beverlin@hgac.cog.tx.us](mailto:rick.beverlin@hgac.cog.tx.us).

TRD-9710771

Alan Clark

MPO Director

Houston-Galveston Area Council

Filed: July 8, 1998



## Texas Department of Human Services

### Public Notice

The Texas Department of Human Services (DHS) has published a report outlining the intended use of federal block grant funds during fiscal year 1999 for Title XX social services programs administered by DHS, the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Protective and Regulatory Services, the Texas Education Agency, and the Texas Workforce Commission. Four public hearings were held around the state in April 1998 to obtain testimony on the recommended use of Title XX funds.

To obtain free copies of the report, send written requests to Elisa Hendricks, Federal Relations Director, Government Relations Division, Mail Code W-623, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030. DHS is seeking written

comments from representatives of both public and private sectors regarding the proposed use of Title XX block grant funds. Written comments will be accepted for 30 days. Please mail comments to the address listed previously.

TRD-9810693

Glen Scott

General Counsel, Legal Counsel

Texas Department of Human Services

Filed: July 7, 1998



## Texas Department of Insurance

### Insurer Services

The following application has been filed with the Texas Department of Insurance and is under consideration:

Application to change the name of THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK to MONY LIFE INSURANCE COMPANY, a foreign life company. The home office is located in New York City, New York.

Any objections must be filed within 20 days after this notice was filed with the Texas Department of Insurance, addressed to the attention of Kathy Wilcox, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-9810753

Bernice Ross

Deputy Chief Clerk

Texas Department of Insurance

Filed: July 7, 1998



### Notice of Applications by Small Employer Carriers to be Risk-Assuming Carriers

Notice is given to the public of the application of the listed small employer carrier to be a risk-assuming carrier under Texas Insurance Code Article 26.52. A small employer carrier is defined by Chapter 26 of the Texas Insurance Code as a health insurance carrier that offers, delivers or issues for delivery, or renews small employer health benefit plans subject to the chapter. A risk-assuming carrier is defined by Chapter 26 of the Texas Insurance Code as a small employer carrier that elects not to participate in the Texas Health Reinsurance System. The following small employer carrier has applied to be a risk-assuming carrier: Memorial Sisters of Charity HMO, L.L.C.

The application is subject to public inspection at the offices of the Texas Department of Insurance, Financial Monitoring Unit, 333 Guadalupe, Hobby Tower 3, 3rd Floor, Austin, Texas.

If you wish to comment on this application to be a risk-assuming carrier, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Lynda H. Nesneholtz, General Counsel and Chief Clerk, Mail Code 113-1C, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-91204. An additional copy of the comments must be submitted to Mike Boerner, Managing Actuary, Actuarial Division of the Financial Program, Mail Code 304-3A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. Upon consideration of the application, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to approve the application to be a risk-assuming carrier.

TRD-9810548  
Bernice Ross  
Deputy Chief Clerk  
Texas Department of Insurance  
Filed: July 2, 1998



### Notices of Public Hearings

The Commissioner of Insurance or his designee at a public hearing under Docket Number 2371, scheduled for August 18, 1998 at 9:00 a.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas will consider amendments proposed by the Staff of the Workers' Compensation Division to the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance (the Manual). The purpose of these proposed amendments to the Manual is to combine certain classifications with like or similar hazards, to eliminate clerical and outside salespersons from the classification wordings for several classifications, to eliminate conflicting language within the classification wordings and footnotes, and to provide clarification to some of the classification wordings by amending the language.

The proposed changes by the staff are summarized as follows:

1. Combination of the following classifications with like or similar hazards: \* Code 2150 Ice Manufacturing into Code 6504 Food Sundries Manufacturing \* Code 2883 Furniture Manufacturing into Code 2881 Furniture Assembly - Wood \* Code 3076 Aluminum Awning Manufacturing into Code 3066 Aluminum Door, Window and Frame Manufacturing; \* Code 3093 Pipe or Tube Manufacturing - Cast Iron into Code 3028 Pipe or Tube Manufacturing - Iron or Steel; \* Code 4113 Cathedral or Art Glass Window Manufacturing into Code 4101 Glass Manufacturing - Polished Plate; \* Code 7389 Ice Manufacturing Drivers into Code 7380 - Drivers, Chauffeurs and their Helpers; \* Code 8038 Restaurant - Fast Food and Code 9078 Commissary Work into Code 9079 Restaurant NOC; \* Code 8393 Automobile Body Repair into Code 8391 Automobile Repair Shop; \* Code 8605 Oil or Gas Geologist or Scout into Code 8601 Surveyors; \* Code 9403 Garbage and Refuse Collection - Containerized into Code 9402 Sewer Cleaning;
2. Removal of the inclusion of clerical employees from the following classifications: \* Code 4360 Motion Picture: Production & Development of Negatives \* Code 4362 Motion Picture: Film Exchange & projection rooms \* Code 7610 Radio or Television Broadcasting Station \* Code 8832 Physician \* Code 8838 Museum or Public Library \* Code 8868 School or Church \* Code 9033 Housing Authority \* Code 9060 Club - Country, golf, fishing or yacht \* Code 9061 Club NOC \* Code 9063 Health Clubs, YMCA
3. Removal of the inclusion of salespersons from the following classifications: \* Code 4361 Photographer \* Code 5192 Vending Machines \* Code 7230 News Agent or Distributor of Magazines or Other Periodicals \* Code 8288 Stockyards \* Code 9033 Housing Authority \* Code 9052 Hotel
4. Changes in the following classifications to classifications with lower relativities: \* Golf Cart Rental or Repair from Codes 8385 and 8002 to Code 8017 \* News Agent or Dealer of Magazines, Newspapers or Other Periodicals from Code 7230 to Code 8017 if retail or Code 8018 if wholesale
5. Editorial changes to the footnotes and classifications wordings in the Classification Section of the Manual due to other changes made or for clarification.

6. Amending the footnote under Codes 9015 and 9032 to allow Managers/Directors performing clerical duties exclusively to be rated as Code 8810; Managers/Directors or leasing agents performing outside salesperson duties such as showing, leasing or inspecting property to be rated as Code 8742; and Managers/Directors performing maintenance duties or directly supervising maintenance work to be rated as either 9015 or 9032.

The Commissioner has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.96 and 5.60.

A copy of the amendments containing the full text of the proposed amendments is available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street in Austin, Texas. For further information or to request copies of the amendments, please contact Ms. Angie Arizpe (512) 322-4147, (refer to Reference Number W-0798-16-I).

The staff and the Commissioner request that written comments to these proposed amendments be submitted prior to the public hearing on August 18, 1998. The written comments should be directed to Lynda Nesenholtz, General Counsel and Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of the comments is to be submitted to Nancy Moore, Deputy Commissioner, Workers' Compensation Division, Texas Department of Insurance, P. O. Box 149092, Austin, Texas 78714-9092. Public testimony at the hearing on August 18, 1998, is also invited and encouraged.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

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

TRD-9810551  
Bernice Ross  
Deputy Chief Clerk  
Texas Department of Insurance  
Filed: July 2, 1998



The Commissioner of Insurance (Commissioner) will hold a public hearing under Docket Number 2372 on August 18, 1998 at 9:00 a.m., in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas to consider a petition by the staff of the Texas Department of Insurance (TDI) proposing the adoption of revised Texas Workers' Compensation Classification Relativities (classification relativities) to replace those adopted in Commissioner's Order Number 96-1038 dated September 12, 1996, and the adoption of a revised table to amend the Texas Basic Manual of Rules, Classification, and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance (Manual).

The petition requests consideration of a schedule of the revised classification relativities and a table amending the Manual. The revised classification relativities schedule is proposed to replace the classification relativities adopted by TDI in Commissioner's Order 96-1038 effective January 1, 1997. The table amending the Manual concerns the Expected Loss Rates and Discount Ratios. The revised table is proposed to replace Table II, pages ER-21 through ER-29 of the Manual.

The petition requests that the proposed revised classification relativities be available for adoption by insurers immediately, but that their use be mandatory for all policies with an effective date on or after

January 1, 1999. The petition requests that the revised table amending the Manual be made effective for workers' compensation policies with an effective date on or after January 1, 1999.

Article 5.60(a) of the Texas Insurance Code authorizes the Commissioner to determine hazards by classes and fix classification relativities applicable to the payroll in each class for workers' compensation insurance. Article 5.60(d) provides that the Commissioner revise the classification system at least once every five years.

The classification relativities currently in effect were based on experience data reflecting workers' compensation experience from policies with effective dates in 1991 through 1993. That data reflected experience subsequent to the Texas Workers' Compensation Reform Legislation (Reform Legislation) which became effective on January 1, 1991. The Reform Legislation has had a dramatic effect on workers' compensation experience due to the adoption of revised medical schedules, permanent and partial disability ratings, and increases in maximum weekly benefits payable to injured workers.

The proposed classification relativities are based on the analysis of experience data from policies with effective dates in 1991 through 1995. In addition to changes in experience due to legislative changes, the staff's proposed classification relativities also reflect changes in experience that occur over time, due to such things as technological advances and improvement in safety programs.

The indicated resulting relativities were initially balanced to the level of the current relativities through the application of off-balance factors. This provides for a revenue neutral set of relativities in relation to the current relativities. The staff proposes to limit changes in the classification relativities that have been balanced overall to the level of the current relativities to +25% and -25%. This would help to minimize possible rate shock due to large indicated changes in the relativities.

The individual company rates currently on file with TDI are, on average, approximately 22% below the level of the current relativities. In addition, the application of schedule rating plans produces an average credit of almost 13% based on TDI's most recent information. This suggests that the level of premiums actually charged are approximately 32% below the level of the existing relativities, without considering other competitive tools available to insurers such as negotiated deductibles credits and negotiated experience modifications.

The rating system in Texas is somewhat unique in that it does not include approved or promulgated loss costs, nor approved or advisory rates. Instead, the Texas rating system has classification relativities, which bear no necessary relationship to what insurers should charge, or are charging. However, people not familiar with the system frequently mistake the classification relativities for guideline rates and may also use them inappropriately to prepare cost comparisons with other jurisdictions. Such comparisons can place Texas at a competitive disadvantage in attracting new industry.

Staff therefore proposes that all of the classification relativities be reduced by 30%. This reduction would produce numbers more in line with what is actually charged, and would maintain a known benchmark against which insurers could measure their own rate needs. This recommended change has no obvious effect on insurer pricing strategies. With the knowledge of the level of the classification relativities, insurers could adjust the factor applied to the classification relativities to produce adequate rates.

Modifications to the classification relativities require concurrent changes in the table of Expected Loss Rates and Discount Ratios. The table is contained in the Manual as part of the uniform experience

rating plan. The current Table II of the Manual concerning Experience Loss Rates and Discount Ratios was adopted on September 12, 1996 and became effective on January 1, 1997. The current expected loss rates are essentially based on the level of losses used to experience rate a policy effective on July 1, 1997. Staff proposes an adjustment to be more reflective of the level of losses that would be used to experience rate policies that would be effective in 1999.

The Reform Legislation has had the effect of significantly reducing the indicated expected loss rates in relation to the current loss rates. Staff proposes to cap changes in the new expected loss rates to +25% and -25%. This would help minimize possible premium shock, which could otherwise occur based solely on the changes in the classification relativities, the expected loss rates, and the discount ratios.

The Commissioner has jurisdiction of this matter pursuant to the Texas Insurance Code, Article 5.60 and 5.96.

Copies of the full text of the staff petition and the proposed revised schedule and table are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. For further information or to request copies of the petition and proposed revised schedule and table, please contact Angie Arizpe at (512) 322-4147 (refer to Reference Number W-0798-17-I).

Comments on the proposed changes must be submitted in writing within 30 days after publication of the proposal in the Texas Register to the Office of Chief Clerk, P. O. Box 149104, MC 113-2A, Austin, Texas, 78714-9104. An additional copy of the comment should be submitted to Philip Presley, Chief Property and Casualty Actuary, P. O. Box 149104, MC 105-5F, Austin, Texas, 78714-9104.

This notification is made pursuant to the Texas Insurance Code, Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, Chapter 2001).

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

TRD-9810552

Bernice Ross

Deputy Chief Clerk

Texas Department of Insurance

Filed: July 2, 1998



## Texas State Library and Archives Commission

Quarterly Report of Consultant Contract Reports Received by the Texas State Library

By law (V.T.C.A., Government Code 2254, Subchapter B), state agencies and regional councils of governments are required to file with the Office of the Secretary of State invitations to bid and details on bidding on private consultant contracts expected to exceed \$10,000. Within 10 days of the award of the contract, the agency must file with the Secretary of State a description of the study to be conducted, the name of the consultant, the amount of the contract, and the due dates of the reports. Additionally, §2254.036, directs the contracting agencies to file copies of all documents, films, recordings, or reports developed by the private consultants with the Texas State Library. The Library is required to compile a list of the materials received and submit the list quarterly for publication in the Texas Register.

The following is a list of materials received for the second quarter of 1998. These materials may be examined in Room 300, Texas State Library, 1201 Brazos Street, Austin, Texas.

**Agency:** Comptroller of Public Accounts

Consultant: Neal and Gibson

Title: School performance review, Socorro Independent School District : a report from the Texas Performance Review

**Agency:** Comptroller of Public Accounts

Consultant: Empirical Management Services

Title: School performance review, Ysleta Independent School District : a report from the Texas Performance Review

**Agency:** Comptroller of Public Accounts

Consultant: Empirical Management Services

Title: School performance review, Wimberley Independent School District : a report from the Texas Performance Review

**Agency:** Board for Educator Certification

Consultant: National Evaluation Systems

Title: (1) TASC and TASC-ASL : Texas Assessment of Sign Communication and Texas Assessment of Sign Communication-American Sign Language 1997-1998 registration bulletin; (2) Expanded preparation guide, TASC and TASC-ASL; (3) TASC and TASC-ASL expanded preparation kit : videotaped interview responses [videocassette]

**Agency:** General Services Commission

Consultant: Ruby Mountain, Inc.

Title: Strategic planning and loan program development project : final report

**Agency:** General Services Commission

Consultant: Phoenix Planning & Evaluation Ltd.

Title: State of Texas statewide electronic commerce feasibility study

**Agency:** Department of Health

Consultant: The Lewin Group, Inc.

Title: (1) Medicaid central data library and warehouse detailed requirements analysis; (2) Implementation strategy and operation and management model; (3) Phase I desk review on-site protocol; (4) Phase II desk review on-site protocol

**Agency:** Department of Health

Consultant: Health Provider Services Inc.

Title: TDH hospitals long-range plan

**Agency:** Natural Resource Conservation Commission

Consultant: Desert Research Institute, Energy and Environmental Engineering Center

Title: Texas 1996 remote sensing feasibility study : final report

**Agency:** Natural Resource Conservation Commission

Consultant: Coastal Bend Bays Foundation

Title: Providing information and advice on gathering and evaluating input from identified stakeholders : final report

**Agency:** Natural Resource Conservation Commission

Consultant: TechLaw Inc.

Title: (1) Business process and organization review : project plan and timeline; (2) Business process redesign and organizational review : interim report of findings [draft]; (3) Business process redesign and organizational review : interim report of findings, February 1998; (4) Business process redesign and organizational review : proposed management, organization and business process report, April 8, 1998; (5) Business process redesign and organizational review : proposed management, organization and business process final report, May 1, 1998

**Agency:** Department of Transportation

Consultant: Jeanneret & Associates, Inc.

Title: Job evaluation system prepared for Texas Department of Transportation

**Agency:** Department of Transportation

Consultant: Public Sector Personnel Consultants

Title: Salary and benefits survey results

TRD-9810688

Raymond Hitt

Assistant State Librarian

Texas State Library and Archives Commission

Filed: July 6, 1998



## **Texas Low-Level Radioactive Waste Disposal Authority**

### **Request for Proposals**

#### **Revised Request for Proposal for Financial Consultant**

This request for proposal is filed under the provisions of Texas Civil Statutes, Health and Safety Code, Chapter 402. This request supersedes the previously published "Request for Proposal for Financial Advisor."

The Texas Low-Level Radioactive Waste Authority (the "Authority") seeks proposals in response to this Request for Proposals (RFP) from firms with qualifications and experience required to provide financial advisory services to the Authority. The Authority hopes to issue revenue bonds in a maximum principal amount of \$55 million prior to August 31, 2000.

The Authority was created in 1981 by the Sixty-seventh Texas Legislature to select, construct, operate, finance, and close a facility for the disposal of low-level radioactive waste (Chapter 402, Health and Safety Code). Under Subchapter K of Chapter 402, Health and Safety Code, the Authority may issue, sell, and provide for the retirement of revenue bonds to pay the expenses of constructing a disposal site (the "Project"). In 1997, the Seventy-fifth Texas Legislature passed H.B. 1077, which transferred the authority to issue such bonds to the Texas Public Finance Authority (the TPFA). The proceeds of such bonds may also be used to create needed reserve funds and to pay for capitalized interest, as well as to pay expenses associated with the issuance and sale of such bonds. The bonds are subject to the approval of the Attorney General of Texas and the Bond Review Board, as well as registration by the Comptroller of Public Accounts, all of the State of Texas. The bonds may be sold at public or private sale in a manner provided by the board of directors of the TPFA. The bonds will not be a debt or a pledge of the faith and credit of the State of Texas, the TPFA, or any public entity and shall

be payable from receipts collected by the TPFA and pledged to the payment of the bonds. The faith and credit and the taxing power of the State of Texas or of any public entity is not or cannot be pledged to the payment of the principal of or interest on the bonds.

The Authority is governed by a six-member board of directors (the "Board"), appointed by the governor with the advice and consent of the senate for six-year staggered terms. The Authority is operated with a staff of 17 employees, headed by a general manager, Lawrence R. Jacobi, Jr., P.E. Mr. Jacobi has served as the general manager since September 1982.

The TPFA is governed by a six-member board of directors (the "TPFA Board"), appointed by the governor with the advice and consent of the senate for six-year staggered terms. The TPFA is operated with a staff of 15 employees, headed by an executive director, Kimberly K. Edwards. Ms. Edwards has served as the executive director since March 1997.

Proposals are due no later than 5:00 p.m., August 7, 1998, as follows:

Five copies shall be mailed or hand-delivered to:

Lawrence R. Jacobi, Jr., P.E.

Texas Low-Level Radioactive Waste Disposal Authority

7701 North Lamar Blvd., Suite 300

Austin, TX 78752

A duly authorized representative of the firm must execute the submittal proposal. An unsigned proposal will not be accepted. Clearly mark the envelopes containing the proposals with the following phrase in the lower left hand corner: "IN RESPONSE TO RFP: FINANCIAL CONSULTANT." All proposals become the property of the Authority. Proposals must set forth accurate and complete information as required by this RFP. Oral instructions or offers will not be considered. Information may be obtained by calling Lee H. Mathews, Deputy General Manager and General Counsel at 512/206-3932.

The Authority reserves the right to negotiate individual elements of any proposal and to reject any and all proposals.

The financial consultant is to be responsible for all duties and services necessary or advisable to facilitate the issuance of bonds and other obligations, including but not limited to:

(1) devising and recommending to the Board and the TPFA Board a plan of financing. The development of the plan of financing may include financial feasibility analysis, such as developing pro forma revenue and expenditure statements, cash-flow analysis, and other financial models to identify a stream of revenue to support the debt service on the bonds that will result in the most advantageous terms to the Authority, consistent with a minimum effective interest rate;

(2) advising the Authority in providing information to various legislators, state agencies, and other persons; and

(3) upon request, assisting and providing information to the TPFA and its consultants or advisors necessary to obtain financing for the facility.

The contract term is to be for the state fiscal year beginning on September 1, 1998, and ending on August 31, 1999. The contract may be extended from year-to-year. The Board retains the right to

negotiate all elements of the contract. The Board also retains the right to terminate the contract for any reason and at any time upon the payment of earned fees and expenses.

The following is a suggested format for the submission of Proposals:

(1) For the most recent three years, list previous financial advisor, financial consultant, or negotiated underwriting experience involving bonds or other obligations to finance facilities similar to those to be constructed by the Authority.

(2) For the most recent three years, list previous financial advisor, financial consultant, or negotiated underwriting experience with governmental entities in Texas.

(3) Describe any innovations developed by the firm for tax-exempt security issues, briefly outlining the problem, the solution, and the result, particularly any that relate to the type of financing contemplated by the Authority.

(4) Name the individuals and provide resumes for those individuals who would be assigned to act as financial advisor(s) to the Authority. Please indicate the role the individuals assumed in the three-year history of financial advisor relationships as described in questions (1) and (2) listed previously. Indicate their particular expertise and how it would benefit the Authority.

(5) Clearly specify the firm's proposed hourly fee. Discussion of other forms and amount of compensation may be included as additional information. If the firm proposes that the Authority bear the costs of incidental expenses associated with a financing or the anticipated day-to-day interaction, clearly state what type of incidental expenses, rate, and costs the Board will be expected to bear. The Board does not intend to pay for time spent in travel unless specifically authorized.

(6) Discuss the management philosophy of the firm as it relates to the control of fees and expenses and the allowances for non-billable time. Explain your billing procedure.

(7) Provide any other information about the firm that you feel is relevant to the consideration of your firm being chosen as financial consultant.

The TPFA will contract with a financial consultant under separate contract to facilitate the issuance of the bonds or other financing mechanisms. The Authority has previously contracted for financial advisor services with Public Financial Management, Inc. (PFM) of Austin, Texas. The Authority proposes to continue those services with PFM unless a better proposal is received. The Board will make its selection based on demonstrated competence, experience, knowledge, and qualifications, as well as the reasonableness of the proposed fee. Significant weight will be given to demonstrated experience with financing for facilities similar to those proposed to be financed by the Authority.

It is the policy of the Authority to encourage the participation of minorities and women in all facets of the agency's activities. To this end, the extent to which minorities and women participate in the ownership, management and professional work force of a firm will be considered by the Board in the selection of a firm to serve as financial advisor. Applicants are therefore requested to submit a current profile of their firm on the form attached to the RFP.

# MINORITY REPRESENTATION

	TOTAL NO.	NO. OF WOMEN	% WOMEN	NO. OF MINORITIES	% MINORITIES
EXECUTIVES					
PROFESSIONALS					
CLERICAL/TECHNICAL					

All costs directly or indirectly related to preparation of a response to the RFP or any oral presentation required to supplement and/or clarify the RFP which may be required by the Authority shall be the sole responsibilities of, and shall be borne, by your firm.

The Authority during the proposal evaluation process or prior to contract award shall not release information submitted relative to this Request.

All proposals shall be deemed, once submitted, to be the property of the Authority and subject to the Texas Open Records Act.

TRD-9810618

Lee H. Mathews

Deputy General Manager and General Counsel

Texas Low-Level Radioactive Waste Disposal Authority

Filed: July 6, 1998



## Texas Natural Resource Conservation Commission

### Enforcement Orders

An agreed order was entered regarding BRITE-SOL SERVICES, INC., Docket Number 97-0592-IHW-E; SWR Number 31044 on June 22, 1998 assessing \$13,920 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kara L. Salmanson, Staff Attorney, TNRCC Legal Division (MC 175) or Anne Rhyne, Enforcement Coordinator, TNRCC Enforcement Division (MC 128), Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WINDY HILL UTILITIES, INC., Docket Number 97-0444-MWD-E; Permit Number 11762-001; CCN Number 20658; Enforcement ID Number 8763 on June 22, 1998 assessing \$5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Booker Harrison, Staff Attorney, TNRCC Legal Division (MC 175) or Brian Lehmkuhle, Enforcement Coordinator, TNRCC Enforcement Division (MC 149), Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MERICHEM COMPANY AND MERICHEM-SASOL USA LLC, Docket Number 97-1024-AIR-E; Account Number HG-0486-G; Enforcement ID Number 474 on June 22, 1998 assessing \$37,070 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator, TNRCC Enforcement Division (MC 169), Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding H & B CONTRACTORS, INCORPORATED, Docket Number 97-1130-AIR-E; Account Number MB-0055-U; Enforcement ID Number 12024 on June 22, 1998 assessing \$900 in administrative penalties with \$180 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator, TNRCC Enforcement Division (MC 169), Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ALBUQUERQUE AUTO WHOLESALE, Docket Number 97-1151-AIR-E; Account Number EE-1257-U; Enforcement ID Number 11982 on June 22, 1998 assessing \$500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stacey Young, Enforcement Coordinator, TNRCC En-

forcement Division (MC 169), Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding U.S. RENTALS, INCORPORATED, Docket Number 97-1109-AIR-E; Account Number EE-1203-U; Enforcement ID Number 11909 on June 22, 1998 assessing \$2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stacey Young, Enforcement Coordinator, TNRCC Enforcement Division (MC 169), Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding VENUS MARBLE COMPANY, INC., Docket Number 96-1392-AIR-E; TNRCC ID Number DB-1624-T; TNRCC Permit Number T-17337; Enforcement ID Number 168 on June 22, 1998 assessing \$9,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cecily Small Gooch, Staff Attorney, TNRCC Legal Division (MC 175) or David Edge, Enforcement Coordinator, TNRCC Enforcement Division (MC 169), Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SHINTECH INC., Docket Number 97-0935-AIR-E; Account Number BL-0051-F; Enforcement ID Number 10237 on June 22, 1998 assessing \$1,800 in administrative penalties with \$360 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator, TNRCC Enforcement Division (MC 169), Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding TOAI VO DBA VT AUTO SALES, Docket Number 97-0945-AIR-E; TNRCC ID Number HX-1533-W; Enforcement ID Number 11922 on June 22, 1998 assessing \$1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cecily Small Gooch, Staff Attorney, TNRCC Legal Division (MC 175) or Tel Croston, Enforcement Coordinator, TNRCC Enforcement Division (MC 169), Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BAILEY METAL PROCESSORS, INC., Docket Number 95-1431-IHW-E; TNRCC ID Number SWR 80049; Enforcement ID Number 1953 on June 22, 1998 assessing \$3,440 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Risner, Staff Attorney, TNRCC Legal Division (MC 175) or Susan Johnson, Enforcement Coordinator, TNRCC Enforcement Division (MC 128), Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EAST TEXAS PLATING COMPANY, Docket Number 97-1042-IHW-E; SWR Number 75060; EPA ID Number TXD982757593; Enforcement ID Number 10162 on June 22, 1998 assessing \$14,560 in administrative penalties with \$2,910 deferred.

Information concerning any aspect of this order may be obtained by contacting Anne Rhyne, Enforcement Coordinator, TNRCC Enforcement Division (MC 128), Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding MR. BAYLIS HARRISS, JR., Docket Number 97-0438-PST-E; TNRCC ID Number 16332 on June 22, 1998 assessing \$7,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Peeler, Staff Attorney, TNRCC Legal Division (MC 175) or Craig Carson, Enforcement Coordinator, TNRCC Enforcement Division (MC 134), Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SEGOVIA ENTERPRISES, INC., Docket Number 97-0910-PST-E; PST Facility ID 0048709; Enforcement ID Number 11886 on June 22, 1998 assessing \$3,200 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting Carolyn Lind, Enforcement Coordinator, TNRCC Enforcement Division (MC R-8), Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding COMAL COUNTY FRESH WATER SUPPLY DISTRICT #1, Docket Number 97-0145-PWS-E; PWS Number 0460164 on June 22, 1998 assessing \$5,540 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Guy Henry, Staff Attorney, TNRCC Legal Division (MC 175) or Tom Napier, Enforcement Coordinator, TNRCC Enforcement Division (MC 149), Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FISH RANCHES OF TEXAS, LTD, Docket Number 98-0146-IWD-E; TNRCC ID Number 03116; Account Numbers 0104722 and 0608911 on June 22, 1998 assessing \$17,724.98 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Risner, Staff Attorney, TNRCC Legal Division (MC 175) or Peyton Sparks, Enforcement Coordinator, TNRCC Financial Administration Division (MC 214), Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-9810798

Eugenia K. Brumm, Ph.D.

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: July 8, 1998



#### Notices of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (the Code), §7.075, which requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 16, 1998**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas

Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable Regional Office listed as follows. Written comments about these AOs should be sent to the enforcement coordinator designated for each AO at the TNRCC's Central Office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 16, 1998**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The TNRCC enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1)COMPANY: Lorenzo Borrego dba Borrego Motors; DOCKET NUMBER: 98-0137-AIR-E; IDENTIFIER: Account Number EE-0772-G; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: used car dealership; RULE VIOLATED: 30 TAC §114.20(c)(1) and the THSC, §382.085(b), by offering for sale a vehicle with missing emission control equipment; PENALTY: \$360; ENFORCEMENT COORDINATOR: Stacey Young, (512) 239-1899; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

(2)COMPANY: Ms. Pamela Cheatham; DOCKET NUMBER: 96-1874-LII-E; IDENTIFIER: Licensed Irrigator Number LI0004337; LOCATION: Plano, Collin County, Texas; TYPE OF FACILITY: irrigation system installation; RULE VIOLATED: 30 TAC §;344.308, 344.507, 344.503, and 344.301, by failing to meet minimum industry standards for licensed irrigators and licensed installers as related to the installation of irrigation systems, by failing as a licensed irrigator on all installations of new irrigation systems to present the customer a written statement of guarantees for materials and labor furnished in the installation of the irrigation system, by failing as a licensed irrigator to maintain proficiency in the field of irrigation, and by failing as a licensed irrigator or licensed installer to comply with reasonable inspection requirements, ordinances, or regulations designed to protect the public water supply; PENALTY: \$980; ENFORCEMENT COORDINATOR: Karen Berryman, (512) 239-2172; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(3)COMPANY: The City of Midlothian; DOCKET NUMBER: 98-0096-MWD-E; IDENTIFIER: Permit Number 10348-001; LOCATION: Midlothian, Ellis County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 10348-001 and the Code, §26.121, by exceeding the daily average ammonium-nitrogen permit effluent limitation of three milligrams per liter; PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Merrilee Mears, (512) 239-4490; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(4)COMPANY: The City of Mineral Wells; DOCKET NUMBER: 98-0123-MWD-E; IDENTIFIER: Permit Number 10585-003; LOCATION: Mineral Wells, Parker County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(2), Permit Number 10585-003, and the Code, §26.121, by failing to renew its permit on or before the expiration date and by allowing the discharge of waste without authorization, permit, or order; PENALTY: \$15,625; ENFORCEMENT COORDINATOR: Merrilee Mears, (512) 239-4490; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(5)COMPANY: Farris Concrete Company; DOCKET NUMBER: 98-0274-AIR-E; IDENTIFIER: Account Number 93-1289-H; LOCATION: Saginaw, Tarrant County, Texas; TYPE OF FACILITY: concrete batch plant; RULE VIOLATED: 30 TAC §116.110(a) and the Act, §382.085(b) and §382.0518(a), by constructing and operating a concrete batch plant without satisfying the conditions for a permit exemption or obtaining a permit; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Carl Schnitz, (512) 239-1892; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(6)COMPANY: Mr. Enrique Galvan; DOCKET NUMBER: 97-0432-LII-E; IDENTIFIER: Enforcement Identification Number 12209; LOCATION: Del Rio, Val Verde County, Texas; TYPE OF FACILITY: irrigation system installation; RULE VIOLATED: The Code, §34.007(a), by failing to obtain a valid certificate of registration as a licensed irrigator in order to legally install landscape irrigation systems; PENALTY: \$992; ENFORCEMENT COORDINATOR: Karen Berryman, (512) 239-2172; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(7)COMPANY: Mr. George Gates dba Gates Construction and Mr. Ron Pitts; DOCKET NUMBER: 98-0027-AIR-E; IDENTIFIER: Account Numbers HF-0214-G and HF-0215-E; LOCATION: Lumberton, Hardin County, Texas; TYPE OF FACILITY: land clearing operation RULE VIOLATED: 30 TAC §111.201 and the THSC, §382.085(b), by conducting outdoor burning one hour prior to sunset, leaving fire unattended, burning synthetic rubber, and causing adverse effects to an offsite structure containing sensitive receptors; and 30 TAC §101.4 and the THSC, §382.085(a) and(b), by creating a nuisance condition; PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Susan Kelly, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(8)COMPANY: H & H Meat Products Company, Incorporated; DOCKET NUMBER: 98-0105-AIR-E; IDENTIFIER: Account Number HN-0051-T; LOCATION: Mercedes, Hidalgo County, Texas; TYPE OF FACILITY: rendering plant; RULE VIOLATED: 30 TAC §116.110(a) and the THSC, §382.0518(a) and §382.085(b), by constructing a rendering plant without a permit; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Carl Schnitz, (512) 239-1892; REGIONAL OFFICE: 134 East Van Buren, Suite 301, Harlingen, Texas 78550-6807, (956) 425-6010.

(9)COMPANY: Mr. Don Jones; DOCKET NUMBER: 96-1872-LII-E; IDENTIFIER: Licensed Irrigator Number LI0001980; LOCATION: Denton, Denton County, Texas; TYPE OF FACILITY: irrigation system installation; RULE VIOLATED: 30 TAC §;344.303, 344.308, and 344.503, by failing to design, install, maintain, repair, and service irrigation systems in a manner that will promote water conservation, by failing to meet minimum industry standards for licensed irrigators and licensed installers as related to the installation of irrigation systems, and by failing as a licensed irrigator to maintain proficiency in the field of irrigation; PENALTY: \$1,050; ENFORCEMENT COORDINATOR: Karen Berryman, (512) 239-2172; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(10)COMPANY: Mr. Kevin Keane; DOCKET NUMBER: 97-0421-LII-E; IDENTIFIER: Licensed Irrigator Number LI0002967; LOCATION: Plano, Collin County, Texas; TYPE OF FACILITY: irrigation system installation; RULE VIOLATED: 30 TAC §344.301, by failing as a licensed irrigator or licensed installer to comply with reasonable inspection requirements, ordinances, or regulations designed to protect the public water supply; PENALTY: \$625;



ENFORCEMENT COORDINATOR: Karen Berryman, (512) 239-2172; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(11)COMPANY: Mr. Maurice Keane; DOCKET NUMBER: 97-0420-LII-E; IDENTIFIER: Licensed Irrigator Number LI0002968; LOCATION: Plano, Collin County, Texas; TYPE OF FACILITY: irrigation system installation; RULE VIOLATED: 30 TAC §344.301, by failing as a licensed irrigator or licensed installer to comply with reasonable inspection requirements, ordinances, or regulations designed to protect the public water supply; PENALTY: \$625; ENFORCEMENT COORDINATOR: Karen Berryman, (512) 239-2172; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(12)COMPANY: Mr. Berry Linden Mulford; DOCKET NUMBER: 97-0431-LII-E; IDENTIFIER: Licensed Irrigator Number LI0004610; LOCATION: Del Rio, Val Verde County, Texas; TYPE OF FACILITY: irrigation system installation; RULE VIOLATED: 30 TAC §344.225(c) and §344.58(c), by authorizing or allowing anyone else to use the certificate of registration to act as a licensed irrigator or licensed installer on June 21, July 24, September 6, and November 19, 1996; PENALTY: \$1,240; ENFORCEMENT COORDINATOR: Karen Berryman, (512) 239-2172; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(13)COMPANY: National Recycling and Developers, Incorporated; DOCKET NUMBER: 98-0360-AIR-E; IDENTIFIER: Account Number JH-0245-V; LOCATION: Cleburne, Johnson County, Texas; TYPE OF FACILITY: metal recycling; RULE VIOLATED: 30 TAC §111.201, §330.5(d), and the THSC, §382.085(b), by conducting outdoor burning of three lawn mower frames; PENALTY: \$1,000; ENFORCEMENT COORDINATOR: Carl Schnitz, (512) 239-1892; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(14)COMPANY: North Texas Municipal Water District; DOCKET NUMBER: 98-0056-MWD-E; IDENTIFIER: Permit Number 12446-001; LOCATION: McKinney, Collin County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: Permit Number 12446-001 and the Code, §26.121, by exceeding the permitted daily maximum limit for total suspended solids and the daily average limit for ammonia-nitrogen; PENALTY: \$35,100; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(15)COMPANY: Texas Parks and Wildlife Department, Hueco Tanks State Historical Park; DOCKET NUMBER: 98-0136-AIR-E; IDENTIFIER: Account Number EE-1706-M; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: state park; RULE VIOLATED: 30 TAC §114.100(a) and the THSC, §382.085(b), by dispensing gasoline for use as motor vehicle fuel which failed to meet the minimum oxygen content of 2.7% by weight; PENALTY: \$1,250; ENFORCEMENT COORDINATOR: Stacey Young, (512) 239-1899; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

TRD-9810712  
Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission  
Filed: July 7, 1998



The Texas Natural Resource Conservation Commission (TNRCC) Staff is providing an opportunity for written public comment on

the listed Agreed Orders (AOs) pursuant to the Texas Water Code (TWC), §7.075. Section 7.075 requires that before the TNRCC may approve these AOs, the TNRCC shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 15, 1998**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withdraw or hold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's Orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about these AOs should be sent to the attorney designated for each AO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on August 15, 1998. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1)COMPANY: Automotive Collision Specialist; DOCKET NUMBER: 97-1066-AIR-E; TNRCC ID NUMBER: SI0067S; LOCATION: Center, Shelby County, Texas; TYPE OF FACILITY: automotive repair and refinishing shop; RULE VIOLATED: 30 TAC §116.115(a) and Texas Health and Safety Code, §382.085(b) and §382.0518, by operating without first obtaining a permit or satisfying the conditions of a permit exemption; PENALTY: \$2,500; STAFF ATTORNEY: Ali Abazari, Litigation Support Division, MC 175; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(2)COMPANY: City of Newton; DOCKET NUMBER: 98-0049-MSW-E; TNRCC ID NUMBER: 40106; LOCATION: Newton, Newton County, Texas; TYPE OF FACILITY: unauthorized municipal solid waste transfer station; RULES VIOLATED: 30 TAC §330.150(1) and (3); Municipal Solid Waste Registration Number 40106 by failing to provide a Site Operating Plan, Site Development Plan, and any other document required as a part of the operating requirements and operating records; 30 TAC §330.150(2), Municipal Solid Waste Registration Number 40106 by failing to maintain required documents at the municipal solid waste transfer station and by failing to record and retain operating records; and 30 TAC §330.4 and §330.65 and Municipal Solid Waste Registration Number 40106 by failing to complete a registration for a Type-V Transfer Station; PENALTY: \$5,000; STAFF ATTORNEY: Lisa Hernandez, Litigation Support Division, MC 175, (512) 239-0612; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-9810775  
Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission  
Filed: July 8, 1998



## Notice of Public Hearing (Chapters 33 and 39)

Notice is hereby given that under the requirements of Texas Health and Safety Code, §382.017 and Texas Government Code, Subchapter B, Chapter 2001, the Texas Natural Resource Conservation Commission (commission) will conduct a public hearing to receive testimony concerning revisions to 30 TAC Chapter 33, concerning Consolidated Permit Processing, and Chapter 39, concerning Public Notice.

House Bill 1228, 75th Legislature, 1997, created a new Texas Water Code, Chapter 5, Subchapter J. The new statute outlines a process for an applicant to request consolidated permit processing and the issuance of a consolidated permit. Federal operating permits are prohibited from consolidation. The primary purpose of the commission's new chapter and proposed amendments is to implement the consolidated permit processing provisions of Texas Water Code, Chapter 5, Subchapter J.

A public hearing on the proposal will be held August 17, 1998, at 10:00 a.m. in Room 2210 of Texas Natural Resource Conservation Commission Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

Comments may be submitted to Lisa Martin, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., August 17, 1998, and should reference Rule Log Number 97170-033-AD. For further information, please contact Brian Christian, Policy Research Division, (512) 239-1760.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-9810529  
Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission  
Filed: July 2, 1998



## Notice of Public Hearing (Chapter 113)

Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code Annotated, §382.017 (Vernon's 1992); and Texas Government Code Annotated, Subchapter B, Chapter 2001 (Vernon's 1993) the Texas Natural Resource Conservation Commission (commission) will conduct a public hearing to receive testimony regarding revisions to 30 TAC Chapter 113, concerning National Emission Standards for Hazardous Air Pollutants for Source Categories.

The proposed amendments would incorporate changes that the United States Environmental Protection Agency has made to Maximum Achievable Control Technology standards by updating the federal promulgation dates cited in the commission rules that were previously adopted by reference. Sections 113.100, 113.110, 113.120, 113.130, 113.140, 113.230, 113.250, and 113.290 were adopted by the commission on June 25, 1997. Section 113.190 and §113.380 were adopted by the commission on October 15, 1997. In addition, the

commission proposes to correct the federal promulgation dates for §113.220 and §113.360, which contained incorrect dates as adopted.

A public hearing on this proposal will be held in Austin on August 13, 1998, at 10:00 a.m. in Building F, Room 5108, at the commission complex, located at 12100 North IH-35, Park 35 Circle, Austin. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments may be mailed to Ms. Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., August 17, 1998, and should reference Rule Log Number 98014-113-AI. For further information on this proposal, please contact Ms. Ann Hammer, Air Policy and Regulations Division, at (512) 239-6255.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-9810487  
Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission  
Filed: July 2, 1998



## Proposal for Decision

The State Office Administrative Hearing has issued Proposal for Decision and Order to the Texas Natural Resource Conservation Commission on June 26, 1998 on KIRT DAVIS; SOAH Docket Number 582-98-0126; TNRCC Docket Number 96-1739-OSI-E. This posting is Notice of Opportunity to comment on Proposal for Decision and Order. Comment period will end 30 days from date of publication.

TRD-9810797  
Douglas A. Kitts  
Agenda Coordinator  
Texas Natural Resource Conservation Commission  
Filed: July 8, 1998



## Public Notices

The executive director of the Texas Natural Resource Conservation Commission (TNRCC or Commission) has issued a public notice of a proposed selection of remedy for the Houston Lead State Superfund site, which may constitute an imminent and substantial endangerment due to a release or threatened release of hazardous substances into the environment. In accordance with Texas Health and Safety Code, Chapter 361.187 of the Solid Waste Disposal Act concerning the proposed remedial action, a public meeting regarding the proposed remedy for the Houston Lead State Superfund site shall be held. The statute requires that the Commission shall publish notice of the meeting in the *Texas Register* and in a newspaper of general circulation in the county in which the facility is located at least 30 days before the date of the public meeting.

The public meeting is scheduled at the Meyer Branch Library, located at 5005 West Belfort, Houston, Texas 77035 for August 18, 1998

beginning at 7:00 p.m. The public meeting will be legislative in nature and is not a contested case hearing under the Texas Government Code 2001.

The site for which a remedy is being proposed, the Houston Lead State Superfund site, was proposed for listing on the state registry of Superfund sites at a public meeting at the Pasadena Convention Center, Pasadena, Texas on November 4, 1987, and originally appeared on the state registry of Superfund sites published in the January 22, 1988, issue of the *Texas Register* (13 TexReg 427-428).

The Houston Lead State Superfund site is located at 300 Holmes Road in Houston, Texas.

In 1951, the Gulf Lead Company (GLC) constructed a secondary lead smelting facility at the Houston Lead Site to recycle/reclaim lead from lead acid batteries. The GLC only operated the facility for approximately one year. In 1952, the Houston Lead Company bought the site and continued to operate the lead smelting furnace for recycling/reclaiming used lead and refining of nonferrous metals. Houston Lead remained in operation until August 1981, at which time all operations ceased.

On May 23, 1996 the TNRCC determined that all costs owed to the TNRCC as per 30 TAC §333.5 had been paid and the site was accepted into the Voluntary Cleanup Program. From May, 1996 to April 1998 Houston Lead performed the equivalents of a Remedial Investigation, Baseline Risk Assessment, and Feasibility Study. The Remedial Investigation indicated that metals contamination (lead, cadmium, and arsenic) exists at the site at levels which may threaten human health and the environment. A Conceptual Exposure Assessment Model (the functional equivalent of a Baseline Risk Assessment) concluded that further action was needed to eliminate any imminent and substantial endangerment to human health and the environment. The Feasibility Study, utilizing the TNRCC's Presumptive Remedies Guidance Document for Soils at State Superfund Sites (RG-277, April 1997), indicated that containment of contaminated soils with groundwater monitoring as the preferred remedy.

Persons desiring to make comments on the proposed remedial action or the identification of potentially responsible parties may do so at the meeting or in writing prior to the public meeting. Written comments concerning the proposed remedial action may be submitted to Mr. Byron Ellington, CPG., Project Manager, TNRCC, Voluntary Cleanup Program, Remediation Division, MC-221, P.O. Box 13087, Austin, Texas 78711-3087. All comments must be received by the close of the public meeting on August 18, 1998.

Copies of the complete public record file is available at the Meyer Branch Library, 5005 West Belfort, Houston, Texas, 77035, (713) 723-1630 or may be obtained by making prior arrangements at the TNRCC Central Records Center, Building D, North Entrance, Room 190, 12100 Park 35 Circle, Austin, Texas 78753, telephone 1-(800) 633-9363 (within Texas only) or (512) 239-2920. Photocopying of file information is subject to payment of a fee.

TRD-9810776  
Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission  
Filed: July 8, 1998



Public Notice – Change of Meeting Date

The Texas Natural Resource Conservation Commission (TNRCC) public meeting regarding the Jerrell B. Thompson State Superfund Site amended selection of remedy HAS BEEN RESCHEDULED.

The public meeting originally scheduled for Thursday, July 23, 1998, at 7:00 p.m. at the Canton City Hall, Council Chambers, is **rescheduled for Tuesday, August 25, 1998, at 7:00 p.m.** at the Canton City Hall, Council Chambers, 290 East Tyler Street, Canton, Texas.

The public comment period for this amended proposed remedy has been extended to the completion of the public meeting on August 25, 1998.

A file containing documents about this site is available for public review at the Van Zandt County Public Library, 317 First Monday Lane, Canton, Texas.

For further information, please contact Barbara Daywood, TNRCC Community Relations, at 1-800-633-9363.

TRD-9810756  
Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation Commission  
Filed: July 8, 1998



## Texas Department of Protective and Regulatory Services

### Request for Proposal

The Texas Department of Protective and Regulatory Services is soliciting proposals for service contracts to be awarded in Bexar, Dallas, Harris, and Hidalgo counties under the Second Chance Programs.

Second Chance Programs are designed to provide independent living skills and licensed adult-supervised living arrangements to teen parents and their children who receive Temporary Assistance to Needy Families (TANF). The goal of the program is to reduce and prevent the problems of teenage parents and their children and to break the cycle of welfare dependence through the provision of timely and appropriate services. Services must be accessible to teens referred by the Texas Department of Human Services. Priority must be given to those youth without shelter and at-risk for losing their Temporary Assistance to Needy Families (TANF).

Eligible applicants: Eligible offerors include private non-profit corporations, for profit corporations, cities, counties, partnerships and individuals. Charitable community or religious organizations, as well as Historically Underutilized Businesses, are encouraged to submit proposals.

Limitations: Funding of the selected proposals will be dependent upon available federal and/or state appropriations. The Department reserves the right to reject any and all offers received in response to this RFP and to cancel this RFP if it is deemed in the best interest of the Department.

Term: The effective dates of any contract awarded under this RFP will be November 1, 1998 through August 31, 1999.

Deadline: All proposals for funding must be received by September 11, 1998 at 4:00 p.m. Modifications to the original proposal must also be received prior to 4:00 p.m. September 11, 1998.

Evaluation and Selection: A panel will rank and score the proposals. The evaluation method and criteria will be specified in the RFP packet.

Contact Person: Potential offerors may obtain the RFP package beginning July 17, 1998. It is preferred that requests for the RFP be submitted in writing to: Linda Fleming, Texas Department of Protective and Regulatory Services Agency Mail Code E-541, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438- 4957.

Amount of Awards: A maximum amount, not to exceed \$400,000 per year, will be available to fund one contract in each of the four counties.

TRD-9810752

C. Ed Davis

Deputy Commissioner for Legal Services

Texas Department of Protective and Regulatory Services

Filed: July 7, 1998



## Public Utility Commission of Texas

### Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On June 30, 1998, Pacific Gateway Exchange, Inc., filed an application with the Public Utility Commission of Texas (PUC) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60085. Applicant intends to reflect *pro forma* assignment of its SPCOA to its wholly-owned subsidiary, International Exchange Communications, Inc., a non-certificated company.

The Application: Application of Pacific Gateway Exchange, Inc., for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 19551.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission at the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326 no later than July 22, 1998. You may contact the PUC Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 19551.

TRD-9810660

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: July 6, 1998



### Notice of Application for Approval of Preliminary Integrated Resource Plan

Notice is given to the public of the filing with the Public Utility Commission of Texas on June 29, 1998, of an application for approval of a preliminary integrated resource plan, pursuant to §34.021 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of El Paso Electric Company for Approval of Preliminary Integrated Resource Plan, Docket Number 19545, before the Public Utility Commission of Texas.

Applicant seeks commission approval of its preliminary integrated resource plan, pursuant to PURA §34.021.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512)936-7120 no later than August 13, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9810590

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: July 3, 1998



### Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on June 29, 1998, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154 - 54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Morris Communications for a Service Provider Certificate of Operating Authority, Docket Number 19549 before the Public Utility Commission of Texas.

Applicant intends to provide local exchange and telecommunications service to business and residential customers.

Applicant's requested SPCOA geographic area includes the San Antonio Local Access and Transport Area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512)936-7120 no later than July 22, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9810522

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: July 2, 1998



### Notice of Application to Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on June 26, 1998, to amend a certificate of convenience and necessity pursuant to §14.001, §32.001, §36.001, §37.051, and §37.054, §§37.056- 37.058 of the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998) (PURA). A summary of the application follows.

Docket Title and Number: Application of Magic Valley Electric Co-operative, Inc. (Magic Valley) to Amend a Certificate of Convenience and Necessity to Construct a Proposed Transmission Line within Cameron County, Docket Number 19536 before the Public Utility Commission of Texas.

The Application: In Docket Number 19536, Magic Valley requests approval to construct approximately 3.3 miles of 138-kV transmission

line to be known as the Rio Hondo 138-kV Transmission Line in Cameron County. The proposed transmission line is being constructed in order for Magic Valley to prevent thermal overload of the Central Power and Light Company (CPL) Rio Hondo to La Palma 138-kV line following the loss of the 345-kV line between the same substations; to provide adequate service to the Val Verde and Weslaco substations; and to strengthen the voltage rigidity of the Pharr-Union Carbide 138-kV transmission line.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P. O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 within 15 days of this notice. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9810661  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 6, 1998



#### Notice of Contract for Resources Acquired Outside of Solicitation

Notice is given to the public of the filing with the Public Utility Commission of Texas an application for approval of a contract for resources acquired outside of the solicitation process, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §34.151 and §34.152(b) (Vernon 1998).

Docket Style and Number: Application of East Texas Electric Cooperative, Inc., for Approval of Contract. Docket Number 19462.

The Application: East Texas Electric Cooperative, Inc., a generating and transmission cooperative, requests the Commission approve its Ownership Interest Purchase Agreement with Entergy Power, Inc. East Texas Electric Cooperative, Inc., asserts that approval of the application will result in benefits to its member cooperatives.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact, not later than July 20, 1998, the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936- 7120. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9810521  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 2, 1998



#### Notices of Intent to File Pursuant to P.U.C. Substantive Rule §23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to P.U.C. Substantive Rule §23.27 for a new PLEXAR-Custom service for County of Nacogdoches, Texas.

Tariff Title and Number: Southwestern Bell Telephone Company Notice of Intent to File an Application for a New PLEXAR-

Custom Service for County of Nacogdoches, Texas Pursuant to P.U.C. Substantive Rule §23.27. Tariff Control Number 19563.

The Application: Southwestern Bell Telephone Company is requesting approval for a new PLEXAR-Custom service for County of Nacogdoches, Texas. PLEXAR-Custom service is a central office-based PBX-type serving arrangement designed to meet the specific needs of customers who have communication system requirements of 75 or more station lines. The designated exchange for this service is the Nacogdoches exchange, and the geographic market for this specific PLEXAR-Custom service is the Houston LATA.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512)936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9810745  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 7, 1998



Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to P.U.C. Substantive Rule §23.27 for a new PLEXAR-Custom service for Dow Chemical in LaPorte, Texas.

Tariff Title and Number: Southwestern Bell Telephone Company Notice of Intent to File an Application for a New PLEXAR-Custom Service for Dow Chemical in LaPorte, Texas Pursuant to P.U.C. Substantive Rule §23.27. Tariff Control Number 19564.

The Application: Southwestern Bell Telephone Company is requesting approval for a new PLEXAR-Custom service for Dow Chemical in LaPorte, Texas. PLEXAR-Custom service is a central office-based PBX-type serving arrangement designed to meet the specific needs of customers who have communication system requirements of 75 or more station lines. The designated exchange for this service is the LaPorte exchange, and the geographic market for this specific PLEXAR-Custom service is the Houston LATA.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9810746  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 7, 1998



Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to P.U.C. Substantive Rule §23.27 for a new PLEXAR-Custom service for Siemens Electrocom L.P. in Arlington, Texas.

Tariff Title and Number: Southwestern Bell Telephone Company Notice of Intent to File an Application for a New PLEXAR-Custom

Service for Siemens Electrocom L.P. in Arlington, Texas Pursuant to P.U.C. Substantive Rule §23.27. Tariff Control Number 19565.

The Application: Southwestern Bell Telephone Company is requesting approval for a new PLEXAR-Custom service for Siemens Electrocom L.P. in Arlington, Texas. PLEXAR-Custom service is a central office-based PBX-type serving arrangement designed to meet the specific needs of customers who have communication system requirements of 75 or more station lines. The designated exchange for this service is the Arlington exchange, and the geographic market for this specific PLEXAR-Custom service is the Dallas LATA.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9810747  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 7, 1998



Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to P.U.C. Substantive Rule §23.27 for a new PLEXAR-Custom service for Datapoint Corporation in San Antonio, Texas.

Tariff Title and Number: Southwestern Bell Telephone Company Notice of Intent to File an Application for a New PLEXAR-Custom Service for Datapoint Corporation in San Antonio, Texas Pursuant to P.U.C. Substantive Rule §23.27. Tariff Control Number 19566.

The Application: Southwestern Bell Telephone Company is requesting approval for a new PLEXAR-Custom service for Datapoint Corporation in San Antonio, Texas. PLEXAR-Custom service is a central office-based PBX-type serving arrangement designed to meet the specific needs of customers who have communication system requirements of 75 or more station lines. The designated exchange for this service is the San Antonio exchange, and the geographic market for this specific PLEXAR-Custom service is the San Antonio LATA.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9810748  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 7, 1998



#### Notice of Petition for Approval of New Interruptible Service Tariff

Notice is given to the public of the filing with the Public Utility Commission of Texas on June 17, 1998, an application for approval of a new interruptible service tariff, effective January 1, 2000, for customers requesting interruptible service for the first time, and October 25, 1998, for customers which had a contract for interruptible

service on the date the proposed tariff is approved. A summary of the application follows.

Docket Title and Number: Application of Central Power and Light Company for Approval of a New Interruptible Service Tariff, Docket Number 19502, before the Public Utility Commission of Texas.

Applicant seeks commission approval of a new interruptible service tariff.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 within 15 days of this notice. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9810662  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 6, 1998



#### Notice of True-Up of Expanded Local Calling Surcharge

Notice is given to the public of the filing with the Public Utility Commission of Texas an application to true-up the expanded local calling surcharge on March 31, 1998, in compliance with Docket Number 15332.

Docket Style and Number: Application of GTE Southwest, Inc., to True-up the Expanded Local Calling Surcharge. Docket Number 19173.

The Application: GTE Southwest, Inc., is not seeking to change its expanded local calling surcharge, but merely files this application in compliance with Docket Number 15332. GTE Southwest, Inc., seeks commission review and approval of its application.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact, not later than September 4, 1998, the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-9810520  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 2, 1998



#### Notice of Workshop on Issues Relating to Transmission Access and Pricing

The Public Utility Commission of Texas will hold a workshop on issues relating to transmission access and pricing on Thursday, July 23, 1998 in the commissioners' hearing room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The workshop will begin at 9:00 a.m. The commission has initiated a rulemaking proceeding, Project Number 18703, to review its rules concerning transmission access and pricing in the wholesale electric market, and the workshop will be an opportunity for interested persons to discuss issues related to the rule. A number of parties have filed comments in Project

Number 18703 suggesting areas in which the current rules should be modified. Copies of these comments are available from the commission's Central Records at the address listed above.

Prior to the workshop, a memorandum will be issued describing the format for the workshop. Questions concerning the workshop or the rulemaking project in general should be referred to Jess Totten, at telephone number (512) 936-7235.

TRD-9810663  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 6, 1998



#### Request for Comments on Issues Related to Utilities' Year 2000 Preparations and Notice of Workshops

The Public Utility Commission of Texas (commission) is conducting workshops pursuant to Project Number 18491 regarding the preparation of utilities for the Year 2000. Workshops will be held on August 3 and 6, 1998. Separate workshops will be held for representatives of the electric industry and the telecommunications industry. The workshops will be further divided between representatives of large service providers, such as investor-owned utilities, and smaller service providers and trade association representatives. All workshops will be held at the William B. Travis Building, 1701 North Congress Avenue, 7th floor, Austin, Texas 78701.

Workshop I will be held in the Commissioner's Hearing Room at 10:00 a.m. on Monday, August 3, 1998, for representatives of investor-owned electric utilities.

Workshop II will be held in the Commissioner's Hearing Room at 2:00 p.m. on Monday, August 3, 1998, for representatives of incumbent local exchange carriers, and other investor-owned telecommunications utilities.

Workshop III will be held in Hearing Room Gee at 10:00 a.m. on Thursday, August 6, 1998, for representatives of electric cooperatives, municipally-owned electric utilities, and other representatives of non-investor-owned electric utilities, including representatives of related trade associations.

Workshop IV will be held in Hearing Room Gee at 2:00 p.m. on Thursday, August 6, 1998, for representatives of competitive local exchange carriers and representatives of trade associations for small telecommunications service providers.

The commission seeks comments and information from interested parties in response to the following questions. During the workshops, project staff will discuss the issues raised by these questions and will utilize the information shared at the workshops to develop a reporting plan and/or reporting format and make other recommendations to the commission regarding Year 2000 preparedness.

1. What role can the commission play in helping utilities deal with potential Y2K problems?
2. The commission wants to stay abreast of the utilities' progress in preparing for the Year 2000. What is the best way to keep the agency informed, without creating an undue reporting burden on the utilities? What reports are currently provided internally or to other agencies? Please bring examples of these reporting formats or copies of any reports currently being generated.
3. What information is your company willing to make publicly available regarding Y2K issues? What kind of information is

considered proprietary? Is your company sharing information with other utilities? What information is your company willing to share with other utilities?

4. What action has your company taken to inform the public of business continuation plans for the Year 2000? If your company has a business continuation plan, has it already placed orders with suppliers to assure sufficient supplies on hand? What action has your company taken to contact business partners and entities with interdependent systems in order to evaluate the vulnerability of those interconnections?

5. How will failures in other areas affect your ability to provide utility services?

For questions regarding the Year 2000 project or the workshops please contact Susan K. Durso, Administrative Counsel, Public Utility Commission, P.O. Box 13326, Austin, TX, 78711- 3326, or [durso@email.puc.state.tx.us](mailto:durso@email.puc.state.tx.us), or by calling (512) 936-7146.

TRD-9810749  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: July 7, 1998



#### Texas A&M University System

##### Consultant Contract Award Notification

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, The Texas A&M University System furnishes this notice of consultant contract award. Request for proposals was filed in the May 1, 1998, issue of the *Texas Register* (23 TexReg 4417).

The contract, for an executive search to fill the position of Chancellor of the Texas A&M University System, was awarded to Korn/Ferry International, 3232 Lincoln Plaza, 500 North Akard Street, Dallas, Texas 75201, for \$90,000 plus expenses and final adjustments (based upon actual base compensation and estimated bonus for the position filled).

The beginning date of the contract is June 26, 1998, and the anticipated ending date is December 1, 1998.

No reports are required under this agreement.

For further information, please call 409/845-9600

TRD-9800537  
Vickie Burt  
Executive Secretary to the Board  
Texas A&M University System  
Filed: July 2, 1998



##### Request for Proposal

The Texas A&M University System (A&M System) requests proposals from professional firms interested in representing the A&M System and its members in certain tax matters.

**Description:** The A&M System is composed of 19 members (including 10 institutions and 8 state agencies) supported by legislative appropriations, tuition, fees, income from auxiliary enterprises, the Permanent University Fund, the Available University Fund, grants, gifts, sponsored research and other sources of revenues, all of which

may be impacted by the Internal Revenue Code and Internal Revenue Service Treasury Regulations. For assistance with such issues, the A&M System will engage outside counsel for review of and advice regarding tax matters as they relate to higher education including, but not limited to, the following: unrelated business income tax; retirement programs; tax matters regarding compensation issues; nonresident alien tax issues; and personal income tax issues as they relate to donors.

The A&M System invites proposals in response to this Request for Proposal (RFP) from qualified firms for the provision of such legal and tax services under the direction and supervision of the A&M System Office of Budgets and Accounting.

**Responses:** Responses to this RFP should include at least the following information:

- a description of the firm's or attorney's qualifications for performing the legal services, including the firm's past experience in tax-related matters and retirement plans as they relate specifically to institutions of higher education;
- the names and experience of the attorneys who will be assigned to work on such matters;
- the availability of the lead attorney and others assigned to the project;
- a description of the firm's efforts to encourage and develop the participation of minorities and women in the provision of the firm's and legal services generally, and tax matters in particular;
- fee information (either in the form of hourly rates for each partner, associate, paralegal and technical advisor who may be assigned to perform services to the A&M System, comprehensive flat fees, or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses;
- a comprehensive description of the procedures to be used by the firm to supervise the provision of legal services in a timely and cost-effective manner;
- representation that should it be selected by the A&M System to provide legal assistance in tax matters, the firm will enter into the attached "Outside Counsel Agreement."; and
- confirmation of willingness to comply with policies, directives and guidelines of the A&M System and the Attorney General of the State of Texas. Qualified firms must be able to exhibit compliance with House Bill No. 1, 75th Legislature, Regular Session, Article IX, Section 59 concerning matters against the State of Texas or any of its agencies.

**Format and Person to Contact:** Three copies of the proposal are requested. The proposal should be typed, preferably double spaced, on 8 1/2 by 11 inch paper with all pages sequentially numbered, and either stapled or bound together. They should be sent by mail or delivered in person, marked on the envelope "Response to Request for Proposal" and addressed to B. J. Crain, Office of Budgets and Accounting, The Texas A&M University System, John B. Connally Building, 301 Tarrow, Room 605, College Station, Texas 77840-7896.

**Evaluation:** Proposals sent in response to this RFP will be evaluated in light of several criteria. The criteria are expertise, availability of a lead attorney, prior experience in handling tax matters related to higher education, procedures for providing timely and cost-effective services, and reasonableness of fees. Although the fee structure and overall cost of this representation will be an extremely important factor in evaluating proposals submitted in response to this RFP, the

successful firm(s) will clearly demonstrate exceptional expertise and experience with the federal tax matters made the subject of this RFP.

**Deadline for submission of Response:** All proposals must be received by the Office of Budgets and Accounting of the A&M System at the address set forth above not later than 5:00 p.m., August 3, 1998. We reserve the right to consider late proposals but cannot guarantee their consideration.

TRD-9810566

Vickie Burt

Executive Secretary to the Board

Texas A&M University System

Filed: July 3, 1998



## Texas Department of Transportation

### Public Notice

Pursuant to Transportation Code, §§21.107-21.111, and Title 43, Texas Administrative Code, §30.204 and §30.209, the Texas Department of Transportation will conduct a public hearing to receive comments from interested parties concerning proposed approval of the Aviation Facility Development Grant projects under consideration by the Texas Transportation Commission for financial assistance, and financial assistance awards for the Routine Airport Maintenance Program (RAMP).

The public hearing will be held at 9:00 a.m. on Monday, August 3, 1998, at 150 East Riverside, South Tower, 5th Floor Conference Room, Austin, Texas 78704. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Persons with disabilities who have special communication or accommodation needs and who plan to attend the hearing 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 Eloise Lundgren, Director, Public Information Office, 125 E. 11th St., Austin, Texas 78701-2483, (512) 463-8588 at least two working days prior to the hearing so that appropriate arrangements can be made.

For additional information please contact Suetta Murray, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4504.

TRD-9810759

Bob Jackson

Acting General Counsel

Texas Department of Transportation

Filed: July 8, 1998



## University of Houston System

### Consultant Proposal Request

The University of Houston System (UHS) invites experienced consultants to submit responses to its Consultant Proposal Request (CPR) for documented expertise and success in analyzing, securing, and im-



plementing long-term, exclusive, financially-beneficial arrangements for cold beverage "pouring rights." UHS anticipates that the consultant may also assist with securing other corporate arrangements that further the interests of UHS.

#### DESCRIPTION OF REQUESTED SERVICES

The selected consultant must thoroughly research, analyze, report, and demonstrate foreseeable benefits of a "pouring rights" arrangement for UHS and for each of its campus components – the University of Houston, the University of Houston - Clear Lake, the University of Houston - Downtown, and the University of Houston - Victoria, collectively and individually. If UHS proceeds to a formal proposal process, the consultant will (a) develop, market, and present proposal packages to suppliers; (b) analyze, compare, and negotiate proposals with suppliers; and (c) recommend, retain, and finalize arrangements with the selected corporate "pouring rights" partner. UHS intends to commence a fully-operational "pouring rights" arrangement with a corporate partner no later than October of 1999.

To obtain information regarding the substance and format for Proposals, consultants should contact the office of Susan Septimus, Director of Contracts Administration, University of Houston System, Houston, TX 77204-5883; (713)743-9167; (fax)(713)743-5664; e-mail SSeptimus@uh.edu. Details regarding the substance and format for Proposals will be mailed to consultants who wish to apply for this assignment. For purposes of the Proposal, consultants will be required to include a summary of 250 words or fewer of experiential history that clearly demonstrates why the consultant is uniquely qualified to fulfill all requisites of this assignment. The consultant must also describe at least two other assignments for which the consultant obtained financially-beneficial "pouring rights" arrangements for a multi-component system similar to UHS. The Proposal must list the names and addresses of the multi-component systems and the names and phone numbers of individuals whom UHS can contact at each system.

The deadline for receipt of Proposals by UHS is 5 p.m., Central Standard Time, on August 21, 1998. Proposals must be sent to: University of Houston System, Purchasing Department, Houston, TX 77204-5883.

This Consultant Proposal Request does not commit UHS or the State of Texas to award a contract, to pay any costs incurred in the preparation of a proposal, or to procure or contract for articles of goods and/or services. UHS reserves the right to accept or reject any or all Proposals received as a result of this request and to cancel, in part or in its entirety, this Consultant Proposal Request, if UHS determines, in its sole discretion, the best interests of UHS are served.

TRD-9710796

Peggy Cervenka

Vice Chancellor for Government Relations

University of Houston System

Filed: July 8, 1998



## The University of Texas System

### Consultant Proposal Request

This request is submitted in accordance to the provisions of the Government Code, Chapter 2254. Harris County Psychiatric Center (HCPC), a component of The University of Texas Houston Health Science Center (UT-Houston), hereby provides a notice of invitation for offers of consulting services. Required services are:

- Assessment of current and anticipated long-term automation needs for HCPC in light of healthcare and computer industry trends for the future.

- Preparation of an information systems long-range strategic plan including recommendations for overall systems and infrastructure strategy, and definition of priority projects.

Deliverables for the services rendered will include a written assessment document defining the automation needs of the hospital in the short-term future, and a written I/S strategic plan document that provides the strategic I/S architecture and priority systems. It is anticipated that the value of this required consulting services will exceed \$15,000.00.

For further information or to obtain a complete proposal package, please contact Donna Schneider, Procurement Services, UT-Houston, 1851 Crosspoint, OCB 1.160, Houston, Texas 77054, Telephone number (713) 500-4709. An original and five copies of the full proposal must be submitted to UT-Houston prior to 3:00 p.m. on **August 17, 1998**. Proposals received thereafter will not be considered and will be returned unopened. Proposals should be sent to the address indicated as follows:

Ms. Donna Schneider

Procurement Services

The University of Texas Houston Health Science Center

1851 Crosspoint, Suite 1.160

Houston, Texas 77054

Selected finalists will be requested to conduct an onsite presentation, at their expense, to clarify and expand upon items provided in their proposal. UT-Houston will evaluate all offers of consulting services received following the closing date of August 17, based on demonstrated competence, qualifications, methodology proposed, project time schedule and reasonableness of cost.

TRD-9810591

Francie A. Frederick

Executive Secretary to the Board of Regents

The University of Texas System

Filed: July 3, 1998



## Texas Workforce Commission (TWC)

### Notice of Availability of Funds and Request for Applications

#### LOCAL INNOVATION AND JOB RETENTION AND REEMPLOYMENT ASSISTANCE DISCRETIONARY GRANTS

The Texas Workforce Commission (TWC) Welfare Reform Division announces the availability of funds and request for applications (RFA packet) under the following two Fiscal Year 1999 strategies: (1) Local Innovation and (2) Job Retention and Reemployment Assistance. The TWC, as authorized by federal and state laws, invites eligible entities to submit applications for FY 1999 funding of grants to serve welfare recipients in their transition from welfare to self-sufficiency.

Funds for transportation must reasonably accomplish a purpose of the Temporary Assistance for Needy Families (TANF) program. Guidance to TANF funds is attached to the RFA packet.

Under the FY 1999 local innovation strategy, the TWC plans to develop demonstration projects for providing services to welfare recipients that will remove barriers to employment at self-sufficient

wage levels, with a focus on collaborative local strategies that address transportation issues.

Under the FY 1999 job retention and reemployment assistance strategy, the TWC plans to develop demonstration projects for providing services to welfare recipients that will improve their ability to retain and advance in a job.

The two strategies are components of the TWC Choices program. TWC Choices services provide work-related activities and support to assist eligible participants to prepare for and retain employment and avoid becoming or remaining dependent on public assistance. A description of the Choices program is attached to the RFA packet

This is the second round of these discretionary grants, following the same strategies for FY 1998 announced in the June 19th issue of the Texas Register.

#### AUTHORIZATION OF FUNDING

The TWC certifies that it has authority of funding from federal and state laws. The funds for these programs are federal funds from the U.S. Department of Health and Human Services, Temporary Assistance for Needy Families (TANF) block grants. Funds are subject to the requirements of the Title VI Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), 7 U.S.C. Sec. 201.1, et seq. and state laws and regulations, including the 1997-98 state appropriations act (H.B. 1, Rider 27).

#### ELIGIBLE APPLICANTS

To be eligible, applicants must provide a non-binding, written Notification of Intent to Apply (form attached to RFA packet) to Monica Moguel, TWC Welfare Reform Division, 101 East 15th Street, Rm 434T, Austin, Texas 78778-0001. Fax: (512) 463-7379; Email: monica.moguel@twc.state.tx.us ; Ph: (512) 936-3540. This must be received by the TWC no later than 5:00 p.m., Friday, August 21, 1998; this form may be mailed, faxed or emailed. This requirement is necessary to facilitate administrative planning; applicants who fail to provide notification of intent to apply by the stated deadline may be considered ineligible.

For both programs, eligible applicants are private and public entities that can provide services in any of the designated Choices counties in the state of Texas. A list of Choices counties in Texas and contact information is attached to the RFA packet. Applicants must submit signed certification and endorsement of their proposed project by the Local Workforce Development Board (LWDB) responsible for service delivery in the county(s) to be serviced by the proposed project. To facilitate compliance with this requirement, a list of designated LWDB contacts and a standard form letter documenting LWDB certification and endorsement is attached to the RFA packet. In Choices counties without a local workforce development board, applicants should consult directly with the TWC. The local TWC contact for these counties is listed in the RFA packet.

Note: LWDBs are not eligible entities as applicants for these discretionary grants. Applicants must consult with LWDBs prior to the development of their applications to ensure that projects are consistent with LWDB policies and priorities.

Applicants may submit only one proposal for services in a single Local Workforce Development Area (LWDA). If the applicant wishes to provide services in more than one LWDA, the applicant must submit a separate application for each LWDA to be served, with the required endorsement from each respective LWDB.

Applicants seeking an award under the local innovation strategy must also provide documentation of consultation and collaboration during

project development with the Texas Department of Transportation district Public Transportation Coordinators (PTC), the local Transit Authority, and/or private or community-based organizations that provide transportation services. Contact information for PTCs is attached to the RFA packet. Note that PTCs serve as single points of contact for direct referral to local Transit Authority officials in your area.

#### AVAILABLE FUNDING

For the local innovation strategy, applications for FY 1999 projects may request up to \$100,000. The maximum amount for the total projects to be funded is \$400,000. For the job retention and reemployment assistance strategy, TWC will consider proposals for funding ranging from \$20,000 to \$300,000, to support a diverse array of projects varying in intensity of service and number of Choices participants served. The maximum amount of funding for the job retention and reemployment assistance strategy for FY 1999 is \$3,000,000.

#### DISCRETIONARY GRANT DESCRIPTION - GOALS AND OBJECTIVES

##### (1) Local Innovation Strategy

The goal of the local innovation strategy is to invest in the long-term success of welfare recipients in their transition from welfare to self-sufficiency.

The specific objectives of the local innovation strategy are:

To develop, implement and evaluate demonstration projects for providing services to Choices participants that will remove barriers to employment at self-sufficiency wage levels.

To develop a set of models for addressing high priority problems confronting the welfare reform effort that may be replicated by local workforce development boards throughout the state. For FY 1999, transportation is the high priority problem to be addressed.

##### (2) Job Retention and Reemployment Assistance Strategy

The goal of the job retention and reemployment assistance strategy is to invest in the long-term success of welfare recipients in their transition from welfare to self-sufficiency.

The specific objectives of the job retention and reemployment assistance strategy are:

To develop, implement and evaluate demonstration projects for providing services to Choices participants that improve their ability to retain and advance in a job.

To develop a set of models for addressing job retention and reemployment assistance problems that may be replicated by local workforce development boards throughout the state.

#### PROJECT DESIGN FEATURES

Under both the local innovation and job retention and reemployment assistance strategies, proposed projects must be responsive to the needs of the employers and Choices participants served in the LWDA. While projects will necessarily reflect the unique resources and circumstances of a particular region, the preference for funding will be given to those project designs that are potentially replicable and adaptable to different LWDAs. Projects must also be responsive to the needs of Choices participants to enable them to move toward self-sufficiency as quickly as possible due to state and federally imposed time limits.

##### (1) Local Innovation Strategy

The local innovation strategy will require a creative approach to meeting the transportation needs of Choices participants. These needs involve access to reliable, affordable, and efficient transportation to jobs, training, and services such as child care. Addressing these needs in a cost-effective way is critical to the successful transition from welfare to work for many Choices participants.

The strength of proposed projects depends on the extent to which they involve planning and collaboration with the Texas Department of Transportation and/or the local Transit Authority. National research has found a variety of welfare-to-work transportation designs which have been tested in both major metropolitan areas and rural areas and involving a variety of populations, resources, and services. The common characteristic of these successful programs is their systemic approach to removing transportation barriers to welfare-to-work transition. Suggested innovative practices from this research include but are not limited to:

evaluation, planning and coordination to integrate welfare reform priorities within the local transportation system;

specific activities such as reverse commuting, van pooling, and various forms of expanded public and/or private service;

collaboration among workforce development, transportation, social service, and community-based organizations;

marketing and outreach; and

employer engagement.

For further information, see a recent publication by the Department of Transportation and the Community Transportation Association of America entitled "Access to Jobs: A Guide to Innovative Practices in Welfare to Work Transportation." This publication is available on the Internet at <http://www.ctaa.org/welfare>.

#### (2) Job Retention and Reemployment Assistance Strategy

The job retention and reemployment assistance strategy will fund demonstration projects that provide model strategies for improving the ability of Choices participants to retain and advance in a job. They may involve any of a full spectrum of services that vary in intensity depending on the number of Choices participants referred to an employer and/or the needs of particular Choices participants.

Suggested job retention strategies include but are not limited to:

Designated job coaches who monitor, counsel, and work with particular Choices participants for a specified period of time to respond effectively on an as-needed basis to a comprehensive range of individual needs and situations.

Choices participant incentives to reward participants for achieving good job retention; this could include cash incentives or vouchers for work related expenses, such as clothing and tools, or for investments such as training.

Designated workplace mentors on job sites with multiple Choices participants who receive a stipend to assist participants as a group in resolving workplace problems to ensure a successful transition from welfare to work.

Outside coaches who facilitate peer counseling and group problem-solving at job sites with multiple Choices participants.

Emergency plans for dependent care and transportation crises that make use of community volunteers to provide drop-in dependent care or temporary transportation to work.

Systemic approaches to removing transportation barriers that put Choices participants at heightened risk of job instability.

Individual Development Accounts (IDAs) to cover business capitalization expenses to establish a transportation service such as a van pool, shuttle, or door-to-door transportation service or other job retention strategy.

Workplace training and adult literacy.

A list of selected references and resources is attached to the RFA packet.

#### LENGTH OF CONTRACT

The contract period for both discretionary grants is expected to start by November 1, 1998 and end by November 1, 1999. However, the length of the contract may be extended where needed to provide sufficient time to conduct a reliable evaluation.

#### SCHEDULE OF MAJOR EVENTS

The schedule of major events for both discretionary grants is:

Release NOFA July 17, 1998

Notification of intent to apply due August 21, 1998

Application submission deadline September 18, 1998

Selection notification begins September 28, 1998

Contract negotiation begins October 1, 1998

Contract signed by October 30, 1998

Project expected start date by November 1, 1998

Project expected end date by November 1, 1998

#### SELECTION CRITERIA

##### (1) Local Innovation Discretionary Grant

The selection criteria:

Contractor experience in program or concept development and delivery of workforce development and related support services, including transportation, for low-income individuals and recipients of public assistance.

Strength of contractor's consultation during project development with Texas Department of Transportation and/or the local Transit Authority. Strength of contractor's project design for coordination and collaboration among workforce development, social service and transportation providers.

Strength of contractor's project design for engaging employers in partnerships that provide businesses and the Choices participants they employ reliable, affordable and efficient transportation.

Contractor ability to leverage existing resources to offer services. Contractor ability to leverage non-state and non-federal financial support for extending service coverage and enhancing service quality.

Strength of contractor's project design for potential cost-effective replicability and adaptation to different LWDBs.

Strength of proposed evaluation plan.

##### (2) Job Retention and Reemployment Assistance Strategy

The selection criteria are:

Contractor experience in program or concept development and delivery of comprehensive job retention and reemployment assistance services for low-income individuals and recipients of public assistance.

Strength of contractor's project design for engaging employers in partnerships that enable businesses and the Choices participants they employ to develop mutually beneficial, long-term relationships.

Strength of contractor's project design for potential cost-effective replicability and adaptation to different LWDBs.

Contractor ability to leverage existing resources to offer services. Contractor ability to leverage non-state and non-federal financial support for extending service coverage and enhancing service quality.

Strength of proposed evaluation plan.

#### APPLICATION PROCESS

Applicants must request an RFA packet from the Welfare Reform Division. Applications must be submitted by 5:00 p.m., Friday, September 18, 1998. Call Monica Moguel at (512) 936-3540 to request an RFA packet or fax a request to (512) 463-7379 directed to the attention of Monica Moguel. Requests may also be made by email to [monica.moguel@twc.state.tx.us](mailto:monica.moguel@twc.state.tx.us).

NOTE: The RFA packet is available on the Internet at the TWC Welfare Reform homepage, located at <http://www.twc.state.tx.us/welref/welf.html>

#### SELECTION, NOTIFICATION, AND NEGOTIATION PROCESS

A panel of Texas Workforce Commission and outside readers will evaluate applications. Evaluation criteria is included in the RFA packet. Contract negotiation will take place immediately after selection. A designated person from the selected entity must be readily available to respond to inquiries, prepare proposed amendments, and negotiate with TWC concerning budget and/or programmatic revisions during the entire contract negotiation process. If a designated person is not readily available to promptly respond to requests for revisions, the applicant will not be considered for contract. The LWDB of the county(s) served by the proposed project must be involved in the negotiation of the contract.

Final selection is contingent upon successful negotiation. TWC reserves the right to vary all provisions of this Notice of Availability of Funds prior to the execution of a contract and to execute amendments to contracts when TWC deems such variances and/or amendments are in the best interest of the State of Texas.

#### DUE DATE AND AGENCY CONTACT

The deadline for receipt and consideration of applications under the local innovation and the job retention and reemployment assistance strategies is 5:00 p.m., Friday, September 18, 1998. For further information on this RFA, contact Jeffrey Kaufman, Contract Specialist, Texas Workforce Commission, Welfare Reform Division, 101 East 15th Street, Room 452T, Austin, Texas 78778-0001. Phone: 512/936-3560; FAX: 512/463-9994; Email [jeffrey.kaufman@twc.state.tx.us](mailto:jeffrey.kaufman@twc.state.tx.us).

A notice of the award grantees will be published in the Texas Register following contract execution.

#### TWC's OBLIGATIONS

TWC's obligations under this Notice are contingent upon the actual receipt by the Agency of funds from the U.S. Department of Health and Human Services. If adequate funds are not available to make payment under this grant, TWC shall terminate this request for applications or the resulting contract and will not be liable for failure to make payments.

TRD-9710769

J. Randel (Jerry) Hill  
General Counsel

Texas Workforce Commission

Filed: July 8, 1998



# *Texas Register*

## Services

The *Texas Register* offers the following services. Please check the appropriate box (or boxes).

### **Texas Natural Resource Conservation Commission, Title 30**

- Chapter 285** \$25     update service \$25/year (*On-Site Wastewater Treatment*)  
 **Chapter 290** \$25     update service \$25/year (*Water Hygiene*)  
 **Chapter 330** \$50     update service \$25/year (*Municipal Solid Waste*)  
 **Chapter 334** \$40     update service \$25/year (*Underground/Aboveground Storage Tanks*)  
 **Chapter 335** \$30     update service \$25/year (*Industrial Solid Waste/Municipal Hazardous Waste*)

Update service should be in  printed format     3 1/2" diskette     5 1/4" diskette

### **Texas Workers Compensation Commission, Title 28**

- Update service \$25/year

### **Texas Register Phone Numbers**

	<b>(800) 226-7199</b>
Documents	(512) 463-5561
Circulation	(512) 463-5575
Marketing	(512) 305-9623
Texas Administrative Code	(512) 463-5565

### **Information For Other Divisions of the Secretary of State's Office**

Executive Offices	(512) 463-5701
Corporations/	
Copies and Certifications	(512) 463-5578
Direct Access	(512) 475-2755
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Name Availability	(512) 463-5555
Trademarks	(512) 463-5576
Elections	
Information	(512) 463-5650
Statutory Documents	
Legislation	(512) 463-0872
Notary Public	(512) 463-5705
Public Officials, State	(512) 463-6334
Uniform Commercial Code	
Information	(512) 475-2700
Financing Statements	(512) 475-2703
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