

# TEXAS REGISTER



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a section of the Office of the Secretary of State P.O. Box 13824 Austin, TX 78711-3824 (512) 463-5561 FAX (512) 463-5569

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Texas Register, ISSN 0362-4781, is published semi-weekly 100 times a year except July 7, November 10, November 28, and December 29, 1995. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: one year - printed, \$95 and electronic, \$90; six-month printed, \$75 and electronic, \$70. Single copies of most issues are available at \$7 per copy. Material in the Texas Register is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the Texas Register Director, provided no such republication shall bear the legend Texas Register or "Official" without the written permission of the director. The Texas Register is published under the Government Code, Title 10, Chapter 2002. Second class postage is paid at Austin, Texas.

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

How to Use the Texas Register

Information Available: The 11 sections of the Texas Register represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

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

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the Texas Register is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 19 (1994) is cited as follows: 19 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "19 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 19 TexReg 3."

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

Texas Administrative Code

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

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

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

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

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

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

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

1 indicates the title under which the agency appears in the Texas Administrative Code; TAC stands for the Texas Administrative Code; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the Texas Administrative Code, please look at the Table of TAC Titles Affected. The table is published cumulatively in the blue-cover quarterly indexes to the Texas Register (January 21, April 15, July 12, and October 11, 1994). In its second issue each month the Texas Register contains a cumulative Table of TAC Titles Affected for the preceding month. If a rule has changed during the time period covered by the table, the rule's TAC number will be printed with one or more Texas Register page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
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The Table of TAC Titles Affected is cumulative for each volume of the Texas Register (calendar year).

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

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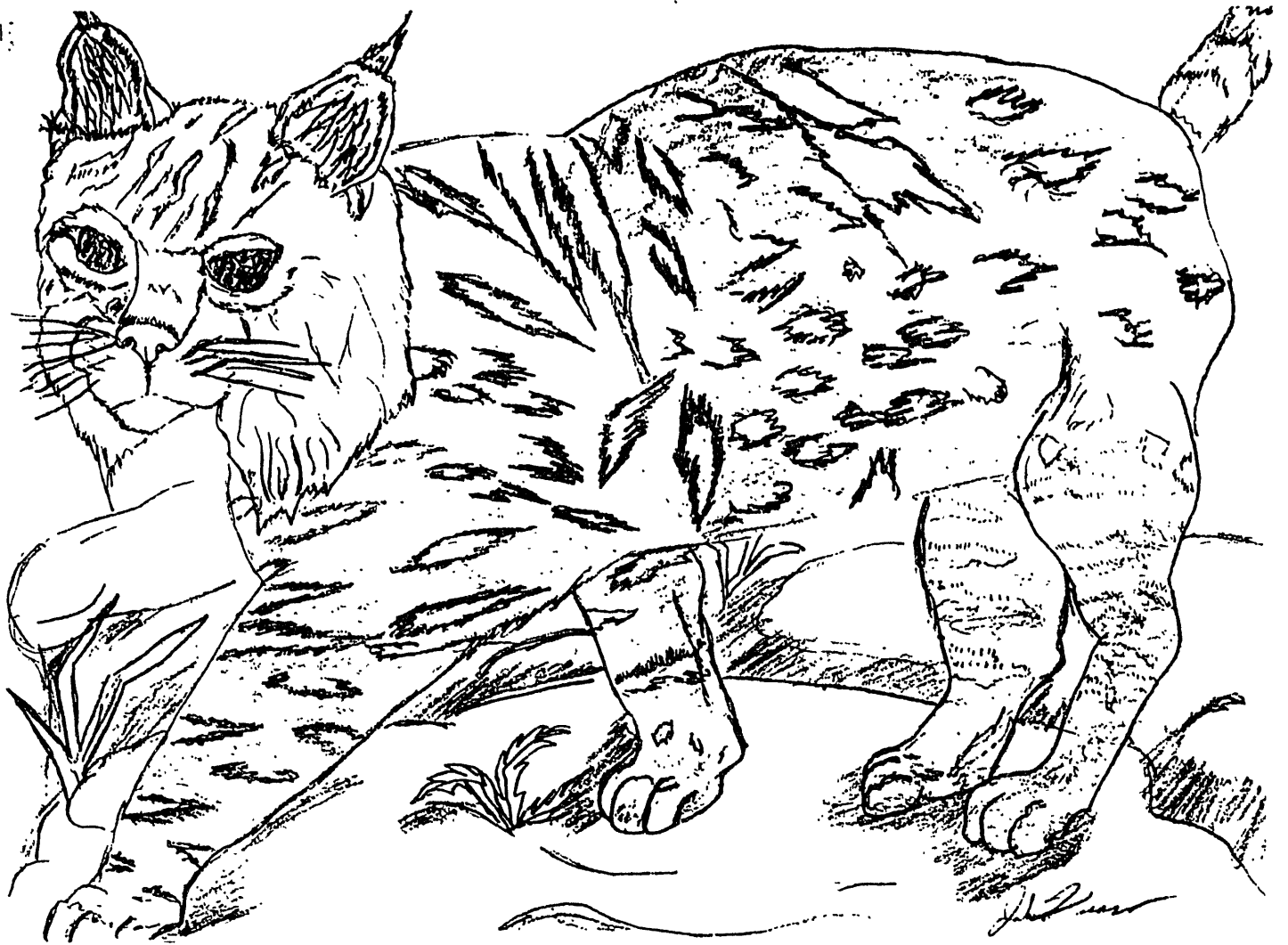
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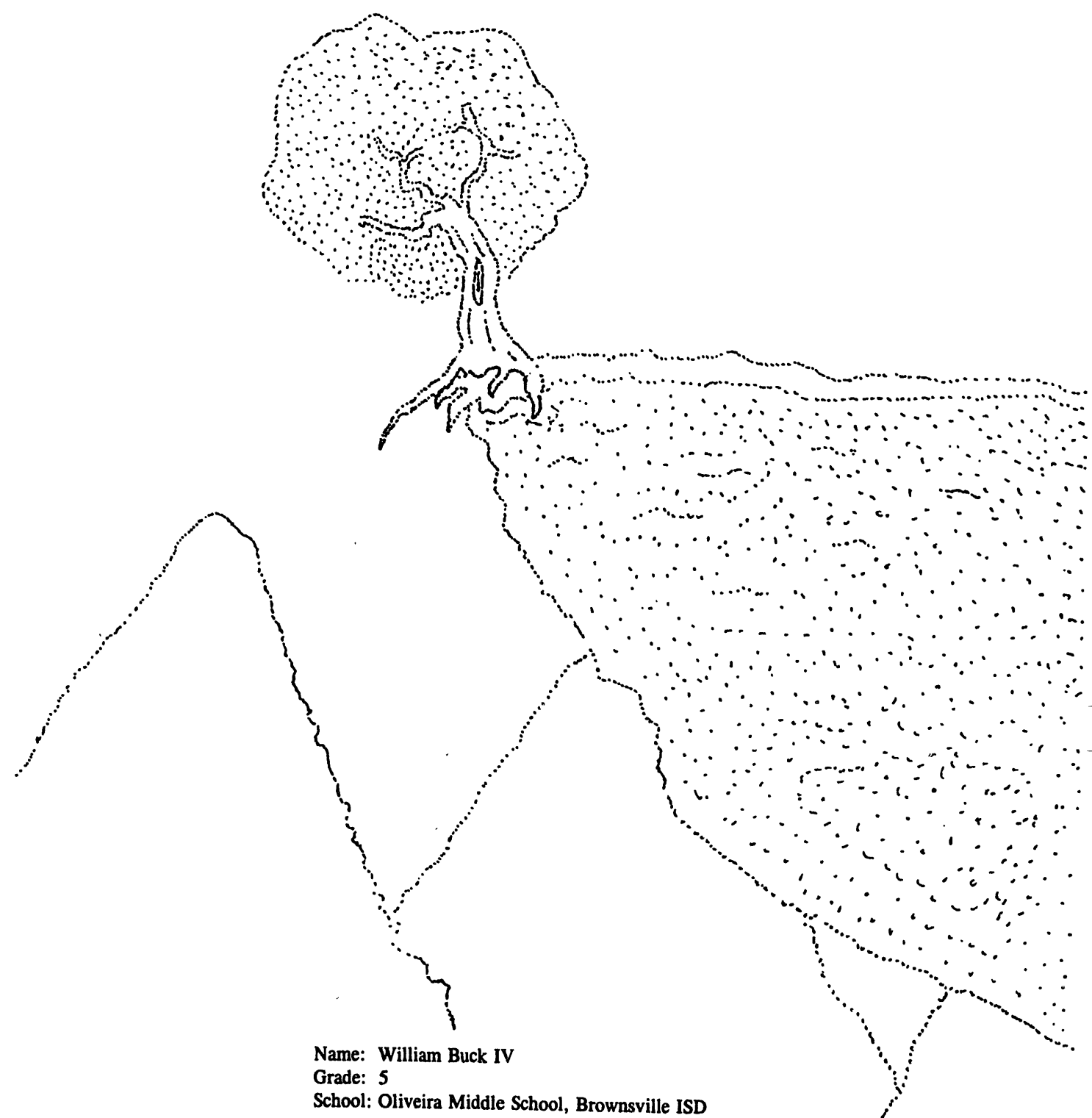
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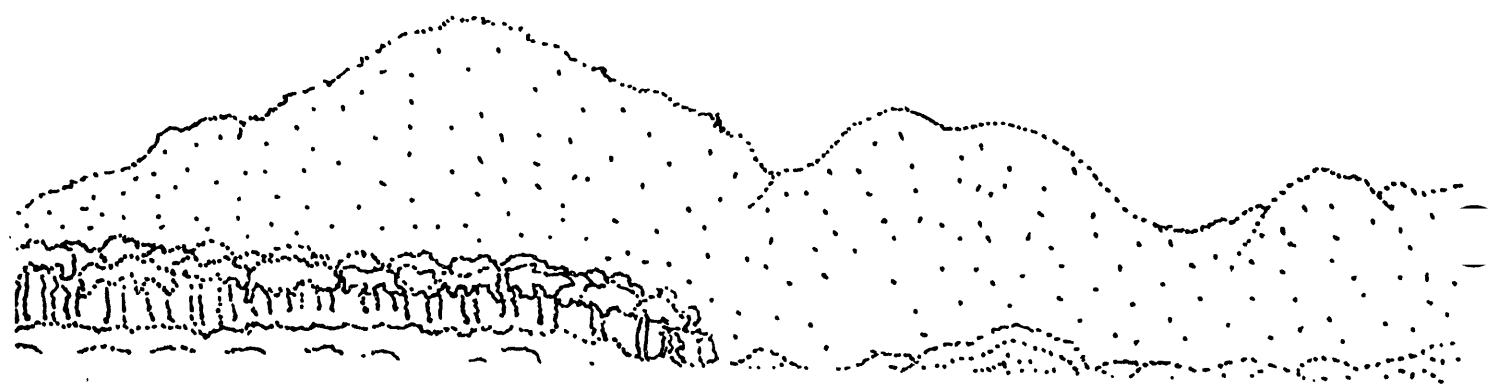




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7/15/21



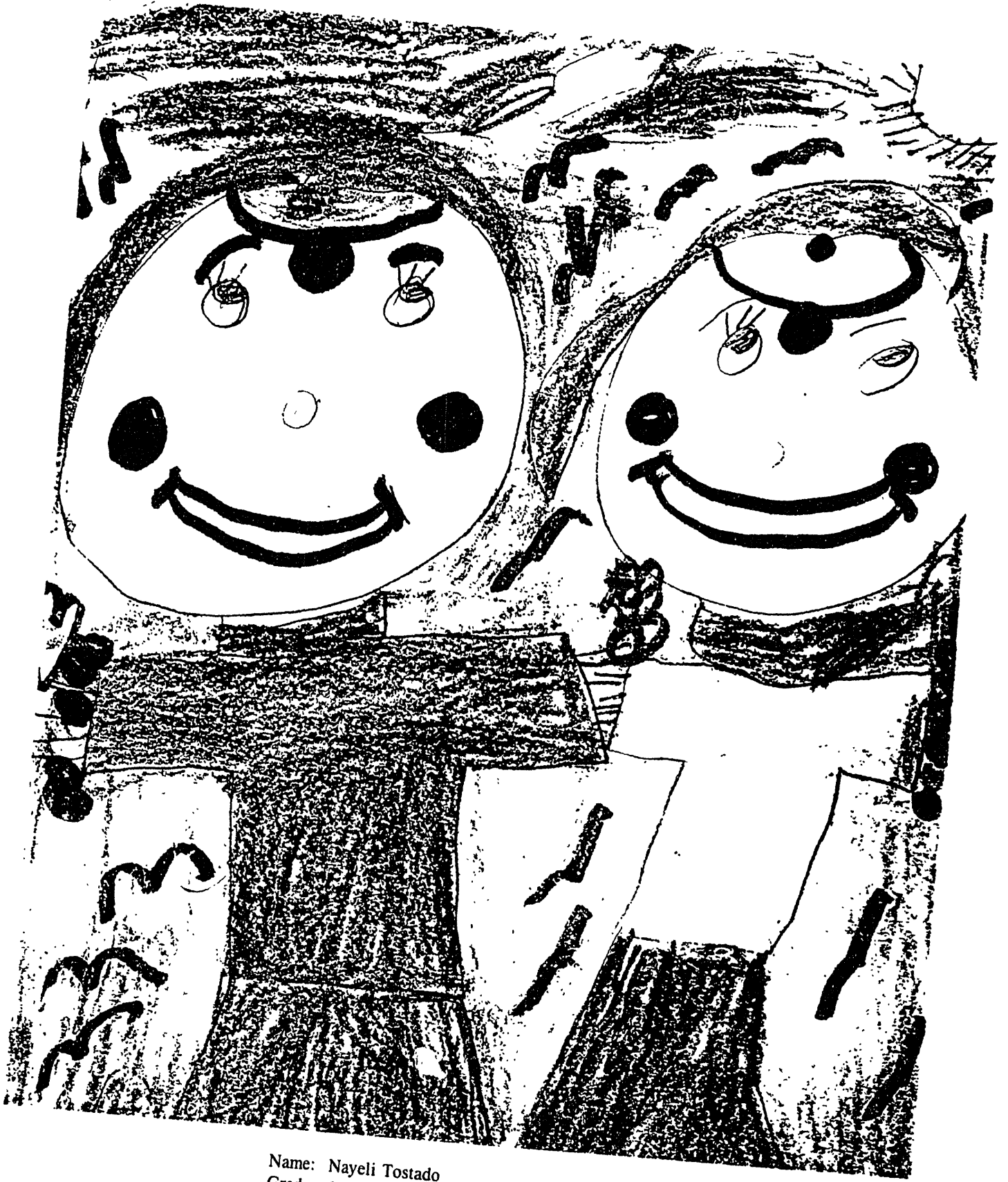
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Name: Nayeli Tostado  
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# THE GOVERNOR

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.

## Appointments Made May 4, 1995

To be Justice of the Fourteenth Court of Appeals until the next General Election and until her successor shall be duly elected and qualified: The Honorable Harriet O'Neill, 5523 Briar Drive, Houston, Texas 77056. Judge O'Neill will be replacing Paul C. Murphy of Houston who was elevated to the position of Chief Justice.

To be a member of the Texas Lottery Commission for a term to expire February 1, 2001: Harriet Ellan Miers, 5115 Royal Crest Drive, Dallas, Texas 75229. Ms. Miers will be replacing Jan Hart of Dallas whose term expired.

To be a member of the Commission on Uniform State Laws for a term to expire September 30, 2000: Harry L. Tindall, 2111 Briarmead, Houston, Texas 77057-2933. Mr. Tindall will be replacing Bradley J. B. Toben of Waco whose term expired.

To be a member of the Texas State Board of Medical Examiners for a term to expire April 13, 2001: William H. Fleming, III, M.D., 5695 Shady River Road, Houston, Texas 77056-1014. Dr. Fleming is being reappointed.

To be a member of the Texas State Board of Medical Examiners for a term to expire April 13, 2001: Penny Angelo, 3106 Stanolind, Midland, Texas 79705. Mrs. Angelo is being reappointed.

To be a member of the Texas State Board of Medical Examiners for a term to expire April 13, 2001: Margaret L. Ford, Ed.D., 3242 Holly Hall Drive, Houston, Texas 77054. Dr. Ford will be replacing Terri L. Stewart of Galveston whose term expired.

To be a member of the Texas State Board of Medical Examiners for a term to expire April 13, 2001: Paul G. Meyer, M.D., 5703 Geneva, Lubbock, Texas 79413. Dr. Meyer will be replacing Dr. Louis M. Rios of Edinburg whose term expired.

To be a member of the Texas State Board of Medical Examiners for a term to expire April 13, 2001: Thomas D. Kirksey, M.D., 2514 Tanglewood Trail, Austin, Texas 78703. Dr. Kirksey will be replacing Dr. Gilberto Aguirre of San Antonio whose term expired.

To be a member of the Texas State Board of Medical Examiners for a term to expire April 13, 2001: Vernon L. Ryan, M.D., P.O. Box 5201, San Angelo, Texas 76902. Dr. Ryan will be replacing Dr. Regina Kyles of Houston whose term expired.

To be a member of the Board of Protective and Regulatory Services for a term to expire February 1, 1997: Catherine Clark Mosbacher, 6421 Vanderbilt, Houston, Texas 77005. Mrs. Mosbacher will be filling the unexpired term of Gabrielle McDonald of Austin who resigned.

To be a member of the Board of Protective and Regulatory Services for a term to expire February 1, 2001: Maurine Dickey, 3412 Beverly Drive, Dallas, Texas 75205. Mrs. Dickey will be replacing Maconda Brown O'Connor of Houston whose term expired.

To be a member of the Board of Protective and Regulatory Services for a term to expire February 1, 2001: Jon Martin Bradley, 9606 Hillview Drive, Dallas, Texas 75231. Mr. Bradley will be replacing Frank Davila II of San Antonio whose term expired.

To be a member of the Governing Board of the International Trade Commission for a term to expire February 1, 2001: Robert B. Reeves, P.O. Box 1216, Center, Texas 75935. Mr. Reeves will be replacing Curtus George Goetz, Jr. of San Augustine whose term expired.

To be a member of the Governing Board of the International Trade Commission for a term to expire February 1, 2001: Robert W. Hsueh, 7004 Quartermile Lane, Dallas, Texas 75248. Mr. Hsueh will be replacing Israel J. Galvan of Houston whose term expired.

To be a member of the Texas-Mexico Authority Advisory Board for a term to expire February 1, 2001: Mark Langdale, 6037 Northwood, Dallas, Texas 75225. Mr. Langdale will be replacing J. Jorge Verduzco of Laredo whose term expired.

To be a member of the Board of Directors of the Brazos River Authority for a term to expire February 1, 2001: Judith Vernon, Route 2, Box 55B, Evant, Texas 76525. Mrs. Vernon will be replacing Jesse Lee

Hibbetts, Jr. of Lake Jackson whose term expired.

To be a member of the Board of Directors of the Brazos River Authority for a term to expire February 1, 2001: Ruth Schiermeyer, 3006 24th Street, Lubbock, Texas 79410. Ms. Schiermeyer is being reappointed.

To be a member of the Board of Directors of the Brazos River Authority for a term to expire February 1, 2001: Linda Kay Lyle, CPA, 507 Kirchwood Drive, Plainview, Texas 79072. Mrs. Lyle will be replacing Robert Pace of Wichita Falls whose term expired.

To be a member of the Board of Directors of the Brazos River Authority for a term to expire February 1, 2001: C. J. "Jack" Farrar, JF Ranch, Route Two, Box C4, Hico, Texas 76457. Mr. Farrar is being reappointed.

To be a member of the Board of Directors of the Brazos River Authority for a term to expire February 1, 2001: Lynn Elliott, 1010 Lometa Lane, Navasota, Texas 77868. Mr. Elliott will be replacing Art King of Bryan whose term expired.

To be a member of the Board of Directors of the Brazos River Authority for a term to expire February 1, 2001: Deborah H. Bell, 1781 Lakeshore, Abilene, Texas 79602. Mrs. Bell will be replacing Robert Hebert of Sugar Land whose term expired.

To be a member of the Board of Directors of the Brazos River Authority for a term to expire February 1, 2001: Ramiro A. Galindo, 3015 Hummingbird Circle, Bryan, Texas 77807. Mr. Galindo is being reappointed.

To be a member of the State Board of Nurse Examiners for a term to expire January 31, 2001: Iris Snell, R.N., 9611 Broken Bow Road, Dallas, Texas 75238. Mrs. Snell will be replacing Sara Jane Keele of Houston whose term expired.

To be a member of the Texas Guaranteed Student Loan Corporation Board of Directors for a term to expire January 31, 1999: Jerry Don Miller, Ph. D., 29 Village, Canyon, Texas 79015. Dr. Miller will be filling the unexpired term of Yvette Clark of Nacogdoches who resigned.

Issued in Austin, Texas, on May 4, 1995.

TRD-9505402

George W. Bush  
Governor of Texas





## Executive Order

GWB 95-2

Placing the Texas Commission on Alcohol and Drug Abuse (TCADA) Under Conservatorship

WHEREAS, on April 12, 1995, in Austin, Texas, the Senate General Investigating Committee and the House General Investigating Committee met in joint session pursuant to §301.019, Texas Government Code to consider the preliminary investigation of the Texas Commission on Alcohol and Drug (TCADA); and

WHEREAS, after considering the reports and testimony presented, the Joint General Investigating Committee found sufficient evidence to warrant allegations that:

1. TCADA failed to maintain proper control over assets, including state appropriated money;
2. TCADA failed to maintain adequate records;
3. TCADA misused state funds; and that
4. A condition of gross fiscal mismanagement exists at TCADA; and

WHEREAS, the Senate General Investigating Committee and the House General Investigating Committee voted to recommend to the Legislative Audit Committee that the Texas Commission on Alcohol and Drug Abuse be placed under conservatorship pursuant to Subchapter C, Chapter 2104, Texas Government Code; and

WHEREAS, those proceedings, findings and recommendations were adopted by the Joint General Investigating Committee of the 74th Legislature of the State of Texas and forwarded for consideration to the Legislative Audit Committee and the Governor of the State of Texas; and

WHEREAS, on April 18, 1995, the Legislative Audit Committee found that a condition of gross fiscal mismanagement exists at the Texas Commission on Alcohol and Drug Abuse and that sufficient evidence exists to warrant placing the agency under state conservatorship.

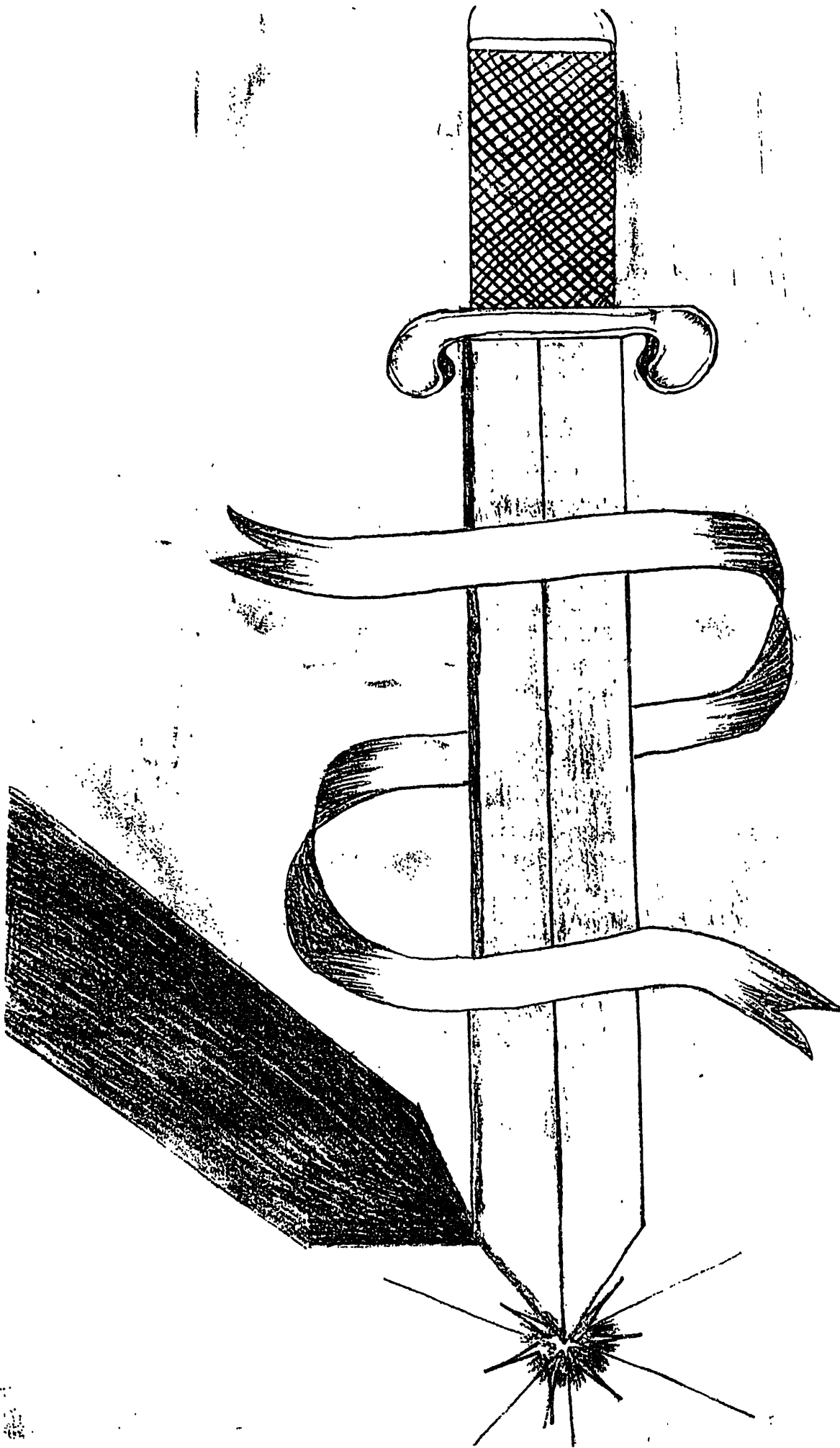
NOW, THEREFORE, I, George W. Bush, Governor of Texas, by authority of the Constitution and laws of the State of Texas, do hereby PROCLAIM that the Texas Commission on Alcohol and Drug Abuse is hereby placed into state conservatorship and I do hereby ORDER the State Conservatorship Board to act as conservator of the Texas Commission on Alcohol and Drug Abuse, and I do FURTHER ORDER as follows:

1. The State Conservatorship Board shall hereby assume all the powers and duties of the officers responsible for policy direction of the Texas Commission on Alcohol and Drug Abuse.
2. The authority and powers of the officers of the Texas Commission on Alcohol and Drug Abuse are hereby suspended and such officers shall not act on behalf of the Texas Commission on Alcohol and Drug Abuse unless authorized by the State Conservatorship Board.
3. The State Conservatorship Board shall ensure that the Texas Commission on Alcohol and Drug Abuse complies with state fiscal management policies.
4. The State Conservatorship Board is hereby authorized to:
  - (a) terminate the employment of any employee whose conduct the State Conservatorship Board determines contributed to the condition that caused the conservatorship;
  - (b) employ personnel for the Texas Commission on Alcohol and Drug Abuse;
  - (c) change the organization or structure of the Texas Commission on Alcohol and Drug Abuse as necessary to alleviate the conditions that caused the conservatorship; and
  - (d) contract with persons for management or administrative services necessary to effect the conservatorship.
5. The State Conservatorship Board may delegate any part of its powers or duties as conservator, other than its rulemaking authority, to a person whom it contracts under Section 4(d), above.
6. The State Conservatorship Board is ORDERED to report on the conservatorship ordered hereunder to the Governor and the Legislative Audit Committee not later than the 60th day after the date this Proclamation and Executive Order is signed and at the end of each subsequent 60-day period until the conservatorship is dissolved. The report shall include a description of the measures taken to ensure that the Texas Commission on Alcohol and Drug Abuse complies with state fiscal management policies and an estimate of the progress the State Conservatorship Board has made in attaining that goal.
7. The conservatorship ordered herein shall continue until the earlier of:
  - (a) My proclamation declaring that the condition of gross fiscal mismanagement in the Texas Commission on Alcohol and Drug Abuse no longer exists and that the conservatorship is dissolved; or
  - (b) The Legislative Audit Committee's finding and certifying to me that the condition of gross fiscal mismanagement in the Texas Commission on Alcohol and Drug Abuse no longer exists, in which case the conservatorship is dissolved.

Issued in Austin, Texas, on April 26, 1995.

TRD-9505387

George W. Bush  
Governor of Texas



Name: Juan Alatorre

Grade: 6

School: Oliveira Middle School, Brownsville ISD

# TEXAS ETHICS COMMISSION

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The Texas Ethics Commission is authorized by Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

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

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## Advisory Opinion Request

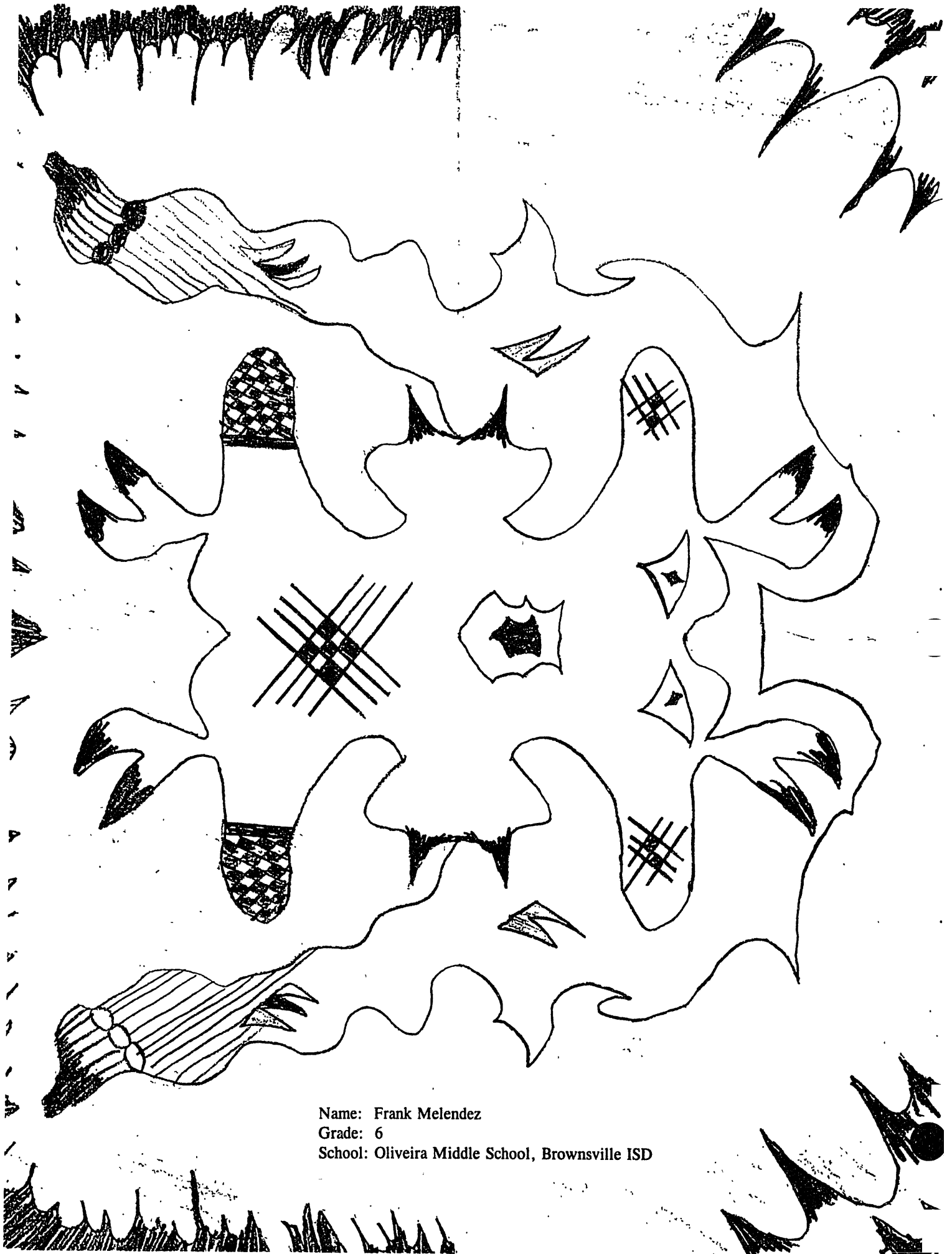
**AOR-296**The Texas Ethics Commission has been asked to consider whether Title IV-D Masters appointed to hear expedited child support enforcement cases in district courts are required to file financial disclosure statements under chapter 572 of the Government Code.

Issued in Austin, Texas, on May 4, 1995.

TRD-9505435 Sarah Woelk  
Director, Advisory Opinions  
Texas Ethics Commission

Filed: May 5, 1995





Name: Frank Melendez  
Grade: 6  
School: Oliveira Middle School, Brownsville ISD

# 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 use of **bold text**. [Brackets] indicate deletion of existing material within a section.

## TITLE 1. ADMINISTRATION

### Part I. Office of the Governor

#### Chapter 3. Criminal Justice Division

##### Subchapter A. Criminal Justice Audits of Criminal Justice Division Projects and Audit Report Exceptions

###### • 1 TAC §3.105

The Criminal Justice Division (CJD) of the Office of the Governor proposes an amendment to §3 105, concerning the Audit Review Board.

The proposed amendment will clarify which CJD staff members will constitute the Audit Review Board for the purpose of reviewing the documentation presented in response to audit or monitoring review exceptions for legal, financial, and program acceptability under the state rules, regulations, and guidelines.

Karen J. Greene, executive director, Criminal Justice Division, 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 government.

Ms. Greene 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 grantees will be provided a means to appeal exceptions determined during audits or monitoring reviews and present additional documentation for review. There will be no effect on small businesses. There is no anticipated economic cost to persons or agencies who are required to comply with the proposed section.

Comments on the proposal may be submitted to Karen J. Greene, Executive Director of the Criminal Justice Division, Office of the Governor, P.O. Box 12428, Austin, Texas 78711, for a period of 30 days following publication in the issue of the *Texas Register*.

The amendment is proposed under Texas Civil Statutes, Article 4413 (32a), §6(a)(11), which provide the Criminal Justice Division of

the Office of the Governor with the authority to adopt rules, regulations, and procedures as may be necessary to carry out the provisions of the act.

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

*§3.105. Audit Review Board.* The Audit Review Board will consist of three Criminal Justice Division staff members to be designated by the Executive Director of the Criminal Justice Division of the Office of the Governor to [the Criminal Justice Division Deputy Director, the Criminal Justice Division extradition counsel, and the Criminal Justice Division Comptroller who will] review the documentation for legal, financial, and program acceptability under state rules, regulations, and guidelines.

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

Issued in Austin, Texas, on May 10, 1995.

TRD-9505497

Pete Wassdorf  
Deputy General Counsel  
Office of the Governor

Earliest possible date of adoption: June 12, 1995

For further information, please call: (512) 463-1788

## TITLE 16. ECONOMIC REGULATIONS

### Part I. Railroad Commission of Texas

#### Chapter 3. Oil and Gas Division

##### Conservation Rules and Regulations

###### • 16 TAC §§3.8, 3.76, 3.98

The Railroad Commission of Texas (the commission) proposes amendments to subsections (d) and (f) of §3.8, relating to pollution control and oil and gas waste haulers, re-

spectively, which will conform §3.8 to proposed new §3.98, relating to standards for management of hazardous oil and gas waste.

The proposed conforming amendments to §3.8(d) specify that disposal of hazardous waste in accordance with the provisions of proposed new §3.98 is authorized under §3.8 and that used oil is to be managed in accordance with the provisions of 40 CFR Part 279.

The first proposed conforming amendment to §3.8(f) specifies that recyclable hazardous oil and gas wastes that are not exempt from regulation under proposed new §3.98 (such as spent solvents) may be transported only by transporters who are qualified under state and federal law to transport hazardous waste. The second proposed conforming amendment to §3.8(f) provides that compliance with the manifest requirements of proposed §3.98 satisfies the requirement of §3.8(f) that an operator obtain a minor permit to dispose of waste at a facility permitted or licensed by another state or agency.

A proposed amendment to §3.76, relating to fees, performance bonds and alternate forms of financial security required to be filed, will also conform §3.76 to the provisions of proposed new §3.98 by referring to the hazardous waste generation fees assessed under proposed new §3.98.

The commission also proposes new §3.98, relating to standards for management of hazardous oil and gas waste that arises out of or incidental to the drilling for or producing of oil and gas (including transportation of oil and gas), brine mining activities, and exploration, development, and production of geothermal resources ("hazardous oil and gas waste"). Upon delegation of authority to the commission by the Environmental Protection Agency (EPA) under the Resource Conservation and Recovery Act (RCRA), proposed new §3.98 will also regulate hazardous waste generated in connection with gas processing activities at gas plants.

Section 3.98 is proposed to prevent pollution of surface and subsurface waters of the state and to prevent injury to life or property that may be caused by mismanagement of hazardous oil and gas waste.

Oil and gas wastes that are exempt from federal hazardous waste regulation are also exempt from regulation under proposed §3.98. Under the federal exemption, wastes

that are intrinsic to and uniquely associated with oil and gas exploration, development, or production operations are exempt from hazardous waste regulation under RCRA.

A partial list of wastes associated with oil, gas, and geothermal exploration, development, and production that are considered exempt from hazardous waste regulation under RCRA can be found in EPA's "Regulatory Determination for Oil and Gas and Geothermal Exploration, Development and Production Wastes," 53 *Federal Register* 25,466 (July 6, 1988). A further explanation of the exemption can be found in the "Clarification of the Regulatory Determination for Wastes from the Exploration, Development and Production of Crude Oil, Natural Gas and Geothermal Energy," 58 *Federal Register* 15,284 (March 22, 1993). These exempt wastes include:

Produced water

Drilling fluids and drill cuttings

Drilling fluids and cuttings from offshore operations disposed on-shore

Rigwash

Well completion, treatment, and stimulation fluids

Workover wastes

Basic sediment & water and other tank bottom sludge from storage facilities that hold product and exempt waste

Accumulated materials such as hydrocarbons, solids, sand, and emulsion from production separators, fluid treating vessels, and production impoundments

Pit sludges and contaminated bottoms from storage or disposal of exempt wastes

Gas plant dehydration wastes, including glycol-based compounds, glycol filters, filter media, backwash, and molecular sieves

Gas plant sweetening wastes for sulfur removal, including amine, amine filters, amine filter media, backwash, precipitated amine sludge, iron sponge, and hydrogen sulfide scrubber liquid and sludge

Cooling tower blowdown

Spent filters, filter media, and backwash (assuming the filter itself is not hazardous and the residue in it is from an exempt waste stream)

Packing fluids

Produced sand

Pipe scale, hydrocarbon solids, hydrates, and other deposits removed from piping and equipment prior to transportation

Pigging wastes from gathering lines

Wastes from subsurface gas storage and retrieval, except for the listed non-exempt wastes

Constituents removed from produced water before it is injected or otherwise disposed of

Liquid hydrocarbons removed from the production stream but not from oil refining

Gases removed from the production stream,

such as hydrogen sulfide and carbon dioxide, and volatilized hydrocarbons

Materials ejected from a producing well during blowdown

Waste crude oil from primary field operations and production

Light organics volatilized from exempt wastes in reserve pits or impoundments or production equipment

Liquid and solid wastes generated from exempt wastes by crude oil and tank bottom reclaimers Non-exempt oil and gas wastes, or wastes associated with the exploration, development, or production of oil or gas that are not exempt from hazardous waste regulation under RCRA include:

Unused fracturing fluids or acids

Gas plant cooling tower cleaning wastes

Painting wastes

Oil and gas service company wastes, such as empty drums, drum rinsate, vacuum truck rinsate, sandblast media, painting wastes, spent solvents, spilled chemicals, and waste acids

Vacuum truck and drum rinsate from trucks and drums transporting or containing non-exempt waste

Used equipment lubrication oils

Waste compressor oil, filters, and blowdown

Used hydraulic fluids

Waste solvents

Waste in transportation pipeline-related pits

Caustic or acid cleaner

Boiler cleaning wastes

Boiler refractory bricks

Incinerator ash

Laboratory wastes

Sanitary wastes

Pesticide wastes

Radioactive tracer wastes

Drums, insulation, and miscellaneous solids

Proposed new §3.98 defines terms applicable to management of hazardous oil and gas waste. In particular, the definition of "generation site" in proposed new §3.98 differs from the definition found in the federal regulations. The federal definition is based on a plant-type concept, *i.e.*, that waste streams are generated on a relatively continuous basis within the four corners of a building.

Hazardous waste generation activities regulated by the commission under proposed new §3.98 will not, in most cases, fit the plant-type concept. Activities regulated by the commission under proposed new §3.98 will most typically involve numerous field operations covering a wide geographic area, and long-line operations such as pipeline operations. Therefore, the proposed definition of "generation site" attempts to more effectively define the types of locations at which activities regulated under proposed new §3.98 occur.

Proposed new §3.98 provides standards for generators of hazardous oil and gas waste. These standards closely parallel standards applicable to generators under federal hazardous waste regulations.

Proposed new §3.98 includes a specific provision for episodic generation of hazardous oil and gas wastes in recognition of the fact that most generation sites regulated under the section will not generate significant quantities of hazardous waste on a day-to-day basis. Rather, many of the facilities regulated by the commission under proposed new §3.98 will generate significant quantities of hazardous waste on a periodic, or episodic, basis, such as during a maintenance operation or in connection with a spill event.

With two minor exceptions, proposed new §3.98 prohibits the on-site treatment, storage, and disposal of hazardous oil and gas waste. Proposed new §3.98 does, however, allow on-site treatment during the applicable accumulation time period in tanks and containers that meet the requirements of the section. Proposed new §3.98 also provides for collection at centralized locations of wastes generated at sites that are considered conditionally exempt small quantity generation sites. The generation sites and the centralized collection facility must be owned or operated by one person and the owner or operator must register the centralized collection facility with the commission.

Proposed new §3.98 also includes standards for hazardous oil and gas waste transporters. These requirements are virtually identical to federal requirements for transporters of hazardous oil and gas waste. Section §3.8(f), relating to oil and gas waste haulers, currently requires that hazardous oil and gas wastes be transported only by permitted oil and gas waste haulers. Proposed new §3.98 would allow hazardous oil and gas wastes to be transported by any transporter who is qualified under state and federal laws to transport hazardous waste, whether or not that transporter is a permitted oil and gas waste hauler. Some wastes hauled to recycling and reclamation facilities would be exempt from these transporter requirements. However, certain recyclable or reclaimable wastes, such as spent solvents, would not be exempt from the transporter requirements.

The commission does not propose to provide for issuing permits to treat, store, or dispose of hazardous oil and gas waste. Because only very small quantities of hazardous oil and gas waste are actually generated, the commission does not anticipate that there will be sufficient demand from the regulated community for permits to treat, store, or dispose of hazardous oil and gas waste to justify development of a program for issuing these types of permits. Instead, the commission believes that its resources will be better used through implementing standards that will ensure that hazardous oil and gas waste is properly managed and safely transported to a facility authorized to treat, store, dispose of, recycle, or reclaim the waste. Such authorized facilities include facilities permitted by the Texas Natural Resource Conservation Commission and the United States Environmental Protection Agency.

Proposed new §3.98 also contains a schedule of fees to be collected from generators of hazardous oil and gas waste.

Rita E. Percival, systems analyst, Oil and Gas Division, has determined that for each of the first five years §3.8 and §3.76 as proposed will be in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the sections.

Ms. Percival also has determined that for the first five-year period the proposed new §3.98 will be in effect, there will be fiscal implications as a result of enforcing or administering it. The effect on state government for the first five-year period that proposed new §3.98 will be in effect is an estimated cost of \$457,246 per year for fiscal years 1996-2000. There will be no fiscal implications for local government. There will be no cost of compliance with proposed new §3.98 rule for small businesses as a result of enforcing or administering it.

Terri Eaton, senior staff attorney, Environmental Services, Oil and Gas Division, has determined that for each year of the first five years §3.8 and §3.76 as proposed are in effect, the public benefit will be the coordinated application of commission regulations. Ms. Eaton also has determined that for each year of the first five years proposed new §3.98 is in effect, the public benefit as a result of enforcing new §3.98 will be increased compliance with hazardous waste regulations, resulting in enhanced protection of public health, safety and the environment. There is no economic cost to affected oil and gas operators to comply with the conforming amendments to §3.8 and §3.76. Costs to individuals, other than individuals who operate only conditionally exempt small quantity generation sites, during the first five years proposed new §3.98 is in effect will result solely from fees assessed because the bulk of the regulatory requirements of proposed new §3.98 are already in effect at the federal level. The total fees assessed against individuals may range from \$200 to as much as \$35,000 for large companies that generate significant quantities of hazardous waste at numerous locations. There will be no economic cost to individuals who operate only conditionally exempt small quantity generation sites because such operators are not subject to hazardous waste generation fees under proposed new §3.98.

Public comment on the proposed amendments to §3.8 and §3.76 and proposed new §3.98 may be submitted to Terri Eaton, senior staff attorney, Environmental Services, Oil and Gas Division, Railroad Commission of Texas, P. O. Box 12967, Austin, Texas 78711-2967. The deadline for filing comments is 60 days after publication in the *Texas Register*.

The amendments to §3.8 and §3.76 and new §3.98 are proposed under Texas Natural Resources Code, §85.042, which authorizes the commission to make and enforce rules pertaining to field operations that pose a danger to life or property; Texas Natural Resources Code, §141.012, which authorizes the commission to adopt rules relating to the exploration, production, and development of

geothermal energy and associated resources; Texas Natural Resources Code, §91.101(4), which authorizes the commission to adopt rules relating to the discharge, storage, handling, transportation, reclamation, or disposal of oil and gas waste, as well as any other substance or material associated with any operation regulated by the commission under Texas Natural Resources Code, §91.101; Texas Natural Resources Code, §91.602, which authorizes the commission to adopt rules relating to the generation, transportation, treatment, storage, or disposal of hazardous oil and gas waste; and Texas Water Code, §27.036, which authorizes the commission to adopt rules relating to brine mining.

The following are the statutes, articles, or codes affected by the proposed amendment to §3.8 and §3.76 and new §3.98:

§3.8-Texas Natural Resources Code, §§85.042, 91.101, 91.601-605, and 141.001-141.018; and Texas Water Code §27.036.

§3.76-Texas Natural Resources Code, §§85.042, 91.101, 91.601-605, and 141.001-141.018; and Texas Water Code §27.036.

§3.98-Texas Natural Resources Code, §§85.042, 91.101, 91.601-605, and 141.001-141.018; and Texas Water Code §27.036.

#### §3.8 (Rule 8) Water Protection.

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

(d) Pollution control.

(1) Prohibited disposal methods. Except for those disposal methods authorized for certain wastes by paragraph (3) of this subsection, [or] subsection (e) of this section, or §3.98 of this title (relating to standards for management of hazardous oil and gas waste), or disposal methods required to be permitted pursuant to §3.9 of this title (relating to disposal wells) (Rule 9) or §3.46 of this title (relating to fluid injection into productive reservoirs) (Rule 46), no person may dispose of any oil and gas wastes by any method without obtaining a permit to dispose of such wastes. The disposal methods prohibited by this paragraph include, but are not limited to, the unpermitted discharge of oil field brines, geothermal resource waters, or other mineralized waters, or drilling fluids into any watercourse or drainageway, including any drainage ditch, dry creek, flowing creek, river, or any other body of surface water. For any disposal method required to be permitted pursuant to §3.75 of this title (relating to discharges to waters of the state) (Rule 77), no permit issued under this section or authorization contained in this section satisfies the requirements of §3.75.

(2)-(8) (No change.)

(9) Used Oil. Used oil as defined in §3.98 of this title (relating to standards for management of hazardous

oil and gas waste), shall be managed in accordance with the provisions of 40 CFR Part 279.

(e) (No change.)

(f) Oil and gas waste haulers.

(1) A person who transports oil and gas waste for hire by any method other than by pipeline shall not haul or dispose of oil and gas waste off a lease, unit, or other oil or gas property where it is generated unless such transporter has qualified for and been issued an oil and gas waste hauler permit by the commission. Hauling of inert waste, asbestos-containing material regulated under the Clean Air Act (42 U.S.C. §7401 et seq.), [or] polychlorinated biphenyl (PCB) waste regulated under the Toxic Substances Control Act (15 U.S.C.A. §2601 et seq.), or hazardous oil and gas waste subject to regulation under §3.98 of this title (relating to standards for management of hazardous oil and gas waste), is excluded from this subsection. This subsection is not applicable to the hauling of oil and gas wastes for recycling. For purposes of this subsection, injection of salt water or other oil and gas waste into an oil and gas reservoir for purposes of enhanced recovery does not qualify as recycling. A person who has a salt water hauler permit does not need to apply for an oil and gas waste hauler permit until the person is scheduled to file an application for permit renewal.

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

(C) Each oil and gas waste hauler shall operate in strict compliance with the instructions and conditions stated on the permit which provide:

(i)-(v) (No change.)

(vi) This permit authorizes the permittee to use commission-permitted disposal systems for which the permittee has submitted affidavits from the disposal system operators stating that the permittee has permission to use the systems. These disposal systems are listed as an attachment to the permit. This permit also authorizes the permittee to use a disposal system operated under authority of a minor permit issued by the commission without submitting an affidavit from the disposal system operator. In addition, this permit authorizes the permittee to transport hazardous oil and gas waste to any facility in accordance with the provisions of §3.98 (relating to standards for the management of hazardous oil and gas wastes), provided the shipment is accompanied by a manifest. Finally, this permit authorizes the transportation of oil and gas waste to a disposal facility permitted by another agency or another state provided the commission has granted separate authorization for the disposal.

(vii)-(x) (No change.)

(2) (No change.)

(g)-(i) (No change.)

§3.76. *Fees, Performance Bonds and Alternate Forms of Financial Security Required to be Filed.*

(a)-(p) (No change.)

(q) **Hazardous waste generation fee.** A person who generates hazardous oil and gas waste, as that term is defined in §3.98 of this title (relating to standards for management of hazardous oil and gas waste), shall pay to the commission the fees specified in subsection (z) of §3.98.

§3.98. *Standards for Management of Hazardous Oil and Gas Waste.*

(a) **Purpose.** The purpose of this section is to establish standards for management of hazardous waste (*i.e.*, non-exempt oil and gas waste that is listed or is characteristically hazardous) that arises out of or incidental to the drilling for or producing of oil or gas, brine mining activities, and the exploration, production, or development of geothermal energy and associated resources.

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

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

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

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

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

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

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

(iv) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the mean-

ings set out in Texas Natural Resources Code, §91.173;

(v) activities associated with any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in Texas Natural Resources Code, §91.201; and

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

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

(D) the discharge, storage, handling, transportation, reclamation, or disposal of waste or any other substance or material associated with any activity listed in subparagraphs (A)-(C) of this paragraph.

(2) **Administrator—**The administrator of the United States Environmental Protection Agency, or the administrator's designee.

(3) **Authorized facility—**Either:

(A) an authorized recycling or reclamation facility; or

(B) an authorized treatment, storage, or disposal facility.

(4) **Authorized recycling or reclamation facility—**A facility at which hazardous waste that is to be recycled or reclaimed is managed and whose owner or operator is subject to regulation under:

(A) 40 CFR §261.6(c) or an equivalent state program (relating to facilities that recycle recyclable materials); or

(B) 40 CFR Part 266, Subparts C (relating to recyclable materials used in a manner constituting disposal), F (relating to recyclable materials used for precious metal recovery), or G (relating to spent lead-acid batteries being reclaimed), or an equivalent state program.

(5) **Authorized representative—**The person responsible for the overall operation of all or any part of a facility or generation site.

(6) **Authorized treatment, storage, or disposal facility—**A facility at which hazardous waste is treated, stored, or disposed of that:

(A) has received either:

(i) a permit (or interim status) in accordance with the requirements of 40 CFR 270 and 124 (EPA permit); or

(ii) a permit (or interim status) from a state authorized in accordance with 40 CFR Part 271; and

(B) is authorized under applicable state or federal law to treat, store, or dispose of that type of hazardous waste. If a hazardous oil and gas waste is destined to a facility in an authorized state that has not yet obtained authorization from the EPA to regulate that particular hazardous waste, then the designated facility must be a facility allowed by the receiving state to accept such waste and the facility must have a permit issued by the EPA to manage that waste.

(7) **Centralized Waste Collection Facility or CWCF—**a facility that meets the requirements of subsection (m)(3) of this section.

(8) **Certification—**A statement of professional opinion based upon knowledge and belief.

(9) **CFR—**Code of Federal Regulations.

(10) **CESQG—**A conditionally exempt small quantity generator, as described in subsection (f)(1) of this section (relating to generator classification and accumulation time).

(11) **Commission—**The Railroad Commission of Texas.

(12) **Container—**Any portable device in which material is stored, transported, treated, disposed of, or otherwise handled.

(13) **Contaminated media—**Soil, debris, residues, waste, surface waters, ground waters, or other materials containing hazardous oil and gas waste as a result of a discharge or clean-up of a discharge.

(14) **Department of Transportation or DOT—**The United States Department of Transportation.

(15) **Designated facility—**An authorized facility that has been designated on the manifest by the generator pursuant to the provisions of subsection (o)(1) of this section (relating to general manifest requirements).

(16) **Discharge or hazardous waste discharge—**The accidental or intentional spilling, leaking, pumping, pouring,



emitting, emptying, or dumping of hazardous waste into or on any land or water.

(17) Disposal—The discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous waste into or on any land or water so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

(18) Disposal facility—A facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure

(19) Elementary neutralization unit—A device consisting of a tank, tank system, container, transport vehicle, or vessel that is used for neutralizing wastes that are hazardous wastes:

(A) only because they exhibit the characteristic of corrosivity under the test referred to in subsection (e)(1)(D)(ii) of this section (relating to characteristically hazardous wastes); or

(B) they are identified in subsection (e)(1)(D) (i) of this section (relating to listed hazardous wastes) only because they exhibit the corrosivity characteristic.

(20) Empty container—A container or an inner liner removed from a container that has held any hazardous waste and that meets the requirements of 40 CFR §261.7(b)

(21) Environmental Protection Agency or EPA—The United States Environmental Protection Agency.

(22) EPA Acknowledgment of Consent—The cable sent to the EPA from the United States Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(23) EPA hazardous waste number—The number assigned by the EPA to each hazardous waste listed in 40 CFR Part 261, Subpart D, and to each characteristic identified in 40 CFR Part 261, Subpart C.

(24) EPA identification number or EPA ID Number—The number assigned by the EPA to each hazardous waste generator, transporter, and treatment, storage, or disposal facility.

(25) EPA Form 8700-12—The EPA form that must be completed and delivered to the appropriate regulatory entity (either the EPA, TNRCC, or another state) in order to obtain an EPA ID number.

(26) Executive director of the TNRCC—The executive director of the TNRCC or the executive director's designee.

(27) Facility—All contiguous land, including structures, other appurtenances, and improvements on the land, used for recycling, reclaiming, treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (*e.g.*, one or more landfills, surface impoundments, or combinations thereof).

(28) Generate—To produce hazardous oil and gas waste or to engage in any activity (such as importing) that first causes a hazardous oil and gas waste to become subject to regulation under this section

(29) Generation site:

(A) Except as provided in subparagraph (B) (relating to pipelines) of this paragraph:

(i) any and all structures, other appurtenances, and improvements that are either geographically contiguous or are physically interrelated (such as oil or gas wells and any associated flow lines, the tank battery, produced water injection lines, disposal wells, and related land surface; an offshore platform; or a commercial salt water disposal facility);

(ii) that are owned or operated by one person; and

(iii) at which hazardous oil and gas waste is produced or where actions first cause a hazardous oil and gas waste to become subject to regulation.

(B) In the case of a pipeline system (other than a field gathering or injection line system):

(i) an equipment station such as a gas plant, pump station, or compressor station, or any other location along a pipeline, such as a drip pot, pigging station, or rupture;

(ii) at which hazardous oil and gas waste is produced or where actions first cause a hazardous oil and gas waste to become subject to regulation; and

(iii) any and all structures, other appurtenances, and improvements that are geographically contiguous with or are physically related to an equipment station or other location described in clause (i) of this subparagraph, but excluding any pipeline that connects two or more such stations or locations.

(30) Generator—Any person, by generation site, whose act or process produces hazardous oil and gas waste or whose act first causes a hazardous oil and gas

waste to become subject to regulation under this section, or such person's authorized representative.

(31) Geothermal energy and associated resources—Geothermal energy and associated resources as defined in Texas Natural Resources Code, §141.003(4).

(32) Hazardous oil and gas waste—Any oil and gas waste determined to be hazardous under the provisions of subsection (e) of this section (relating to hazardous waste determination)

(33) Hazardous oil and gas waste constituent—A hazardous waste constituent of hazardous oil and gas waste

(34) Hazardous substance—Any substance defined in 40 CFR Part 116 or 302.

(35) Hazardous waste—A hazardous waste, as defined in 40 CFR §261.3, including a hazardous oil and gas waste

(36) Hazardous waste constituent—A constituent that caused the administrator to list a hazardous waste in 40 CFR Part 261, Subpart D, or a constituent listed in table 1 of 40 CFR §261.24.

(37) International shipment—The transportation of hazardous oil and gas waste into or out of the jurisdiction of the United States.

(38) LQG—A large quantity generator, as described in subsection (f)(3) of this section (relating to generator classification and accumulation time)

(39) Management—The systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(40) Manifest—The shipping document required pursuant to the provisions of subsection (o) of this section (relating to manifests).

(41) Manifest document number—The twelve-digit identification number assigned to a generator by the EPA, plus a unique five-digit document number assigned to the manifest by the generator, or preprinted on the manifest, for recording and reporting purposes.

(42) Oil and gas waste—Waste generated in connection with activities associated with the exploration, development, and production of oil or gas or geothermal resources, or the solution mining of brine. Until delegation of authority under RCRA to the commission by EPA, the term "oil and gas waste" shall exclude hazardous waste arising out of or incidental to activities associated with natural gas or natural gas liquids processing plants and reservoir pressure maintenance or repressurizing plants

(43) On-site-At the generation site.

(44) Operator-The person responsible for the overall operation of a facility.

(45) Owner-The person who owns a facility or part of a facility.

(46) P-5 operator number-The number assigned by the commission to each person who conducts any of the activities specified in §3.1 of this title (relating to organization name to be filed and records kept) within the State of Texas.

(47) Person-An individual, firm, joint stock company, corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(48) Pressure maintenance plant-A plant where gas, water, or other fluids are injected into an oil or gas reservoir to maintain pressure, or to retard pressure decline, in the reservoir for the purpose of increasing the recovery of oil or other hydrocarbons therefrom. A pressure maintenance plant does not include a compressor station along a natural gas pipeline system or a pump station along a crude oil pipeline system.

(49) Primary exporter-Any person who is required to originate the manifest for a shipment of hazardous waste in accordance with 40 CFR Part 262, Subpart B, or equivalent state provision, that identifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

(50) Receiving country-A foreign country to which a hazardous waste is sent for the purpose of treatment, storage, or disposal (except short-term storage incidental to transportation).

(51) Reclaim-To process to recover a usable product or to regenerate.

(52) Recycle-To beneficially use, reuse, or reclaim hazardous waste.

(53) Reportable quantity-The quantity of a hazardous substance that must be reported upon release under the provisions of 40 CFR Part 117 (for spills to water) or Part 302 (any spill).

(54) Repressurizing plant-A plant engaged in a form of secondary hydrocarbon recovery where gas, water, or other fluids are injected into an oil or gas reservoir to increase the reservoir pressure in order to recover more oil or gas. A repressurizing plant does not include a compressor station along a natural gas pipeline system or a pump station along a crude oil pipeline system.

(55) Resource Conservation and Recovery Act or RCRA-The federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. §6901, *et seq*

(56) Reuse-To employ hazardous waste as an ingredient in an industrial process to make a product (other than recovery of distinct components of hazardous waste as separate end products) or effective substitution of hazardous waste for a commercial product used in a particular function or application.

(57) Sludge-Any solid, semi-solid, or liquid waste generated from a wastewater treatment plant or water supply treatment plant, or air pollution control facility, exclusive of the treated effluent from a wastewater treatment plant.

(58) Solid waste-Any waste identified in 40 CFR §261.2.

(59) Solution mined brine-Brine extracted from a subsurface salt formation through dissolution of salt in the formation.

(60) SQG-A small quantity generator, as described in subsection (f)(2) of this section (relating to generator classification and accumulation time).

(61) State-Any of the 50 states that compose the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands.

(62) Storage-The holding of hazardous waste for a temporary period (excluding storage at the site of generation during the applicable accumulation time period specified in subsection (f) of this section, at the end of which the hazardous waste is recycled, reclaimed, treated, disposed of, or stored elsewhere.

(63) Tank-A stationary device designed to contain an accumulation of hazardous waste that is constructed primarily of non-earthen materials (*e. g.*, wood, concrete, steel, plastic) that provide structural support.

(64) Tank system-A tank and its associated ancillary equipment and containment system.

(65) TNRCC-The Texas Natural Resource Conservation Commission.

(66) Totally enclosed treatment facility-A facility for the treatment of hazardous waste that is directly connected to an industrial production process and that is constructed and operated in a manner that prevents the release of any hazardous waste or hazardous waste constituent into the environment during treatment (*e.g.*, a pipe in which waste acid is neutralized).

(67) Transfer facility-Any transportation-related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

(68) Transport vehicle-A motor vehicle or rail car used for the transportation of cargo. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle.

(69) Transportation-The movement of hazardous waste by air, rail, highway, or water.

(70) Transporter-A person engaged in the off-site transportation of hazardous waste.

(71) Treatment-Any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, to recover energy or material resources from the waste, or to render such waste non-hazardous or less hazardous, safer to transport, store, or dispose of, amenable for recovery or storage, or reduced in volume. The term does not include any activity that might otherwise be considered treatment that is exempt from regulation under this section (such as neutralization of caustic or acidic fluids in an elementary neutralization unit).

(72) TNRCC Form 0311-The TNRCC Uniform Hazardous Waste Manifest form. The form can be obtained from the TNRCC.

(73) United States-The 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(74) Used Oil-Any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.

(75) Vessel-Every description of watercraft used or capable of being used as a means of transportation on the water. The term does not include structures that are, or are designed to be, permanently affixed to one location.

(76) Waste-Any solid waste, as that term is defined in 40 CFR §261.2.

(77) Wastewater treatment unit-A device (such as a hydrostatic test water treatment unit) that:

(A) is a tank or tank system comprising part of a wastewater treatment facility that is subject to regulation under

either §402 or §307(b) of the Clean Water Act, 33 U.S.C. §1342 or §1317(b); and

(B) receives and treats or stores an influent wastewater that is a hazardous waste, that generates and accumulates a wastewater treatment sludge that is a hazardous waste, or treats or stores a wastewater treatment sludge that is a hazardous waste.

(78) Water (bulk shipment)-The bulk transportation of hazardous waste that is loaded or carried on board a vessel without containers or labels.

(c) Applicability.

(1) General.

(A) This section applies to any person who generates hazardous oil and gas waste and to any person who transports hazardous oil and gas waste.

(B) An owner or operator of a treatment, storage, or disposal facility who initiates a shipment containing hazardous oil and gas waste shall be subject to the standards for generators of hazardous waste found in Title 30, Texas Administrative Code, Chapter 335, Subchapter C (relating to TNRCC standards for generators).

(2) Requirements Cumulative. The provisions of this section are in addition to applicable provisions contained in any other section, order, policy, rule, or statutory authority of the commission. In the event of a conflict between this section and any other section, order, policy, or rule of the commission, this section shall control.

(d) General Prohibitions. No person may cause, suffer, allow, or permit the collection, handling, storage, transportation, treatment, or disposal of hazardous oil and gas waste in a manner that would violate the provisions of this section.

(e) Hazardous Waste Determination.

(1) Determination. The operator of a facility where waste is generated shall determine if such waste is hazardous oil and gas waste as provided in this subsection. A hazardous oil and gas waste is a waste that:

(A) is defined in subsection (b) of this section (relating to definitions) as an oil and gas waste;

(B) is not described in 40 CFR §261.4(a) (which describes wastes that are not considered solid wastes);

(C) is not described in 40 CFR §261.4(b) (which describes solid wastes that are exempt from regulation under RCRA Subtitle C); and

(D) is identified as a hazardous waste either:

(i) in 40 CFR Part 261, Subpart D (regarding listed hazardous wastes); or

(ii) in 40 CFR Part 261, Subpart C (regarding characteristically hazardous wastes), as determined either:

(I) by testing the waste:

(-a-) in accordance with methods described in 40 CFR Part 261, Subpart C; or

(-b-) in accordance with an equivalent method approved by the administrator under 40 CFR §260.21; or

(II) by applying knowledge of the hazard characteristics of the waste in light of the materials or processes used.

(2) Land Ban. Each LQG and SQG shall determine whether the hazardous oil and gas waste it generates is prohibited from land disposal under the provisions of 40 CFR Part 268. If the waste is prohibited from land disposal, the LQG or SQG must comply with all applicable provisions of 40 CFR Part 268 (relating to management of land ban wastes) prior to disposing of such waste.

(3) Exclusions and Exemptions.

(A) Notwithstanding the provisions of subsection (e)(1) of this section, in the event the administrator determines, in accordance with the provisions of 40 CFR §260.22, that a particular oil and gas waste that is considered a hazardous oil and gas waste because it meets criteria set out in paragraph (1) (D)(i) of this subsection (relating to listed hazardous wastes) should not be considered a hazardous waste, such waste shall be exempt from regulation under this section.

(B) Notwithstanding the provisions of paragraph (1) of this subsection the following are exempt from regulation under this section:

(i) any oil and gas waste described in 40 CFR §261.6(a)(2) (relating to recyclable materials) that is managed as provided in applicable provisions of 40 CFR Part 266, Subparts C-H, and 40 CFR Parts 270 and 124;

(ii) any oil and gas waste described and recycled, reclaimed, or reused as provided in 40 CFR §261.6(a)(3) (relating to recyclable materials);

(iii) used oil that is not considered a hazardous waste under the provisions of 40 CFR §279.10(b) and that is managed as provided in 40 CFR Part 279;

(iv) dielectric fluid containing polychlorinated biphenyls (PCB's) and electric equipment containing such fluid that are regulated under 40 CFR Part 761 and that are hazardous only because they exhibit the characteristic of toxicity for D018-D043 under the test required under paragraph (1)(D)(ii) of this subsection (relating to characteristically hazardous wastes);

(v) debris, as that term is defined in 40 CFR §268.2, that is an oil and gas waste:

(I) that contains or contained a hazardous oil and gas waste listed in 40 CFR, Part 261, Subpart D or that exhibits or exhibited a hazardous waste characteristic identified in 40 CFR Part 261, Subpart C; and

(II) that has been treated using one of the required destruction technologies specified in Table 1 of 40 CFR §268.45 or that is determined by the administrator to be no longer contaminated with hazardous oil and gas waste; and

(vi) hazardous oil and gas waste remaining in an empty container.

(f) Generator Classification and Accumulation Time.

(1) Conditionally Exempt Small Quantity Generator.

(A) To be classified as a conditionally exempt small quantity generator (CESQG) during any calendar month, a generator of hazardous oil and gas waste must:

(i) generate no more than 100 kilograms (220.46 pounds) of hazardous oil and gas waste in that calendar month; and

(ii) accumulate no more than 1,000 kilograms (2204.60 pounds) of hazardous oil and gas waste on-site at any one time.

(B) Except as provided in subsection (f)(5) of this section, a CESQG must comply with all requirements of this section applicable to CESQGs.

(C) If a CESQG generates in one calendar month, or accumulates on-site at any one time, more than a total of one kilogram (2.20 pounds) of any acute hazardous waste listed in 40 CFR §§261.31, 261.32 or 261.33(e) or a total of 100 kilograms (220.46 pounds) of contaminated media resulting from the clean up of a discharge into or on any land or water of any acute hazardous waste listed in 40 CFR §§261.31, 261.32, or 261.33(e), all such acute hazardous wastes must be managed as though generated by a LQG. The LQG accumulation time period for such acute hazardous wastes shall begin at such time as the maximum quantity specified in this subparagraph is exceeded.

(2) Small Quantity Generator.

(A) To be classified as a small quantity generator (SQG) in any calendar month, a generator of hazardous oil and gas waste must:

(i) generate less than 1,000 kilograms (2204.60 pounds) of hazardous oil and gas waste in that calendar month;

(ii) not allow any particular quantity of hazardous oil and gas waste to remain on-site for a period of more than:

(I) 180 days from the date that particular quantity was generated; or

(II) 270 days from the date that particular quantity was generated, but only if the waste must be transported or offered for transport to a treatment, storage, or disposal facility that is located a distance of 200 miles or more from the point of generation; and

(iii) not accumulate more than 6000 kilograms (13,227.60 pounds) of hazardous oil and gas waste on-site at any one time.

(B) A SQG must accumulate all hazardous oil and gas waste in tanks or containers that meet the requirements of this section and, except as provided in subsection (f)(5) of this section, comply with all requirements of this section applicable to SQGs.

(C) The accumulation period specified in subsection (f)(2)(A)(ii) of this section may be extended an additional 30 days if the commission, at its sole discretion, determines that unforeseen, temporary, and uncontrollable circumstances require that hazardous oil and gas waste remain on-site for a longer time period.

(3) Large Quantity Generators.

(A) Any generator of hazardous oil and gas waste not classified as a CESQG or SQG is classified as a large quantity generator (LQG).

(B) A LQG must accumulate hazardous oil and gas waste in tanks or containers that meet the requirements of this section and, except as provided in paragraph (5) of this subsection, comply with all other requirements of this section applicable to LQGs.

(C) A LQG shall not accumulate any particular quantity of hazardous oil and gas waste on-site for more than 90 days from the date that particular quantity was generated, unless an extension to such 90-day period has been granted in accordance with the provisions of paragraph (4)(D) of this subsection.

(D) The 90-day accumulation period specified in paragraph (4)(C) of this subsection may be extended an additional 30 days if the commission, at its sole discretion, determines that unforeseen, temporary, and uncontrollable circumstances require that hazardous oil and gas waste remain on-site for longer than 90 days.

(4) Accumulation in Containers at the Point of Generation.

(A) Notwithstanding the foregoing provisions of this subsection, a LQG or SQG may accumulate in containers up to 55 gallons of hazardous oil and gas waste or a total of one quart of acute hazardous wastes listed in 40 CFR §261.33(e)(e) without having to manage such hazardous oil and gas waste in accordance with the accumulation time limits applicable to LQGs or SQGs or with the provisions of subsections (q) (relating to preparedness and prevention), (r) (relating to contingency plan and emergency procedures), (s) (relating to personnel training), (t) (relating to standards for use of containers), and (u) (standards for use of tank systems) of this section, provided that the requirements of subparagraph (B) of this paragraph are met.

(B) All hazardous oil and gas waste subject to the exemption of subparagraph (A) of this paragraph must be accumulated in containers that:

(i) are at a location that is:

(I) under the control of the generator; and

(II) at or near the point of generation;

(ii) meet the applicable requirements of 40 CFR §§265.171, 265.172, and 265.173(a) (relating to container condition, compatibility of waste with container, and closing containers); and

(iii) are marked with the words "Hazardous Waste" or with other words that identify the contents of the containers.

(C) If the amount of hazardous waste accumulated on-site at or near the point of generation exceeds the maximum amount specified in subparagraph (A) of this paragraph, the generator must, with respect to such excess waste, comply with all applicable provisions of this section within three days of the date that such maximum amount is exceeded.

(5) Episodic Generation. Except as otherwise provided in this paragraph, if a generator's classification varies from one month to another, the hazardous oil and gas waste generated during any particular month shall be managed in accordance with the requirements applicable to the generator's classification for that month.

(A) If hazardous oil and gas waste generated by a generator who is classified as a CESQG during a particular month is mixed with waste generated in a month during which the generator is considered an LQG, the mixture shall be managed in accordance with the standards applicable to LQGs.

(B) If hazardous oil and gas waste generated by a generator who is classified as a CESQG during a particular month is mixed with waste generated in a month during which the generator is considered an SQG, the mixture shall be managed in accordance with the standards applicable to SQGs.

(C) If hazardous oil and gas waste generated by a generator who is classified as a SQG during a particular month is mixed with waste generated in a month during which the generator is considered an LQG, the mixture shall be managed in accordance with the standards applicable to LQGs.

(g) Notification. A person who is considered a LQG or SQG under the provisions of this section must notify the commission of the activities of such person that are subject to the provisions of this section and obtain an EPA ID number by filing the prescribed form (currently EPA Form 8700-12) with the appropriate regulatory entity (currently EPA Region 6). Such noti-

fiction must be made upon the later of 90 days after the effective date of this section or within ten days of the date that the LQG or SQG becomes subject to the provisions of this section.

(h) Preparedness and Prevention.

(1) General. In addition to all other applicable requirements of this section, all generators of hazardous oil and gas waste shall employ reasonable and appropriate measures (considering the nature and location of the facility and the types and quantities of hazardous oil and gas waste maintained at the site) in the operation and maintenance of his or her generation site to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous oil and gas wastes or hazardous oil and gas waste constituents to air, soil, or surface water that could threaten human health or the environment.

(2) LQGs and SQGs. LQGs and SQGs must comply with the provisions applicable to owners or operators of 40 CFR Part 265, Subpart C (relating to preparedness and prevention).

(i) Contingency Plan and Emergency Procedures.

(1) LQGs. LQGs must comply with the provisions applicable to owners or operators of 40 CFR Part 265, Subpart D (relating to contingency plan and emergency procedures).

(2) SQGs. SQGs must comply with the provisions of 40 CFR §262.34(d)(5) (relating to emergency response).

(j) Personnel Training. LQGs must comply with the provisions applicable to owners or operators of 40 CFR §265.16 (relating to personnel training)

(k) Standards for Use of Containers.

(1) LQGs. LQGs accumulating hazardous oil and gas waste in containers must:

(A) comply with the provisions applicable owners or operators of 40 CFR Part 265, Subpart I (relating to use and management of containers);

(B) clearly mark each container being used to accumulate hazardous oil and gas waste on-site, in a manner and location visible for inspection, with the date accumulation of such hazardous oil and gas waste begins; and

(C) clearly label or mark each container being used to accumulate hazardous oil and gas waste on-site with the words "Hazardous Waste."

(2) SQGs. SQGs accumulating hazardous oil and gas waste in containers must:

(A) comply with the provisions applicable to owners or operators of 40 CFR Part 265, Subpart I, except §265.176 (relating to distance from property lines);

(B) clearly mark each container being used to accumulate hazardous oil and gas waste on-site, in a manner and location visible for inspection, with the date accumulation of such hazardous oil and gas waste begins; and

(C) clearly label or mark each container being used to accumulate hazardous oil and gas waste on-site with the words "Hazardous Waste. "

(3) CESQGs. The provisions of this paragraph apply to CESQGs only.

(A) Hazardous oil and gas waste generated by a CESQG may be mixed with non-hazardous waste even though the resultant mixture exceeds the quantity limitations of subsection (f)(1) of this section, unless the mixture exhibits any of the characteristics of hazardous waste as provided in subsection (e)(1) (D)(ii) of this section.

(B) If a CESQG's wastes are mixed with used oil, the mixture is subject to the requirements 40 CFR Part 279 if the mixture is destined to be burned for energy recovery. Any material produced from such a mixture by processing, blending, or other treatment is also so regulated if it is destined to be burned for energy recovery.

(l) Standards for Use of Tank Systems.

(1) LQGs. LQGs accumulating hazardous oil and gas waste in tanks must:

(A) comply with the provisions applicable to owners or operators of 40 CFR Part 265, Subpart J, except §265.197(c) and §265.200;

(B) comply with the provisions applicable to owners or operators of 40 CFR §265.111 and §265.114 (relating to closure performance standards and disposal of contaminated equipment and media); and

(C) clearly label or mark each tank being used to accumulate hazardous oil and gas waste with the words "Hazardous Waste".

(2) SQGs. SQGs accumulating hazardous oil and gas waste in tanks must:

(A) comply with the provisions of 40 CFR §265.201 (relating to accumulation of waste in tanks by small quantity generators); and

(B) clearly label or mark each tank being used to accumulate hazardous oil and gas waste with the words "Hazardous Waste".

(m) Disposition of Hazardous Oil and Gas Waste.

(1) On-site Treatment, Storage, Disposal, Recycling, and Reclamation. Except as otherwise specifically provided in this section, no person may treat, store, dispose of, recycle, or reclaim any hazardous oil and gas waste on-site.

(2) Transport to Authorized Facility.

(A) Except as otherwise specifically provided in this section, a generator of hazardous oil and gas waste must send his or her waste to one of the following categories of facilities for treatment, storage, disposal, recycling, or reclamation:

(i) an authorized recycling or reclamation facility;

(ii) an authorized treatment, storage, or disposal facility;

(iii) a facility located outside the United States, provided that the requirements of subsection (v)(1) of this section (relating to exports of hazardous waste) are met;

(iv) a transfer facility, provided that the requirements of subsection (w)(3) of this section are met;

(v) if the waste is generated by a CESQG, a facility permitted, licensed, or registered by a state to manage municipal or industrial solid waste; or

(vi) if the waste is generated by a CESQG, a centralized waste collection facility (CWCF) that meets the requirements of subsection (m)(3) of this section.

(B) Notwithstanding any contrary provision of this subsection, hazardous oil and gas wastes may be treated or stored on-site in an elementary neutralization unit or a totally enclosed treatment facility. If a hazardous oil and gas waste that is ignitable under 40 CFR §261.21 (other than DOO1 High TOC Subcategory wastes defined in 40 CFR §268.42, Table 2) or that is corrosive under 40 CFR §261.22 is being treated in an elementary neutraliza-

tion unit or a wastewater treatment unit to remove the characteristic before land disposal, the owner or operator must comply with the requirements of 40 CFR §264.17(b).

(C) While waste is being accumulated on-site in accordance with the provisions of subsection (f) of this section, a generator may treat hazardous oil and gas waste on-site in tanks or containers that comply with the applicable provisions of subsections (k) and (l) of this section.

(D) For purposes of §3.8(f)(1)(C)(vi) of this title (relating to oil and gas waste haulers), the manifest for shipment of hazardous oil and gas waste to a designated facility (a facility designated on the manifest by the generator pursuant to the provisions of subsection (o)(1) of this section) shall be deemed commission authorization for disposal at a facility permitted by another agency or another state.

(3) Centralized Collection of Hazardous Oil and Gas Waste.

(A) Centralized Waste Collection Facility. Provided that the requirements of this paragraph are met, a person may collect at a CWCF hazardous oil and gas waste that is generated:

- (i) by that person; and
- (ii) at sites where that person is considered a CESQG under the provisions of this section.

(B) Prior to receipt of oil and gas hazardous waste generated off-site, a person who operates a CWCF must register with the commission by filing with the commission a notice that includes the following information:

- (i) a map showing the location of the CWCF and each individual hazardous oil and gas waste generation site that may contribute waste to the collection facility;
- (ii) the person's P-5 operator number; and
- (iii) the EPA ID number for the CWCF, if any.

(C) All hazardous oil and gas waste received at the CWCF must be kept in closed containers that are marked with the words "Hazardous Waste."

(D) A person operating a CWCF shall not store at the CWCF at any one time more than 5,000 kilograms of hazardous oil and gas waste or more than five quarts of any hazardous oil and gas

waste that is listed in 40 CFR §261.33(e) (acute hazardous waste).

(n) EPA ID Numbers.

(1) Generators. No LQG or SQG may transport or offer for transportation any hazardous oil and gas waste until such generator has obtained an EPA ID number by filing the prescribed form (currently EPA Form 8700-12) with the appropriate regulatory entity (the TNRCC or EPA Region 6).

(2) Transporters. No LQG or SQG may allow his or her hazardous oil and gas waste to be transported by a transporter that does not have an EPA ID number.

(3) Treatment, Storage, or Disposal Facilities. Except in the case of facilities specified in subsection (m)(2)(A)(iii), (vi), and (v) of this section, no LQG or SQG may send his or her hazardous oil and gas waste to a treatment, storage, or disposal facility unless that facility:

(A) is a designated facility as defined in this section; and

(B) has an EPA ID number.

(o) Manifests.

(1) General Requirements.

(A) Except as provided in subsection (o)(1)(E) of this section, each time a LQG or SQG transports hazardous oil and gas waste or offers hazardous oil and gas waste for transportation to an authorized facility, such generator must prepare a manifest form. If the waste was generated in the State of Texas and is being transferred to an authorized facility located within the State of Texas, the generator shall use the form prescribed by the TNRCC. If the authorized facility is located outside the State of Texas, the generator must refer to paragraph (2) of this subsection to determine which manifest form to use.

(B) The generator must specify on the manifest one authorized facility to handle the hazardous oil and gas waste described on the manifest (the "primary designated facility").

(C) The generator may also specify on the manifest one alternate authorized facility to handle the hazardous oil and gas waste (the "alternate designated facility") in the event an emergency prevents delivery of the hazardous oil and gas waste to the primary designated facility

(D) If the transporter is unable to deliver the hazardous oil and gas waste to the primary designated facility or the alternate designated facility, the generator must either specify another authorized facility to which the hazardous oil and gas waste can be delivered or instruct the transporter to return the hazardous oil and gas waste to the generator. If the generator specifies another authorized facility to which the hazardous oil and gas waste can be delivered, the generator shall instruct the transporter to revise the manifest to show this facility as the designated facility (see subsection (w)(6) of this section relating to transporter's inability to deliver waste).

(E) A SQG is not required to comply with the provisions of this subsection (relating to manifests) if:

(i) the SQG's hazardous oil and gas waste is reclaimed under a contractual agreement (the "hazardous waste reclamation agreement") pursuant to which:

(I) the type of hazardous oil and gas waste and frequency of shipments are specified in the agreement; and

(II) the vehicle used to transport the hazardous oil and gas waste to the hazardous waste reclamation facility and to deliver regenerated material back to the generator is owned and operated by the hazardous waste reclamation facility;

(ii) the SQG maintains a copy of the hazardous waste reclamation agreement in his or her files for a period of at least three years after termination or expiration of the reclamation agreement; and

(iii) the SQG complies with the provisions of 40 CFR §268.7(a)(10) (relating to land ban wastes subject to tolling agreements) if the waste is determined to be prohibited from land disposal under subsection (e)(2) of this section (relating to land ban wastes).

(2) Manifests Required for Out-of-State Domestic Shipments.

(A) If the hazardous oil and gas waste was generated within the United States, but outside the State of Texas, and is being transported to an authorized facility located within the State of Texas, the generator must use the form prescribed by the TNRCC.

(B) If the hazardous oil and gas waste was generated within the State of Texas and is being transported to an authorized facility located within the United

States but outside the State of Texas (the "consignment state"), the manifest specified by the consignment state shall be used. If the consignment state does not specify a particular manifest form for use, then the generator shall use the form prescribed by the TNRC.

(3) Number of Copies. The manifest must consist of at least the number of copies that will provide the generator, each transporter, and the owner or operator of the designated facility with one copy each for their records and one additional copy to be returned to the generator by the owner or operator of the designated facility to which the waste was delivered (in accordance with the provisions of 40 CFR §264.71, §265.71, or state equivalent).

(4) Use of the Manifest.

(A) The generator must:

- (i) sign the manifest certification by hand;
- (ii) obtain the handwritten signature of the initial transporter and date of acceptance of the shipment by the initial transporter on the manifest; and
- (iii) retain one copy of the manifest, signed by the owner or operator of the designated facility that received the hazardous oil and gas waste, for three years from the date the hazardous oil and gas waste was accepted for shipment by the initial transporter. The manifest signed by the initial transporter must be retained until the copy signed by the owner or operator of the designated facility (in accordance with 40 CFR §264.71, §265.71, or state equivalent) is received.

(B) The generator must give the transporter the remaining copies of the manifest.

(C) For shipments of hazardous oil and gas waste within the United States solely by water (bulk shipments only), the generator must send three copies of the manifest, dated and signed in accordance with the provisions of subparagraph (A) of this paragraph (relating to use of the manifest), to either:

- (i) the owner or operator of the designated facility; or
- (ii) if exported by water, the last water transporter expected to handle the hazardous oil and gas waste in the United States. Copies of the manifest are not required for each transporter.

(D) For rail shipments of hazardous oil and gas waste within the United States that originate at the genera-

tion site, the generator must send at least three copies of the manifest, dated and signed in accordance with the provisions of subparagraph (A) of this paragraph (relating to use of the manifest), to:

- (i) the next non-rail transporter, if any;
- (ii) the designated facility, if transported solely by rail; or
- (iii) if exported by rail, the last rail transporter expected to handle the hazardous oil and gas waste in the United States.

(E) For shipments of hazardous oil and gas waste to a designated facility located outside the State of Texas and in an authorized state that has not yet obtained authorization from the EPA to regulate that particular waste as hazardous, the generator must determine that the owner or operator of the designated facility agrees to sign and return the manifest to the generator (in accordance with the applicable provisions of 40 CFR §264.71 or §265.71), and that any out-of-state transporter agrees to comply with the applicable requirements of subsection (w)(4) of this section (relating to manifest requirements for transporters).

(p) Packaging. Before transporting hazardous oil and gas waste or offering hazardous oil and gas waste for transportation off-site, a LQG or SQG must package the hazardous oil and gas waste in accordance with the applicable DOT packaging regulations set out in 49 CFR Parts 173, 178, and 179.

(q) Labeling. Before transporting hazardous oil and gas waste or offering hazardous oil and gas waste for transportation off-site, LQGs and SQGs must label each package that contains hazardous oil and gas waste in accordance with the applicable DOT regulations set out in 49 CFR Part 172.

(r) Marking.

(1) General. Before transporting hazardous oil and gas waste or offering hazardous oil and gas waste for transportation off-site, LQGs and SQGs must mark each package that contains hazardous oil and gas waste in accordance with the applicable DOT regulations set out in 49 CFR Part 172.

(2) Non-Bulk Packaging. Before transporting hazardous oil and gas waste or offering hazardous oil and gas waste for transportation off-site, LQGs and SQGs must mark each package that contains hazardous oil and gas waste and is of a size specified in 40 CFR §262.32(b) (110 gallons or less), with the following words and information. Such words and information must be displayed in accordance with the

applicable requirements of 49 CFR §172.304. The generator must include his or her name and address and the manifest document number in the appropriate space: HAZARDOUS WASTE-Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency. Generator's Name and Address: \_\_\_\_\_ Manifest Document Number: \_\_\_\_\_

(s) Placarding. Before transporting hazardous oil and gas waste or offering hazardous oil and gas waste for transportation off-site, LQGs and SQGs must placard the vehicle or vehicles used to transport such hazardous oil and gas waste, or offer to the initial transporter the appropriate placards. Appropriate placards shall be determined according to DOT regulations set out in 49 CFR Part 172, Subpart F.

(t) Recordkeeping.

(1) Waste Determination. Each LQG and SQG shall keep records of any and all test results, waste analyses, or other determinations made in accordance with subsection (e) of this section (relating to hazardous waste determination), for at least three years from the date that the waste was last sent to an authorized facility.

(2) Annual Reports. A copy of all reports required in subsection (u)(1) of this section (relating to annual reports), shall be retained by the generator for a period of at least three years from the due date of the report.

(3) Exception Reports. A copy of all reports required under subsection (u)(2) of this section (relating to exception reports), shall be retained by the generator for a period of at least three years from the due date of the report.

(4) Inspection Reports. A copy of each inspection report required under this section shall be retained by the generator for a period of at least three years from the due date of the report.

(5) Extension. The periods of record retention specified in paragraphs (1)-(4) of this subsection are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or upon request by the commission.

(u) Reporting.

(1) Annual Reports. Any generator who is classified as a LQG or SQG during any calendar month of a calendar year shall prepare and submit a single copy of an annual report to the commission on the biennial reporting form prescribed by the EPA (currently EPA Form 8700-13A). The report shall be filed on or before the first day of March of the following calendar



year and shall be accompanied by the fee assessed under the provisions of subsection (z) of this section. The annual report must contain a certification signed by the generator. The annual report must cover activities occurring at the generation site during the reporting year, and must include the following information:

(A) the name of the generator followed by the generator's P-5 operator number in parentheses, the EPA ID number for the generation site, and the address of the generation site or other site-identifying information (such as the lease number, unit number, or T-4 number (in the case of pipelines));

(B) the calendar year covered by the report;

(C) the name, EPA ID number, if any, and address for each authorized facility within the United States to which hazardous oil and gas waste was shipped during the year;

(D) the name and EPA ID number of each transporter used during the year for shipments to an authorized facility within the United States;

(E) a description, EPA hazardous waste number (from 40 CFR Part 261, Subpart C or D), United States DOT hazard class, and quantity of each hazardous oil and gas waste shipped to an authorized facility within the United States. This information must be listed by the EPA ID number of each facility to which hazardous oil and gas waste was shipped. If the waste was shipped to an authorized facility that does not have an EPA ID number, the type of facility (reclamation or recycling) must be designated on the report;

(F) a description of the efforts undertaken during the year to reduce the volume and toxicity of hazardous oil and gas waste generated; and

(G) a description of the changes in volume and toxicity of hazardous oil and gas waste actually achieved during the year in comparison to previous years, to the extent such information is available.

(2) Exception Reports.

(A) A LQG who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days from the date the hazardous oil and gas

waste was accepted by the initial transporter for shipment must contact the transporter and, if necessary, the owner or operator of the designated facility to determine the status of the hazardous oil and gas waste shipment.

(B) A LQG must submit an exception report to the commission if he or she has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days from the date the hazardous oil and gas waste was accepted by the initial transporter for shipment. The exception report must include:

(i) a legible copy of the manifest for that shipment of hazardous oil and gas waste for which the generator does not have confirmation of delivery; and

(ii) a letter signed by the generator explaining the efforts taken to locate the hazardous oil and gas waste and the results of those efforts.

(C) A SQG who does not receive confirmation of delivery of hazardous oil and gas waste by receipt of a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 60 days from the date the hazardous oil and gas waste was accepted by the initial transporter for shipment, must submit to the commission an exception report. The exception report must include:

(i) a legible copy of the manifest for which the generator does not have confirmation of delivery; and

(ii) a notation, either typed or handwritten, indicating that the generator has not received confirmation of delivery of the shipment to the designated facility.

(D) In the case of interstate shipments of hazardous oil and gas waste for which a manifest has not been returned within 45 days of acceptance of the hazardous oil and gas waste for shipment by the initial transporter, a LQG or SQG shall notify the appropriate regulatory agency of the state in which the designated facility is located, and the appropriate regulatory agency of each state in which the shipment may have been delivered, that the manifest has not been received. If a state required to be notified under this section has not received interim or final authorization pursuant to the RCRA, the LQG or SQG shall notify the administrator that the manifest has not been returned.

(3) Additional Reporting. The commission may require any generator of hazardous oil and gas waste to furnish additional reports concerning the quantities and

disposition of hazardous oil and gas waste generated.

(v) Additional Requirements Applicable to International Shipments.

(1) Exports.

(A) Any person who exports hazardous oil and gas waste to a foreign country must comply with the requirements of 40 CFR Part 262, Subpart E.

(B) Primary exporters of hazardous oil and gas waste generated within the State of Texas must submit to the commission a copy of the annual report submitted to the administrator in compliance with 40 CFR §262.56.

(2) Imports. Any person who imports hazardous oil and gas waste generated outside the United States into the State of Texas shall be considered the generator of such hazardous oil and gas waste for the purposes of this section. Such person must comply with the applicable provisions of this section, except that:

(A) the name and address of the foreign generator and the importer's name, address, and EPA ID number shall be substituted on the manifest in place of the generator's name, address, and EPA ID number;

(B) the importer or the importer's agent must sign and date the certification and obtain the signature of the initial transporter in place of the generator's certification statement on the manifest; and

(C) the importer shall use the manifest form prescribed by the TNRCC, or its successor.

(w) Standards Applicable to Transporters of Hazardous Oil and Gas Waste. The following standards apply to persons who transport hazardous oil and gas waste generated by LQGs and SQGs. The requirements of this subsection do not apply in the case of hazardous oil and gas waste generated by CESQGs.

(1) Scope.

(A) This subsection establishes standards for persons transporting hazardous oil and gas waste from the generation site to any designated facility. The provisions of this section do not apply with respect to on-site movements of hazardous oil and gas waste.

(B) In addition to the provisions of this subsection, a transporter must comply with standards applicable to gener-



ators of hazardous oil and gas waste if he or she mixes hazardous oil and gas wastes of different DOT shipping descriptions by placing them into a single container. If a transporter mixes a hazardous oil and gas waste with a hazardous waste that is not considered a hazardous oil and gas waste, the transporter must comply with the standards applicable to generators of hazardous wastes found at Title 30, Texas Administrative Code, Chapter 335, Subchapter C (the TNRCC's standards for generators of hazardous waste).

(2) Permits and EPA ID Numbers. No transporter may transport hazardous oil and gas waste unless he or she has an EPA ID number. The transporter may obtain an EPA ID number by filing the prescribed form (currently EPA Form 8700-12) with the appropriate regulatory entity (either EPA, TNRCC or another state).

(3) Transfer Facility Requirements. No transporter may store manifested hazardous oil and gas waste at a transfer facility for any period of time unless:

(A) the hazardous oil and gas waste is packaged in containers that meet the requirements of subsection (p) of this section (relating to packaging); and

(B) the hazardous oil and gas waste is stored at the transfer facility for no longer than ten days.

(4) Manifest Requirements.

(A) A transporter may not accept hazardous oil and gas waste for shipment from a generator unless it is accompanied by a manifest signed in accordance with the provisions of subsection (o)(4) of this section (relating to use of the manifest).

(B) Before transporting hazardous oil and gas waste, the transporter must sign and date the manifest acknowledging acceptance of the hazardous oil and gas waste from the generator. The transporter must return a signed copy of the manifest to the generator before leaving the generation site.

(C) The transporter must ensure that the manifest accompanies the shipment of hazardous oil and gas waste. In the case of exports, the transporter must ensure that a copy of the EPA Acknowledgment of Consent is attached to the manifest.

(D) A transporter may not accept hazardous oil and gas waste for export from a primary exporter or other person if:

(i) the transporter knows that the shipment does not conform to the EPA Acknowledgment of Consent; or

(ii) except in the case of shipments by rail, an EPA Acknowledgment of Consent is not attached to the manifest (or shipping paper in the case of exports by water (bulk shipment)).

(E) A transporter who delivers a hazardous oil and gas waste to another transporter or to the designated facility must:

(i) obtain the date of delivery and the handwritten signature of the other transporter or of the owner or operator of the designated facility on the manifest;

(ii) retain one copy of the manifest in accordance with the provisions of paragraph (7) of this subsection (relating to recordkeeping); and

(iii) give the remaining copies of the manifest to the accepting transporter or owner or operator of the designated facility.

(F) The requirements of subparagraphs (C), (D), (E), and (G) of this paragraph do not apply to water (bulk shipment) transporters if:

(i) the hazardous oil and gas waste is delivered by water (bulk shipment) to the designated facility;

(ii) a shipping paper containing all the information required on the manifest (excluding the EPA ID numbers, generator certification, and signatures) and, for exports, an EPA Acknowledgment of Consent, accompanies the hazardous oil and gas waste;

(iii) the delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the designated facility on either the manifest or the shipping paper;

(iv) the person delivering the hazardous oil and gas waste to the initial water (bulk shipment) transporter obtains the date of delivery and signature of the water (bulk shipment) transporter on the manifest and forwards it to the designated facility; and

(v) a copy of the shipping paper or manifest is retained by each water (bulk shipment) transporter in accordance with the provisions of paragraph (7) of this paragraph (relating to recordkeeping).

(G) For shipments involving rail transportation, the requirements of subparagraphs (C), (D), (E), and (F) of this paragraph do not apply and the following requirements do apply:

(i) when accepting hazardous oil and gas waste from a non-rail transporter, the initial rail transporter must:

(I) sign and date the manifest acknowledging acceptance of the hazardous oil and gas waste;

(II) return a signed copy of the manifest to the non-rail transporter;

(III) forward at least three copies of the manifest to:

(-a-) the next non-rail transporter, if any;

(-b-) the designated facility, if the shipment is delivered to that facility by rail; or

(-c-) the last rail transporter designated to handle the hazardous oil and gas waste in the United States; and

(IV) retain one copy of the manifest and rail shipping paper in accordance with the provisions of paragraph (7) of this subsection (relating to recordkeeping);

(ii) rail transporters must ensure that a shipping paper containing all the information required on the manifest (excluding the EPA ID numbers, generator certification, and signatures) and, for exports, an EPA Acknowledgment of Consent, accompanies the hazardous oil and gas waste at all times;

(iii) when delivering hazardous oil and gas waste to the designated facility, a rail transporter must:

(I) obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or the shipping paper (if the manifest has not been received by the facility); and

(II) retain a copy of the manifest or signed shipping paper in accordance with the provisions of subsection (w)(7) of this section (relating to recordkeeping);

(iv) when delivering hazardous oil and gas waste to a non-rail transporter, a rail transporter must:

(I) obtain the date of delivery and the handwritten signature of the next non-rail transporter on the manifest; and

(II) retain a copy of the manifest in accordance with the provisions of paragraph (7) of this subsection (relating to recordkeeping);

(v) before accepting hazardous oil and gas waste from a rail transporter, a non-rail transporter must sign and date the manifest and provide a copy to the rail transporter.

(H) Transporters who transport hazardous oil and gas waste out of the United States must:

(i) indicate on the manifest the date the hazardous oil and gas waste left the United States;

(ii) sign the manifest and retain one copy in accordance with the provisions of subsection (v)(1) of this section;

(iii) return a signed copy of the manifest to the generator; and

(iv) give a copy of the manifest to a United States customs official at the point of departure from the United States.

(I) A transporter accepting hazardous oil and gas waste for shipment from a SQG need not comply with the requirements of this paragraph and paragraph (7) of this subsection provided that:

(i) the hazardous oil and gas waste is being transported pursuant to a reclamation agreement that meets the requirements of subsection (o)(1)(E) of this section;

(ii) the transporter records, on a log or shipping paper, the following information for each shipment:

(I) the name, address, and EPA ID number of the generator of the hazardous oil and gas waste;

(II) the quantity of hazardous oil and gas waste accepted;

(III) all DOT required shipping information;

(IV) the date the hazardous oil and gas waste is accepted;

(iii) the transporter carries this record when transporting the hazardous oil and gas waste to the reclamation facility; and

(iv) the transporter retains these records for a period of at least three years after termination or expiration of the agreement.

(5) Delivery of Waste. The transporter must deliver the entire quantity of hazardous oil and gas waste accepted from a generator or a transporter to:

(A) the primary designated facility;

(B) the alternate designated facility, if the hazardous oil and gas waste cannot be delivered to the primary designated facility because an emergency prevents delivery;

(C) the next designated transporter; or

(D) for exports, the location designated in the EPA Acknowledgment of Consent.

(6) Inability to Deliver Waste. If the hazardous oil and gas waste cannot be delivered as provided in paragraph (5) of this subsection the transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions.

(7) Recordkeeping.

(A) A transporter of hazardous oil and gas waste must keep a copy of the manifest signed by the generator, himself or herself, and the next transporter or the owner or operator of the designated facility for a period of three years from the date the hazardous oil and gas waste was accepted by the initial transporter.

(B) For shipments delivered to the designated facility by water (bulk shipment), each water (bulk shipment) transporter must retain a copy of the shipping paper containing all the information required in 40 CFR §263.20(e)(2) for a period of three years from the date the hazardous oil and gas waste was accepted by the initial transporter.

(C) For shipments of hazardous oil and gas waste by rail within the United States:

(i) the initial rail transporter must keep a copy of the manifest and shipping paper with all the information required in 40 CFR §263.20(f)(2) for a period of three years from the date the hazardous oil and gas waste was accepted by the initial transporter; and

(ii) the final rail transporter must keep a copy of the signed manifest (or the shipping paper if signed by the designated facility in lieu of the manifest) for a period of three years from the date the

hazardous oil and gas waste was accepted by the initial transporter.

(D) A transporter who transports hazardous oil and gas waste out of the United States must keep, for a period of three years from the date the hazardous oil and gas waste was accepted by the initial transporter, a copy of the manifest indicating that the hazardous oil and gas waste left the United States.

(E) The periods of retention referred to in this paragraph are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or upon request by the commission.

(x) Discharges.

(1) Reporting Requirements.

(A) Commission. A person subject to regulation under this section shall immediately notify the commission of any discharge in which a reportable quantity of a hazardous oil and gas waste is discharged within a 24 hour period. Such notification shall be made by contacting the appropriate commission district office.

(B) Federal. Persons subject to regulation under this section shall comply with applicable reporting requirements of 40 CFR Parts 117, 263, and 302.

(2) Initial Response. Upon discovery of a discharge of hazardous oil and gas waste, the generator or transporter must take appropriate immediate action to protect human health and the environment (e.g., notify local authorities, where appropriate, and dike the discharge area).

(3) Discharge Clean Up.

(A) The generator or transporter shall recover as much as of the spilled material as can be recovered by ordinary physical means as soon as possible after discovery of the spill.

(B) The generator or transporter shall clean up the site at which the discharge occurred to background levels as soon as reasonably possible. As an alternative to clean-up to background levels, the generator or transporter must take such action as may be required or approved by the commission so that the hazardous oil and gas waste discharge no longer presents a hazard to human health or the environment, taking into consideration the geology and hydrology of the discharge site, the nature and quantity of the hazardous oil and gas waste discharged, and the present and anticipated future use of the discharge site.



## TITLE 22. EXAMINING BOARDS

### Part VI. Texas State Board of Registration for Professional Engineers

#### Chapter 131. Practice and Procedure

##### Application for Registration

###### • 22 TAC §131.55

The Texas State Board of Registration for Professional Engineers proposes an amendment to §131.55, concerning application for registration from nonresidents. Paragraph (3) of subsection (a) is amended to require that an applicant who is a nonresident of Texas must furnish an official verification that he or she possesses a current and valid certificate of registration or license issued by another appropriate licensing board. Applicants from foreign countries must furnish official verification that their registration or charter is current and valid.

Charles E. Nemir, P.E., Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Nemir also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be clarification of the requirements for application for registration from nonresidents. There will be no effect on small businesses as a result of enforcing the rule. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Charles E. Nemir, P.E., Executive Director, Texas State Board of Registration for Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760.

The amendment is proposed under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

Texas Civil Statutes, Article 3271a, §21 is affected by this proposed amendment.

*§131.55. Application for Registration from Nonresidents.* In general, applicants nonresidents of Texas must apply under the provisions of the Texas Engineering Practice Act (the Act), §21. To be eligible under §21, the applicant must be registered and in good standing in the state in which he is practicing or formerly practiced, and the applicant must have met the requirements for registration under the Act, §12(a)(1) or (2), at the time he was granted an original registration. In addition, the application shall include all documentation as described

in §131.54 of this title (relating to General Application Information) to be considered complete. If the applicant is currently registered in the state of his residence or practice but registration was granted under requirements less than those specified in the Act, §12(a)(1) or (2), he may apply under §12(a)(1) or (2), whichever is appropriate, if he has acquired the minimum requirements subsequent to his original registration.

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

(3) A nonresident applicant or others applying under the Act, §21, must furnish an official verification from the appropriate licensing board that the applicant possesses a license that is current and valid [with the application a copy of the pocket card or other verification that the licenses in the state of original registration or state of residency and other states (no more than two pocket cards are required) are current and valid and, in addition, include with the application copies of proof or verification that the applicant has taken and passed the engineering examinations]. If the applicant is registered as a chartered engineer or a professional engineer in another country, official verification [documents] must be provided showing that the registration or charter is current and valid [such person is a chartered engineer or professional engineer, the status of the person (corporate member, graduate member, etc.), the date of registration and a statement that the membership is current and valid, inactive, or expired].

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

Issued in Austin, Texas, on May 5, 1995

TRD-9505461

Charles E. Nemir, P.E.  
Executive Director  
Texas State Board of  
Registration for  
Professional Engineers

Proposed date of adoption: June 14, 1995

For further information, please call: (512) 442-1414

#### References

##### • 22 TAC §131.71

The Texas State Board of Registration for Professional Engineers proposes an amendment to §131.71, concerning reference statements. Subsection (a) of the section is amended to more accurately reflect the intent of the Texas Engineering Practice Act with regard to reference statements and engineering experience. Applicants for registration will be required to submit reference statements covering the last four years of engineering experience if applying under the provisions of the Act, §12(a)(1) or 21, and eight years of engineering experience if applying under the

provisions of the Act, §12(a)(2). If an individual is requesting an exemption from either or both engineering examinations, then reference statements covering the last twenty years of engineering experience must be provided.

Charles E. Nemir, P.E., Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Nemir also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be clarification and streamlining of the registration process. There will be no effect on small businesses as a result of enforcing the rule. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Charles E. Nemir, P.E., Executive Director, Texas State Board of Registration for Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760

The amendment is proposed under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

Texas Civil Statutes, Article 3271a, §§12(a)(1), 12(a)(2), and 21 are affected by this proposed amendment.

#### §131.71. Reference Statements

(a) The applicant, as a part of the application for registration, shall send a copy of the board's reference statement form and a copy of the portion of the applicant's supplementary experience record (SER) that the reference is to verify to a minimum of five references of which three must be professional engineers. The reference writer should complete the reference statement, sign the copy of the SER signifying agreement with the information written by the applicant, and place the completed reference statement and signed SER in an envelope. After sealing the envelope, the reference writer's signature and professional engineer's number, if applicable, shall be placed across the sealed flap of the envelope and covered with transparent tape. The reference writer shall return the sealed envelope to the applicant. The applicant must enclose all of the sealed reference envelopes with his application when he submits it to the office of the board. An application received without the required references, or with envelopes that have evidence of tampering, shall be considered an incomplete application and returned to the applicant. At least one reference statement should be provided concerning the work done for each employer. References shall be provided for at least the last four years of engineering experience for persons applying under the Act, §12(a)(1) or 21, and at least the last eight years of engineering

experience for persons applying under the Act, §12(a)(2). Persons requesting exemption from either or both examinations shall provide references for the last 20 years of engineering experience. [References need not be provided for experience gained 15 or more years prior to the date of the application unless specifically requested by the board.] The reference should have personal knowledge of the applicant's work for which he is providing a reference statement. Accurate statements of fact from responsible sources concerning the applicant's technical abilities and performance are necessary as are frank and candid appraisals of his character, reputation, and suitability for professional registration.

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

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

Issued in Austin, Texas, on May 5, 1995.

TRD-9505462 Charles E. Nemir, P.E.  
Executive Director  
Texas State Board of  
Registration for  
Professional Engineers

Proposed date of adoption: June 14, 1995

For further information, please call: (512) 442-1414

## Education

### • 22 TAC §131.92

The Texas State Board of Registration for Professional Engineers proposes an amendment to §131.92, concerning foreign degrees. Subsection (b) of the section is amended to delete the requirement that an applicant with a foreign degree must submit with an application for registration a certified copy or documented proof of all engineering degrees, diplomas, certificates, etc. These documents are not required because official transcripts must be provided to the board in accordance with the requirements of §131.93.

Charles E. Nemir, P.E., Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Nemir also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be clear and concise requirements pertaining to applications for registration from applicants with foreign degrees. There will be no effect on small businesses as a result of enforcing the rule. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Charles E. Nemir, P.E., Executive Director, Texas State Board of Registration for Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760.

The amendment is proposed under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

Texas Civil Statutes, Article 3271a, §12 is affected by this proposed amendment

§131.92. Foreign Degrees.

(a) (No change.)

(b) Applicants having foreign degree(s), with the exception of those covered by subsection (a)(2) of this section, must furnish at their own expense an evaluation of their foreign degree(s) from a commercial evaluation service selected by the board. The degree evaluation must be sent directly to the board by the evaluation service. [Applicants must submit with their applications complete certified copies or documented proof of all engineering degrees, diplomas, certificates, etc., showing the type of engineering degree awarded (B.S., M.S., Ph.D.), date awarded, branch of engineering, dates attended, and scores, grades, or honors awarded. Documents written in languages other than English shall be accompanied by a certified English translation.] Applicants covered by subsection (a)(1) of this section may request exemption from the requirement for evaluation of the foreign degree(s) from a commercial evaluation service by submitting other substantiating evidence and documentary proof that the degree(s) meets the requirements of §131.91(a)(3) of this title (relating to Educational Requirements for Registration) which is satisfactory to the executive director.

(c) All documents supporting the application that are written in languages other than English shall be accompanied by a certified English translation.

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

Issued in Austin, Texas, on May 5, 1995.

TRD-9505463 Charles E. Nemir, P.E.  
Executive Director  
Texas State Board of  
Registration for  
Professional Engineers

Proposed date of adoption: June 14, 1995

For further information, please call: (512) 442-1414

## Examinations

### • 22 TAC §131.101

The Texas State Board of Registration for Professional Engineers proposes an amendment to §131.101, concerning engineering examinations required for registration as a professional engineer. Subsection (c) of the section is being amended to establish that the

agency's deadline for scheduling an examination is seven weeks prior to the examination date. The seven-week deadline is necessary because the board must order the examination materials from the National Council of Examiners for Engineering and Surveying six weeks prior to the examination date

Charles E. Nemir, P.E., Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Nemir also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be clear and concise requirements for scheduling examinations. There will be no effect on small businesses as a result of enforcing the rule. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Charles E. Nemir, P.E., Executive Director, Texas State Board of Registration for Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760.

The amendment is proposed under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties

Texas Civil Statutes, Article 3271a, §14 is affected by this proposed amendment.

§131.101. Engineering Examinations Required for Registration as a Professional Engineer

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

(c) All examinations will be in the English language. Examinations are prepared by the National Council of Examiners for Engineering and Surveying (NCEES) for ten years in advance and are subject to change only by NCEES. To schedule either examination, an individual may telephone, write or visit the board office to obtain the necessary forms and information. Students may obtain the scheduling forms for the fundamentals of engineering examination at their college or from the board office. Individuals who plan to take an examination [in the spring (April)] must have their completed examination request form and the appropriate fee in the board office or have their request and fee postmarked no later than seven weeks prior to the scheduled examination date [the third Friday in February. Those who plan to take an examination in the fall (October) must have their completed examination request form and the appropriate fee in the board office or have their request postmarked no later than the third Friday in September].

(d)-(g) (No change.)

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

Issued in Austin, Texas, on May 5, 1995

TRD-9505464

Charles E. Nemir, P.E.  
Executive Director  
Texas State Board of  
Registration for  
Professional Engineers

Proposed date of adoption June 14, 1995

For further information, please call (512)  
442-1414

## Registration

### • 22 TAC §131.138

The Texas State Board of Registration for Professional Engineers proposes an amendment to §131.138, concerning engineer's seals. The section is being amended to provide clear and concise procedures pertaining to the proper use of an engineering seal.

Charles E. Nemir, P.E., Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Nemir also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be clarification of the procedures pertaining to the use of an engineering seal. There will be no effect on small businesses as a result of enforcing the rule. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Charles E. Nemir, P.E., Executive Director, Texas State Board of Registration for Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760

The amendment is proposed under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

Texas Civil Statutes, Article 3271a, §15 is affected by this proposed amendment.

§131.138. *Engineers' Seals* Physical seals of two different sizes will be acceptable, a pocket seal, the size commercially designated as 1-5/8-inch seal, or desk seal, commercially designated as a two-inch seal, to be of the design shown as follows:

Figure 1: 22 TAC §131.138

(1) All seals obtained and used by license holders may contain any given name or initial combination, except for nicknames, at their discretion, provided the surname appears on the seal and in the usual written signature. [The use of the first or middle name, or both, or the initials thereof, or the name used for the usual written signature, is at the discretion of the registrant, provided the surname of the registrant appears on the seal.]

(2) The engineer shall only seal work done by him or under his responsible

supervision, except as provided in paragraph (10) of this section concerning standards [as relates to standards in paragraph (9) of this section].

(3) It shall be misconduct to knowingly sign or seal any engineering document or product if their use or implementation may endanger the health, safety, or welfare of the public [sign, seal, or stamp any engineering drawings, diagrams, specifications, maps, plats, reports, or other engineering documents if their use or implementation may endanger the public health, safety, and/or welfare].

(4) It shall be unlawful for a license holder whose license has expired, or has been revoked or suspended to sign or affix his seal on any engineering document or product [registrant whose certificate has expired or has been revoked, or whose license has expired or has been suspended, to sign or affix his seal on any engineering product].

(5) All seals obtained and used by license holders shall be capable of leaving a permanent ink or impression representation on the engineering work, or shall leave an inaccessible computer-generated representation in a computer file containing the engineering work. Unless accompanied by an original signature and date, computer-generated seals shall be accompanied by the following text: "The seal appearing on this document was authorized by (example) John H. Doe, P.E. 0112 on \_\_\_\_\_, 19\_\_\_\_. Alteration of a sealed document without proper notification to the responsible engineer is an offense under the Texas Engineering Practice Act." Computer-generated seals may be of a reduced size provided that the engineer's name and number is clearly legible.

[(5) Registrants may obtain and use both an impression type seal and a rubber stamp facsimile. In addition, a seal replica produced by computer-aided design/drafting (CADDSEAL) may be used based on the provisions prescribed in subparagraphs (A)-(C) of this paragraph. The rubber stamp facsimile and the CADDSEAL shall bear the same name, in the same style, as the impression seal, and conform to the design requirements previously stated in this section. A CADDSEAL may be of a reduced size, but the name and registration number shall be clearly legible on all copies.

[(A) The CADDSEAL shall not be placed on a document until such document has been approved by the engineer whose name appears on the CADDSEAL.

[(B) The original hard copy reproduced from a CADD-generated engineering document shall not be issued by the originator bearing a CADDSEAL unless the document also bears the registrant's original signature and date. However, additional copies, after the original or a CADD-generated engineering document that is not reproduced or is transmitted electronically, may be issued without an original signature, providing that the following notation is displayed prominently near the CADDSEAL. "The seal appearing on this document was authorized by (example) John H. Doe, P.E. 0112 on \_\_\_\_\_, 19\_\_\_\_."

[(C) The engineer whose seal appears on the documents shall be responsible for the security and proper use of his CADDSEAL and for assuring that the procedures in subparagraphs (A) and (B) of this paragraph are followed.]

(6) Preprinting of blank forms with an engineer's seal, or the use of decal or other seal replicas [except for a CADDSEAL.] is prohibited.

(7) The engineer shall insure the security of his physical or computer-generated seal at all times. [A registrant should insure the security of his engineer's seal at all times.] In the event of loss of a seal, the registrant will immediately upon learning of such loss communicate in writing all facts relative to the loss to the executive director of the board.

(8) The engineer shall affix his unobscured seal, original signature, and date of signature to the originals of all documents containing the final version of any engineering work as outlined in paragraph (9) before such work is released from his control for any purpose. Incomplete or review documents released from his control shall bear the following text or similar wording instead of his seal: "This document is released for purpose of interim review under the authority of (example) John H. Doe, P.E. 0112 on \_\_\_\_\_, 19\_\_\_\_. It is not to be used for (example) construction, bidding or permit purposes." Computer files need not contain an original signature or date provided that they conform with paragraph (5) of this section. The engineer may wish to retain a hard copy of computer files for his records and such hard copy should bear a seal, original signature and date.

[(8) The registrant shall affix his seal, sign his name, and place the date of execution, only on engineering documents that have been issued by the registrant as completed for an intended purpose which should be specified prominently adjacent to the seal. Documents considered as incomplete by the registrant may be released tem-

porarily for interim review and do not need to have the registrants seal or signature affixed, but shall be dated; bear the responsible engineer's name, serial number, and "P.E." designation; and be clearly labeled to indicate the documents are for interim review and not intended for construction, bidding, or permit purposes. The use of signature reproductions, such as rubber stamps, or computer generated or other facsimiles shall not be permitted in lieu of actual signatures.]

(9) The engineer shall sign, seal and date the originals of the following engineering products and documents containing engineering opinions, recommendations, calculations, procedures or the designs that result from such opinions, recommendations, calculations or procedures.

(A) Each sheet of plans or drawings regardless of size or binding.

(B) Each sheet of unbound or loosely bound engineering reports, specifications, details, calculations, or estimates.

(C) The title sheet of permanently and securely bound engineering reports, specifications, details, calculations or estimates.

(D) The signature page of any correspondence containing engineering opinions, recommendations, calculations, procedures or designs. Correspondence transmitting collected data, sealed engineering work, or clarification of previously sealed work need not be sealed. Correspondence transmitting new opinions, recommendations, calculations, procedures or designs shall be sealed.

(E) Contracted research studies which contain recommendations, designs, or analyses specific to individual projects or systems. Academic engineering work such as theses or dissertations, or general engineering research that does not contain project or system-specific recommendations, designs or analyses need not be sealed.

(9) The engineer shall affix his seal or professional identification as stipulated in paragraph (8) of this section on each sheet of engineering plans, drawings, and other separate engineering documents, and on the title or contents page of engineering specifications, reports, studies, and similar engineering work products considered to be bound volumes. The initial sheet, title sheet, or table of contents sheet of a

bound volume of engineering drawings shall contain the seal conforming to the size as stated in this section. Registered employees of the state, its political subdivisions, or other public entities are responsible for sealing their original engineering work, however, such registered employees engaged in review and evaluation for compliance with applicable law or regulation of engineering work submitted by others, or in the preparation of general planning documents, a proposal for decision in a contested case or any similar position statement resulting from a compliance review, need not seal the review reports, planning documents, proposals for decision, or position statement. Not included in the sealing requirements of this paragraph are standards and general guideline specifications which should be labeled as such by and bear the identity of the publishing entity, except that when an engineer elects to use such standards and incorporate them into his work he must seal each of those which he uses, or seal an integral design/title/contents sheet which authorizes and directs the inclusion of each enumerated standard, and become responsible for their use in the end product.]

(10) Work performed by more than one engineer shall be sealed in a manner such that all engineering can be clearly attributed to the responsible engineer or engineers. Licensed employees of the state, its political subdivisions, or other public entities are responsible for sealing their original engineering work; however, such licensed employees engaged in review and evaluation for compliance with applicable law or regulation of engineering work submitted by others, or in the preparation of general planning documents, a proposal for decision in a contested case or any similar position statement resulting from a compliance review, need not seal the review reports, planning documents, proposals for decision, or position statement. When an engineer elects to use standards or general guideline specifications, those items shall be clearly labeled as such, shall bear the identity of the publishing entity, and shall be:

(A) individually sealed by the engineer; or

(B) specified on an integral design/title/contents sheet that bears the engineer's seal, signature, and date with a statement authorizing their use.

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

Issued in Austin, Texas, on May 5, 1995

TRD-9505466

Charles E. Nemir, P.E.  
Executive Director  
Texas State Board of  
Registration for  
Professional Engineers

Proposed date of adoption. June 14, 1995  
For further information, please call (512) 442-1414

## Professional Conduct and Ethics

### • 22 TAC §131.156

The Texas State Board of Registration for Professional Engineers proposes an amendment to §131.156, concerning an engineer's responsibility to the engineering profession. Paragraph (4) of subsection (a) is amended to clarify that a professional engineer shall not violate federal, state and local statutes, regulations, rules or ordinances when providing engineering services

Charles E. Nemir, P.E., Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Nemir also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be clarification of what constitutes a violation relative to engineering services. There will be no effect on small businesses as a result of enforcing the rule. There is no anticipated economic cost to persons who are required to comply with the rule as proposed

Comments on the proposal may be submitted to Charles E. Nemir, P.E., Executive Director, Texas State Board of Registration for Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760.

The amendment is proposed under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

Texas Civil Statutes, Article 3271a, §22(a)(2) is affected by this proposed amendment

§131.156 Responsibility of the Engineering Profession

(a) The engineer shall not:

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

(4) violate any of the professional practice requirements of federal, state and local statutes, codes, regulations, rules or [related state statutes and local codes and] ordinances in providing engineering services,

(5)-(15) (No change.)

(b) (No change.)

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

Issued in Austin, Texas, on May 5, 1995.

TRD-9505465

Charles E. Nemir, P.E.  
Executive Director  
Texas State Board of  
Registration for  
Professional Engineers



Proposed date of adoption: June 14, 1995  
For further information, please call: (512)  
442-1414

## Part XIX. Polygraph Examiners Board

### Chapter 391. Polygraph Examiner Internship

#### • 22 TAC §391.3

The Polygraph Examiners Board proposes an amendment to §391.3, concerning the internship training schedule. The amendment is proposed for the ultimate benefit of the public by insuring that only qualified polygraph examiners will attain licensure. The amendment is proposed pursuant to Texas Civil Statutes, Article 4413(29cc), §6(a) and §8(a)(3) which allow the Board the authority to issue regulations consistent with the provisions of the Polygraph Examiners Act.

Bryan M. Perot, Executive Officer, 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. Perot 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 polygraph industry will be more closely regulated in areas that the Board determines to be critical. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Bryan M. Perot, Executive Officer, Polygraph Examiners Board, P.O. Box 4087, Austin, Texas 78773, (512) 465-2058.

The amendment is proposed under Texas Civil Statutes, Article 4413(29cc), which provide the Polygraph Examiners Board with the authority to regulate persons who purport to be able to detect deception or to verify truth of statements through the use of instrumentation.

Texas Civil Statutes, Article 4413(29cc), §6(a) and §8(a)(3) is affected by this proposal.

**§391.3. Internship Training Schedule.** The following internship schedule has been approved and adopted by the board as a minimum type and number of hours of any internship training program to be utilized in a course of supervised instruction of not less than 32 hours per week:

(1)-(16) (No change.)

(17) An intern is qualified to participate in the licensing examination:

(A) who is a graduate of a polygraph examiners course approved by

the board and has completed not less than six months of internship training; or

(B) who is not a graduate of an approved polygraph examiners course and has completed not less than 12 months of internship training; and

(C) The Executive Officer may approve an intern applicant who meets the qualifications set forth in §391.2 of this title (relating to Procedure and Qualifications).

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

Issued in Austin, Texas, on May 3, 1995.

TRD-9505339

Bryan M. Perot  
Executive Director  
Polygraph Examiners  
Board

Earliest possible date of adoption: June 12, 1995

For further information, please call: (512)  
465-2058

## Part XXVIII. Executive Council of Physical Therapy and Occupational Therapy Examiners

### Chapter 651. Fees

#### • 22 TAC §651.1

*(Editor's note. The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Executive Council of Physical Therapy and Occupational Therapy Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Executive Council of Physical Therapy and Occupational Therapy Examiners proposes to repeal §651.1, concerning Occupational Therapy Board Fees. This repeal will allow the council to clarify fees for services provided by the Texas Board of Occupational Therapy Examiners.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the repeal is in effect there will be no effect on local or state government as a result of repealing and replacing the rule.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to allow the council to adopt clarified and consistent fees. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the repeal as proposed.

Comments on the proposed repeal may be submitted to Nina Hurter, Executive Assistant, Executive Council of Physical Therapy and Occupational Therapy Examiners, 3001 South Lamar Boulevard, Suite 101, Austin, Texas 78704.

The repeal is proposed under Texas Civil Statutes, Article 4512e-1, which provide the Council with the authority to promulgate rules.

Texas Civil Statutes, Article 8851, is affected by this repeal.

#### §651.1. Occupational Therapy Board Fees.

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

Issued in Austin, Texas, on May 4, 1995.

TRD-9505413

John P. Maline  
Executive Director  
Executive Council of  
Physical Therapy and  
Occupational Therapy  
Examiners

Earliest possible date of adoption: June 12, 1995

For further information, please call: (512)  
443-8202

The Executive Council of Physical Therapy and Occupational Therapy Examiners proposes new §651.1, concerning Occupational Therapy Board Fees. This new section clarifies fees for services provided by the Texas Board of Occupational Therapy Examiners.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no effect on local or state government as a result of enforcing or administering the rule.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be provision of better occupational therapy licensing services. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted to Nina Hurter, Executive Assistant, Executive Council of Physical Therapy and Occupational Therapy Examiners, 3001 South Lamar Boulevard, Suite 101, Austin, Texas 78704.

The new section is proposed under Texas Civil Statutes, Article 4512e-1, which provide the Council with the authority to promulgate rules.

Texas Civil Statutes, Article 8851, is affected by this new section.

#### §651.1. Occupational Therapy Board Fees.



- (a) Application Fees:
- (1) Provisional:
- (A) OTR-\$15;
- (B) COTA-\$15;
- (2) Temporary or Regular:
- (A) OT or OTR-\$10;
- (B) OTA or COTA-\$10;
- (b) License Fees:
- (1) Temporary or Regular, Pro-rated cost per Month:
- (A) OT or OTR-\$100;
- (B) OTA or COTA-\$75;
- (2) Provisional:
- (A) OT or OTR-\$27;
- (B) OTA or COTA \$21;
- (3) Active to Inactive/Retiree
- Status:
- (A) OTR-\$25;
- (B) COTA-\$25;
- (4) Inactive/Retiree to Active
- Status:
- (A) OTR-\$50;
- (B) COTA-\$25;
- (c) License Renewal Fees (on-time):
- (1) Regular License:
- (A) OTR-\$100;
- (B) COTA-\$75;
- (2) Inactive/Retiree:
- (A) OTR-\$0;
- (B) COTA-\$0;
- (d) License Renewal Fees (late):
- (1) Regular License:
- (A) Late 90 days or less-Regular fee plus late fee which is equal to one-half of the certification examination fee;

(B) Late more than 90 days but less than one year-Regular fee plus late fee which is equal to the certification examination fee;

(2) Inactive/Retiree Renewal Fees, OTR or COTA (late):

(A) Late 90 days or less-\$12;

(B) Late more than 90 days but less than one year-\$25;

(e) Registration Fees-Facilities:

(1) Registration of First Facility-\$300;

(2) Registration of Each Additional Facility-\$100.

(f) Renewal Fees-Facilities (on-time):

(1) Renewal of Registration of First Facility-\$300;

(2) Renewal of Registration of Each Additional Site-\$100.

(g) Restoration Fees-First Facility:

(1) Late 90 days or less-\$150;

(2) Late more than 90 days but less than one year-\$300;

(3) Late one year or more-\$600.

(h) Restoration Fees-Each Additional Site:

(1) Late 90 days or less-\$50;

(2) Late more than 90 days but less than one year-\$100;

(3) Late one year or more-\$200.

(i) Administrative Fees:

(1) Verification of License-\$40;

(2) Duplicate/Replacement License-\$25;

(3) Duplicate Renewal Certificate/Wallet Card-\$25;

(4) Duplicate of Facility Registration Certificate-\$25.

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

Issued in Austin, Texas, on May 4, 1995.

TRD-9505414

John P. Maline  
Executive Director  
Executive Council of  
Physical Therapy and  
Occupational Therapy  
Examiners

Earliest possible date of adoption: June 12, 1995

For further information, please call: (512) 443-8202

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**TITLE 25. HEALTH SERVICES**

**Part I. Texas Department of Health**

**Chapter 29. Purchased Health Services**

**Subchapter G. Hospital Services**

**• 25 TAC §29.609**

On behalf of the State Medicaid Director, the Texas Department of Health (department) submits a proposed amendment to §29.609, concerning disproportionate share hospitals. Specifically, the amendment implements the Omnibus Budget Reconciliation Act of 1993 (effective September 1, 1995), which requires Medicaid inpatient utilization of at least one percent and extends the time period in which hospitals, as a condition of participation, must be designated in trauma centers.

This amendment is being proposed to conform to requirements of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93). After September 1, 1995, all disproportionate share hospitals must have Medicaid inpatient utilization rates, at a minimum, of one percent. Disproportionate share hospitals reimbursed after September 1, 1995, also must have limits to how much hospitals can be reimbursed during a state fiscal year. The limit is the sum of two numbers. The first number is a hospital's Medicaid shortfall (the difference between reimbursement and Medicaid allowed costs). The second number is the cost of providing care to patients who have no health insurance or source of third party payments for services provided during the year, less the amount of payments made by these patients. The changes relating to hospital specific limits include definitions of "cost of service," "hospital overall ratios of cost to charges," Medicaid "shortfall," and "payments received" by a hospital from patients without health insurance or source of third party payment for services. Additional changes allow the department to pay a hospital its projected reimbursement, plus its percentage of any additional available funds. Finally, the department proposes changes to the trauma condition of participation to allow disproportionate share hospitals additional time to become designated trauma centers.

Gary Bego, health care financing budget director, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implication for state or local governments as a result of enforcing or administering the sections.

Mr. Bego also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the sections will be the continuation, according to federal directives, of reimbursing hospitals that provide a

disproportionate share of indigent care. There is no anticipated economic cost to small or large businesses or persons who are required to comply with the proposed section. There is no anticipated effect on local employment.

Comments on the proposal may be sent to Brenda Salisbery, Health Care Financing, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 338-6521. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*. The department will hold a public hearing on the proposal on Wednesday, May 31, 1995, at 9:00 a.m. in the Robert D. Moreton Building, Room M-739, 1100 West 49th Street, Austin. Federal regulations require the department to have a copy of the proposed amendment available in each county for public review and comment. A copy of the proposal is being sent to all Department of Human Services offices to be available for review upon request.

The amendment is proposed under the Human Resources Code, §32.021 and Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program and is submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program and as authorized under Chapter 15, §1 07, Acts of the 72nd Legislature, First Called Session (1991).

The amendment affects Chapter 32 of the Human Resources Code.

*§29.609. Additional Reimbursement to Disproportionate Share Hospitals.*

(a) (No change.)

(b) Definitions. For purposes of this section, the following words and terms, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Adjusted hospital specific limit**—A hospital specific limit trended forward to account for inflation update factor since the base year.

(2) **Bad debt charges**—Charges as defined and reported to the Texas Department of Health (department) in its Annual Hospital Survey.

(3)[(1)] **Charity care**—The unreimbursed cost to a hospital of providing, funding, or otherwise financially supporting health care services on an inpatient or outpatient basis to a person classified by the hospital as financially or medically indigent or providing, funding, or otherwise financially supporting health care services provided to financially indigent patients through other nonprofit or public outpatient clinics, hospitals, or health care organizations.

(4)[(2)] **Charity charges (excluding bad-debt charges)**—Total amount of hos-

pital charges for inpatient and outpatient services attributed to charity care in a cost reporting period. The total inpatient and outpatient charity charges attributable to charity care do not include contractual allowances and discounts (other than for indigent patients not eligible for medical assistance under an approved Medicaid State Plan); that is, reduction or discounts, in charges given to other third-party payers such as, but not limited to, Health Maintenance Organizations (HMOs), Medicare, or Blue Cross. The amount of total charity charges must be consistent with the amount reported on the [Texas Department of Health's (department)] department's annual hospital survey.

(5) **Cost of services**—The cost of services provided by a hospital to patients who have no health insurance or source of third party payment for services provided during the hospital's latest fiscal year, less the amount of payments made by these patients.

(6)[(3)] **Cost-to-charge ratio (inpatient only)**—Hospital's overall inpatient cost-to-charge ratio, as determined from its Medicare cost report it submitted for its fiscal year ending in the previous calendar year.

(7) **Cost-to-charge ratio (inpatient and outpatient)**—Hospital's overall cost-to-charge ratio, as determined from its Medicare cost report it submitted for its fiscal year ending in the previous calendar year.

(8)[(4)] **Financially indigent**—An uninsured or underinsured person who is accepted for care with no obligation or a discounted obligation to pay for the services rendered based on the hospital's eligibility system.

(9)[(5)] **Gross inpatient revenue**—Amount of gross inpatient revenue (charges) reported by the hospital in the appropriate part of the Medicare cost report it submitted for its fiscal year ending in the previous calendar year. Gross inpatient revenue excludes revenue related to the professional services of hospital-based physicians, swing bed facilities, skilled nursing facilities, intermediate care facilities, and other revenue that is unidentified.

(10) [(6)] **Hospital eligibility criteria**—The financial criteria used by a hospital to determine if a patient is eligible for charity care. The system includes income levels and means testing indexed to the federal poverty guidelines; provided, however that a hospital may not establish an eligibility system that sets the income level eligible for charity care lower than that required by counties under the Texas Health and Safety Code, §61.023 or higher, in the case of the financially indigent, than 200% of the federal poverty guidelines. A hospital

may determine that a person is financially or medically indigent pursuant to the hospital's eligibility system after health care services are provided.

(11) **Hospital specific limit**—The sum of the following two measurements:

(A) the Medicaid shortfall; and

(B) cost of services.

(12) **Inflation update factor**—A general increase in prices as determined by the guidelines in §29. 606 of this title (relating to Reimbursement Methodology for Inpatient Hospital Services).

(13)[(7)] **Low-income days**—Number of days derived by multiplying a hospital's total inpatient census days by its low-income utilization rate.

(14)[(8)] **Low-income utilization rate**—The result of the following computation: ((Title XIX inpatient hospital payments plus total state and local revenue) divided by (gross inpatient revenue multiplied by cost-to-charge ratio)) plus ((total inpatient charity charges minus total state and local revenue) divided by (gross inpatient revenue)).

(15)[(9)] **Medicaid inpatient utilization rate**—A hospital's number of inpatient days attributable to patients who for these days were eligible for Medical Assistance under the State Plan divided by a hospital's total inpatient days [Title XIX inpatient days divided by total inpatient census days].

(16) **Medicaid shortfall**—The cost of services (inpatient and outpatient) furnished to Medicaid patients, less the amount paid under the nondisproportionate share hospital payment method under the state plan.

(17)[(10)] **Medically indigent**—A person whose medical or hospital bills after payment by third-party payers [payors] exceed a specified percentage of the patient's annual gross income, determined in accordance with the hospital's eligibility system, and the person is financially unable to pay the remaining bill.

(18)[(11)] **Medicare inpatient utilization rate**—Medicare inpatient days divided by total inpatient census days.

(19) **Payments received**—Payments received by a hospital from patients who have no health insurance or source of third party payment for services provided during the hospital's latest fiscal year.

(20)[(12)] **Rural area**—Area outside a Metropolitan Statistical Area (MSA)

or a Primary Metropolitan Statistical Area (PMSA) MSA and PMSA are defined by the Office of Management and Budget.

(21)[(13)] Total inpatient census days—Total number of a hospital's inpatient census days during its fiscal year ending in the previous calendar year.

(22)[(14)] Total inpatient charity charges (excluding bad debt charges)—Total amount of the hospital's charges for inpatient hospital services attributed to charity care (care provided to individuals who have no source of payment, third-party or personal resources) in a cost reporting period. The total inpatient charges attributable to charity care will not include contractual allowances and discounts (other than for indigent patients not eligible for medical assistance under an approved Medicaid State Plan); that is, reduction or discounts, in charges given to other third-party payers such as but not limited to HMOs, Medicare, or Blue Cross. The amount of total inpatient charity charges must be consistent with the amount reported on the department's annual hospital survey.

(23)[(15)] Total Medicaid inpatient days—Total number of billed Title XIX inpatient days based on the latest available state fiscal year data for patients entitled to Title XIX benefits. Total Medicaid inpatient days includes days with dates of admissions between September 1 and August 31 (state fiscal year) and dates of payments within the fiscal year and for nine months after the end of the fiscal year (May 31). Total Medicaid inpatient days include days that were denied for reasons other than eligibility. Total Medicaid inpatient days also include days attributable to individuals eligible for Medicaid in other states.

(24)[(16)] Total Medicaid inpatient hospital payments—Total amount of Title XIX funds, excluding Medicaid disproportionate share funds, a hospital received for admissions during the latest available state fiscal year for inpatient services. Total Medicaid inpatient hospital payments includes payments associated with dates of admissions between September 1 and August 31 (state fiscal year) and dates of payments within the fiscal year and for nine months after the end of the fiscal year (May 31).

(25)[(17)] Total operating costs—Total inpatient operating costs of a hospital during its fiscal year ending in the calendar year before the start of the current federal fiscal year, according to the hospital's Medicare cost report (tentative, or final audited cost report, if available).

(26)[(18)] Total state and local revenue—Total amount of state and local revenue a hospital received for inpatient care, excluding all Title XIX payments, during its fiscal year ending in the previous

calendar year. Sources of state and local revenue include but are not limited to County Indigent Health Care, Chronically Ill and Disabled Children, Kidney Health Care, and tax funds. Sources of revenue that are not included in state and local inpatient revenue include but are not limited to Office of Substance Abuse Program, Ryan White Title II, Ryan White Title III, State Legalization Impact Assistance Grant, Civilian Health and Medical Program of the Uniformed Services, Medicare, and Medicare/Medicaid contractual funds and allowances. The department adjusts inpatient tax revenues for hospitals that report all of their tax revenues as inpatient revenue. To make adjustments, the department [hospital] uses the appropriate parts of the Medicare cost report that the hospital submitted for its fiscal year ending in the previous calendar year.

(27)[(19)] Urban—Area inside an MSA or PMSA.

(28)[(20)] Weighted low-income days—Low-income days multiplied by an appropriate weighing factor.

(29)[(21)] Weighted Medicaid days—Medicaid days multiplied by an appropriate weighing factor.

(c) Conditions of participation. Before the beginning of each state fiscal year, which begins September 1, the single state agency or its designee surveys Medicaid hospitals to determine which hospitals meet the state's conditions of participation. Hospitals must allow state personnel access to the hospital and its records to ensure compliance with the conditions of participation. Failure to meet all of the conditions of participation results in ineligibility for participation in the program. These conditions of participation do not apply to state-owned teaching hospitals as specified in §29.610 of this title (relating to Disproportionate Share Hospital Reimbursement Methodology for State-Owned Teaching Hospitals). The conditions of participation are as follows.

(1) -(6) (No change.)

(7) Trauma system. Disproportionate share hospitals must actively participate in the development of a regional trauma system, which includes trauma facility designation as defined in the state trauma laws (Health and Safety Code, §§773.111-773.120) and department [TDH] rules. This condition applies only if rules and procedures to designate facilities have been adopted. Exceptions. The following hospitals are exempt from the trauma system condition: State mental and state chest hospitals; psychiatric hospitals licensed by TXMHMR; and certain hospitals licensed as "special" by the department [TDH] (i.e., long-term care hospitals, ventilator hospitals, burn institutes, and alcohol-chemical dependency hospitals); rehabilita-

tion hospitals; maternity hospitals; college infirmaries; contagious disease hospitals; and hospitals for the terminally ill Pediatric and adolescent facilities are exempt from trauma facility designation requirements until the time that state law authorizes the designation of pediatric and/or adolescent trauma facilities.

(A) Hospitals qualifying for the disproportionate share program for the first time must meet the regional trauma system development participation requirement in the first year of their participation in the disproportionate share program, regional trauma system development participation and application for trauma facility designation in the second year of their participation in the disproportionate share program, regional trauma system development participation and confirmation that a consultation survey has been scheduled or a complete designation application packet has been submitted to the Bureau of Emergency Management in the third year of their participation in the disproportionate share program, regional trauma system development participation and confirmation that a verification or designation survey has been scheduled in the fourth year of their participation in the disproportionate share program and regional trauma system development participation and trauma facility designation in subsequent years of their participation in the disproportionate share hospital program.

(B) Hospitals can be designated as trauma facilities under four levels that range from "basic" (stabilization and transfer of major and severe trauma patients) to "comprehensive" (care and management of all trauma patients, plus education and research). Hospitals identified as disproportionate share hospitals effective September 1, 1993, must be designated as trauma facilities or hospitals participating in regional trauma system development by March 1, 1994. Participation in regional trauma system development and application for designation as a trauma facility are required in the second year of participation in the disproportionate share program. Participation in regional trauma system development and confirmation that a consultation survey has been scheduled or a complete designation application packet has been submitted to the Bureau of Emergency Management are required in the third year of participation in the disproportionate share program. Participation in regional trauma system development and confirmation that a verification or designation survey has been scheduled are required in the fourth year of participation in the disproportionate share program. Participation

in regional trauma system development and designation as a trauma facility are required in subsequent years of their development in the disproportionate share program. [Participation in regional trauma system development, application for trauma facility designation, and designation as a trauma facility are required in subsequent years.]

(C) (No change.)

(8)-(9) (No change.)

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

(f) Reimbursing Medicaid disproportionate share hospitals. The single state agency reimburses Medicaid disproportionate share hospitals on a monthly basis. Monthly payments will equal one-twelfth of annual payments unless it is necessary to adjust the amount because payments will not be made for a full 12-month period, to comply with the annual state disproportionate share hospital allotment, or to comply with other state or federal disproportionate share hospital program requirements. Payments will be made in the following manner, unless the state determines the hospital's proposed reimbursement has exceeded its specific limit.

(1) (No change.)

(2) For the remaining hospitals, payments will be based on both weighted inpatient Medicaid days and weighted low income days. The single state agency weights each hospital's total inpatient Medicaid days and low income days by the appropriate weighing factor. The state defines a low income day as a day derived by multiplying a hospital's total inpatient census days from its fiscal year ending in the previous calendar year by its low income utilization rate. Hospital districts and city/county hospitals with greater than 250 licensed beds in the state's largest MSAs would receive weights based proportionally on the MSA population according to the 1990 United States census. MSAs with populations greater than or equal to 150,000, according to the 1990 census, are considered as the "largest MSAs." Children's hospitals also receive weights because of the special nature of the services they provide. All other hospitals receive weighing factors of 1.0. The inpatient Medicaid days of each hospital will be based on the latest available state fiscal year data for patients entitled to Title XIX benefits. The available fund is divided into two parts. Two-thirds of the available fund will reimburse each qualifying hospital on a monthly basis by its percent of the total inpatient Medicaid days. One-third of the available fund will reimburse each qualifying hospital by its percent of the total low income days. Reimbursement for the remaining hospitals is determined monthly as follows.

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

(D) The department or its designee determines the adjusted hospital specific limits for each disproportionate share hospital. These limits are the sum of a hospital's Medicaid shortfall and its cost of services provided to patients who have no health insurance or source of third party payment for services provided during the year, multiplied by the appropriate inflation update factor.

(i) The department or its designee determines the Medicaid shortfall for each hospital, using the appropriate part of the hospital's Medicare cost report submitted for the fiscal year ending in the previous calendar year.

(ii) The department or its designee determines the cost of services to the uninsured for each hospital. Hospitals are surveyed each year to determine charges that can be attributed to patients without insurance or other third party resources. Hospitals that do not respond to the survey, or that are unable to determine accurately the charges attributed to patients without insurance, shall have their bad debt charges, as reported to the department in its Annual Hospital Survey, reduced by a percentage derived from a representative sample of hospitals to be determined annually by the department or its designee. After the department has identified the charges for each hospital that can be attributed to patients without insurance, or other third party resources, the department multiplies those charges by each hospital's cost-to-charge ratio.

(iii) After the department or its designee determines each disproportionate share hospital's cost of services to patients who have no health insurance or source of third party payment for services provided during the year, the state subtracts from each hospital's cost of these services the amount of payments made by those patients who have no health insurance or source of third party payment for services provided during the year.

(iv) The department or its designee trends each hospital's "hospital specific limit" calculated from its historical base period cost report to the state's fiscal year disproportionate share program. The department or its designee uses the inflation rates described in subsection §29.606(n)(2) of this title (relating to Reimbursement Methodology for Inpatient Hospital Services) to calculate the inflation update factor used in the adjusted hospital specific limit. The department or its designee calculates the

number of months from the mid-point of the hospital's cost reporting period to the mid-point of the state fiscal year disproportionate share program. The department or its designee then multiplies the portion of the hospital's cost report year occurring in the state fiscal year by the inflation update factor used for each state fiscal year in the calculation of hospital reimbursement rates for each state fiscal year. The product of these calculations is multiplied by the each hospital's "hospital specific limit" to obtain each hospital's "adjusted hospital specific limit." For hospitals without a full 12-month fiscal year cost report, the department or its designee shall convert the hospital's reported uncompensated care data by the reciprocal of the number of days covered by the reporting period divided by 365.

(E) The state compares the projected payment for each disproportionate share hospital with its hospital specific limit. If a hospital's calculated payment is less than its limit, the state will reimburse the calculated payment to the hospital, plus its percentage of any additional available funds. If the calculated payment is greater than the limit, the state will reduce the hospital's payment to equal its limit.

(g)-(i) (No change.)

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

Issued in Austin, Texas, on May 5, 1995.

TRD-9505492

Susan K. Staeg  
General Counsel  
Texas Department of  
Health

Earliest possible date of adoption: June 12, 1995

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

◆ ◆ ◆  
Subchapter P. Hearing Aid  
Services

• 25 TAC §29.1502

On behalf of the State Medicaid Director, the Texas Department of Health (department) submits a proposed amendment to §29.1502, concerning the requirements for hearing aid services, in its Purchased Health Services rules.

Generally, this amendment will clarify and streamline rules governing the hearing aid program. Specifically, the amendment deletes prior authorization requirements for hearing aid services.

Gary Bego, health care financing budget director, has determined that for the first five-year period the proposed amendment will be

in effect there will be no fiscal implications to state or local governments as a result of enforcing or administering the section.

Mr. Bego also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section as proposed will be a more efficient use of state resources. There are no anticipated economic cost to small businesses. There will be no anticipated economic costs to persons who are required to comply with the proposed section. There will be no anticipated effect on local employment.

Comments on the proposal may be sent to Brenda Salisbery, Health Care Financing, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 338-6521. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

The amendment is proposed under the Human Resources Code, §32.021 and Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program and is submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

The amended section affects Chapter 32 of the Human Resources Code.

#### §29.1502. Requirements for Hearing Aid Services.

(a) Prior authorization. Prior authorization for hearing aid services may be granted only by the department or its designee. Instructions for requesting prior authorization are found in Part 2, Section 4, prior authorization, of the Texas Medicaid Provider Procedures Manual. The department or its designee issues the manual to each participating provider upon his enrollment in the Texas Medicaid Program.

(1) The provider must obtain prior authorization before providing any hearing aid service, except replacement ear molds and first and second revisits. Written prior authorization must be obtained for all hearing aid services, except evaluations. A physician's examination to determine medical necessity for a hearing aid is considered to be a physician service, as cited at §29.1504(b)(3)(B) of this title (relating to Reimbursement for Hearing Aid Services), and does not require prior authorization.

(2) Prior authorization to disperse a hearing aid is not granted for recipients who do not meet the criteria for a hearing aid evaluation established at subsection (b)(1)(B) of this section.

(3) Prior authorization is not granted for recipients who have a third-

party resource available for the purchase of a hearing aid, nor for recipients who can receive a hearing aid from another agency.]

(a)[(b)] Hearing aid evaluations. Providers of hearing aid evaluations must comply with all applicable federal and state laws and regulations, recognized professional standards, and the provisions cited at Subchapter A, Medicaid Procedures for Providers, and at Subchapter L, General Administration, of this chapter, in addition to the following conditions, specifications, and limitations established by the Texas Department of Health (department) or its designee.:

(1) Hearing aid evaluations must be recommended by a physician based upon his examination of the client [recipient]. The client [recipient] must have a medical necessity for a hearing aid and have no medical contraindications to his ability to use and/or wear a hearing aid.

(A) A physician who recommends a hearing aid evaluation must be licensed to practice medicine in the state where and when the evaluation is conducted.

(B) The physician must indicate on the Physician Examination Report form if the client needs a hearing aid evaluation based on his examination of the client [provider of the hearing aid evaluation must determine that the recipient meets the eligibility criteria for an evaluation]. Medicaid reimbursement for a hearing aid evaluation is based on the physician's recommendation that the hearing aid evaluation is medically necessary. Medicaid reimbursement for hearing aids [aid evaluations] is limited to eligible clients [recipients] whose air conduction puretone average in the better ear is 45dB or greater ([ANSI 1969] PTA for 500, 1000, 2000 HZ).

(C) Each client [recipient] receiving a hearing aid through the Texas Medicaid Program must receive a hearing aid evaluation using the procedures specified under the provisions of paragraph (2)(A)-(G) and paragraph (3)(A)-(C) of this subsection and subsection (b) [(c)] of this section.

(D) Providers must conduct all authorized hearing aid evaluations within 90 days of their authorization, contingent upon the recipient's eligibility for Medicaid benefits at the time of service.]

(D)[(E)] Providers may conduct home visit hearing aid evaluations only if the client's [recipient's] physician has

documented that the client's [recipient's] medical condition prohibits his traveling to the provider's place of business.

(E) [(F)] Only those providers having the necessary mobile testing equipment and sound level meter may conduct home visit hearing aid evaluations.

(2) Providers must include in the hearing aid evaluation an audiometric assessment and a sound field test.

(A) Masking for air-conduction, bone-conduction, speech discrimination testing, and speech audiometry must be conducted in accordance with the 45dB hearing loss evidenced by the client [recipient].

(B) Providers must ensure that the testing environment does not have an ambient noise level exceeding 50dBA or 60dBC.

(C) Audiometers must be equipped with air and bone conduction circuitry, masking and sound field capabilities, with calibrated speech circuit and VU meter.

(D) Audiometers must be calibrated annually to meet ANSI 1969 standards.]

(D)[(E)] Semi-annual audiometer calibration and sound level readings are required for equipment used for home visit hearing aid evaluations.

(E) [(F)] If conventional sound field speech discrimination testing cannot be done, providers may use aided versus unaided lipreading scores on appropriate standardized tests.

(3) Providers of hearing aid evaluations must have a report in the client's record [report their findings to the department or its designee in a hearing aid evaluation report]. Providers must include in the report audiometric test data, sound field test data for at least two arrangements of amplification, and a recommended hearing aid for the ear requiring amplification supported by sound field test data.

(A) If appropriate, providers must include test data cited in paragraph (2)(F) and (G) of this subsection in the hearing aid evaluation report.

(B) If any of the criteria cited in this section cannot be met, providers must specify in the evaluation report the

factors influencing or preventing assessments, and justify the recommendation for a hearing aid.

(C) Recommendations including poor ear fittings resulting in problems with speech discrimination ability must be accompanied by supporting rationale.

(b)[(c)] Hearing aids. Providers must offer each client [recipient] eligible for a hearing aid a new instrument that meets his hearing need and that is within the allowable fee paid by the Texas Medicaid Program.

(1) Hearing aids above the maximum allowable fee. The department shall pay the maximum allowable fee paid by the Texas Medicaid Program toward [may authorize] hearing aids for clients [recipients] who meet the requirements cited at §29.1504(b)(2) of this title (relating to Reimbursement for Hearing Aid Services)

(2) Warranty. Providers must ensure that each hearing aid purchased through the Texas Medicaid Program is a new and current model which meets the performance specifications of the manufacturer and the hearing needs of the client [recipient]. Providers must also ensure that each hearing aid is covered by a full 12-month manufacturer's warranty, effective from the dispensing date.

(3) Required package. Providers must dispense each hearing aid purchased through the Texas Medicaid Program with a receiver or oscillator, if needed; all necessary tubing, cords, and connectors; instructions for care and use; and a one-month supply of batteries.

(4) Thirty-day trial period. Providers must allow each eligible client [recipient] 30 days to determine his satisfaction with a hearing aid purchased through the Texas Medicaid Program. The trial period consists of 30 consecutive days from the dispensing date. Providers must inform clients [recipients] of the trial period and of the beginning and ending dates.

(A) During the trial period, providers may dispense additional hearing aids, as medically necessary, until the client is satisfied with the results of the aid or the provider determines that the client cannot benefit from the dispensing of an additional hearing aid [Providers may dispense a second hearing aid to a recipient during the trial period; providers must obtain prior authorization for each instrument]. A new trial period begins with the dispensing date of each [the] hearing aid. [If the recipient requires a third hearing aid, providers must submit a physician's evaluation of the recipient's ability to use

the hearing aid before the department approves dispensing of the hearing aid.]

(B) Providers may charge a rental fee for hearing aids returned during the trial period.

(i) If a rental fee is charged, providers must assess the rental fee according to the rules and regulations established by the State Committee for Examiners in the Fitting and Dispensing of Hearing Instruments [Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids].

(ii) If there is no signed agreement between the client [recipient] and the provider specifying a greater amount, the maximum rental for eligible Medicaid clients [recipients] is \$2.00 per day. This fee is not a covered benefit of the Texas Medicaid Program. Clients [Recipients] are responsible for paying any rental fee assessed them for instruments returned during the 30-day period. Providers must keep in the client's file [submit to the department or its designee] the client's [recipient's] signed certification acknowledging his responsibility to pay hearing aid rental fees.

(iii) Providers must comply with all procedures and directions provided by the department or its designee regarding forms and certifications required during the 30-day trial period. Providers must allow 30 days to elapse from the hearing aid dispensing date before completing a [submitting a signed and dated] "30-day trial period certification statement," which is kept in the client's file [to the department or its designee].

(5) Post-fitting checks. The fitter and dispenser must perform a post-fitting check of the hearing aid within five weeks of the initial fitting. The post-fitting check is part of the dispensing procedure.

(6) First revisit. The first revisit includes a hearing aid check and/or counseling and is conducted as needed within six months of the post-fitting check.

(7) Second revisit. The second revisit is conducted as needed. The purpose of the second revisit is to assess hearing acuity and includes an aided sound field test according to the hearing aid evaluation guidelines established by the department or its designee.

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

Issued in Austin, Texas, on May 5, 1995.

TRD-9505491

Susan K Steeg  
General Counsel  
Texas Department of  
Health

Earliest possible date of adoption: June 12, 1995

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

## Chapter 41. Utilization Review

### Waiver for Utilization Review

• 25 TAC §§41.101, 41.102, 41.104, 41.106-41.108, 41.110, 41.112, 41.113

On behalf of the State Medicaid Director, the Texas Department of Health (department) submits proposed amendments to §§41.101, 41.102, 41.104, 41.106-41.108, 41.110, 41.112, and 41.113, concerning utilization and review procedures. Specifically, the amendments cover inpatient hospital utilization program; case selection process; Texas Medical Review Program (TMRP) review process; attestation statement for TMRP hospitals; acknowledgment of penalty notice; denials and recoupments for TMRP and Tax Equity and Fiscal Responsibility Act (TEFRA) hospitals; appeals requirements under TMRP and TEFRA, and hospital notification; inpatient utilization review for hospitals reimbursed under the TEFRA principles of reimbursement; and quality of care review.

These amendments are being proposed to redefine the scope of the utilization review program for inpatient hospital care for hospitals reimbursed under the department's prospective payment system. The amendments are proposed to include a diagnostic related group (DRG) data base that will determine the DRG payment schedule, which includes psychiatric and rehabilitation admissions in the DRG payment methodology; define the review process to include review of readmissions, cost outliers, day outliers, and emergency services; improve administrative procedures by eliminating the requirement for annual renewal of acknowledgment of penalty notices and the requirement for the issuance of preliminary technical denials when attestation statements are not provided or are not properly completed when submitted with complete medical records; and clarify existing language by deleting repetitive language, simplifying instructions, and clearly delineating agency responsibility.

Gary Bego, health care financing budget director, has determined for the first five-year period that there will be minimal fiscal implication for state or local governments as a result of enforcing or administering the sections.

Mr. Bego also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a more efficient use of state resources and improved quality of care provided to Medicaid clients of Texas. There is no anticipated economic cost to small businesses. There will be no anticipated economic costs to persons who are required to comply with the proposed sections. There is no anticipated effect on local employment.



Comments on the proposal may be sent to Brenda Salisbury, Health Care Financing, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 338-6521. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*

The amendments are proposed under the Human Resources Code, §32.021 and Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program and are submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991)

The amendments affect Chapter 32 of the Human Resources Code

*§41.101. Inpatient Hospital Utilization Review Program.*

(a) The Texas Medical Review Program (TMRP) is the inpatient hospital utilization review system used by the Texas Department of Health (department) for hospitals reimbursed under the department's prospective payment system. The department conducts the TMRP in accordance with:

(1) (No change.)

(2) an approved waiver under the Social Security Act, §1861(k), as it relates to the use of Title XVIII utilization review procedures for Title XIX patients in acute general hospitals other than hospitals reimbursed under the Tax Equity Fiscal Responsibility Act (TEFRA) principles of reimbursement; or[.]

(3) diagnostic-related group (DRG) data base that determines the DRG payment schedule, which includes psychiatric and rehabilitation admissions in the DRG payment methodology.

(b) (No change.)

*§41.102. Case Selection Process* Selection of cases for review includes, but is not limited to:

(1) Texas Medical Review Program (TMRP) cases.

(A) (No change.)

(B) additional cases, up to 100% for any provider or DRG, if:

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

(iii) admission denials for a given DRG for a particular provider are 5.0% or greater; or

(iv)-(vi) (No change.)

(2) (No change.)

*§41.104. Texas Medical Review Program (TMRP) Review Process.*

(a) For all Medicaid admissions identified for review, the TMRP review process includes, but is not limited to, the following [consists of the following three major components]:

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

(3) quality of care review, which is an assessment of the quality of care provided to determine if it meets generally accepted standards of medical and hospital care practices or puts the patient at risk of unnecessary injury, disease, or death. Quality of care review includes the use of discharge screens and generic quality screens;[.]

(4) readmission review, which consists of reviewing each admission on its individual merits as well as determining if the second or subsequent admissions were the direct result of a premature discharge or to provide services that should have been provided in the first admission;

(5) day outlier review, which consists of verifying the medical necessity of each day of the admission;

(6) cost outlier review, which consists of verifying that services billed were medically necessary, ordered by a physician, rendered and billed appropriately, and substantiated in the medical record; and

(7) emergency service review, which consists of verifying that the emergency principal diagnosis (billed and paid), is substantiated in the medical record. If the admission is to a noncontracted hospital in the Medicaid Selective Contracting Program or any other hospital approved for emergency inpatient services only and the process of normal DRG validation, as stated in paragraph (2) of this subsection, results in a change to the principal diagnosis that consequently designates the admission as nonemergency, all monies paid shall be recouped by the Texas Department of Health (department) or its contractor.

(b) The department [Texas Department of Health (department)] or its contractor shall review [reviews] the complete medical record to make decisions on all aspects of the review process including but not limited to the medical necessity of the admission, DRG validation, and quality of care [concerning the medical necessity of the admission, DRG validation, and quality of care]. The complete medical re-

cord must include, but is not limited to: medical/surgical history and physical examination, discharge summary, physicians' progress notes, physicians' orders, lab reports, x-ray reports, operative reports, pathology reports, nurses' notes, medication sheets, vital signs sheets, therapy notes, specialty consultation reports, special diagnostic and treatment records, and completed attestation statements. If the complete medical record is not available or is not made available during the review, a preliminary technical denial is issued and the facility is notified.

(c) A practicing physician consultant shall make all decisions regarding any aspect of the review process that involves determining medical necessity, cause of readmission, or appropriateness of setting regarding the service provided. In the event the practicing physician consultant determines the services were not medically necessary, should have been provided in the first admission, or were not provided in the appropriate setting, the hospital shall be notified in writing of that decision, and the appropriate action shall be taken. [If the complete medical record is not available or is not made available during the review, a preliminary technical denial will be issued. The facility will be notified and allowed 60 days to provide the complete medical record. If the complete medical record is received by the department or its contractor within the 60 days, a final technical denial is not issued and the medical record is reviewed. If the complete medical record, including the properly completed physician attestation, is not received by the department or its contractor within the 60 days, a final technical denial is issued, and payment is recouped. Medical records not received by the department or the contractor within the 60 days shall be denied review on the merits, and any claim the hospital may have to the Medicaid funds at issue shall be barred. Extensions of time will not be granted for the filing of a medical record and/or attestation statement beyond the 60 days.

[(d) Beginning October 1, 1990, if a department physician reviewer or contractor's physician reviewer determines that the admission was not medically necessary, the case will be referred to a practicing physician for a determination. If a practicing physician determines upon initial review, or upon review of a record previously reviewed by a department physician reviewer or contractor's physician reviewer, that the admission was not medically necessary, an admission denial will be issued.]

*§41.106. Attestation Statement for Texas Medical Review Program (TMRP) Hospitals.*

(a) Diagnostic related group (DRG)

validation requires comparison of the attestation statement, signed and dated by the physician, to the documentation in the medical record of principal and secondary diagnoses, procedures, and complications or comorbidities. **The physician must hand-write in ink his/her signature and the date (including the month, day, and year) on the attestation statement.** The hospital must ensure that an attestation statement is completed on each Medicaid case prior to submission of the claim. This information must be noted on that portion of the medical record containing the diagnostic and procedural information. The following statement must immediately precede the physician's signature and must be on the same page as the diagnostic and procedural information: "I certify that the narrative descriptions of the principal and secondary diagnoses and the major procedures performed are accurate and complete to the best of my knowledge "

(b) (No change.)

(c) The hospital must ensure that the attestation statement is made a permanent part of the hospital medical record for all inpatient Medicaid claims in TMRP hospitals. The hospital must ensure that the attestation statement is typed or handwritten in ink [and signed and dated in ink by the physician with his or her legal signature]. **The physician must sign and date (including the month, day, and year) in ink his legal signature before submitting the claim.** Signature stamps are not acceptable. Facsimiles or other alternate methods are not acceptable unless the hospital submits documentation from its Medicare fiscal intermediary that the hospital has been approved to use an alternate signature option. Requests for approval to participate in the facsimile process should be submitted to the[:] Texas Department of Human Services, UARS-Attestation Approval, P.O. Box 149030 (MC Y-919), Austin, Texas 78714-9030. If the physician determines that a change is necessary in the sequencing of diagnoses or procedures, the physician must **initial and date the change in ink on the original/initial attestation statement, before submitting the claim** [indicate and initial the change. The attestation must be dated at the time that the physician signs it and prior to the submission of the claim].

*§41.107. Acknowledgment of Penalty Notice.*

(a) Hospitals must provide and have on file a [current,] signed acknowledgment from the physician that the physician has received the following notice: "Notice to Physician: Medicaid payment to hospitals is based in part on each patient's principal and secondary diagnoses and the major procedures performed on the patient, as attested to by the patient's physician by virtue

of his or her signature in the medical record. Anyone who misrepresents, falsifies, or conceals essential information required for payment of federal or state funds, may be subject to fine, imprisonment, or civil penalty under applicable federal and state laws "

(b) Each physician's acknowledgment of penalty notice remains in effect as long as the physician admits patients at that hospital. [Hospitals must ensure that each physician's acknowledgement is updated by October 1 of each year and has been completed within the year prior to the submission of the facility's claim.] The physician must sign and date (including day, month, and year), in ink, the acknowledgment using only his or her legal signature before submission of claims for payment. [.] Initials [initials] and facsimiles are not acceptable.

(c) (No change.)

*§41.108. Denials and Recoupsments for Texas Medical Review Program (TMRP) and Tax Equity and Fiscal Responsibility Act (TEFRA) Hospitals.*

(a) The following denials are issued as a result of the review process. [Three types of denials--admission denials, continued stay denials, and technical denials--are issued as a result of the review process.]

(1) Admission and continued stay denials. A practicing physician consultant makes all decisions regarding any aspect of the review process that involves determining medical necessity, cause of readmission, or appropriateness of setting regarding the service provided. In the event the practicing physician determines the services were not medically necessary, should have been provided in the first admission, or were not provided in the appropriate setting the hospital shall be notified of that decision. [Beginning October 1, 1990, if the Texas Department of Health (department) or contractor's physician reviewer determines that the admission or continued stay was not medically necessary, the case will be referred to a practicing physician for a determination. If a practicing physician determines upon initial review, or upon review of a record previously reviewed by a department physician reviewer or contractor's physician reviewer, that the admission or continued stay was not medically necessary, an admission denial or continued stay denial will be issued.]

(2) Technical denials. A technical denial shall be issued when a hospital fails to make available for review a complete medical record including a properly completed physician attestation statement, on the date of an onsite review

or, for mail-in hospitals, within specified time frames. A technical denial also shall be issued when the physician attestation statement is not available for review, is dated after the claim was submitted, or is not properly completed. A properly completed attestation statement must include a narrative description of the diagnoses and procedures, the initials of the physician changing the sequencing of diagnoses or procedures, the certification statement, the physician's signature, and the date (month, day, year) the physician signed the statement. [If the complete medical record, including a properly completed physician attestation statement in the case of a TMRP hospital, is not available or is not made available during the review or, for mail-in hospitals, within the specified time frames, a preliminary technical denial is issued. The facility will be notified and allowed 60 days, after receipt of said notice, to provide the complete medical record, including the completed attestation in the case of a TMRP hospital, to the department or the contractor. A properly completed attestation statement must include a narrative description of the diagnoses and procedures, the certification statement, the physician's signature, the physician's initials in changes in the sequencing of diagnoses or procedures, and the date the physician signed the statement. If the complete medical record, including the completed attestation in the case of a TMRP hospital, is received by the department or its contractor within 60 days after the preliminary technical denial, a final technical denial is not issued, and the case is reviewed. If the complete medical record, including the completed attestation in the case of a TMRP hospital, is not received by the department or the contractor within the 60 days, a final technical denial is issued and payment is recouped. Medical records and/or attestation statements not received by the department or the contractor within the 60 days shall be denied review on the merits, and any claim the hospital may have to the Medicaid funds at issue shall be barred. Extensions of time will not be granted for the filing of a medical record and/or attestation statement beyond the 60 days.]

(A) If the properly completed attestation statement is not available or is not made available during the onsite review, a final technical denial shall be issued, and the payment shall be permanently recouped. For mail-in hospitals, a final technical denial shall be issued if the properly completed physician attestation statement is not included in the medical record submitted for review, and the payment shall be permanently recouped.



(B) If the complete medical record (other than the properly completed attestation statement) is not available or is not made available during the onsite review or, for mail-in hospitals, within the specified time frames, a preliminary technical denial shall be issued. Preliminary technical denials shall be issued onsite for onsite reviews. The facility must submit a complete medical record within 60 calendar days from the exit conference date. For mail-in hospitals, preliminary technical denials shall be issued by certified mail or FAX machine, and the facility shall have 60 calendar days from the receipt date of the notice to submit a complete medical record.

(C) If the complete medical record, including the properly completed attestation statement in the case of a TMRP hospital, is received by the department or its contractor within 60 days after the preliminary technical denial, a final technical denial shall not be issued, and the case will be reviewed. If the complete medical record, including the properly completed attestation statement in the case of a TMRP hospital, is not received by the department or its contractor within the 60 calendar days, a final technical denial shall be issued, and payment shall be recouped. Medical records not received by the department or its contractor within the 60 calendar days must be denied review on the merits, and any claim the hospital has to the Medicaid funds at issue must be barred. Extensions of time are not granted for the filing of a medical record beyond the 60 calendar days.

(3) Readmission denial. If it is determined that the services provided in the second or subsequent admissions were the direct result of a premature discharge or should have been provided in the first or previous admission, the admission in question shall be denied, and monies shall be recouped.

(4) Day outlier denial. If it is determined that not all of the days during the admission were medically necessary, those days shall be denied as covered days, and monies shall be recouped.

(5) Cost outlier denial. If it is determined that services delivered were not medically necessary, not ordered by a physician, not rendered or billed appropriately, or not substantiated in the medical record, monies for those services shall be recouped.

(b) Except as otherwise noted in this subsection, when an inpatient admission or continued stay is not medically nec-

essary and an admission denial or continued stay denial is issued, the department or its contractor shall recoup [recoups] all monies paid to the hospital for the admission or days of stay that were denied, and no money shall be [is] payable for any of the services provided for the admission or continued stay days denied. An exception shall be [is] made in the case of TMRP hospitals in the event that the patient was originally placed in observation, and the hospital has been notified by the department or its contractor that they may submit a revised claim solely for medically necessary outpatient services provided during the observation period. A physician's order must be present to document that the patient was originally placed in observation on an outpatient basis[; therefore, the complete medical record must be submitted with the revised claim]. The revised claim and a copy of the notification must be submitted to the address indicated in the notification and must be received within 180 days of receipt of the notification. Payment shall [will] be considered for the medically necessary services provided during the first 23 hours. Observation services can be provided in any part of the hospital where a patient placed in observation can be assessed, examined, monitored and/or treated in the course of the customary handling of patients by the facility

(c) (No change )

*§41.110. Appeals Requirements Under the Texas Medical Review Program (TMRP) and Tax Equity and Fiscal Responsibility Act (TEFRA), and Hospital Notification.* Beginning October 1, 1990, hospitals may appeal adverse decisions made under the TMRP and TEFRA review programs under the following guidelines.

(1) If a hospital receives notification from the Texas Department of Health (department) or its contractor of an adverse decision regarding: medical necessity of admission and/or continued stay, or diagnostic related group (DRG) validation, the methods for appealing the decisions are as follows:

(A) If a hospital is dissatisfied with the original utilization review decision made by the department or the department's contractor, the hospital may submit a written request for a desk review to the Texas Department of Health, [department's] Bureau of Medical Appeals, 1100 West 49th Street, Austin, Texas 78756-3172[; a written request for a desk review]. The request should indicate the reason the decision by the department was incorrect and must include a copy of the complete medical record; the original signed, properly completed, and notarized affidavit in the format provided or approved

by the department, which allows the hospital to certify the record as a business record; and a properly completed physician attestation statement in the case of a TMRP hospital[; unless these items were previously provided to the department at the time of the initial utilization review] If the written request for a desk review is not received by the department within 180 days from the date the hospital received the original utilization review decision, the desk review shall not be conducted. No appeal of any type is thereafter available on the merits and the previous decision by the department shall be final. Any claim the facility may have to the Medicaid funds at issue shall be barred. Extensions of time shall not be granted for the filing of a written request for a desk review, submission of the complete medical record, the notarized business record affidavit, or the completed physician attestation.

(B) A desk review must be conducted by a department [the] Bureau of Medical Appeals physician. On completion of the review, a department [the] Bureau of Medical Appeals physician must render an appeal decision and notify the hospital in writing of that decision. If any of the requirements of subparagraph (A) of this paragraph are not met, the request for the desk review will be dismissed for want of jurisdiction and the Bureau of Medical Appeals shall consider [considers] the original decision made by the department as final.

(C) If a hospital is dissatisfied with the desk review decision or if the hospital determines that the department has not followed its policy concerning due process in its appeal rules, the hospital may request a contract appeal hearing. The contract appeal hearing request must be submitted in writing to [and must be received by] the Texas Department of Health, Bureau of Medical Appeals, Hearing Request, 1100 West 49th Street, Austin, Texas 78756-3172, and must be received by the department no later than 15 days from the [hospital's] date of receipt of the desk review decision. Receipt of the written request for a contract appeal hearing within 15 days by the department's Bureau of Medical Appeals is a jurisdictional prerequisite. Any such request received beyond the 15 days is subject to dismissal for want of jurisdiction and the entry of an order sustaining the previous decision by the Bureau of Medical Appeals.

(2) If a hospital receives notification from a contractor of an adverse decision regarding: medical necessity of admission and/or continued stay, or DRG validation, the methods for appealing and the specific requirements which must be met by the hospital are as follows.

[(A) If a hospital is dissatisfied with a reviewing contractor's original decision regarding: medical necessity of admission and/or continued stay, or DRG validation, the hospital may submit to the contractor a written request for a reconsideration. The written request should state the reason the decision by the TDH contractor was incorrect and must include a copy of the complete medical record accompanied by the properly completed and notarized business record affidavit in the format provided by or approved by TDH, which allows the hospital to certify the record as a business record; and a properly completed attestation statement in the case of a TMRP hospital; unless these items were previously provided to the contractor at the time of the initial review. The hospital must ensure that the contractor receives this request within 180 days of the date the hospital received the notification documenting the denial of or reduction of payment of the claim(s). After receiving the request, the contractor considers the case, renders a decision, and notifies the hospital in writing. The contractor also notifies the hospital that the hospital has the right to request a desk review from the Bureau of Medical Appeals, if dissatisfied with the decision.

[(B) If, after filing a request for a reconsideration, a hospital is dissatisfied with the contractor's reconsideration decision, the hospital may submit to the Bureau of Medical Appeals, 1100 West 49th Street, Austin, Texas 78756-3172, a written request for a desk review. The request should state the reason the decision by the department or the contractor was incorrect and must include a copy of the complete medical record; an original signed, properly completed and notarized affidavit in a format provided by or approved by the department for the hospital to certify the record as a business record; and a properly completed attestation statement in the case of a TMRP hospital; unless these items were previously provided to the contractor when requesting a reconsideration]. The written request for a desk review must be received by the department within 15 days from the date of the hospital's receipt of written notification of the reconsideration decision from the contractor. Receipt by the Bureau of Medical Appeals of the written request for a desk review within the 15 days is a jurisdictional prerequisite. Any such request received beyond the 15 days is subject to dismissal for want of jurisdiction and the entry of an order sustaining the previous decision by the department contractor. No appeal of any type is thereafter available on the merits, and the previous decision by the department contractor shall be final. Any claim the hospital may have to the Medicaid funds at issue shall be barred. Extensions of

time shall not be granted for the filing of a written request for a desk review, submission of the complete medical record, the notarized business record affidavit, or the completed attestation.

[(i) A desk review must be conducted by a Bureau of Medical Appeals physician. On completion of the review, the Bureau of Medical Appeals must render an appeal decision and notify the hospital in writing of that decision. If any of the requirements of this subparagraph are not met, the department considers the original decision made by the department contractor as final.

[(ii) If a hospital is dissatisfied with the decision in the desk review, the hospital request a contract appeal may request a hearing. The contract appeal hearing request must be submitted in writing and must be received by the Bureau of Medical Appeals, 1100 West 49th Street, Austin, Texas 78756-3172, no later than 15 days from the hospital's date of receipt of the desk review decision. Receipt of the written request for a contract appeal hearing within the 15 days by the Bureau of Medical Appeals is a jurisdictional prerequisite. Any such request received beyond the 15 days is subject to dismissal for want of jurisdiction and the entry of an order sustaining the previous decision by the Bureau of Medical Appeals.]

(2)[(3)] The hospital may appeal a technical denial to the department if the hospital determines that the department or the contractor issuing the denial made an incorrect denial or did not provide proper notification of the technical denial.

(A) The hospital must submit a written request for a desk review, accompanied by the complete medical record; an [the] original signed, properly completed and notarized business record affidavit in the format provided by or approved by the department, which allows the hospital to certify the record as a business record; and a properly completed physician attestation statement in the case of a TMRP hospital; and should state the reason the decision by the department or its contractor was incorrect. The hospital must [may] submit copies of any supporting documentation at the time of filing the appeal [documentation the hospital deems necessary]. Appeals of final technical denials must be received no later than 180 [15] days from the date the hospital receives the final technical denial notice from the department or its contractor and must be sent to the Texas Department of Health, Bureau of Medical Appeals, 1100 West 49th Street, Austin, Texas 78756-3172. Receipt by the Bureau of Medical Appeals of the written appeal request within the 180 [15] days is a jurisdictional prerequisite. Any such requests received be-

yond the 180 [15] days is subject to dismissal for want of jurisdiction and the entry of an order sustaining the previous decision by the department or its contractor.

(B) If the requirements of subparagraph (A) of this paragraph are met, the Bureau of Medical Appeals shall render [renders] a decision on the department's or the contractor's final technical denial decision. If the department's Bureau of Medical Appeals determines that the technical denial was issued correctly, [correct,] the Bureau of Medical Appeals shall consider [considers] the decision of the department or the contractor as final and shall notify the hospital. If the department's Bureau of Medical Appeals determines that the department's or the contractor's decision was incorrect, the [Bureau of Medical Appeals notifies the hospital that the technical denial has been overturned. In both instances, the] cases will be reviewed by [then be referred to the section within] the department or [to] the department contractor [responsible for making initial utilization review decisions] for a determination of the medical necessity of the admission and/or continued stay, DRG validation, and quality of care review. The department's Bureau of Medical Appeals will notify the hospital of the final decision regarding the technical denial and of the decisions made regarding the medical necessity of the admission and/or continued stay, DRG validation, and quality of care review [by the department or the contractor].

(C) If a hospital is dissatisfied with the decision in the desk review, the hospital may request a contract appeal hearing. The contract appeal hearing request must be submitted in writing [and must be received] by the Texas Department of Health, Bureau of Medical Appeals, Hearing Request, 1100 West 49th Street, Austin, Texas 78756-3172, and must be received by the department no later than 15 days from the hospital's date of receipt of the desk review decision. Receipt of the written request for a contract appeal hearing within the 15 days by the department's Bureau of Medical Appeals is a jurisdictional prerequisite. Any such request received beyond the 15 days is subject to dismissal for want of jurisdiction and the entry of an order sustaining the previous decision by the Bureau of Medical Appeals.

(D) If a final technical denial is overturned by a hearing examiner as a result of a contract appeal hearing, the case shall be referred to the department's Bureau of Medical Appeals for a determination of the medical necessity of the admission and or continued stay, DRG validation, and quality of care re-

view. The hospital is notified by the Bureau of Medical Appeals if there is an adverse decision.

(E) If the hospital is dissatisfied with the decision made by the department, the hospital is allowed to request a contract appeal hearing. The request must be submitted in writing to and must be received by the Texas Department of Health, Bureau of Medical Appeals, Hearing Request, 1100 West 49th Street, Austin, Texas 78756, no later than 15 days from the hospital's date of receipt of the adverse decision. Receipt of the written request for a contract appeal hearing within the 15 days by the Bureau of Medical Appeals is jurisdictional prerequisite. Any such request received beyond the 15 days is subject to dismissal for want of jurisdiction and the entry of an order sustaining the previous decision by the Bureau of Medical Appeals or its contractor:

*§41.112. Inpatient Utilization Review for Hospitals Reimbursed under the Tax Equity and Fiscal Responsibility Act (TEFRA) Principles of Reimbursement.*

(a) For all Medicaid admissions identified for review, the TEFRA review process includes, but is not limited to, the following [consists of the following three major components]:

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

(3) quality of care review, which is an assessment of the quality of care provided to determine if it meets generally accepted standards of medical and hospital care practices or puts the patient at risk of unnecessary injury or death. Quality of care review includes the use of discharge screens and generic quality screens; and[.]

(4) emergency service review, which consists of verifying that the emergency principal diagnosis billed and paid, is substantiated in the medical record. The principal diagnosis is verified as stated in the normal DRG validation process in §41.104(a)(2) of this title (relating to Texas Medical Review Program (TMRP) Review Process). If the admission is to a noncontracted hospital in the Medicaid Selective Contracting Program or any other hospital approved for emergency inpatient services only and the process results in a change to the principal diagnosis that consequently designates the admission as nonemergency, all monies paid shall be recouped by the Texas Department of Health (department) or its contractor.

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

(d) A practicing physician consultant shall make all decisions regarding

any aspect of the review process that involves determining medical necessity, cause of readmission, or appropriateness of setting regarding the service provided. In the event the practicing physician consultant determines the services were not medically necessary; should have been provided in the first admission; or were not provided in the appropriate setting, the hospital is notified in writing of that decision and appropriate action shall be taken. [Beginning October 1, 1990, if a Texas Department of Health (department) physician reviewer determines that the admission or continued stay was not medically necessary the case will be referred to a practicing physician for a determination. If a practicing physician determines upon initial review, or upon review of a record previously reviewed by a department physician reviewer, that the admission or continued stay was not medically necessary, an admission or continued stay denial will be issued.]

*§41.113. Quality of Care Review.* Quality review shall [will] be conducted on all cases reviewed by the Texas Department of Health (department) or its contractor. The department or a contractor physician may identify quality issues. The department shall [will] utilize regional and statewide quality review committees to make recommendations to the department concerning corrective actions and/or sanctions. The committees shall [will] be comprised of three to five specialty consultant physicians from the same geographic location as the hospital, when possible. [The department physician will serve as an ex officio member of the committees.]

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

Issued in Austin, Texas, on May 5, 1995.

TRD-9505493

Susan K. Steeg  
General Counsel  
Texas Department of  
Health

Earliest possible date of adoption: June 12, 1995

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

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**Part VII. Texas Medical Disclosure Panel**

**Chapter 601. Informed Consent**

• 25 TAC §601.7

The Texas Medical Disclosure Panel (panel) proposes new §601.7, relating to informed consent for electroconvulsive therapy. The new section addresses consent to electroconvulsive therapy as required by the Health and

Safety Code (HSC), §578.003. HSC, §578.003 requires the Texas Department of Mental Health and Mental Retardation (MHMR) to adopt a written consent form for electroconvulsive therapy. In addition to the information required by §578.003, the form must include the information required by the panel for electroconvulsive therapy. HSC, §578.003 states that use of the consent form prescribed by MHMR in the manner prescribed by HSC, §578.003 creates a rebuttal presumption that the disclosure requirements of the Medical Liability and Insurance Improvement Act of Texas, Texas Civil Statutes, Article 4590i, §6.05 and §6.06 have been met.

The new section states that if the MHMR consent form for electroconvulsive therapy is in compliance with the HSC, §578.003 and contains the minimum information required by the panel, a physician or health care provider using the MHMR form for electroconvulsive therapy is not required also to use the panel's disclosure and consent form. The section also states that it does not constitute approval of the MHMR current form or of MHMR's assessment of the risks and hazards associated with electroconvulsive therapy. The intent of this section is to clarify the issue which has arisen as to whether a physician or health care provider must use both forms or may use only the MHMR form.

Becky Beechinor, Director, Health Facility Licensure Division, has determined that for each year of the first five-year period the section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Beechinor also has determined that for each year of the first five years the section as proposed will be in effect, the public benefit to be anticipated will be clarification that if the MHMR form meets the requirements of law, that form alone may be used for electroconvulsive therapy, rather than a physician or health care provider having to utilize both the MHMR form and the panel's disclosure and consent form. There is no anticipated economic cost to persons who are required to comply with the section as proposed for each year of the first five years the proposal will be in effect. There is no anticipated effect on small businesses or local employment.

Comments on the proposed section may be submitted to Becky Beechinor, Director, Health Facility Licensure Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6647 within 30 days of publication of this proposed section.

The new section is proposed under the Medical Liability and Insurance Improvement Act of Texas, Texas Civil Statutes, Article 4590i, §6.04, which authorizes the panel to prepare lists of the medical treatments and surgical procedures that do and do not require disclosure by physicians and health care providers of the possible risks and hazards and to prepare the form for the treatments and procedures which do require disclosure.

The new section affects the Medical Liability and Insurance Improvement Act of Texas,



residential refinance transactions, to accept an affidavit by the mortgagor in lieu of requiring a current survey.

The Department will consider the adoption of amended §9.1 and take testimony on any of the listed items in a public hearing under Docket Number 2149 scheduled for 1:30 p.m. on June 14, 1995 in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas.

David Durden, deputy commissioner for property and casualty lines, has determined that for the first five year period the proposal will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. Mr. Durden has determined that there will be fiscal impact on small businesses with respect to the proposed amendment to Procedural Rule P-2 and new Procedural Rule P-42 which would require title insurers, when handling residential refinance transactions, to accept an affidavit by the mortgagor in lieu of requiring a current survey. The effect of these proposed changes would be to reduce the number of surveys required when consumers refinanced their mortgage loans. The number of consumers refinancing their loans varies widely from year to year depending in part on the mortgage lending interest rate. It is estimated that consumers would save in total from \$8 million to \$14 million on the costs of refinancing in a given year. Mr. Durden also has determined that there will be fiscal impact on the title insurance industry with respect to the adoption of a new procedural rule allowing the computer generation of promulgated endorsement forms. It is estimated that the increased efficiency of computer generation of endorsement forms will save title agents from \$250,000 to \$500,000 per year in policy production costs. Mr. Durden has further determined that there will be no other implications for the local economy and no impact on local employment as a result of administering the proposed section.

Mr. Durden also has determined that for each year of the first five years this proposed section is in effect, the public benefit anticipated as a result of adopting this section will be to produce clarification and standardization of rules and forms in the regulation of title insurance. Mr. Durden has further determined that the public benefit anticipated as a result of adopting the proposed amendment to Procedural Rule P-2 and new Procedural Rule P-42 (requiring title insurers, when handling refinance transactions, to accept an affidavit by the mortgagor in lieu of requiring a current survey) would be more consistent application of the requirements necessitating a survey which will result in a net saving to consumers on survey costs upon refinancing their mortgage loans. Another public benefit anticipated by adoption of a new procedural rule permitting title companies to electronically produce hard copies of promulgated endorsement forms would be to greatly expedite the consumers' receipt of their title policies.

Comments on the proposal to be considered by the Department must be submitted within 30 days after publication of the proposed section in the *Texas Register* to Alicia M. Fechtcl, General Counsel and Chief Clerk,

Texas Department of Insurance, P.O. Box 149104, Mail Code 113-1A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to David Durden, Deputy Commissioner for Property and Casualty Lines, Texas Department of Insurance, P.O. Box 149104, MC 103-1L, Austin, Texas 78714-9104

The amendment is proposed under the Insurance Code, Articles 1.03A, 1.02, 9.07, and 9.21; and the Government Code, §§2001.004 et seq. Article 1.03A authorizes the Commissioner to adopt rules and regulations for the conduct and execution of the duties and functions of the Department as authorized by statute. Article 1.02 provides that a reference in the Insurance Code or another insurance law to the State Board of Insurance means the Commissioner of Insurance or the Texas Department of Insurance as consistent with the respective powers and duties of the Commissioner and the Department under Article 1.02. Article 9.07 authorizes and requires the Commissioner to hold a biennial hearing to promulgate or approve rules and policy forms of title insurance and otherwise to provide for the regulation of the business of title insurance. Article 9.21 authorizes the Commissioner to promulgate and enforce rules and regulations prescribing underwriting standards and practices, and to promulgate and enforce all other rules and regulations necessary to accomplish the purposes of Chapter 9, concerning regulation of title insurance. The Government Code §§2001.004 et seq. (Administrative Procedures Act), authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirements of available procedures and to prescribe the procedure for adoption of rules by a state administrative agency.

The following statute is affected by this proposal: Insurance Code, Articles 9.07, 9.21.

§9.1. *Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas.* The Texas Department [State Board] of Insurance adopts by reference the Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas, as amended effective August 1, 1995 [October 30, 1992]. The document is published by and available from Hart Information [Forms and] Services, 11500 Metric Boulevard, Austin, Texas 78758, and is available from and on file at the Texas Department of Insurance, Title Insurance Section, MC 105-3B [104-1C] 333 Guadalupe Street, Austin, Texas 78701-1998.

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

Issued in Austin, Texas, on May 8, 1995

TRD-9505530

Alicia M. Fechtcl  
General Counsel and Chief  
Clerk  
Texas Department of  
Insurance

Earliest possible date of adoption. June 12, 1995

For further information, please call. (512) 463-6327

## Chapter 19. Agent's Licensing

### Subchapter H. Variable Contract Agents

#### • 28 TAC §19.701, §19.702

The Texas Department of Insurance proposes amendments to §19.701 and §19.702, concerning the licensing of variable contract agents. Proposed §19.701(b) exempts from the examinations listed in §19.701(a) applicants whose activity in the sale of variable contracts is limited to 1) a stock bonus, pension or profit sharing plan which qualifies under §401 of the Internal Revenue Code of 1986; 2) an annuity plan which meets the requirements for the deduction of the employer's contributions under §404(a)(2) of such Code, or 3) a governmental plan as defined in §414(d) of such Code. Proposed §19.701(c) requires applicants for a variable contract agent license, or for renewal of such license, to state whether any judicial or administrative action has been taken against the agent by any insurance or securities regulatory agency or by any securities industry association. In §19.702, reference to a securities dealer's license has been changed to variable contract agent's license; and, reference to the State Board of Insurance has been changed to the Texas Department of Insurance (the Department). The proposed amendments will allow the Department to exempt from securities examination those variable contract agents who sell products which are exempt from registration under state and federal securities law.

Edna Ramon Butts, Senior Associate Commissioner, Regulation and Safety, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal implications for state or local government, or small business as a result of enforcing or administering these sections. There will be no effect on the local economy or local employment.

Ms. Butts also has determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit is that regulation of variable contract agents selling certain types of products will conform with state and federal securities law. Additionally, there will be more effective regulation of variable contract agents by requiring that agents inform the Department if any securities licenses held by them are not in good standing. On the basis of cost per hour of labor, there is no anticipated difference in cost of compliance between small and large businesses.

Comments on the proposal must be submitted within 30 days after publication of the proposed sections in the *Texas Register* to Alicia M. Fechtcl, General Counsel and Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-1C, Austin, Texas 78714-9104. An additional copy of the comment must be submitted to Edna Ramon Butts, Senior Associate Commissioner, Reg-

ulation and Safety, Texas Department of Insurance, MC 107-2A, P.O. Box 149104, Austin, Texas 78714-9104.

The amendments are proposed pursuant to the Insurance Code, Articles 3.75 and 1.03A, and the Government Code, §§2001.004 et seq (Administrative Procedure Act). Article 3.75 authorizes the State Board of Insurance to establish fair and reasonable rules appropriate for the implementation and augmentation of the article. Article 1.03A provides that the Commissioner of Insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance only as authorized by a statute. The Government Code, §§2001.004 et seq authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirements of available procedures and to prescribe the procedures for adoption of rules by a state agency.

The proposed rule affects Insurance Code, Article 3.75.

*§19.701. Variable Contract Agent's [Security Dealer's] License.*

(a) As a condition of licensure, an individual, partnership, or corporation acting as a variable contract agent (agent) [(hereinafter referred to simply as agent)] must hold a valid life insurance agent's license issued under authority of the Insurance Code, Article 21.07-1. Additionally, an individual, as a condition for licensure as a variable contract agent, must meet the following requirements:

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

(b) Notwithstanding subsection (a) of this section, no securities examination shall be required as a condition for licensure as a variable contract agent for any individual whose variable contract sales are limited to variable annuity contracts sold to:

(1) a stock bonus, pension or profit sharing plan which meets the requirements for qualification under §401 of the Internal Revenue Code of 1986;

(2) an annuity plan which meets the requirements for the deduction of the employer's contributions under §404(a)(2) of such Code; or

(3) a governmental plan as defined in §414(d) of such Code.

(c) Applicants claiming an exemption from examination under subsection (b), of this section shall so certify on the application.

(d) Upon application for an initial license or for renewal of license, an agent shall state whether any insurance or securities regulatory agency or any securities industry association, including the National Association of Securities Dealers or any recognized stock exchange has, at any time prior to the filing of the applica-

tion or renewal application, taken any judicial or administrative action against the agent.

*§19.702. Examination.* Certification [Proper proof] of successful completion of the securities examinations as required in §19.701 of this title (relating to Variable Contract Agent's [Securities Dealer's] License) is sufficient to meet the examination requirements of the Texas Department [State Board] of Insurance.

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

Issued in Austin, Texas, on May 4, 1995.

TRD-9505399 Alicia M. Fechtel  
General Counsel and Chief  
Clerk  
Texas Department of  
Insurance

Earliest possible date of adoption: June 12, 1995

For further information, please call: (512) 463-6327

◆ ◆ ◆  
**TITLE 31. NATURAL RE-  
SOURCES AND CON-  
SERVATION**

**Part X. Texas Water  
Development Board**

**Chapter 363. Financial  
Assistance Programs**

**Subchapter B. State Water  
Pollution Control Revolving  
Fund**

The Texas Water Development Board (board) proposes the repeal of §363 203, Eligibility Determination and the amendment to §363.241, Release of Funds for Building. Amendment to §363.241 will require that an applicant for State Water Pollution Control Revolving Fund (SRF) funding must submit a project that is consistent with plans, if any, developed under the Clean Water Act, §§205(j), 208, 303(e), 319, or 320, which apply to the project receiving the financial assistance. The existing rules require that the applicant be designated a waste treatment management agency under the Clean Water Act rather than just having plans consistent with the Act. This requirement was more restrictive than the Clean Water Act requirements and unnecessarily limited the use of the SRF. The amendments eliminate this restriction, instead allowing the Board to finance projects consistent with programs for water quality management planning, nonpoint source pollution, and estuaries as developed under the Clean Water Act. The proposed repeal of §363.203 will delete the requirement that an applicant have submitted documentation for designation as a waste treatment

management agency to be eligible for funding. The effect of this, combined with amendment to §363. 241, will be to shift consideration of a project's consistency with the State water quality planning from the time of commitment to the time of release of funds.

Pamela Ansbury, the Director of Finance, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state government as a result of enforcing or administering the rules. Ms. Ansbury has determined that for the first five-year period the rules are in effect there will be no fiscal implications on local government.

Ms. Ansbury also has further determined that for each year of the first five years that the proposed rules are in effect the public benefit anticipated as a result of enforcing the rules as proposed will be to provide access to State Water Pollution Control Revolving funds for projects consistent with water quality management planning, nonpoint source pollution, and estuary programs as developed under the Clean Water Act. There will be no effect on small businesses. Ms. Ansbury has determined that there will be no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted within 30 days of the date of this publication to Lisa Adelman, Attorney, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, (512) 475-2051.

**Introductory Provisions**

• **31 TAC §363.203**

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

The repeal is proposed under Texas Water Code, §6.101 and §15.065, which requires the board to adopt rules to carry out the powers and duties of the board, under the Texas Water Code, and adopt rules for the SRF.

The proposed section and repeal affect Texas Water Code, Chapter 15, Subchapter J.

*§363.203. Eligibility Determination.*

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

Issued in Austin, Texas, on May 5, 1995.

TRD-9505470 Craig D. Pedersen  
Executive Administrator  
Texas Water Development  
Board

Proposed date of adoption: June 15, 1995

For further information, please call: (512) 463-7981



## Closing and Construction Phase

### • 31 TAC §363.241

The amendment is proposed under Texas Water Code, §6.101 and §15.065, which requires the board to adopt rules to carry out the powers and duties of the board, under the Texas Water Code, and adopt rules for the SRF

§363.241. *Release of Funds for Building.* The following additional information must be submitted prior to release of funds for building for projects receiving assistance from the SRF:

(1) evidence that the project is consistent with plans, if any, developed under the Act, §§205(j), 208, 303(e), 319 or 320, which applies to the project receiving the financial assistance [applicant has been designated a waste treatment management agency under the Act, §208 and §303e];

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

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

Issued in Austin, Texas, on May 5, 1995.

TRD-9505471

Craig D. Pedersen  
Executive Administrator  
Texas Water Development Board

Proposed date of adoption: June 15, 1995

For further information, please call: (512) 463-7981

## Subchapter E. Economically Distressed Areas Program

### Economically Distressed Areas

### • 31 TAC §363.510

The Texas Water Development Board (the board) proposes new §363.510, which will require that any applicant receiving financial assistance from the board under the Economically Distressed Areas Program for construction of wastewater service shall exercise the authority granted to the applicant pursuant to Texas Water Code, §17.934, by requiring any property owners that are to be served by the applicant's wastewater system improvement to connect to such service.

Pamela Ansboury, the Director of Finance, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the new section.

Pamela Ansboury, the Director of Finance, has further determined that for each year of the first five years that the new section is in effect the public benefit anticipated as a result of enforcing the rule as proposed will be to insure the use of and thereby obtain the pub-

lic health benefits from the installation of wastewater treatment and collection systems. Ms. Ansboury also has determined that there is an anticipated economic cost to persons who are required to comply with this section as proposed. Based on an estimate that 5.0% of colonia households will have to be forced to hookup under the authority granted by the rule, the cumulative impact to individuals would be \$239,977 for 1995, \$262,570 for 1996, \$202,222 for 1997, \$217,778 for 1998 and \$217,778 for 1999. The cost per household with an average of 4.5 residents per household would be \$700 per year for each of the first five years that the rule is in effect. Board staff has determined that for the first five years that the rule is in effect there will be no economic impact on local economies.

Comments on the proposals may be submitted within 30 days of publication to Jonathan Steinberg, Attorney, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, (512) 475-2051.

The new section is proposed under Texas Water Code, §6.101 and Texas Water Code, §16.342, which require the board to adopt rules that are necessary to carry out the program provided by Water Code, Subchapter K, Chapter 17.

Texas Water Code, §17.934 is the only statutory provision affected by the proposed new section.

§363.510. *Required Sewer Connections.* Any applicant receiving financial assistance from the board for the construction of wastewater system improvements shall exercise the authority granted to such applicant pursuant to the Water Code, §17.934, and require property owners that are to be served by such wastewater system improvements to connect to the applicant's sewer system.

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

Issued in Austin, Texas, on May 5, 1995.

TRD-9505472

Craig D. Pedersen  
Executive Administrator  
Texas Water Development Board

Proposed date of adoption: June 15, 1995

For further information, please call: (512) 463-7981

## Chapter 375. State Water Pollution Control Revolving Fund

The Texas Water Development Board (board) proposes the repeal of §375.11, Eligibility Determination and §375.39, Hardship Applications and amendments to §375.72, Loan Closing and §375.74, Release of Funds. Amendment to §375.74 will require that before funds are released for building purposes, a recipient of a State Water Pollution Control

Revolving Fund (SRF) loan must submit documentation that the project is consistent with plans, if any, developed under the Clean Water Act, §§205(j), 208, 303(e), 319, or 320, which apply to the project receiving financial assistance. The existing rule requires the applicant be designated a waste treatment management agency under the Clean Water Act, rather than just having plans consistent with the appropriate provisions of such act. This requirement was more restrictive than the Clean Water Act, and unnecessarily limited the use of the SRF. The amendment to §375.74 eliminates this restriction, instead allowing the Board to finance projects consistent with programs for water quality development under the Clean Water Act. Current §375.72 requires loan recipients to provide proof of designated management agency status before loan closing. The amendment proposed to §375.74 provides all needed assurances to comply with the Clean Water Act at the most appropriate time-release of funds for building purposes. Therefore, amendment to §375.72 will remove all requirements for providing evidence regarding designated waste management agency status at the loan closing stage. The proposed repeal of §375.11 will delete the requirement that an applicant be a designated waste management agency to be eligible for funding. The effect of this, combined with amendments to §375.72 and §375.74 will be to shift the requirement that a project be consistent with the state water quality planning from the time of commitment to the time of release of funds. Section 375.39 is no longer used as a method of financial assistance, and therefore is proposed for repeal.

Pamela Ansboury, the Director of Finance, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state government as a result of enforcing or administering the rules. Ms. Ansboury has determined that for the first five-year period the rules are in effect there will be no fiscal implications on local government.

Ms. Ansboury also has further determined that for each year of the first five years that the proposed rules are in effect the public benefit anticipated as a result of enforcing the rules as proposed will be to provide access to State Water Pollution Control Revolving funds for projects consistent with water quality management planning, nonpoint source pollution, and estuary programs as developed under the Clean Water Act. There will be no effect on small businesses. There will be no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted within 30 days of the date of this publication to Lisa Adelman, Attorney, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, (512) 475-2051.

## Program Requirements

### • 31 TAC §375.11

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Water Development Board or in the Texas*

Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the authority of Texas Water Code, §6.101 and §15.605, which requires the board to adopt rules necessary to carry out the powers and duties of the board provided by Texas Water Code, and adopt rules for the State Water Pollution Control Revolving Fund.

The proposed repeal affects the Texas Water Code, Chapter 15, Subchapter J.

#### §375.11. Eligibility Determination.

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

issued in Austin, Texas, on May 5, 1995.

TRD-9505467 Craig D. Pedersen  
Executive Administrator  
Texas Water Development  
Board

Proposed date of adoption: June 15, 1995

For further information, please call: (512) 463-7981

### Application for Assistance

#### • 31 TAC §375.39

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

The repeal is proposed under the authority of Texas Water Code, §6.101 and §15.605, which requires the board to adopt rules necessary to carry out the powers and duties of the board provided by Texas Water Code, and adopt rules for the State Water Pollution Control Revolving Fund.

#### §375.39. Hardship Applications.

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

Issued in Austin, Texas, on May 5, 1995.

TRD-9505468 Craig D. Pedersen  
Executive Administrator  
Texas Water Development  
Board

Proposed date of adoption: June 15, 1995

For further information, please call: (512) 463-7981

### Prerequisites to Release of Funds

#### • 31 TAC §375.72, §375.74

The amendments are proposed under the authority of Texas Water Code, §6.101 and §15.605, which requires the board to adopt

rules necessary to carry out the powers and duties of the board provided by Texas Water Code, and adopt rules for the State Water Pollution Control Revolving Fund.

#### §375.72. Loan Closing.

(a) Instruments needed for closing. The documents which shall be required at the time of closing shall include the following:

(1)-(10) (No change.)

[(11) evidence that the applicant has been designated a waste treatment management agency under the Act, §208 and §303e].

(b)-(e) (No change.)

#### §375.74. Release of Funds.

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

(c) Release of funds for building purposes. Prior to the release of funds for building purposes, the political subdivision shall submit for approval to the executive administrator the following documents:

(1)-(5) (No change.)

(6) evidence that the applicant has submitted a project that is consistent with plans, if any, developed under the Act, §205(j), 208, 303(e), 319 or 320, which apply to the project receiving the financial assistance [been designated a waste treatment management agency under the Act, §208 and §303e];

(7) (No change.)

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

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

Issued in Austin, Texas, on May 5, 1995.

TRD-9505469 Craig D. Pedersen  
Executive Administrator  
Texas Water Development  
Board

Proposed date of adoption: June 15, 1995

For further information, please call: (512) 463-7981

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 50. Day Activity and Health Services

The Texas Department of Human Services (DHS) proposes amendments to §§50.101, 50.403, 50.410, and 50.501, concerning ef-

fective date of contract, facility-initiated referrals, renewal of services, and facility not entitled to payment, in its day activity and health services (DAHS) chapter. The purpose of the amendments is to delete the requirement for annual renewal of physician's orders for clients who have chronic health conditions, change the date when a DAHS contract becomes effective, and delete a section which conflicts with another section.

Burton F. Raiford, commissioner, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Raiford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be assurance that clients receive continued DAHS services. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Maria Garcia Montoya at (512) 450-3155 in DHS's Community Care Program Services section. Written comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Media and Policy Services-258, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

### Contracting

#### • 40 TAC §50.101

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.024 and §§32.001-32.041 of the Human Resources Code.

§50.101. *Effective Date of Contract.* The effective date of a day activity and health services contract is the date the Texas Department of Human Services receives a complete contract application from the facility. [the license or license notice from:

- [(1) DHS's Licensing section; or
- [(2) the facility.]

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

Issued in Austin, Texas, on May 4, 1995.

TRD-9505406 Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services



Proposed date of adoption: July 1, 1995

For further information, please call: (512) 450-3765

## Service Requirements

### • 40 TAC §50.403, §50.410

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement §§22.001-22.024 and §§32.001-32.041 of the Human Resources Code.

#### §50.403. Facility-Initiated Referrals.

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

[(e) If the facility submits documentation that fails to support the prior approval, the facility must submit any additional information the regional nurse requests. This additional information must be postmarked within seven days of the date of request, unless the regional nurse gives written permission for an extension.]

(e)[(f)] If the facility fails to submit prior approval forms or additional documentation within required time frames, or if the additional documentation is not adequate, the regional nurse cancels the facility-initiated prior approval and the facility is not reimbursed for services.

(f)[(g)] If DHS's Client Health Assessment/Plan of Care form or Physician's Order for Day Activity and Health Services form is missing, or if any of the critical omissions or errors stated in paragraphs (1)-(11) of this subsection have occurred in the required documentation, the facility cannot obtain prior approval.

(1) The nurse fails to sign or date DHS's Client Health Assessment/Plan of Care form or omits the registered nurse/licensed vocational nurse credentials that should follow his signature.

(2) Documentation on DHS's Client Health Assessment/Plan of Care form does not support the medical eligibility criteria specified in §50.202 of this title (relating to Medical Criteria).

(3) Items A and B, in Sections II and III of DHS's Client Health Assessment/Plan of Care form are not completed or completed incorrectly and medical need cannot be determined.

(4) For renewal of prior approval, DHS's Client Health Assessment/Plan of Care form has a date that is

earlier than 30 days before the end of the prior approval period.

(5) DHS's Physician's Order for Day Activity and Health Services form does not include the MD or DO credential of the physician who signed the form.

(6) DHS's Physician's Order for Day Activity and Health Services form does not include the license number of the physician who signed it.

(7) The physician who signed the order is excluded from participation in Medicare or Medicaid.

(8) The physician's signature is not on DHS's Physician's Order for Day Activity and Health Services form.

(9) The physician's signature date is missing or illegible and the facility's stamped date is missing from DHS's Physician's Order for Day Activity and Health Services form.

(10) The facility's stamped date used instead of the physician's date on DHS's Physician's Order for Day Activity and Health Services form does not include the provider agency's name, abbreviated name, or initials.

(11) For clients with short term (less than 12 months) prior approval who request renewal of prior approval, the physician's order has a date that is earlier than 30 days before the end of the short term prior approval [period].

#### §50.410. Renewal of Services.

(a) An individual seeking initial prior approval for day activity and health services must have a physician's order for the service. A client with short term (less than 12 months) prior approval who wants to renew prior approval must have his physician's order for the service renewed. [The client's physician must renew his order for day activity and health services at least every twelve months.]

(b) (No change.)

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

Issued in Austin, Texas, on May 4, 1995.

TRD-9505407

Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

Proposed possible date of adoption: July 1, 1995

For further information, please call: (512) 450-3785

## Billing

### • 40 TAC §50.501

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.024 and §§32.001-32.041 of the Human Resources Code.

#### §50.501. Facility not Entitled to Payment.

(a) (No change.)

[(b) The facility will not be reimbursed for services provided to a client currently receiving day activity and health services from another facility without prior approval from the caseworker/regional nurse.]

(b)[(c)] A provider of Medicaid (Title XIX) services may not charge or take other recourse against Medicaid client-patients or income-eligible clients, their family members, or their representatives for any claim denied or reduced by DHS because of the provider's failure to comply with any DHS rule, regulation, or procedure.

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

Issued in Austin, Texas, on May 4, 1995.

TRD-9505408

Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

Proposed date of adoption: July 1, 1995

For further information, please call: (512) 450-3765

## Part XII. Texas Board of Occupational Therapy Examiners

### Chapter 365. Types of Licenses

#### • 40 TAC §365.1

The Texas Board of Occupational Therapy Examiners proposes an amendment to §365.1, concerning Types of Licenses. This amended section will limit the duration of a temporary license granted to a foreign-trained licensee.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the

rule is in effect there will be no effect on local or state government as a result of enforcing or administering the rule.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be provision of better occupational therapy licensing services. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted to Josephine Sanchez, OT Coordinator, Executive Council of Physical Therapy and Occupational Therapy Examiners, 3001 South Lamar Boulevard, Suite 101, Austin, Texas 78704.

The amendment is proposed under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Texas Civil Statutes, Article 8851 is affected by this amendment.

#### §365.1. Types of Licenses.

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

(f) An applicant trained outside the United States of America or its territories may be issued a temporary license, not to exceed a duration of nine months, upon approval from AOTCB that the applicant has met all the requirements to sit for the next available certification examination.

(g)-(h) (No change.)

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

Issued in Austin, Texas, on May 4, 1995.

TRD-9505416

John P. Maline  
Executive Director  
Texas Board of  
Occupational Therapy  
Examiners

Earliest possible date of adoption: June 12, 1995

For further information, please call: (512) 443-3171

## Chapter 372. Referral

### • 40 TAC §372.1

The Texas Board of Occupational Therapy Examiners proposes an amendment to §372.1, concerning Referral. This amendment will clarify and strengthen the requirement for written orders to verify referrals.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the

rule is in effect there will be no effect on local or state government as a result of enforcing or administering the rule.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be provision of better occupational therapy licensing services. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted to Josephine Sanchez, OT Coordinator, Executive Council of Physical Therapy and Occupational Therapy Examiners, 3001 South Lamar Boulevard, Suite 101, Austin, Texas 78704.

The amendment is proposed under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Texas Civil Statutes, Article 8851 is affected by this amendment.

#### §372.1. Referral.

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

(c) The provision of direct treatment by an OTR or COTA [occupational therapist] for medical conditions requires a referral from a physician licensed by the Texas State Board of Medical Examiners to practice in the state of Texas. A referral may be an oral or written order to initiate services. If an oral referral is received, it must be followed by a [request for a] written order [to be] signed by the physician requesting the services.

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

Issued in Austin, Texas, on May 4, 1995.

TRD-9505417

John P. Maline  
Executive Director  
Texas Board of  
Occupational Therapy  
Examiners

Earliest possible date of adoption: June 12, 1995

For further information, please call: (512) 443-3171

## Chapter 373. Supervision

### • 40 TAC §373.1

The Texas Board of Occupational Therapy Examiners proposes an amendment to §373.1, concerning Supervision. This amended section establishes a new form and procedure for OTAs and COTAs to follow to maintain records of professional supervision.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has deter-

mined that for the first five-year period the rule is in effect there will be no effect on local or state government as a result of enforcing or administering the rule.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that proper supervision of OTAs and COTAs is more consistently ensured. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted to Josephine Sanchez, OT Coordinator, Executive Council of Physical Therapy and Occupational Therapy Examiners, 3001 South Lamar Boulevard, Suite 101, Austin, Texas 78704.

The amendment is proposed under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Texas Civil Statutes, Article 8851 is affected by this amendment.

#### §373.1. Supervision.

(a) Supervision of COTAs.

(1) (No change.)

(2) A COTA shall provide occupational therapy services only under the general supervision of a licensed OTR.

(A) A minimum of eight hours of supervision per month for full time COTAs must be documented on a "COTA/OTA Supervision Log" ["COTA Supervision Form"] prescribed by the board. COTAs employed part time shall prorate the required supervision. (If the COTA is employed less than 20 hours per month, a minimum of four hours of supervision is required.) [(COTAs employed part time shall prorate the required supervision. If the COTA is employed less than 20 hours per month, a minimum of four hours of supervision is required.) The "COTA/OTA Supervision Log" must be kept by the COTA, and a copy of this form must be maintained by the facility where the COTA provides services. [The "COTA Supervision Form" must be submitted by the COTA with his or her annual license renewal.]

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

(3)-(9) (No change.)

(b) (No change.)

(c) Supervision of an occupational therapist or an occupational therapy assistant with a temporary license:

(1) Temporary License Pending Passage of Certification Examination:

(A) (No change.)

(B) A minimum of 16 hours of [documented] supervision per month for full-time OTAs must be documented on a "COTA/OTA Supervision Log" prescribed by the board [is required for an OTA]. An OTA employed part time shall prorate the required supervision. (If the OTA is employed less than 20 hours per month, a minimum of four hours of supervision is required.) The "COTA/OTA Supervision Log" must be kept by the OTA, and a copy of this form must be maintained by the facility where the OTA provides services.

(C)-(F) (No change.)

(2) (No change.)

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

Issued in Austin, Texas, on May 4, 1995.

TRD-9505418

John P. Maline  
Executive Director  
Texas Board of  
Occupational Therapy  
Examiners

Earliest possible date of adoption: June 12, 1995

For further information, please call: (512) 443-3171

### Chapter 374. Disciplinary Actions/Complaints [Disciplinary Actions]

#### • 40 TAC §374.1

The Texas Board of Occupational Therapy Examiners proposes an amendment to §374.1, concerning Disciplinary Actions. The amended title clarifies the subject of the rule. The section amendment establishes requirements for reinstatement of a license after a probationary period.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no effect on local or state government as a result of enforcing or administering the rule.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be greater assurance that only OTs and COTAs in good standing are providing services to the public. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted to Josephine Sanchez, OT Coordinator, Executive Council of Physical Therapy and Occupational Therapy Examiners, 3001 South Lamar Boulevard, Suite 101, Austin, Texas 78704.

The amendment is proposed under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Texas Civil Statutes, Article 8851 is affected by this amendment.

#### §374.1. Disciplinary Actions.

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

(c) The board recognizes four levels of disciplinary action for its licensees:

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

(3) Level III: Suspension--A specified period of time that the licensee may not practice as an occupational therapist or occupational therapy assistant. Upon the successful completion of the suspension period, the license will be [is automatically] reinstated upon the licensee successfully meeting all requirements.

(4) (No change.)

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

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

Issued in Austin, Texas, on May 4, 1995.

TRD-9505419

John P. Maline  
Executive Director  
Texas Board of  
Occupational Therapy  
Examiners

Earliest possible date of adoption: June 12, 1995

For further information, please call: (512) 443-3171

### Part XIX. Texas Department of Protective and Regulatory Services

#### Chapter 708. Medicaid Targeted Case Management Program

##### Program Requirements

#### • 40 TAC §708.4, §708.5

The Texas Department of Protective and Regulatory Services (TDPRS) proposes an amendment to §708.4 and new §708.5, concerning providers of service and reimbursement for services, in its Medicaid Targeted Case Management Program chapter. The purpose of the amendment and new section

is to clarify TDPRS's targeted case management sections and make the sections consistent with the approved Medicaid state plan amendment. The targeted case management program serves Medicaid recipients who are receiving foster care, child protective services, adoption assistance, or adult protective services. Targeted case management services include assessment, case planning, case coordination, and case plan reassessment.

Jerry Abel, chief fiscal officer, has determined that for the first five-year period the proposed amendment and new section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment and new section.

Mr. Abel also has determined that for each year of the first five years the proposal is in effect the public benefit anticipated as a result of enforcing the proposal will be the continued receipt of federal funds available for TDPRS programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposal.

Questions about the content of the proposal may be directed to Mary Ann Harvey at (512) 834-3772 in TDPRS's Research and Development section. Written comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Media and Policy Services-303, Texas Department of Protective and Regulatory Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment and new section are proposed 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; under Texas Civil Statutes, Article 4413 (503), which transferred all functions, programs, and activities related to the child protective services program from the Texas Department of Human Services to TDPRS; and under Texas Civil Statutes, Article 4413(502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment and new section implement TDPRS's response to the SB-5, General Appropriations Act, 73rd Legislature, Regular Session, Article V, Section 154 (Texas Performance Review Riders).

#### §708.4. Providers of Service.

(a) Provider agencies must make Texas Department of Protective and Regulatory Services (TDPRS) Medicaid Targeted Case Management Program services available to all eligible recipients and deliver the services statewide with procedures that ensure:

- (1) 24-hour availability;
- (2) the protection and safety of recipients;

(3) continuity of services without duplication; and

(4) uniform and consistent provision of services, as well as meet other established criteria.

(b)[(a)] Individual providers [Providers] of TDPRS [the Texas Department of Protective and Regulatory Services (TDPRS)] Medicaid Targeted Case Management Program services employed by the provider agency are caseworkers providing foster care, protective services, adoption assistance, and adult protective services in the state and regional offices of TDPRS. Case-

workers who provide these services must meet a set of minimum qualifications as established by TDPRS.

*§708.5. Reimbursement for Services.* Reimbursement for Texas Department of Protective and Regulatory Services (TDPRS) Medicaid Targeted Case Management Program is through a unit rate based on a monthly Medicaid Targeted Case Management cost per case. The rate is computed by dividing TDPRS's total quarterly cost for Medicaid Targeted Case Management by the total units of Medicaid Targeted Case Management provided during the quarter.

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

Issued in Austin, Texas, on May 4, 1995.

TRD-9505409

Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Protective and  
Regulatory Services

Proposed date of adoption: August 1, 1995

For further information, please call: (512)  
450-3765

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# WITHDRAWN RULES

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An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the **Texas Register**. The notice is effective immediately upon filing or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the **Texas Register**, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the **Texas Register**.

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## TITLE 16. ECONOMIC REGULATION

### Part I. Railroad Commission of Texas

#### Chapter 5. Transportation Division

##### Subchapter EE. Operating Cer- tificates, Permits and Li- censes

- 16 TAC §§5.1006-5.1012, 5.1016,  
5.1017, 5.1021, 5.1022, 5.  
1024-5.1026

The Railroad Commission of Texas has with-  
drawn from consideration for permanent  
adoption a proposed new §§5.1006-5.1012,  
5.1016, 5.1017, 5.1021, 5. 1022,  
5.1024-5.1026, which appeared in the No-  
vember 8, 1994, issue of the *Texas Register*  
(19 TexReg 8826). The effective date of this  
withdrawal is May 5, 1995.

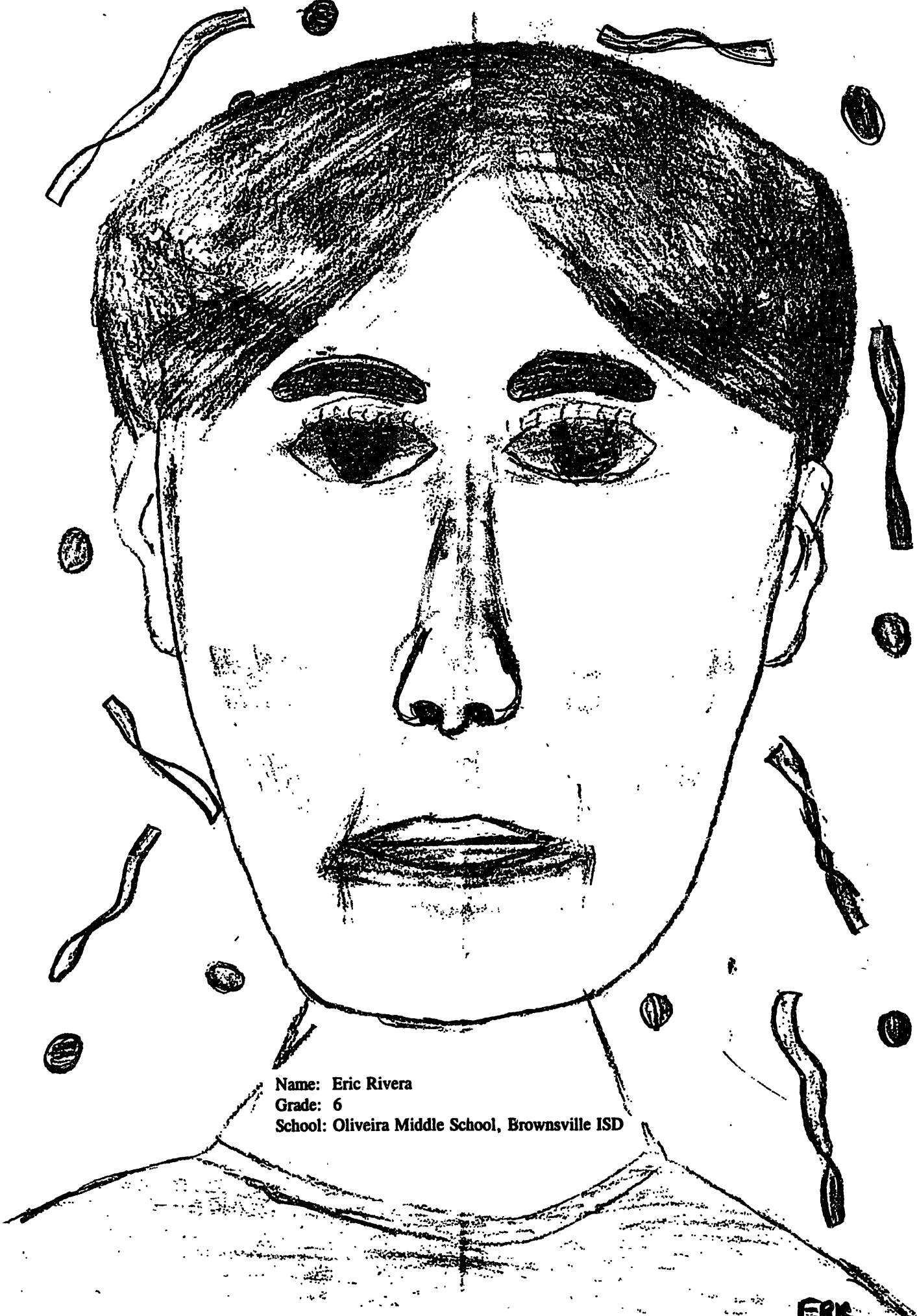
Issued in Austin, Texas, on May 5, 1995.

TRD-9505443      Mary Ross McDonald  
Assistant Director, Legal  
Division, Gas  
Utilities/LP Gas  
Railroad Commission of  
Texas

Effective date: May 5, 1995

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





Name: Eric Rivera  
Grade: 6  
School: Oliveira Middle School, Brownsville ISD

ERIK

# ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

## TITLE 28. INSURANCE Part I. Texas Department of Insurance

### Chapter 7. Corporate and Financial Regulation

#### Subchapter A. Examination and Corporate Custodian and Tax National Association of Insurance Commissioners Examiners Handbook

##### • 28 TAC §7.11

The Texas Department of Insurance adopts an amendment to §7.11, concerning the *National Association of Insurance Commissioners Examiners Handbook*, without changes to the proposed text as published in the January 17, 1995, issue of the *Texas Register* (20 TexReg 278).

The amendment to §7.11 is necessary to clarify which version of the *NAIC Examiners Handbook* has been officially adopted by reference by the Texas Department of Insurance. The amendment to §7.11 is adopted to comply with a newly enacted provision of the Insurance Code, Article 1.27, which recites that the Department may not require an insurer to comply with any rule, regulation, directive, or standard adopted by the National Association of Insurance Commissioners unless it is expressly authorized by and approved by the Commissioner. The amendment will allow interested persons notice and opportunity for a hearing if the Department proposes to adopt a particular version of the *NAIC Examiners Handbook*.

Section 7.11 specifies which version of the *NAIC Examiners Handbook* has been officially adopted by reference by the Texas Department of Insurance. Paragraph (a) defines terms used in the new section. Paragraph (b) recites that the department adopts by reference the *NAIC Examiners Handbook* (March, 1994) as the standard for the department when conducting statutory examinations and rehabilitations of insurers licensed in Texas.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to the Insurance Code, Articles 1.03A and 1.27. Article 1.03A authorizes the Commissioner of

Insurance to promulgate and adopt rules and regulations for the conduct and execution of duties and functions by the Department. Article 1.27 recites that the Department may not require an insurer to comply with any rule, regulation, directive, or standard adopted by the National Association of Insurance Commissioners unless it is expressly authorized by and approved by the Commissioner.

The adopted rule affects Insurance Code, Article 1.27.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on May 4, 1995.

TRD-9505400      Alicia M. Fechtel  
General Counsel and Chief  
Clerk  
Texas Department of  
Insurance

Effective date: May 25, 1995

Proposal publication date: January 17, 1995

For further information, please call: (512) 463-6327

#### Subchapter A. Examination and Corporate Custodian and Tax National Association of Insurance Commissioners Purposes and Procedures of the Securities Valuation Of- fice Manual

##### • 28 TAC §7.16

The Texas Department of Insurance adopts an amendment to §7.16, concerning the *National Association of Insurance Commissioners Purposes and Procedures of the Securities Valuation Office Manual*, without changes to the proposed text as published in the January 13, 1995, issue of the *Texas Register* (20 TexReg 209).

The amendment to §7.16 is necessary to clarify which version of the *NAIC Purposes and Procedures of the Securities Valuation Office* manual has been officially adopted by reference by the Texas Department of Insur-

ance. The amendment to §7.16 is adopted to comply with a newly enacted provision of the Insurance Code, Article 1.27, which recites that the Department may not require an insurer to comply with any rule, regulation, directive, or standard adopted by the National Association of Insurance Commissioners unless it is expressly authorized by and approved by the Commissioner. The amendment will allow interested persons notice and opportunity for a hearing if the Department proposes to adopt a particular version of the *NAIC Purposes and Procedures of the Securities Valuation Office* manual.

Section 7.16 specifies which version of the *NAIC Purposes and Procedures of the Securities Valuation Office* manual has been officially adopted by reference by the Texas Department of Insurance. Paragraph (a) defines terms used in the new section. Paragraph (b) recites that the department adopts by reference the *NAIC Purposes and Procedures of the Securities Valuation Office* manual (effective for 1994 Annual Statements) as the standard for the Department in the evaluation of securities. Paragraph (c) sets out an exception to the *NAIC Purposes and Procedures of the Securities Valuation Office* manual, reciting the circumstances in which companies shall establish an Asset Valuation Reserve (AVR) or Interest Maintenance Reserve (IMR).

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to the Insurance Code, Articles 1.03A and 1.27. Article 1.03A authorizes the Commissioner of Insurance to promulgate and adopt rules and regulations for the conduct and execution of duties and functions by the Department. Article 1.27 recites that the Department may not require an insurer to comply with any rule, regulation, directive, or standard adopted by the National Association of Insurance Commissioners unless it is expressly authorized by and approved by the Commissioner.

The adopted rule affects Insurance Code, Article 1.27.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on May 4, 1995.

TRD-9505401

Alicia M. Fechtel  
General Counsel and Chief  
Clerk  
Texas Department of  
Insurance

Effective date: May 25, 1995

Proposal publication date: January 13, 1995

For further information, please call: (512)  
463-6327

## TITLE 34. PUBLIC FI- NANCE

### Part I. Comptroller of Public Accounts

#### Chapter 3. Tax Administration

##### Subchapter F. Motor Vehicle Sales Tax

###### • 34 TAC §3.90

The Comptroller of Public Accounts adopts an amendment to §3.90, concerning motor vehicles purchased for use outside of Texas, without changes to the proposed text as published in the February 21, 1995, issue of the *Texas Register* (20 TexReg 1259).

The section is being amended to include an exemption certificate as provided by the 73rd Legislature, 1993, and to incorporate a change made by Comptroller's Decision Number 29,965 (1994). The rule adopts the certificate by reference.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 4, 1995.

TRD-9505378

Martin E. Cherry  
Chief, General Law  
Section  
Comptroller of Public  
Accounts

Effective date: May 25, 1995

Proposal publication date: February 21, 1995

For further information, please call: (512)  
463-4028

##### Subchapter GG. Insurance Tax

###### • 34 TAC §3.807

The Comptroller of Public Accounts adopts the repeal of §3.807, concerning late payment of premium tax liability during any quarterly prepayment tax period, without changes to

the proposed text as published in the January 24, 1995, issue of the *Texas Register* (20 TexReg 327).

The section is being repealed in order that it can be incorporated into new §3.826 concerning Tax Return and Prepayment Due Dates and Penalty and Interest for Failing to Report or the Underreporting of Tax.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 4, 1995.

TRD-9505377

Martin E. Cherry  
Chief, General Law  
Section  
Comptroller of Public  
Accounts

Effective date: May 25, 1995

Proposal publication date: January 24, 1995

For further information, please call: (512)  
463-4028

###### • 34 TAC §3.808

The Comptroller of Public Accounts adopts the repeal of §3.808, concerning underpayment of quarterly premium tax, without changes to the proposed text as published in the January 24, 1995, issue of the *Texas Register* (20 TexReg 327).

The section is being repealed in order that it can be incorporated into new §3.826 concerning Tax Return and Prepayment Due Dates and Penalty and Interest for Failing to Report or the Underreporting of Tax.

No comments were received regarding adoption of the repeal.

This repeal is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 4, 1995.

TRD-9505376

Martin E. Cherry  
Chief, General Law  
Section  
Comptroller of Public  
Accounts

Effective date: May 25, 1995

Proposal publication date: January 24, 1995

For further information, please call: (512)  
463-4028

###### • 34 TAC §3.826

The Comptroller of Public Accounts adopts new §3.826, concerning tax return and prepayment due dates and penalty and interest for failing to report or underreporting of tax due, with changes to the proposed text as published in the January 24, 1995, issue of the *Texas Register* (20 TexReg 328).

The change occurs in subsection (a) and corrects a typographical error in the original text.

The proposal specifies the due dates for the tax returns and premium tax prepayments. It also explains the application of penalty and/or interest for failing to make payment, underpaying, underreporting or failing to file a report. This proposal replaces current §3.807 concerning Late Payment of Premium Tax Liability During Any Quarterly Prepayment Tax Period and §3.808 concerning Underpayment of Quarterly Premium Tax, which are being repealed simultaneously.

No comments were received regarding adoption of the new section.

The new section 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.

*§3.826. Tax Return and Prepayment Due Dates and Penalty and Interest for Failing to Report or the Underreporting of Tax.*

(a) Premium and Maintenance Tax Return due date. The premium tax and maintenance tax return for each taxable year ending the preceding December 31st shall be filed and the total amount of tax due shall be paid on or before the 1st day of March of each year or if a company is required to file an annual statement after March 1, the premium tax and maintenance tax report is required to be filed at that time.

(b) Premium tax prepayments.

(1) Prepayments due on or after March 1, 1994. A semiannual prepayment of premium tax must be made on March 1, or at the same time that the annual statement is required to be filed, and August 1 by all insurers with a net tax liability for the previous calendar year in excess of \$1,000. The prepayment shall equal the lesser of one-half of the total premium tax paid for the previous calendar year, or one-half of the current year's tax liability. If no premium tax was paid during the previous calendar year, the prepayment will be based on the tax which would be owed on the aggregate of premium receipts for the two preceding calendar quarters based on the minimum tax rate specified by law. If the premium tax liability for the previous year was between \$.01 and \$1,000, no prepayment is due.



(2) The amount due is the lesser of the total annual premium tax liability from the previous year, or the actual tax liability for the current year multiplied by 50%.

(c) Penalty and interest. Any taxes due prior to September 1, 1993, including prepayments, are subject to the Insurance Code in effect at that time. Therefore, any assessments issued by the comptroller for additional taxes which were originally due prior to September 1, 1993, fall under the penalty and interest provisions contained within the Insurance Code, Article 4.13 and Article 4.14, in effect through August 31, 1993. Refer to paragraph (1) of this subsection. The comptroller does not have the authority to waive penalty or interest on assessments made for periods prior to September 1, 1993.

(1) Prepayments and tax returns due prior to September 1, 1993.

(A) Late payment.

(i) Penalty. A penalty equal to 5.0% of the amount of taxes due shall be assessed for each month or portion of a month for which such payment is late. The penalty shall not exceed 20%.

(ii) Interest. Interest shall accrue at an annual rate of 9.0% from the due date until the date paid.

(B) Underpayment.

(i) Penalty. Insurance carriers failing to satisfy the provisions of subsection (a) or (b) (1) of this section will be assessed penalty, as prescribed in subparagraph (A) (i) of this paragraph, on the difference between the amount of quarterly prepayment tax liability actually paid and the amount due.

(ii) Interest. Insurance carriers failing to satisfy the provisions of subsection (a) or (b)(1) of this section will be assessed interest, as prescribed in subparagraph (A)(ii) of this paragraph, on the difference between the amount of quarterly prepayment tax liability actually paid and the amount due.

(2) Prepayments and tax returns due on or after September 1, 1993.

(A) Late payment.

(i) A penalty of 5.0% will be assessed on all payments which are received 1-30 days after the due date. An additional 5.0% penalty will be assessed on tax payments received more than 30 days after the due date.

(ii) Interest will be assessed on payments received more than 60 days after the due date at the rate of 12%

per annum. Interest will begin to accrue on the 61st day from the due date and continue through date of the tax payment. The interest will be in addition to the 10% penalty assessed in clause (i) of this subparagraph.

(B) Underpayment.

(i) Penalty. Insurance carriers failing to satisfy the provisions of subsection (a) or (b)(2) of this section will be assessed penalty, as prescribed in subparagraph (A)(i) of this paragraph, on the difference between the amount of semi-annual prepayment tax liability actually paid and the amount due.

(ii) Interest. Insurance carriers failing to satisfy the provisions of subsection (a) or (b)(2) of this section will be assessed interest, as prescribed in subparagraph (A)(ii) of this paragraph, on the difference between the amount of semi-annual prepayment tax liability actually paid and the amount due.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 4, 1995.

TRD-9505375

Martin E. Cherry  
Chief, General Law  
Section  
Comptroller of Public  
Accounts

Effective date: May 25, 1995

Proposal publication date: January 24, 1995

For further information, please call: (512) 463-4028

◆ ◆ ◆  
**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

**Part I. Texas Department of Human Services**

**Chapter 90. Intermediate Care Facilities Serving Persons with Mental Retardation or a Related Condition**

**Subchapter C. Standards for Licensure**

• **40 TAC §90.42**

The Texas Department of Human Services (DHS) adopts an amendment to §90.42, with changes to the proposed text as published in the March 17, 1995, issue of the *Texas Register* (20 TexReg 1875).

The justification for the amendment is to ensure the safety of all individuals who participate in facility-sponsored events. The amendment defines water activities, specifies the number of staff with pertinent training

required to be on duty to meet safety requirements, and specifies the content of the individual program plan as it relates to needs and precautions utilized to meet needs.

The amendment will function by increasing the safety of individuals who participate in facility-sponsored water events.

During the public comment period, DHS received comments from New Avenues of Hope. During the initial development of the proposal, DHS received comments from Rock House, Volunteers of America, R and K Specialized Homes, and a parent. A summary of all the comments received and DHS's responses follow:

Comment: One commenter requested a definition for "facility-sponsored event."

Response: It is not appropriate for DHS to define "facility-sponsored event."

Comment: One commenter recommended that language be added to reflect that the interdisciplinary team (IDT) determine the sufficient number of staff present at the activity and reflect that information in the individual program plan (IPP).

Response: It is the facility's responsibility to determine the sufficient number of staff needed for any event. Federal regulations require that the IDT develop the IPP, which reflects the needs of the individual. No change has been made to that language.

Comment: Two commenters recommended that staffing ratios remain in the section.

Response: The section as written allows facilities to determine the needs of and be responsible for the individuals who participate in the ICF/MR program. No change has been made to that language.

Comment: One commenter recommended that U.S. Coast Guard-approved flotation devices be required for facility-sponsored events that utilize an unlicensed boat.

Response: The section was revised to allow facilities to determine the needs of and be responsible for all individuals participating in a facility-sponsored event. It is the facility's responsibility to ensure that needs are met and reflected by the IDT in the IPP. No change has been made to the language as a result of the comment.

DHS is adopting subparagraph (B) with a minor correction. DHS is adding the term "staff," which was inadvertently omitted.

The amendment is adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs; and under Texas Civil Statutes, Article 4413 (502), which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services.

The amendment implements the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024.

§90.42. Standards for Facilities Serving Persons with Mental Retardation or Related Conditions.

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

(e) Additional requirements.

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

(8) In the area of water activities, the facility must assure the safety of all individuals who participate in facility-sponsored events. For the purpose of this section, a water activity is defined as an activity which occurs in or on water that is knee deep or deeper on the majority of individuals participating in the event. To assure the safety of all individuals who participate, the requirements in subparagraphs (A)-(F) apply.

(A) The facility must develop a policy statement regarding the water sites utilized by the facility. Water sites include, but are not limited to, lakes, amusement parks, and pools.

(B) A minimum of one staff person with demonstrated proficiency in cardiopulmonary resuscitation (CPR) must be on duty and at the site when individuals are involved in water activities.

(C) A minimum of one person with demonstrated proficiency in water life saving skills must be on duty and at the site when activities take place in or on water that is deep enough to require swimming for life saving retrieval. This person must maintain supervision of the activity for its duration.

(D) A sufficient number of staff or a combination of staff and volunteers must be available to meet the safety requirements of the group and/or specific individuals.

(E) Each individual's program plan must address each person's needs for safety when participating in water activities including, but not necessarily limited to, medical conditions; physical disabilities and/or behavioral needs which could pose a threat to safety; the ability to follow directions and instructions pertaining to water safety; the ability to swim independently; and, when called for, special precautions.

(F) If the interdisciplinary team recommends the use of a flotation device as a precaution for any individual to engage in water activities, it must be identi-

fied and precautions outlined in the individual program plan. The device must be approved by the United States Coast Guard or be a specialized therapy flotation device utilized in the individual's therapy program.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 5, 1995.

TRD-9505516 Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

Effective date: June 1, 1995

Proposal publication date: March 17, 1995

For further information, please call: (512) 450-3765

## TITLE 43. TRANSPORTATION

### Part I. Texas Department of Transportation

#### Chapter 9. Contract Management

##### Subchapter B. Highway Improvement Contracts

###### • 43 TAC §§9.11, 9.13, 9.16, 9.18

The Texas Department of Transportation adopts amendments to §§9.11, 9.13, 9.16, and 9.18, concerning highway improvement contracts, without changes to the proposed text as published in the March 3, 1995, issue of the *Texas Register* (20 TexReg 1479).

Texas Civil Statutes, Article 6674i, require the commission to prescribe rules on all bidders on bids for contracts awarded for the improvement of the state highway system. These amended sections prescribe the definition of terms, the policies and procedures governing, bidding, award, and execution of a contract entered under Texas Civil Statutes, Article 6674a, et seq.

On March 17, 1995, the department conducted a public hearing on the proposed adoption of amendments to §§9.11, 9.13, 9.16, and 9.18 and no oral or written comments were received.

The amendments are adopted under Texas Civil Statutes, Articles 6666, which provide the Texas Transportation Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation; and Texas Civil Statutes, Article 6674a, et seq, which authorize the department to construct and maintain the state highway system; and Article 6674i, which require the commission to prescribe rules on all bidders on bids received for contracts awarded for the improvement of the state highway system.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 4, 1995.

TRD-9505431 Robert E. Shaddock  
General Counsel  
Texas Department of  
Transportation

Effective date: May 25, 1995

Proposal publication date: March 3, 1995

For further information, please call: (512) 463-8630

## Chapter 30. Aviation

### Subchapter A. Practice and Procedure

#### • 43 TAC §§30.1-30.53

The Texas Department of Transportation adopts the repeal of §§30.1-30.53, concerning the practices and procedures of the Texas Department of Aviation, without changes to the proposed text as published in the December 23, 1994, issue of the *Texas Register* (19 TexReg 10208).

The sections are no longer necessary due to the provision of House Bill 9, 72nd Legislature, 1st Called Session which created the Texas Department of Transportation by merging the Texas Department of Aviation with the State Department of Highways and Public Transportation.

On January 12, 1995, the department conducted a public hearing on the proposed repeal of §§30.1-30.53 and no oral or written comments were received.

The repeal is adopted under Texas Civil Statutes, Article 6666, which provide the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on May 3, 1995.

TRD-9505359 Robert E. Shaddock  
General Counsel  
Texas Department of  
Transportation

Effective date: May 24, 1995

Proposal publication date: December 23, 1994

For further information, please call: (512) 463-8630

## Subchapter B. Air Carriers

### • 43 TAC §30.102

The Texas Department of Transportation adopts an amendment to §30.102, concerning Certificated Air Carriers, without changes to the proposed text as published in the December 23, 1994, issue of the *Texas Register* (19 TexReg 10209).

Texas Civil Statutes, Article 46c-6, Subdivision 3, provide for an air carrier program. House Bill 9, 72nd Legislature, 1st Called Session created the Texas Department of Transportation by merging the Texas Department of Aviation with the State Department of Highways and Public Transportation.

It is necessary to adopt an amendment to §30.102 to revise references to the Texas Aeronautics Commission to the Texas Department of Transportation.

On January 12, 1995, the department conducted a public hearing on the proposed amendment to §30.102 and no oral or written comments were received.

The amendment is adopted under Texas Civil Statutes, Article 6666, which provide the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically Texas Civil Statutes, Article 46c-6, which provide for an air carrier program.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on May 3, 1995.

TRD-9505360 Robert E. Shaddock  
General Counsel  
Texas Department of  
Transportation

Effective date: May 24, 1995

Proposal publication date: December 23, 1994

For further information, please call: (512) 463-8630

### Subchapter C. Aviation Facilities Development and Financial Assistance Rules

#### • 43 TAC §§30.201-30.220

The Texas Department of Transportation adopts amendments to §§30.201-30.220, concerning aviation facilities development and financial assistance rules, without changes to the proposed text as published in the December 23, 1994, issue of the *Texas Register* (19 TexReg 10210).

Texas Civil Statutes, Article 46c-6, Subdivision 10, provide for an aviation facilities development and financial assistance program. House Bill 94, 71st Legislature, 1st Called Session, added Texas Civil Statutes, Article 46c-8A, which designate the department as agent for the state and each political subdivi-

sion for the purpose of applying for, receiving, and disbursing federal funds for the general aviation non-reliever airports of the state. House Bill 9, 72nd Legislature, 1st Called Session created the Texas Department of Transportation by merging the Texas Department of Aviation with the State Department of Highways and Public Transportation. On March 30, 1993, the department became one of seven states nationwide to participate in the state block grant pilot program.

It is necessary to adopt amendments to §§30.201-30.220 to comply with House Bill 9, House Bill 94, Texas Civil Statutes, Article 46c-8A, and the federal requirements of the state block grant pilot program.

Section 30.302, provides for additional definitions of terms and better clarification of existing definitions.

Section 30.206 provides additional information for the calculation for the amount and composition of a local sponsor's financial contribution to the airport development project.

Section 30.209 provides additional information for the commission approval of the capital improvement program and financial assistance.

Section 30.210 provides clarified and additional information as to the content of agreements.

Section 30.211 authorizes the executive director to increase grants by \$100, 000 or 25%, whichever is greater, to provide greater internal flexibility to meet unforeseen costs for an airport development project.

On January 12, 1995, the department conducted a public hearing on the proposed amendments to §§30.201-30.220 and no oral or written comments were received.

The new amendments are adopted under Texas Civil Statutes, Article 6666, which provide the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically Texas Civil Statutes, Article 46c-6, which provide for an Airport Development Program.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on May 3, 1995.

TRD-9505361 Robert E. Shaddock  
General Counsel  
Texas Department of  
Transportation

Effective date: May 24, 1995

Proposal publication date: December 23, 1994

For further information, please call: (512) 463-8630

### Subchapter D. Obstruction to Air Navigation Rules

#### • 43 TAC §§30.301-30.306, 30.308

The Texas Department of Transportation adopts amendments to §§30.301-30.306 and §30.308, concerning obstruction to air navigation rules, without changes to the proposed text as published in the December 23, 1994, issue of the *Texas Register* (19 TexReg 10215).

Texas Civil Statutes, Articles 46i-1 et seq provide for an obstruction to air navigation program. House Bill 9, 72nd Legislature, 1st Called Session created the Texas Department of Transportation by merging the Texas Department of Aviation with the State Department of Highways and Public Transportation.

It is necessary to adopt amendments to §§30.301-30.306 and §30.308 to revise references to the Texas Aeronautics Commission to the Texas Department of Transportation.

On January 12, 1995, the department conducted a public hearing on the proposed amendments to §§30.301-30.306 and §30.308 and no oral or written comments were received.

The amendments are adopted under Texas Civil Statutes, Article 6666, which provide the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically Texas Civil Statutes, Article 46i-1 et seq, which provide for an obstruction to air navigation program.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

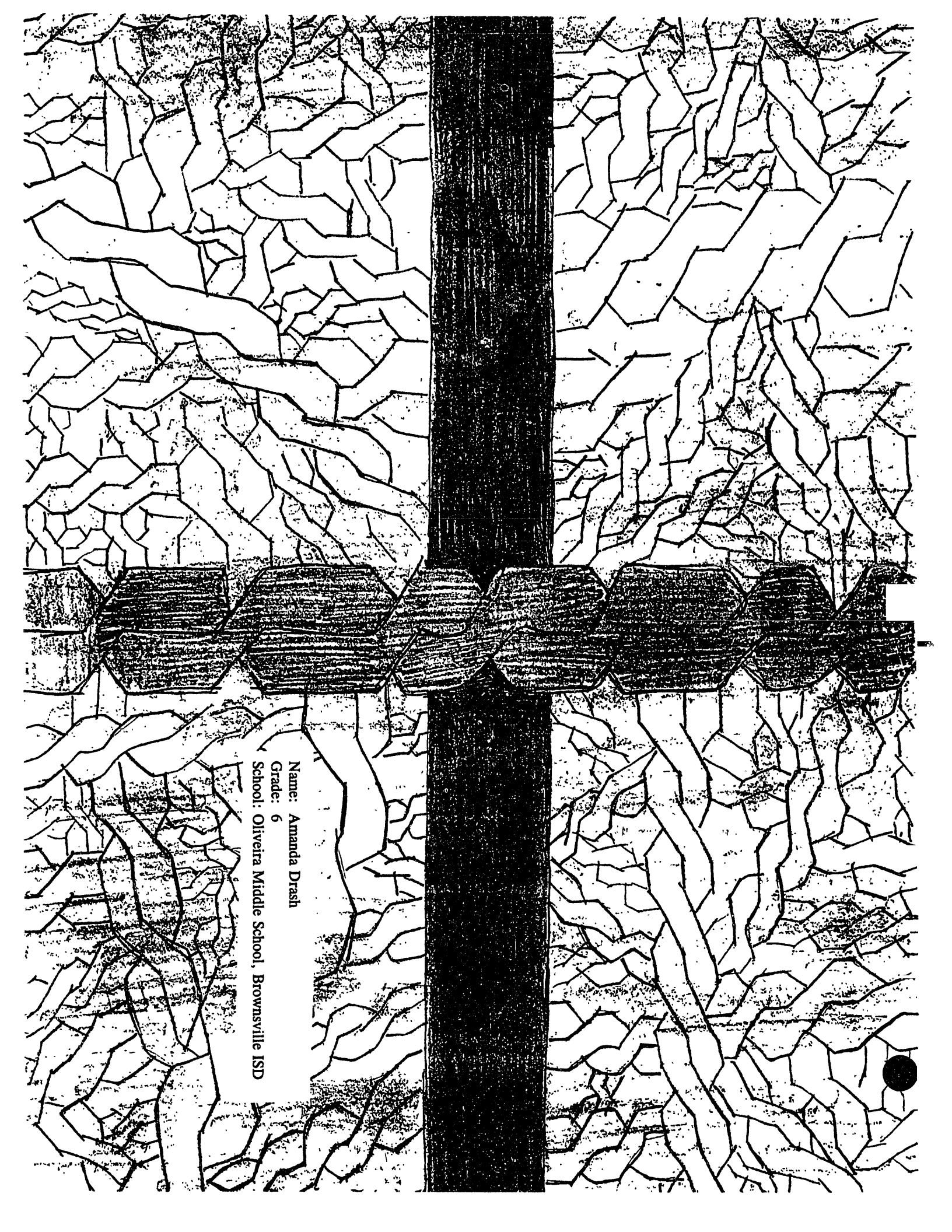
Issued in Austin, Texas, on May 3, 1995.

TRD-9505362 Robert E. Shaddock  
General Counsel  
Texas Department of  
Transportation

Effective date: May 24, 1995

Proposal publication date: December 23, 1994

For further information, please call: (512) 463-8630



Name: Amanda Drash  
Grade: 6  
School: Oliveira Middle School, Brownsville ISD

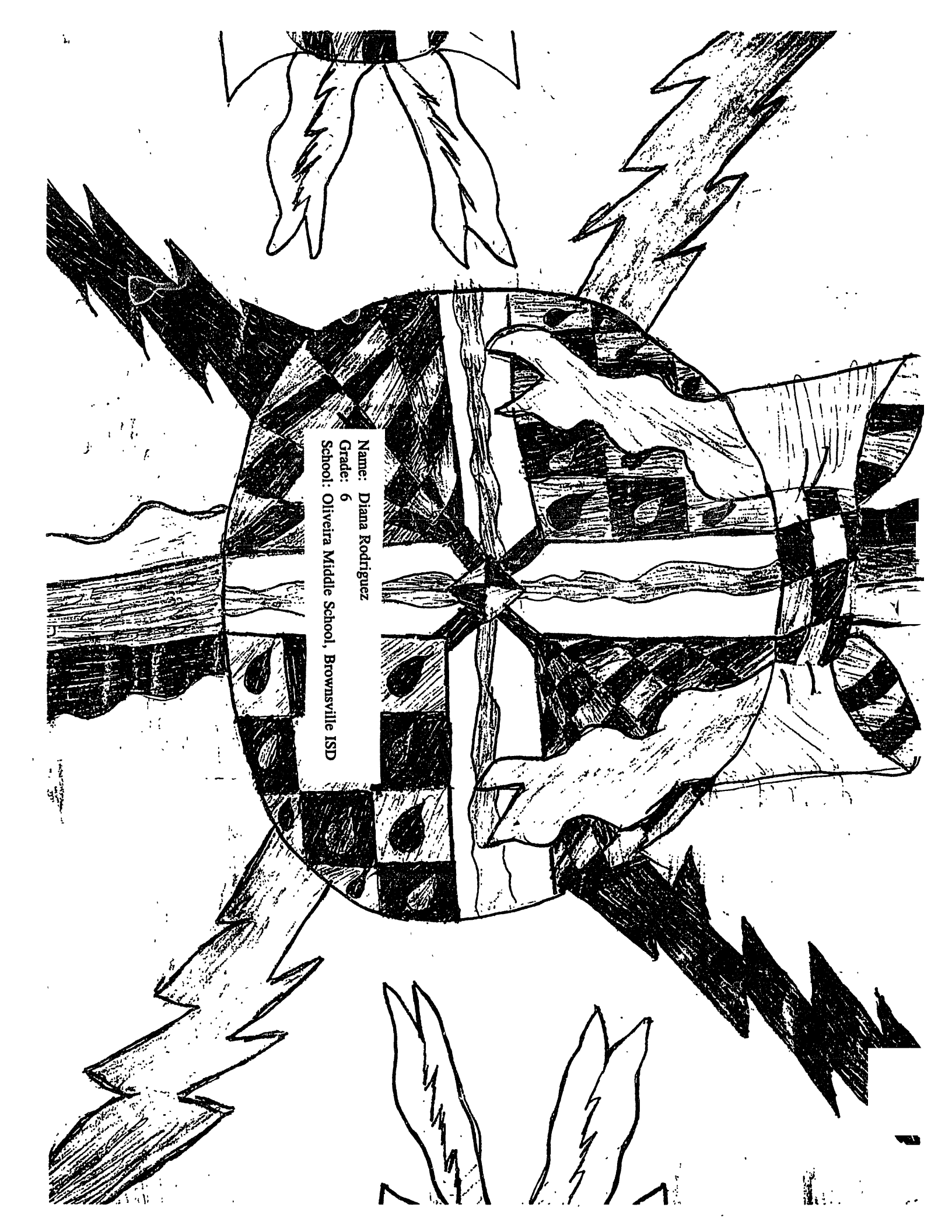
# TABLES AND GRAPHICS

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.

Figure 1: 22 TAC, §131.138





Name: Diana Rodriguez  
Grade: 6  
School: Oliveira Middle School, Brownsville ISD

# OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours 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).

## Texas Department of Agriculture

Thursday, May 18, 1995, 10:00 a.m. (Rescheduled from October 19, 1994)

Harris County Extension Center, #2  
Abercrombie Drive

Houston

Texas Rice Producers Board

AGENDA:

Call to order

Review and approve: Minutes of previous meeting

Financial report

1994-1995 revenue/expense budget

Discussion and action: 1995-1996 revenue/expense budget

Discuss: Report and recommendations on funding uses and programs for:

Research activities and market development activities

Other business

Adjourn

Contact: Curtis Leonhardt, P.O. Box 740250, Houston, Texas 77274, 1-800-888-7423.

Filed: May 8, 1995, 2:35 p.m.

TRD-9505554

## Texas Appraiser Licensing and Certification Board

Monday, May 15, 1995, 1:00 p.m.

Conference Room 123, 1101 Camino La Costa

Austin

Enforcement Committee

AGENDA:

Monday, May 15, 1995.

Call to order, informal conferences with respondents in File Numbers 95-005, 95-013, 95-003, 95-018, and possible recommendations to the Texas Appraiser Licensing and Certification Board; executive session for consultation with, and advice from, legal counsel with respect to pending or contemplated litigation or settlement offers, pursuant to Texas Government Code, §551.071; reconvene in public session; and adjourn.

Contact: Renil C. Limer; P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3950.

Filed: May 5, 1995, 3:01 p.m.

TRD-9505504

## Conservatorship Board

Monday, May 8, 1995, 9:00 a.m.

710 Brazos, Eighth Floor Conference Room  
Austin

Emergency Meeting

AGENDA:

Executive session to discuss lawsuit-Casanova vs. TCADA and personnel issues

Reason for emergency: Necessary for Conservatorship Board to meet in order to meet statutory mandate.

Contact: Otis E. Williams, 710 Brazos, Austin, Texas 78701, (512) 867-8720.

Filed: May 5, 1995, 3:32 p.m.

TRD-9505505

## Texas Cosmetology Commission

Saturday, May 20, 1995, 10:00 a.m.

Texas Cosmetology Commission Hearing Room, 5717 Balcones Drive

Austin

Working Session (Staff)

AGENDA:

Update on fiscal year 1995 operating budget; legislative update.

Contact: Alicia C. Watson, P.O. Box 26700, Austin, Texas 76755-0700, (512) 454-4674.

Filed: May 5, 1995, 1:51 p.m.

TRD-9505479

## Texas State Board of Professional Counselors

Friday, May 12, 1995, 12:30 p.m.

Room S-402, The Exchange Building, 8407 Wall Street

Austin

Applications Committee

Emergency Meeting

AGENDA:

The committee will discuss and possibly act on the application for regular license of Terry Gilmer.

Reason for emergency: Unforeseeable circumstances concerning a decision on an applicant's request for a regular license in accordance with the Texas Civil Statutes, Article 4512G, §18(d).

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6658. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: May 5, 1995, 2:20 p.m.

TRD-9505483

## East Texas State University

Friday, May 12, 1995, 9:00 a.m.

McDowell Administration Building, 1600 South Neal Street

Commerce

Board of Regents

AGENDA:

1. Approval of minutes of February 10, 1995. 2. Report by the presidents. 3. Report of division activities in student and university advancement, Commerce and Texarkana. 4. Distinguished alumnus awards. 5. Report of division activities in academic affairs, Commerce and Texarkana. 6. Faculty promotions, ETSU-Commerce. 7. Faculty promotions, ETSU-Texarkana. 8. Faculty workload report, spring 1995, ETSU-Commerce. 9. Faculty workload report, spring 1995, ETSU-Texarkana. 10. Undersized class report, spring 1995, ETSU-Commerce. 11. Undersized class report, spring 1995, ETSU-Texarkana. 12. Professor Emeritus designation. 13. Adjustments to fiscal year 1995 operating budget, ETSU-Commerce. 14. Adjustments to fiscal year 1995 operating budget, ETSU-Texarkana. 15. Approval of housing system fee schedule. 16. Authorization of signatures to execute documents. 17. Report on historically underutilized businesses. 18. Selection of architect for space study and master plan preparation, ETSU-Texarkana. 19. Execu-

tive session pursuant to §§551.071, 551.074 and 551.075, of the Texas Government Code. 20. Approval of ethics policy. 21. Approval of tenure policy, ETSU-Texarkana. 22. Hall of fame inductions. 23. Hearing and decision on the appeal of James Newberry.

Contact: Charles Turner, East Texas State University, Commerce, Texas 75429, (903) 886-5539.

Filed: May 8, 1995, 4:15 p.m.

TRD-9505566

## Texas Education Agency

Friday, May 19, 1995, 8:30 a.m.

William B. Travis State Office Building, Room 1-104, 1701 North Congress Avenue

Austin

Academics 2000 State Panel

AGENDA:

The Academics 2000 State Panel will hear public testimony; discuss the state accountability system, State Board of Education policy initiatives, and academic standards; and discuss issues, initiatives, and indicators included in a draft state education improvement plan.

Contact: Dan Arrigona, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: May 9, 1995, 8:27 a.m.

TRD-9505579

## State Employee Charitable Campaign

Thursday, May 11, 1995, 4:00 p.m.

128 East Second, United Way of Odessa  
Odessa

Emergency Meeting

Revised Agenda

Local Employee Committee

AGENDA:

Organization meeting to select local charitable organizations to appear in the SECC brochure

Reason for emergency: Only partial committee recruited because of personnel changes of committee and need to recruit new members.

Contact: Jill Nelson, 128 East Second, Odessa, 79761, (915) 332-0941, Fax: (915) 332-5245.

Filed: May 8, 1995, 4:29 p.m.

TRD-9505571

Monday, May 15, 1995, 9:00 a.m.

Texas Department of Public Safety, 2405 South Loop 250 West, New Classroom

Midland

Local Employee Committee-Midland

AGENDA:

Organizational meeting to provide overview of State Employee Charitable Campaign, to select local campaign manager, and to review local charitable agency/federation applications and determine their eligibility to participate in the State Employee Charitable Campaign.

Contact: Capital Kevin Napier, 2405 South Loop 250 West, Midland, Texas (915) 697-2211, Fax: (915) 681-1217.

Filed: May 5, 5:28 p.m.

TRD-9505519

Thursday, May 18, 1995, 3:00 p.m.

4000 Southpark Drive

Tyler

Local Employee Committee-Tyler

AGENDA:

I. Call to order

II. Review documentation/information received from local agencies and federations that were conditionally approved for local eligibility.

III. Discuss 1995 local area budget.

IV. Discuss agenda and schedule next meeting

Contact: Bill Marint, P.O. Box 130428, Tyler, Texas 75713, (903) 581-6376, Fax: (903) 581-6376.

Filed: May 5, 1995, 5:29 p.m.

TRD-9505520

Thursday, May 18, 1995, 4:00 p.m.

2207 Line Avenue

Amarillo

Local Employee Committee-Amarillo

AGENDA:

Preliminary review of local organization and federation applications

Contact: Diana Phillips, 2207 Line Avenue, Amarillo, Texas 79106, (806) 376-6359, Fax: (806) 376-9343.

Filed: May 4, 1995, 4:26 p.m.

TRD-9505429

Friday, May 19, 1995, Noon.

700 South Alamo

San Antonio



Local Employee Committee--San Antonio

**AGENDA:**

- I. Welcome
- II. SECC 1995 update
- III. Selection of local campaign manager
- IV. Approval of budget
- V. Approval of local agencies
- VI. Other business
- VII. Summary and adjournment

Contact: Mary Damsgaard, c/o United Way, P.O. Box 898, San Antonio, Texas 78293, (210) 224-5000, Fax: (210) 224-4245.

Filed: May 5, 1995, 8:18 a.m.

TRD-9505433

Thursday, May 25, 1995, 9:00 a.m.

Texas Department of Public Safety, 2405 South Loop 250 West, New Classroom Midland

Local Employees Committee--Midland

**AGENDA:**

Organizational meeting to provide overview of State Employee Charitable Campaign and to review local charitable agency/federation applications and determine their eligibility to participate in the State Employee Charitable Campaign.

Contact: Kevin S. Napier, 2405 South Loop 250 West, Midland, Texas 79703, (915) 697-2211, Fax: (915) 681-1217.

Filed: May 8, 1995, 3:52 p.m.

TRD-9505563

Tuesday, May 30, 1995, 4:00 p.m.

525 North Locust  
Denton

Local Employee Committee--Denton

**AGENDA:**

Review of applications by statewide organizations

Budget review

Campaign plan development

Contact: Pat Gobble, 525 North Locust, Denton, Texas 76201-4127, (817) 566-5851.

Filed: May 8, 1995, 3:52 p.m.

TRD-9505564

Tuesday, June 6, 1995, 4:00 p.m.

525 North Locust  
Denton

Local Employee Committee--Denton

**AGENDA:**

Budget review

Campaign plan development

Contact: Pat Gobble, 525 North Locust, Denton, Texas 76201-4127, (817) 566-5851.

Filed: May 8, 1995, 3:52 p.m.

TRD-9505565

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**Texas Ethics Commission**

Friday, May 12, 1995, 9:30 a.m.

Room 104, Reagan Building, 105 West 15th Street

Austin

**AGENDA:**

The commission will take roll call; hear comments by the commissioners and the executive director, and communications from the public; approve the minutes of the April 13, 1995, meeting; briefing, discussion, and possible action to waive certain fines assessed for late filing of a report; briefing and discussion on any changes arising out of converting from a special-fund agency to a general-fund agency; briefing and discussion on the repercussions of *McIntyre v. Ohio Elections Commission*, a recent supreme court decision affecting political advertising; discussion and possible action in response to the following Advisory Opinions Requests Number 288, 290-292, 294-296, and SP-4; the commission will meet in an executive session to discuss the filling of certain vacancies on the commission's staff, including but not limited to the position of executive director and/or general counsel; possible action regarding the filing of vacancies on the commission's staff, including but not limited to the position of executive director and/or general counsel; and adjourn.

Contact: Sarah Woelk, 1101 Camino La Costa, Austin, Texas 78711, (512) 463-5800.

Filed: May 4, 1995, 1:23 p.m.

TRD-9505391

◆ ◆ ◆  
**Texas Commission on Fire Protection**

Monday, May 15, 1995, 9:00 a.m.

12675 North Research Boulevard

Austin

Fire Code Committee

**AGENDA:**

I. Discussion of committee's mission.

II. Discussion and possible action relating to the development of rules including standards to be enforced by the State Fire Marshal in conducting inspections under the authority of §417.008 of the Government Code.

III. Discussion and possible action on future meeting dates, agenda items, and locations.

Contact: Carol Menchu, 12675 North Research, Austin, Texas 78759, (512) 916-7100.

Filed: May 8, 1995, 5:04 p.m.

TRD-9505578

◆ ◆ ◆  
**General Land Office**

Tuesday, May 16, 1995, 10:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Room 831

Austin

School Land Board

**AGENDA:**

Approval of previous board meeting minutes; pooling applications, Taylor Lake East (Lox B), Chambers County; Giddings (Austin Chalk-3), Lee County; Big Cowboy (Lobo), Webb County; Flour Bluff, East Field, Nueces County; applications to lease highway rights of way for oil and gas, Hansford County; Robertson County; Grimes County; Goliad County; and Washington County; coastal public lands, lease applications, renewals and amendments, Sabine Lake, Jefferson County; Armand Bayou, Harris County; Padre Island Tracts 1, 4, 5, Nueces County; easement applications, renewals and amendments, Dickinson Bayou, Galveston County; West Bay, Galveston County; Laguna De Los Olmos, Kleberg County; Clear Lake, Galveston County; structure (cabin) permits amendments, terminations and rebuilding requests, Laguna Madre, Kleberg County; commercial lease renewals, Offats Bayou, Galveston County; Dickinson Bayou, Galveston County; commercial easement amendment application, Clear Lake, Galveston County; executive session--pending and proposed litigation; executive session--discussion of reduction of penalty and interest, Kilroy Company of Texas, Inc. audit; open session--consideration of reduction of penalty and interest, Kilroy Company of Texas, Inc. audit; executive session--proposed real estate transactions involving Permanent School Fund lands, El Paso County; open session--consideration of proposed real estate transactions involving Permanent School Fund lands, El Paso County.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: May 5, 1995, 3:44 p.m.

TRD-9505508

◆ ◆ ◆  
**Texas Department of Health**

**Tuesday, May 16, 1995, 9:30 a.m.**

Room G-402, Texas Department of Health,  
1100 West 49th Street

Austin

Revised Agenda

Midwifery Board, Grievance Committee

**AGENDA:**

The committee will meet to discuss and possibly act on old business (hiring an expert on grievance procedure as consultant or to have an ad-hoc member with non-voting privileges; review grievance before calling plaintiff and complainant to appear before subcommittee; midwife not responding to request for records regarding complaint; and actions to take to the full Midwifery Board).

**Contact:** Cecilia Nobles, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700. For ADA assistance, contact Richard Butler (512) 458-7695 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: May 5, 1995, 2:19 p.m.

TRD-9505482

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**Texas Department of Housing and Community Affairs**

**Monday, May 15, 1995, 9:00 a.m.**

Clements Building, 300 West 15th Street,  
Committee Room 5

Austin

Programs Committee Meeting

**AGENDA:**

The Programs Committee will meet to consider and possibly act on the following: HOME Program Funding Recommendations for fiscal year 1994 in which the Program Committee has been authorized by the board to make final approval of awarding of funds for first time homebuyer assistance and owner occupied housing assistance; and adjourn.

Supporting materials and staff recommendations on these agenda items are available for review at Texas Department of Housing and Community Affairs, 811 Barton Springs Road, Austin, Texas 78704 or copies may be obtained on specific items by calling (512) 475-2124 (copies are subject to open records request copying charge per page).

Individuals who require auxiliary aids or services for this meeting should contact Aurora Carvajal, ADA Responsible Employee, at (512) 475-3822 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

**Contact:** Henry Flores, 811 Barton Springs Road, Suite 500, Austin, Texas 78704, (512) 475-3934.

Filed: May 5, 1995, 1:50 p.m.

TRD-9505478

**Monday, May 15, 1995, 9:00 a.m.**

Clements Building, 300 West 15th Street,  
Committee Room 5

Austin

Programs Committee Meeting

**AGENDA:**

The Programs Committee will meet to consider and possibly act on the following: HOME Program funding recommendations for fiscal year 1994 in which the Program Committee has been authorized by the board to make final approval of awarding of funds for first time homebuyer assistance and owner occupied housing assistance; and adjourn.

Supporting materials and staff recommendations on these agenda items are available for review at Texas Department of Housing and Community Affairs, 811 Barton Springs Road, Austin, Texas 78704 or copies may be obtained on specific items by calling (512) 475-2124 (copies are subject to open records request copying charge per page).

Individuals who require auxiliary aids or services for this meeting should contact Aurora Carvajal, ADA Responsible Employee, at (512) 475-3822 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

**Contact:** Henry Flores, 811 Barton Springs Road, Suite 500, Austin, Texas 78704, (512) 475-3934.

Filed: May 5, 1995, 1:51 p.m.

TRD-9505481

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**Texas Department of Insurance**

**Monday, May 22, 1995, 9:00 a.m.**

State Office of Administrative Hearings,  
300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0355.A

To consider whether the application of International Association of Entrepreneurs of America Benefit Trust, Inc., for an initial certificate of authority for a multiple employer welfare arrangement (MEWA) should be granted (recessed from April 4, 1995).

**Contact:** Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: May 9, 1995, 9:19 a.m.

TRD-9505594

**Monday, May 22, 1995, 1:00 p.m.**

State Office of Administrative Hearings,  
300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0614.C

To consider whether disciplinary action should be taken against Grace Alvarado, Corpus Christi, Texas, who holds a Local Recording Agent's License issued by the Texas Department of Insurance.

**Contact:** Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: May 9, 1995, 9:24 a.m.

TRD-9505601

**Monday, May 22, 1995, 1:00 p.m.**

State Office of Administrative Hearings,  
300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0558.C

To consider whether disciplinary action should be taken against Randall Bruce Harris, San Antonio, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License issued by the Texas Department of Insurance (continued from May 1, 1995).

**Contact:** Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: May 9, 1995, 9:24 a.m.

TRD-9505600

**Tuesday, May 23, 1995, 1:00 p.m.**

State Office of Administrative Hearings,  
300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0563.C

To consider whether the application of James Paul Williams, Houston, Texas for a Group II, Insurance Agent's License to be issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: May 9, 1995, 9:24 a.m.

TRD-9505599

Wednesday, May 24, 1995, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0547

To consider the application of Joseph R. Abohosh, Mesquite, Texas, for a solicitor's license to be issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: May 9, 1995, 9:24 a.m.

TRD-9505598

Wednesday, May 24, 1995, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0448.C

To consider whether disciplinary action should be taken against Glenn Phillip Bishop, Texarkana, 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, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: May 9, 1995, 9:24 a.m.

TRD-9505597

Thursday, May 25, 1995, 1:00 p.m.

State Office of Administrative Hearings, 305 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0514.C

To consider whether disciplinary action should be taken against Richard Howard Fantroy, Duncanville, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License and Local Recording Agent's License (continued from April 17, 1995).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: May 9, 1995, 9:24 a.m.

TRD-9505602

Friday, May 26, 1995, 10:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0522.D

To consider the appeal of an emergency cease and desist order issued against Agency Premium Acceptance Corporation pursuant to Article 1.10A of the Texas Insurance Code (continued from April 27, 1995).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: May 9, 1995, 9:24 a.m.

TRD-9505596

Friday, May 26, 1995, 1:00 p.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0603.C

To consider whether disciplinary action should be taken against Thomas Edward Nanninga, Spring, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License, Group II, Insurance Agent's License and a Local Recording Agent's License issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: May 9, 1995, 9:24 a.m.

TRD-9505595

## Lamar University System

Thursday, May 11, 1995, 9:00 a.m.

John Gray Institute, 855 Florida

Beaumont

Board of Regents

AGENDA:

Call to order-approval of minutes-chair's report-chancellor's report

Executive session

Reconvene open meeting/recess for Committee meetings

Ad Hoc Committee

Student Relations and Services Committee

Academic Affairs Committee

Personnel Committee

Finance and Audit Committee

Reconvene Board of Regents meeting

Consider approval of Committee reports

Other reports

Contact: Joseph E. Champagne, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: May 5, 1995, 10:29 a.m.

TRD-9505450

## Texas Department of Licensing and Regulation

Tuesday, May 23, 1995, 9:00 a.m.

920 Colorado, E.O. Thompson Building, Third Floor

Austin

Inspections and Investigations, Manufactured Housing

AGENDA:

According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for Chairman Saadon doing business as Casablanca Mist Mobile Home Park for violation of the Texas Civil Statutes, Article 5221f, §7(d) and Article 9100, 16 Texas Administrative Code (TAC), §69.125(e)(1), and the Texas Government Code, Chapter 2001.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

Filed: May 8, 1995, 2:52 p.m.

TRD-9505556

Thursday, June 8, 1995, 9:00 a.m.

920 Colorado, E. O. Thompson Building, Fourth Floor

Austin

Inspections and Investigations, Auctioneers

AGENDA:

According to the complete agenda, the Department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for Gregg Trenor for violation of the Texas Civil Statutes, Article 8700, §10 and Article 9100, and the Texas Government Code, Chapter 2001.

Contact: Paula Hamje, 920 Colorado, E. O. Thompson Building, Austin, Texas 78701, (512) 463-3192.

Filed: May 5, 1995, 8:31 a.m.

TRD-9505434

Thursday, June 15, 1995, 9:00 a.m.

920 Colorado, E.O. Thompson Building,  
Fourth Floor

Austin

Inspections and Investigations, Auctioneers

**AGENDA:**

According to the complete agenda, the Department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for Marian Voss for violation of the Texas Civil Statutes, Article 8700, §7(a)(3) and (7) and Article 9100, 16 Texas Administrative Code (TAC), Chapter 67, Business and Commerce Code, §17.46(b)(2) and (3) and the Texas Government Code, Chapter 2001.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

Filed: May 8, 1995, 2:52 a.m.

TRD-9505555



**Texas State Board of Medical Examiners**

Friday, May 12, 1995, 8:30 a.m.

1812 Centre Creek Drive, Suite 300

Austin

Finance Committee

**AGENDA:**

1. Call to order
2. Roll call
3. Introduce Wally Lankford-the new Director of Administration and Finance
4. Review financial statements
5. Adjourn

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, Fax: (512) 834-4597.

Filed: May 4, 1995, 4:26 p.m.

TRD-9505428

Friday, May 12, 1995, 9:00 a.m.

1812 Centre Creek Drive, Suite 300

Austin

Standing Orders Committee

**AGENDA:**

1. Call to order
2. Roll call
3. Consideration of waiver requested by Nora Daugherty, M.D., to supervise four physician assistants in three rural health clinics.

4. Review, consideration, and possible action on proposed acupuncture licensing agreed order in regard to Tara Nakamura.

**5. Adjourn**

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, Fax: (512) 834-4597.

Filed: May 4, 1995, 4:26 p.m.

TRD-9505425

Friday, May 12, 1995, 10:00 a.m.

1812 Centre Creek Drive, Suite 300

Austin

Public Information Committee

**AGENDA:**

1. Call to order
2. Roll call
3. Update on booth exhibits
4. Update on rural health issues
5. Review and approval of Spring/Summer 1995 newsletter
6. Adjourn

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, Fax: (512) 834-4597.

Filed: May 4, 1995, 4:26 p.m.

TRD-9505427

Friday, May 12, 1995, 11:00 a.m.

1812 Centre Creek Drive, Suite 300

Austin

Legislative Committee

**AGENDA:**

1. Call to order
2. Roll call
3. Update from executive director and general counsel regarding legislative issues
4. Adjourn

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, Fax: (512) 834-4597.

Filed: May 4, 1995, 4:26 p.m.

TRD-9505426



**Midwestern State University**

Thursday, May 11, 1995, 3:00 p.m.

3410 Taft Boulevard, Hardin Board Room

Wichita Falls

Board of Regents Executive Committee

**AGENDA:**

The Executive Committee will review and approve February 9, 1995 committee minutes and a nominating committee for Board officers will be appointed. The committee will receive recommendations concerning the 1995-1996 staff employee holiday schedule, transfer of funds for settlement of a legal issue, roof repair for Clark Student Center, Ligon Coliseum locker room and Bolin, Killingsworth Hall HVAC and elevator projects, thermal storage and the sale of land off of Southwest Parkway. This committee reserves the right to discuss any items in executive session whenever legally justified and properly posted in accordance with the Texas Open Meetings Act, Article 6252-17.

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4212.

Filed: May 8, 1995, 11:49 a.m.

TRD-9505535

Thursday, May 11, 1995, 3:30 p.m.

3410 Taft Boulevard, Hardin Board Room

Wichita Falls

Board of Regents Finance and Audit Committee

**AGENDA:**

The Finance Committee will review minutes of the committee meeting February 9, 1995 and will receive recommendations and discuss the MSU Bookstore contract, IBM mainframe disk storage upgrade, administrative software upgrade, and ratification of items \$15,000 and under approved by president per Board authorization. This committee reserves the right to discuss any items in executive session whenever legally justified and properly posted in accordance with the Texas Open Meetings Act, Article 6252-17.

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4212.

Filed: May 8, 1995, 11:49 a.m.

TRD-9505536

Thursday, May 11, 1995, 4:00 p.m.

3410 Taft Boulevard, Hardin Board Room

Wichita Falls

Board of Regents Personnel and Curriculum Committee

**AGENDA:**

The Personnel and Curriculum Committee will review minutes of the committee meeting February 9, 1995. They will consider the position changes in the fiscal year 1994-1995 budget, the 1994-1995 graduates from MSU, emeritus status recommendations for Dr. Eldon Sund and Dr. Rudolf Klein, and a new Secretary II position in the

Office of Housing. Minor Policy Manual revisions will be presented in the following policies: 2.22, Regents By-Laws; 2.31, Administration Selection; 2.322, Purpose and Responsibilities. President; 2.323, Organization, President's Office; 2.324, Athletics; 2.332 and 2.333, Purpose, Responsibilities, Organization of VPAA; 2.343, Organization, VPBA; 2.353, Organization, VP Students; 2.36, Councils; 2.37, Committees; 3.112, Hiring Faculty; 3.117, Resignation of Faculty; 3.127, Faculty Workload; 3.212, Staff Hiring; 3.216, Staff Termination/Discharge; 3.217, Employee Leave Policies; 3.218, Grievance Procedures, Non-Teaching Employees; 3.225, Longevity Pay; 3.321, Medical Insurance; 3.326, Personnel Records; 3.327 and 3.328, Retirement; 3.330, Student Employment; 3.338, PC Software; 3.342, University Issued Credit Cards; 4.115-4.118, Building Use Policies; 4.119, Closing Due to Weather; 4.121, Credit Union; 4.131, Equal Opportunity, Affirmative Action; 4.133, Food Purchases; 4.138, Key Authorization; 4.155, Postal Services; 4.157, State Publications Depository; 4.158, Purchasing; 4.172, TPEG Program; 4.174, Minority and Female-Owned Businesses; 4.176, Drug Free School. Authorizing legislation will be added to 3.213, 3.219, 3.221, 3.222, 3.311, 3.316, 3.320, 3.323, 3.324, 3.331, 3.335, 3.337. The following policies would be changed to reflect the correct name of the Vinson Health Center: 2.31, 4.124, 4.143. New policies will be recommended and discussed; ethics policies for employees and regents and a policy regarding dual employment with the state. Recommendations for promotion and tenure will be discussed to executive session in legally justified and properly posted in accordance with the Texas Open Meetings Act, Article 6252-17, §2(g).

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4212.

Filed: May 8, 1995, 11:49 a.m.

TRD-9505537

Thursday, May 11, 1995, 4:30 p.m.

3410 Taft Boulevard, Hardin Board Room  
Wichita Falls

Board of Regents Student Services Committee

**AGENDA:**

The Student Services Committee will review minutes of the committee meeting February 9, 1995 and will consider recommendations regarding Vinson Health Center physicians contract 1995-1996, YOU program physicians contract for summer 1995, Health Watch Clinic contract 1995-1996, and the 1995-1996 MSU Student Handbook and Activities Calendar. Information will be presented concerning the Clark Student

Center renovation and residence hall summer reservations. This committee reserves the right to discuss any items in executive session whenever legally justified and properly posted in accordance with the Texas Open Meetings Act, Article 6252-17.

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4212.

Filed: May 8, 1995, 11:49 a.m.

TRD-9505538

Thursday, May 11, 1995, 5:00 p.m.

3410 Taft Boulevard, Hardin Board Room  
Wichita Falls

Board of Regents University Development Committee

**AGENDA:**

The University Development Committee will review minutes of the committee meeting February 9, 1995. Summaries of gifts, grants and pledges September 1, 1994-April 14, 1995 will be presented for review of the board. Resolutions of appreciation will be presented for approval as necessary, including a resolution for Donna Arp Lotter, MSU's 1995 commencement speaker. This committee reserves the right to discuss any items in executive session whenever legally justified and properly posted in accordance with the Texas Open Meetings Act, Article 6252-17.

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4212.

Filed: May 8, 1995, 11:49 a.m.

TRD-9505539

Thursday, May 11, 1995, 5:15 p.m.

3410 Taft Boulevard, Hardin Board Room  
Wichita Falls

Board of Regents Athletics Committee

**AGENDA:**

The Athletics Committee will review minutes of the committee meeting February 9, 1995 and will receive information concerning Title IX compliance review, 1995 M Club campaign, the 1995 football schedule and tentative 1995-1996 men's and women's basketball schedules. This committee reserves the right to discuss any items in executive session whenever legally justified and properly posted in accordance with the Texas Open Meetings Act, Article 6252-17.

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4212.

Filed: May 8, 1995, 11:50 a.m.

TRD-9505540

Friday, May 12, 1995, 9:00 a.m.

3410 Taft Boulevard, Hardin Board Room  
Wichita Falls

Board of Regents

**AGENDA:**

The Board of Regents will consider the minutes of the February 10, 1995 Board of Regents meeting and review the financial reports for the months of January, February and March 1995. The Board will consider recommendations and review information from the Executive, Finance, Personnel and Curriculum, Student Services, University Development and Athletics committees. Information will additionally be presented concerning the Moffett Library at MSU as well as an overall update by the president of the university. The Board of Regents of Midwestern State University reserves the right to discuss any items in executive session whenever legally justified and properly posted in accordance with the Texas Open Meetings Act, Article 6252-17. Recommendations for faculty promotion and tenure will be discussed in executive session as allowed by §2(g) of the Texas Open Meetings Act.

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4212.

Filed: May 9, 1995, 8:53 a.m.

TRD-9505592

**Texas Natural Resource Conservation Commission**

Monday, May 15, 1995, 9:00 a.m.

12118 North Interstate 35, Building E,  
Room 201S

Austin

**AGENDA:**

The Commission will meet in executive session to discuss litigations related to the Edward Aquifer; Sierra Club et al v. Bruce Babbitt, et al, Number 91-CA-069, United States District Court, Western District of Texas, Midland-Odessa Division; and Sierra Club, et al v. Bruce Babbitt, et al, Numbers 94-50260 and 95-50165, United States Court of Appeals for the Fifth Circuit.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: May 5, 1995, 2:26 p.m.

TRD-9505495

Wednesday, May 17, 1995, 9:30 a.m.

12118 North Interstate 35, Building E,  
Room 201S

Austin

**AGENDA:**

The commission will meet to consider district matter. The commission will consider continuing the item to May 24, 1995. Rolling Creek Utility District of Harris County.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: May 8, 1995, 2:35 p.m.

TRD-9505553

Tuesday, May 30, 1995, 5:00 p.m.

Macedonia Baptist Church, 2712 South Freeway

Fort Worth

**AGENDA:**

On an application by Southwest Paper Stock, Inc., Proposed Registration Number MSW40052, to construct and operate a Type V municipal solid waste recycling and transfer station. The proposed site covers approximately 3.25 acres of land, will accept approximately 100 tons of municipal solid waste daily, and is to be located at 400 and 212 West Jessamine Street in the City of Fort Worth, Tarrant County, Texas.

Contact: Charles Stavley or Ann Scudday, P.O. Box 130, Austin, Texas 78711, (512) 239-6687 or (512) 239-6688.

Filed: May 5, 1995, 8:18 a.m.

TRD-9505432

Thursday, June 8, 1995, 10:00 a.m. (Rescheduled from May 16, 1995.)

TNRCC, 12124 Park 35 Circle, IH-35 North at Yager Lane, Building C, Room 131E

Austin

**AGENDA:**

On an application by West Texas Wilbert Vault Company, Air Quality Standard Exemption Registration Number 26193, to construct and operate a concrete batch plant. The proposed plant will be located at 2301 Auburn in Lubbock, Lubbock County, Texas.

Contact: Kelly Brown, P.O. Box 13087, Austin, Texas 78711, (512) 239-1086.

Filed: May 4, 1995, 1:24 p.m.

TRD-9505392

Friday, June 16, 1995, 1:00 p.m.

Clarion Hotel, 1241 West Mockingbird Lane

Dallas

**AGENDA:**

The State Small Business Compliance Advisory Panel will meet with the TNRCC Small Business Advocate's Office and the TNRCC Small Business Assistance Pro-

gram to work with these programs to insure that small businesses have every opportunity to come into compliance with environmental regulations. (Janice Robinson)

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: May 8, 1995, 4:21 p.m.

TRD-9505569

Thursday, June 22, 1995, 9:00 a.m.

City Hall, City Council Room, 302 South Madison Street

McGregor

Office of Hearings Examiners

**AGENDA:**

For a hearing before a hearings examiner on an application by Billy Ray Miller for Proposed Permit Number 03774 to authorize disposal of waste and wastewater from a dairy. The dairy will consist of a maximum of 500 milking head and 150 dry cows in open lots. The waste treatment facilities will include four storage ponds for washdown water, flushwater and stormwater retention. Wastewater from the ponds is to be disposed of by irrigation on 84 acres of agricultural land. Manure and separated solids are to be applied, for beneficial use, as fertilizer on agricultural land. No discharge of pollutants into the waters of the State is authorized by this permit. The dairy is located on Orion Road, approximately two miles south of the intersection of FM Road 3268 and FM Road 185. This intersection is 5-1/2 miles east of the intersection of FM Road 185 and State Highway 317 in McLennan County, Texas. TNRCC Docket Number 95-0786-AGR.

Contact: Cecile Hanna, Mail Code 102, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: May 8, 1995, 8:53 a.m.

TRD-9505522

Tuesday, June 27, 1995, 10:00 a.m.

Brazoria County Courthouse, Commissioner's Court, 111 East Locust, Room 307

Angleton

Office of Hearings Examiners

**AGENDA:**

For a hearing before a hearings examiner on an application by Robert E. Pine for Proposed Permit Number 13735-01 to authorize disposal of treated domestic sewage effluent by subsurface disposal on 6.78 acres of land. The disposal volume is not to exceed an average of 21,275 gallons per day. Application rates for the subsurface disposal are not to exceed 3.5 acre-foot/acre/year. No discharge of pollutants into the waters of the State is authorized by this permit. The wastewater treatment facil-

ity and subsurface disposal site are approximately 2.8 miles north of the intersection of State Highway 6 and County Road 48 and 0.3 miles south of the American Canal on County Road 48 in Brazoria County, Texas. TNRCC Docket Number 95-0677-MWD.

Contact: Carol Wood, Mail Code 102, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: May 8, 1995, 8:53 a.m.

TRD-9505521

◆ ◆ ◆  
**Pecos River Commission**

Thursday, May 25, 1995, 9:00 a.m.

2910 LaForce Boulevard, West of Midland International Airport

Midland

**AGENDA:**

1. Call to order by Chairman Villa;
2. Introduction-Commissioner Newton, commissioner from New Mexico;
3. Approval of minutes of meeting held August 17, 1994;
4. Report of chairman;
5. Report of secretary;
6. Report of treasurer;
7. Report of audit;
8. Reports of commission committees, (a) Budget, (b) Legal, (c) Engineering;
9. Reports of cooperating agencies and others;
10. Unfinished business;
11. New business;
12. Adjournment.

Contact: Herman Settemeyer, 12100 Park 35 Circle, Austin, Texas 78711-3087, (512) 239-4707.

Filed: May 8, 1995, 9:36 a.m.

TRD-9505525

◆ ◆ ◆  
**State Pension Review Board**

Monday, May 8, 1995, 2:00 p.m. (Telephone Conference Call)

State Pension Review Board, Conference Room, Fourth Floor, Room 406, William Clements Building

Austin

Emergency Meeting

PRB Legislative Subcommittee

**AGENDA:**

Preparation of actuarial impact statements on bills from which actuarial information is available by meeting time, and for which requests have been received from legislative committees.

Reason for emergency: In order to obtain a quorum and respond to request in appropriate time.

Contact: Lynda Baker, P.O. Box 13498, Austin, Texas 78711, (512) 463-1736.

Filed: May 5, 1995, 2:20 p.m.

TRD-9505484

◆ ◆ ◆  
**Texas Department of Protec-  
tive and Regulatory Ser-  
vices**

Thursday-Friday, May 18-19, 1995, 10:00  
a.m.

Driskill Hotel, 604 Brazos Street, Para-  
mount Room

Austin

Child Care Administrators and Facilities  
Advisory Committee

**AGENDA:**

Approval of minutes. Deputy director's re-  
port. Update on minimum standards for  
group day care homes. Discussion and rec-  
ommendations on sharing information with  
parents about centers and for incentives for  
compliance with minimum standards. Re-  
quirements for purchased services for CPS  
children. Consideration of suggestions for  
future agenda items.

Contact: Paul Grubb, P.O. Box 149030,  
Austin, Texas 78714-9030, (512) 450-3736.

Filed: May 8, 1995, 8:53 a.m.

TRD-9505523

◆ ◆ ◆  
**Public Utility Commission of  
Texas**

Tuesday, May 16, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

**AGENDA:**

There will be an open meeting at which the  
Commissioners will consider Project Num-  
ber 13863, the commission will hear public  
comment and consider for adoption an  
amendment to §23.56 concerning Statewide  
Dual-Party Relay Service; Project Number  
12706, the commission will hear public  
comment and consider for adoption new  
§23.6 concerning Spanish Language Re-  
quirements or consider for publication a  
new rule regarding Customer Service and  
Communication with Spanish-speaking  
Customers; Docket Number 11027, com-  
plaint of the City of McKinney against  
Southwestern Bell Telephone Company;  
Docket Number 13587, joint complaint of  
Texas Ratepayers' Organization to save en-  
ergy and the Environmental Defense Fund  
against Texas Utilities Electric Company;  
Docket Number 13126, inquiry of the gen-  
eral counsel into the operation and manage-  
ment of the South Texas Nuclear Project;  
Docket Number 12957, application of

Houston Lighting and Power Company for  
approval of experimental tariff for special  
contract pricing-rate schedule SCP; Docket  
Number 12852, inquiry into the reasonable-  
ness of the rates and services of Gulf States  
Utilities Company; and Docket Number  
12700, application of El Paso Electric Com-  
pany for authority to change rates and of  
Central and South West Corporation and El  
Paso Electric for approval of acquisition.

Contact: John M. Renfrow, 7800 Shoal  
Creek Boulevard, Austin, Texas 78757,  
(512) 458-0100.

Filed: May 8, 1995, 2:35 p.m.

TRD-9505552

Thursday, May 18, 1995, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

**AGENDA:**

A prehearing conference will be held on the  
above date and time in Docket Number  
14152—complaint of City of Denton against  
GTE Southwest, Inc.

Contact: John M. Renfrow, 7800 Shoal  
Creek Boulevard, Austin, Texas 78757,  
(512) 458-0100.

Filed: May 4, 1995, 3:46 p.m.

TRD-9505420

Friday, May 19, 1995, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

**AGENDA:**

A prehearing conference is scheduled for  
the above date and time in Docket Number  
14174: petition of Southwestern Public Ser-  
vice Company for fuel reconciliation.

Contact: John M. Renfrow, 7800 Shoal  
Creek Boulevard, Austin, Texas 78757,  
(512) 458-0100.

Filed: May 5, 1995, 2:20 p.m.

TRD-9505485

◆ ◆ ◆  
**Railroad Commission of  
Texas**

Tuesday, May 16, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor  
Conference Room 1-111

Austin

**AGENDA:**

The commission will consider and act on  
the Automatic Data Processing Division di-  
rector's report on division administration,

budget, procedures, equipment acquisitions  
and personnel matters. The commission will  
consider and act on the Information Re-  
source Manager's report on information re-  
source planning documents.

The commission will consider and act on  
the Automatic Data Processing Division di-  
rector's report on administration, budget,  
procedures, equipment acquisitions, con-  
tracts and work schedules associated with  
the Department of Energy-RRC Area of  
Review (AOR) Data Management Enhance-  
ments Grant status review.

Contact: Bob Kmetz, P.O. Box 12967,  
Austin, Texas 78701, (512) 463-7251.

Filed: May 5, 1995, 9:53 a.m.

TRD-9505444

Tuesday, May 16, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor  
Conference Room 1-111

Austin

**AGENDA:**

The commission will consider and act on  
the Office of Information Services Direc-  
tor's report on division administration, bud-  
get, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Box  
12967, Austin, Texas 78701, (512)  
463-6710.

Filed: May 5, 1995, 9:53 a.m.

TRD-9505445

Tuesday, May 16, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor  
Conference Room 1-111

Austin

**AGENDA:**

The commission will consider and act on  
agency administration, budget, policy and  
procedures, and personnel matters for all  
divisions. The commission may meet in ex-  
ecutive session to consider the appointment,  
employment, evaluation, re-assignment, du-  
ties, discipline, and/or dismissal of person-  
nel.

Contact: Mark Bogan, P.O. Box 12967,  
Austin, Texas 78711-2967, (512) 463-6981.

Filed: May 5, 1995, 9:54 a.m.

TRD-9505446

Tuesday, May 16, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor  
Conference Room 1-111

Austin

**AGENDA:**

The commission will consider and act on  
the surface mining and reclamation division  
director's report on division administration,  
budget, procedures, and personnel matters.

Contact: Melvin B. Hodgkiss, P.E., P.O. Box 12967, Austin, Texas 78711, (512) 463-6901.

Filed: May 5, 1995, 9:54 a.m.

TRD-9505447

Tuesday, May 16, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

The commission will consider and act on the agency budget, fiscal and administrative matters and the Administrative Services Division director's report on division administration, budget, procedures and personnel matters, including discussion of Abilene and Dallas district office lease proposals and take action on the division's recommendation.

Contact: Roger Dillon, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7257.

Filed: May 5, 1995, 9:55 a.m.

TRD-9505448

Tuesday, May 16, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

To consider a motion for re-hearing for Docket Number 03-0201923, the application of Hunters Creek Oil and Gas, W. L. Goldston (05584) Lease, Hastings, Best Field, Brazoria County, Texas.

Contact: Philip Danks, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6762.

Filed: May 5, 1995, 1:49 p.m.

TRD-9505473

Tuesday, May 16, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

According to the complete agenda, the Railroad Commission of Texas will consider various applications and other matters within the jurisdiction of the agency including oral arguments. 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: Carole J. Vogel, P.O. Box 12967, Austin, Texas 78711, (512) 463-7033.

Filed: May 5, 1995, 9:55 a.m.

TRD-9505449

Tuesday, May 16, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

Revised Agenda

AGENDA:

Add to:

To consider a motion for rehearing in oil and gas Docket Number 03-0206767: consideration of whether to enter a commission order assessing administrative penalties and/or requiring compliance with commission regulations on the Hunters Creek Oil and Gas, Goldston, W. L. Fee Lease, Hastings, East Field, Brazoria County, Texas.

Contact: Phillips Danks, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6762.

Filed: May 8, 1995, 1:56 p.m.

TRD-9505544

Tuesday, May 16, 1995, 9:30 a.m.

Texas Railroad Commission, 1701 North Congress Avenue, Room 1-111

Austin

AGENDA:

Discussion and approval of comments on the Federal Department of Transportation notice of proposed rulemaking regarding mandatory participation in qualified one-call systems by pipeline operators.

Contact: Mary Ross McDonald, P.O. Box 12967, Austin, Texas 78701, (512) 463-7008.

Filed: May 8, 1995, 4:34 p.m.

TRD-9505573

◆ ◆ ◆  
**Texas Real Estate Commission**

Monday, May 15, 1995, 9:30 a.m.

Conference Room 235, Second Floor, TREC Headquarters Office, 1101 Camino La Costa

Austin

AGENDA:

Call to order: Introduction of new members; election of vice-chairperson; minutes of April 3, 1995 commission meeting; staff reports for March 1995; committee reports; discussion and possible action to propose amendment to 22 TAC §535.13 concerning real estate license requirements to arrange for persons to occupy vacant residential property; discussion and possible action to adopt new 22 TAC §535.228, concerning

standard inspection report form, and proposed amendments to 22 TAC §535.222, concerning standards of practice; discussion and possible action to adopt or withdraw proposed amendments to 22 TAC §535.164, concerning disclosure of agency; discussion and possible action to request the Real Estate Research Center to conduct public focus groups; report on meeting of committee on alternative educational delivery systems; discussion and possible action to approve MCE providers and courses or other providers and course; legislative update; executive session to discuss pending litigation pursuant to Texas Government Code, §551.071 and appointments to the Texas Real Estate Inspector Committee pursuant to §551.074; authorization of payments from recovery funds; discussion and possible action to appoint members of the Texas Real Estate Inspector Committee; consideration of complaint information; motion for rehearing in Hearing Number 95-52-950015; entry of orders in contested cases; scheduling of future meetings.

For ADA assistance, call Nancy Guevremont at (512) 465-3923 at least two days prior to meeting.

Contact: Mark A. Moseley, P.O. Box 12118, Austin, Texas 78711-2188, (512) 465-3900.

Filed: May 4, 1995, 4:04 p.m.

TRD-9505424

◆ ◆ ◆  
**Texas Real Estate Research Center**

Wednesday, May 24, 1995, 9:00 a.m.

Real Estate Center Conference Room, Texas A&M University

College Station

Advisory Committee

AGENDA:

- 1) Opening remarks
- 2) Approval of minutes
- 3) Progress reports
- 4) Current budget report
- 5) Legislative update
- 6) Other business
- 7) Adjourn

Contact: R. Malcolm Richards, Texas A&M University, College Station, Texas 77843-2115, (409) 845-9691.

Filed: May 5, 1995, 8:44 a.m.

TRD-9505507  
◆ ◆ ◆



## Texas Savings and Loan Department

Tuesday, May 30, 1995, 10:00 a.m.

300 West 15th Street, Room 502

Austin

### AGENDA:

The purpose of this meeting (hearing) is to accumulate a record of evidence in regard to the application of Shelby-Panola Savings Association, Carthage, Texas to merge with a federally chartered interim savings bank; the surviving Shelby to merge with First Federal Savings Bank of Longview, with Longview the surviving entity, from which record the commissioner will determine whether to grant or deny the application.

Contact: Teresa Scarborough, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 475-1350.

Filed: May 8, 1995, 1:31 p.m.

TRD-9505542

## Texas Guaranteed Student Loan Corporation

Friday, May 12, 1995, 9:30 a.m.

13809 North Highway 183, Suite 301

Austin

Board of Directors

### AGENDA:

1. Call to order
2. Approval of minutes of May 3, 1995
3. Election of board secretary for remainder 1994-1995 term
4. Discussion and action on telephone contract
5. Discussion and action on reappointment of Coopers and Lybrand and H. V. Villegas and Company to conduct financial audit for fiscal year ending September 30, 1995
- 6(a). Presentation, discussion, and action on the submission of a bid to provide servicing to the Department of Education's Direct Loan Program
- 6(b). Discussion and action to approve the retention of space and the formation of a subsidiary corporation to undertake the above referenced activity
7. Adjourn to executive session  
Consultation with attorney on litigation issues  
Discussion of personnel issues
8. Resume regular session
9. Action on items arising from executive session

10. Discussion and authorization of staff to issue a Request For Proposal (RFP) for retention of collection counsel

11. Adjourn

Contact: Pat Boulton, 13809 North Highway 183, Austin, Texas 78750, (512) 219-4550.

Filed: May 4, 1995, 3:46 p.m.

TRD-9505422

## Texas Sustainable Energy Development Council

Friday, May 19, 1995, 9:00 a.m.

1700 North Congress Avenue, Stephen F. Austin Building, Room 831

Austin

### AGENDA:

1. Call to order
2. Review agenda
3. Welcoming remarks
4. Review goals and objectives
5. Discuss suggested additions and modifications
6. Discuss parking lot issues
7. Set next meeting date
8. Adjourn

Contact: Charlotte Banks, 1700 North Congress Avenue, Room 850, Austin, Texas 78701, (512) 463-1745.

Filed: May 8, 1995, 1:31 p.m.

TRD-9505541

## The Texas State University System

Thursday-Friday, May 11-12, 1995, 1:15 p.m. and 8:30 a.m., respectively.

First Floor Conference Room, Houston Harte University Center, Angelo State University

San Angelo

Board of Regents

### AGENDA:

Review of matters of the board and the four universities in the system including: all matters reviewed by the Curriculum Committee (see Curriculum Committee agenda), the Construction and Planning Committee (see Construction and Planning Committee agenda), the Finance Committee (see Finance Committee agenda) and the Rules and Regulations Committee (see Rules and Regulations Committee agenda) as submitted to

the full board for review and approval; personnel actions including new employees, promotions, resignations, retirements, terminations, tenure, designation of faculty with Distinguished and Emeritus titles, commissioning of police officers, salaries/salary supplements and special appointment of any system employee including the presidents and chancellor; discussion of litigation; bond sales, budgetary changes, operating budgets and contract approvals for each university and the system administration; acceptance of gifts; admission requirements and fees; room and board rates; land leases; purchases, easements and sales; and an update of the legislative proposal to move the Lamar University components to the Texas State University System. (Where appropriate and permitted by law, executive sessions may be held for the above listed subjects.)

Contact: Lamar Urbanovsky, 333 Guadalupe, Tower III, Suite 810, Austin, Texas 78701, (512) 463-1808.

Filed: May 5, 1995, 11:20 a.m.

TRD-9505453

Thursday, May 11, 1995, 3:00 p.m.

First Floor Conference Room, Houston Harte University Center, Angelo State University

San Angelo

Curriculum Committee

### AGENDA:

Review of matters of the board and the four universities in the System including: all matters of curriculum, including diversification reports, substantive and non-substantive program changes, new degree programs, additions, deletions and retention of courses, admission standards, out-of-state and out-of-country studies and Angelo State University's Curriculum Master Plan. (Where appropriate and permitted by law, executive sessions may be held for the above listed subjects.)

Contact: Lamar Urbanovsky, 333 Guadalupe, Tower III, Suite 810, Austin, Texas 78701, (512) 463-1808.

Filed: May 5, 1995, 11:20 a.m.

TRD-9505454

Thursday, May 11, 1995, 3:30 p.m.

First Floor Conference Room, Houston Harte University Center, Angelo State University

San Angelo

Planning and Construction Committee

### AGENDA:

Review of construction projects and documents for the four universities in the System including: purchase orders for parking lot

maintenance, repair and construction and purchase of the McKay property at Sam Houston State University; selection of a consultant for roof repairs and replacements, contract award for the new student center/bookstore, parking garage and purchase orders for the HVAC improvements to San Saba Hall at Southwest Texas State University; and, contract award for the Equine Science Facility at Sul Ross State University. (Where appropriate and permitted by law, executive sessions may be held for the above listed subjects.)

Contact: Lamar Urbanovsky, 333 Guadalupe, Tower III, Suite 810, Austin, Texas 78701, (512) 463-1808.

Filed: May 5, 1995, 11:20 a.m.

TRD-9505455

Thursday, May 11, 1995, 4:00 p.m.

First Floor Conference Room, Houston Harte University Center, Angelo State University

San Angelo

Finance Committee

AGENDA:

Review of financial matters of the System Office and the four universities in the System including approval of expenditures, adjustment of budgets, approval of fees, room and board rates, internal audit reports and transfer of student housing funds from Angelo State University, Sam Houston State University, Southwest Texas State University and Sul Ross State University. (Where appropriate and permitted by law, executive sessions may be held for the above listed subjects.)

Contact: Lamar Urbanovsky, 333 Guadalupe, Tower III, Suite 810, Austin, Texas 78701, (512) 463-1808.

Filed: May 5, 1995, 11:20 a.m.

TRD-9505456

Thursday, May 11, 1995, 4:30 a.m.

First Floor Conference Room, Houston Harte University Center, Angelo State University

San Angelo

Rules and Regulations Committee

AGENDA:

Review of proposed amendments to the rules and regulations of the System. (Where appropriate and permitted by law, executive sessions may be held for the above listed subjects.)

Contact: Lamar Urbanovsky, 333 Guadalupe, Tower III, Suite 810, Austin, Texas 78701, (512) 463-1808.

Filed: May 5, 1995, 11:20 a.m.

TRD-9505457

## University of Houston

Monday, May 15, 1995, 2:00 p.m.

SRII Building, Room 201, University of Houston, 4800 Calhoun Boulevard

Houston

Animal Care Committee

AGENDA:

To discuss and/or act upon the following:

Approval of April minutes

Renewal protocols

AAALAC exit briefing update

HVAC repair update

Date selection for semi-annual program review and facilities inspection

Contact: Rosemary Grimmet, 4800 Calhoun Boulevard, Houston, Texas 77204, (713) 743-9222.

Filed: May 8, 1995, 2:10 p.m.

TRD-9505548

## University of Texas at Arlington

Wednesday, June 7, 1995, 12:45 p.m.

501 South Nedderman, Room 323, Life Science Building

Arlington

Institutional Animal Care and Use Committee

AGENDA:

1. Approval of December 7, 1994 minutes.

2. Report of Animal Care and Use Orientation meeting.

3. Discussion of future improvements for animal facilities.

Contact: Verne C. Cox, UT-Arlington, Box 19528, Arlington, Texas 76019, (817) 273-3164.

Filed: May 8, 1995, 3:07 p.m.

TRD-9505557

## The University of Texas at Austin

Monday, May 8, 1995, 11:30 a.m.

21st and San Jacinto Streets, Belmont Hall, Ninth Floor

Austin

Council for Intercollegiate Athletics for Women

AGENDA:

I. Call to order

II. Approval of minutes of the previous meeting

III. New business

IV. Announcements/information reports

V. Adjournment

Contact: Jody Conradt, Belmont Hall 718, Austin, Texas 78712-1286, (512) 471-7693.

Filed: May 4, 1995, 12:07 p.m.

TRD-9505390

## Texas Workers' Compensation Insurance Facility

Thursday, May 18, 1995, 9:45 a.m.

Doubletree Guest Suites Hotel, 303 West 15th Street

Austin

Governing Committee Meeting

AGENDA:

Approval of minutes from the April 13, 1995 Governing Committee meeting. Consideration and possible action on 1994 actuary report. Consideration and possible action on discount rate for rebates or assessments. Consideration and possible action on re-assessment of outstanding assessments. Consideration and possible approval of proposed amendments to the rules governing the Employers Rejected Risk Fund. Consideration and possible approval of proposed amendments to the Texas Workers' Compensation Insurance Facility's bylaws. Consideration and possible approval of proposed amendments to the rules and regulations governing the Small Premium Policy Plan. Consideration and possible action on servicing company request for reimbursement of legal fees and expenses. Consideration and possible action on recommendations from the Appeals Committee. Executive director's report. Executive session(s) regarding personnel matters and pending legal matters. Following the closed executive session(s), the Governing Committee will reconvene in open and public session and take any action as may be desirable or necessary as a result of the closed deliberations, including possible approval of settlements of potential or existing litigation, possible approval of facility transition plans and personnel policies.

Contact: Peter E. Potemkin, 8303 MoPac Expressway North, Suite 310, Austin, Texas 78759, (512) 345-1222.

Filed: May 8, 1995, 11:49 a.m.

TRD-9505534

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**Texas Workers' Compensation Insurance Fund**

Friday-Saturday, May 12-13, 1995, 1:30 p.m. and 8:30 a.m., respectively.

The Plaza Hotel, 555 South Alamo

San Antonio

Board of Directors

**AGENDA:**

Call to order; roll call; review and approval of the minutes of the April 28, 1995, board meeting, swearing in of new board member(s); informational presentation for new board members; ratification of certain actions relating to the change of the position of president/CEO; consideration of ratification of termination of investment agreement with Harbor Capital Management Company, Inc.; executive session(s); action items resulting from executive session deliberations; announcements; and adjourn.

Contact: Jeanette Ward, 100 Congress Avenue, Austin, Texas 78701, (512) 404-7142.

Filed: May 4, 1995, 2:56 p.m.

TRD-9505403

Friday, May 12, 1995, 7:00 p.m.

The Plaza Restaurant, 555 South Alamo

San Antonio

Board of Directors

**AGENDA:**

The Board of Directors of the Texas Workers' Compensation Insurance Fund (Fund) will have an informal dinner at 7:00 p.m. on Friday, May 12, 1995. The dinner is intended to be a social event, and there is no formal agenda. No formal action will be taken, but it is possible that discussions could occur which could be construed to be "deliberations" within the meaning of the Open Meetings Act; therefore, the dinner will be treated as an "open meeting" and the public will be allowed to observe. However, dinner will be provided only for the Board of Directors of the Fund, and certain staff of the Fund. No dinner or refreshments will be provided for members of the public who may wish to attend.

Contact: Jeanette Ward, 100 Congress Avenue, Austin, Texas 78701, (512) 404-7142.

Filed: May 4, 1995, 3:23 p.m.

TRD-9505410

**Regional Meetings**

**Meetings Filed May 4, 1995**

The Alamo Area Council of Governments Community Affairs met at 118 Broadway, Suite 400, San Antonio, May 9, 1995, at 9:30 a.m. Information may be obtained from Al J. Notzon III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (210) 225-5201. TRD-9505430.

The Blanco County Appraisal District 1995 Board of Directors will meet at Avenue G and Seventh Street, Johnson City, May 9, 1995, at 5:00 p.m. Information may be obtained from Hollis Boatright, P.O. Box 338, Johnson City, Texas 78636, (210) 868-4013. Fax: (210) 868-7330. TRD-9505389.

The Brazos Valley Development Council Executive Committee met at 1706 East 29th Street, May 10, 1995, at 1:30 p.m. Information may be obtained from Tom Wilkinson, Jr., P.O. Drawer 4128, Bryan, Texas 77805, Texas 77805-4128, (409) 775-4244. TRD-9505396.

The Cass County Appraisal District Board of Directors met at 502 North Main Street, Linden, May 9, 1995, at 7:00 p.m. Information may be obtained from Janelle Clements, P.O. Box 1150, Linden, Texas 75563, (903) 756-7545. TRD-9505423.

The El Oso Water Supply Corporation Board of Directors met at FM 99 Karnes City, May 9, 1995, at 7:30 p.m. Information may be obtained from Judith Zimmermann, P.O. Box 309, Karnes City, Texas 78118, (210) 780-3539. TRD-9505397.

The Hale County Appraisal District Board of Directors will meet at 3314 Olton Road, Plainview, May 18, 1995, at 7:30 p.m. Information may be obtained from Linda Jaynes, 302 West Eighth, Plainview, Texas 79072, (806) 293-4226. TRD-9505386.

The Hays County Appraisal District Board of Directors met at 21001 North IH-35, Kyle, May 11, 1995, at 3:30 p.m. Information may be obtained from Lynnell Sedlar, 21001 North IH-35, Kyle, Texas 78640, (512) 268-2522. TRD-9505393.

The Jones County Appraisal District Board of Directors met at 1137 East Court Plaza, Anson, May 18, 1995, at 8:30 a.m. Information may be obtained from Susan Holloway, P.O. Box 349, Anson, Texas 79501, (915) 823-2422. TRD-9505412.

The Lower Rio Grande Valley Tech Prep Associate Degree Consortium (as known as Tech Prep of the Rio Grande Valley Inc.) Board of Directors met in the Board Room, Conference Center, Texas State Technical College, Corner of Loop 499 and Oak Street, Harlingen, May 10, 1995, at Noon. Information may be obtained from

Pat Bubb, Tech Prep of the Rio Grande Valley, Inc., TSTC Conference Center, Harlingen, Texas 78550-3697, (210) 425-0729. TRD-9505421.

The Nortex Regional Planning Commission Executive Committee will meet at The Galaxy Center, #2 North, Suite 200, 4309 Jacksboro Highway, Wichita Falls, May 18, 1995, at Noon. Information may be obtained from Dennis Wilde, P.O. Box 5144, Wichita Falls, Texas 76307-5144, (817) 322-5281. TRD-9505404.

The Taylor County Central Appraisal District Board of Directors met at 1534 South Treadaway, Abilene, May 10, 1995, at 3:30 p.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381 or Fax (915) 676-7877. TRD-9505405.

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**Meetings Filed May 5, 1995**

The Barton Springs/Edwards Aquifer Conservation District Board of Directors (Regular Meeting) met at 1124A Regal Row, Austin, May 11, 1995, at 5:30 p.m. Information may be obtained from Bill E. Couch, 1124A Regal Row, Austin, Texas 78748, (512) 282-8441, Fax: (512) 282-7016. TRD-9505480.

The Carson County Appraisal District Agricultural Advisory Board met at 102 Main Street, Panhandle, May 10, 1995, at 9:00 a.m. Information may be obtained from Donita Herber, Box 970, Panhandle, Texas 79068, (806) 537-3569. TRD-9505517.

The Coleman County Water Supply Corporation Board of Directors met at 214 Santa Anna Avenue, Coleman, May 10, 1995, at 1:30 p.m. Information may be obtained from Davey Thweatt, 214 Santa Anna Avenue, Coleman, Texas 76834, (915) 625-2133. TRD-9505441.

The Dallas Area Rapid Transit Committee of the Whole met in Conference Room C, 1401 Pacific Avenue, Dallas, May 9, 1995, at 1:00 p.m. Information may be obtained from Vanessa A. Knight, P.O. Box 660163, Dallas, Texas 75266-0163. TRD-9505474.

The Dallas Area Rapid Transit Board met in the Board Room, First Floor, 1401 Pacific, Dallas, May 9, 1995, at 6:30 p.m. Information may be obtained from Vanessa A. Knight, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3371. TRD-9505475.

The Denton Central Appraisal District Appraisal Review Board will meet at 3911 Morse Street, Denton, May 17, 1995, at 9:00 a.m. Information may be obtained from Kathy Pierson, P.O. Box 2816, Denton, Texas 76202-2816, (817) 566-0904. TRD-9505506.

**The Eastland County Appraisal District Appraisal Review Board** will meet at 100 Main, Eastland, May 18, 1995, at 10:00 a.m. Information may be obtained from Steve Thomas, P.O. Box 914, Eastland, Texas 76448, (817) 629-8597. TRD-9505442.

**The Education Service Center, Region I Region I ESC Board** met 1/4-mile North Highway 1847, Los Fresnos, May 11, 1995, at 6:00 p.m. Information may be obtained from Dr. Roberto Zamora, 1900 West Schunior, Edinburg, Texas 78539, (210) 383-5611. TRD-9505476.

**The Ellis County Appraisal District Board of Directors** met at 400 Ferris Avenue, Waxahachie, May 11, 1995, at 7:00 p.m. Information may be obtained from R. Richard Rhodes, P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552. TRD-9505496.

**The Heart of Texas Housing Finance Corporation Board** met at the City Hall, Third and Austin Avenue, Waco, May 9, 1995, at Noon. Information may be obtained from Lyndon Olson, 510 North Valley Mills Drive, Suite 600, Waco, Texas 76710, (817) 776-3336. TRD-9505514.

**The Hickory Underground Water Conservation District Number 1 Board and Advisors** met at 2005 South Bridge Street, Brady, May 11, 1995, at 7:00 p.m. Information may be obtained from Lorna Moore, P.O. Box 1214, Brady, Texas 76825, (915) 597-2785. TRD-9505477.

**The Hunt County Appraisal District Board of Directors** met at 4801 King Street, Greenville, May 11, 1995, at 6:30 p.m. Information may be obtained from Shirley Smith, P.O. Box 1339, Greenville, Texas 75403, (903) 454-3510. TRD-9505436.

**The Hunt County Appraisal District Appraisal Review Board** will meet at 4801 King Street, Greenville, May 15-June 30, 1995, at 8:30 a.m. Information may be obtained from Shirley Gregory, P.O. Box 1339, Greenville, Texas 75403, (903) 454-3510. TRD-9505512.

**The Kempner Water Supply Corporation Board of Directors** met at Highway 190, Kempner, May 11, 1995, at 6:15 p.m. Information may be obtained from Donald W. Guthrie, P.O. Box 103, Kempner, Texas 76539, (512) 932-3701. TRD-9505513.

**The Lower Colorado River Authority Board of Trustees for LCRA's Benefit Plans** met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, May 9, 1995, at 1:00 p.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-4043. TRD-9505459.

**The Lower Colorado River Authority Planning and Public Policy Committee** met

at 3701 Lake Austin Boulevard, Hancock Building, Board Conference Room, Austin, May 9, 1995, at 10:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3287. TRD-9505460.

**The Manville Water Supply Corporation Board** met at Spur 277, Board Room, Coupland, May 11, 1995, at 7:00 p.m. Information may be obtained from Tony Graf, P.O. Box 248, Coupland, Texas 78615, (512) 272-4044. TRD-9505458.

**The Texas Municipal Power Agency (TMPA) Board of Directors** met at the Hyatt Regency-DFW Airport, Apollo Room-Lower Level of West Tower, International Parkway, DFW Airport, May 11, 1995, at 9:30 a.m. Information may be obtained from Carl Shahady, P.O. Box 7000, Bryan, Texas 77805, (409) 873-2013. TRD-9505515.

**The Sabine Valley Center Finance Committee** met at 107 Woodbine Place, Judson Road, Longview, May 11, 1995, at 6:30 p.m. Information may be obtained from Mack Blackwell or LaVerne Moore, P.O. Box 6800, Longview, Texas 75608, (903) 237-2362. TRD-9505437.

**The Sabine Valley Center Personnel Committee** met at 107 Woodbine Place, Judson Road, Longview, May 11, 1995, at 6:00 p.m. Information may be obtained from Mack Blackwell or LaVerne Moore, P.O. Box 6800, Longview, Texas 75608, (903) 237-2362. TRD-9505438.

**The Sabine Valley Center Care and Treatment Committee** met at 107 Woodbine Place, Judson Road, Longview, May 11, 1995, at 6:00 p.m. Information may be obtained from Mack Blackwell or LaVerne Moore, P.O. Box 6800, Longview, Texas 75608, (903) 237-2362. TRD-9505439.

**The Sabine Valley Center Board of Trustees** met at 107 Woodbine Place, Judson Road, Longview, May 11, 1995, at 7:00 p.m. Information may be obtained from Mack Blackwell or LaVerne Moore, P.O. Box 6800, Longview, Texas 75608, (903) 237-2362. TRD-9505440.

### ◆ ◆ ◆ Meetings Filed May 8, 1995

**The Callahan County Appraisal District Board of Directors** will meet at 130-A West Fourth Street, Baird, May 15, 1995, at 7:30 p.m. Information may be obtained from Jane Ringhoffer, P.O. Box 806, Baird, Texas 79504, (915) 854-1165. TRD-9505546.

**The Central Texas MHMR Center Board of Trustees** will meet at 1200 Coggin, Brownwood, May 15, 1995, at 5:00 p.m. Information may be obtained from Saul Pullman, 408 Mulberry, Brownwood, Texas

76801, (915) 646-9574, Ext. 102. TRD-9505574.

**The Dewitt County Appraisal District Board of Directors** will meet at 103 Bailey, Cuero, May 16, 1995, at 7:30 p.m. Information may be obtained from Kay Rath, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753. TRD-9505551.

**The Dewitt County Appraisal District Appraisal Review Board** will meet at 103 Bailey, Cuero, May 18, 1995, at 9:00 a.m. Information may be obtained from Kay Rath, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753. TRD-9505550.

**The Falls County Appraisal District Appraisal Review Board** will meet at Interstate of Highway 6 and 7, Falls County Courthouse-First Floor, Marlin, May 15, 1995, at 9:00 a.m. Information may be obtained from Joyce Collier, P.O. Box 430, Marlin, Texas 76661, (817) 883-2543. TRD-9505528.

**The Falls County Appraisal District Board of Directors** will meet at Interstate of Highway 6 and 7, Falls County Courthouse-First Floor, Marlin, May 15, 1995, at 5:30 p.m. Information may be obtained from Joyce Collier, P.O. Box 430, Marlin, Texas 76661, (817) 883-2543. TRD-9505527.

**The Middle Rio Grande Development Council Joint PIC and Board Executive Committee** will meet in the MRGDC Operations Conference Room, 209 North Getty Street, Uvalde, May 12, 1995, at 2:30 p.m. Information may be obtained from Leodoro Martinez, Jr., P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9505572.

**The Mills County Appraisal District Appraisal Review Board** will meet at the Mills County Courthouse, Jury Room, Fisher Street, Goldthwaite, May 16, 1995, at 8:00 a.m. Information may be obtained from Cynthia Partin, P.O. Box 565, Goldthwaite, Texas 76844, (915) 648-2253. TRD-9505567.

**The Mills County Appraisal District Board of Directors** will meet at the Mills County Courthouse, Jury Room, Fisher Street, Goldthwaite, May 16, 1995, at 6:30 p.m. Information may be obtained from Cynthia Partin, P.O. Box 565, Goldthwaite, Texas 76844, (915) 648-2253. TRD-9505568.

**The North Texas Municipal Water District Board of Directors** will meet at the Administration Office, 505 East Brown, Wylie, May 25, 1995, at 4:00 p.m. Information may be obtained from Carl W. Riehn, P.O. Box 2408, Wylie, Texas 75098, (214) 442-5405. TRD-9505545.

**The Texas Panhandle Mental Health Authority Board of Trustees, TPMHA** will meet at 7201 I-40, Second Floor, Amarillo,

May 16, 1995, at 10:30 a. m. Information may be obtained from Shirley Hollis, P.O. Box 3250, Amarillo, Texas 79116-3250, (806) 353-3699, Fax: (806) 353-9537. TRD-9505559.

The San Antonio River Authority Board of Directors will meet at 100 East Guenther Street, Boardroom, San Antonio, May 17, 1995, at 2:00 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0027, (210) 227-1373. TRD-9505526.

The Southeast Texas Regional Planning Commission Executive Committee will meet at 801 Main, Beaumont City Council Chambers, Beaumont, May 17, 1995, at 7:00 p.m. Information may be obtained from Jackie Vice Solis, P.O. Drawer 1387, Nederland, Texas 77627, (409) 727-2384. TRD-9505547.

The Wheeler County Appraisal Board of Directors will meet at 103 East Texas, Courthouse Square, Wheeler, May 15, 1995, at 5:00 p.m. Information may be obtained from Larry Schoenhals, P.O. Box 1200, Wheeler, Texas 79096, (806) 826-5900. TRD-9505560.

The Wood County Appraisal District Appraisal Review Board will meet at 217 North Main, Quitman, May 11, 1995, at 9:00 a.m. Information may be obtained from W. Carson Wages or Lou Brooke, P.O. Box 518, Quitman, Texas 75783-0518, (903) 763-4891. TRD-9505543.

The Wood County Appraisal District (Revised Agenda and Rescheduled from Thursday, May 11, 1995.) Appraisal Review Board will meet at 217 North Main,

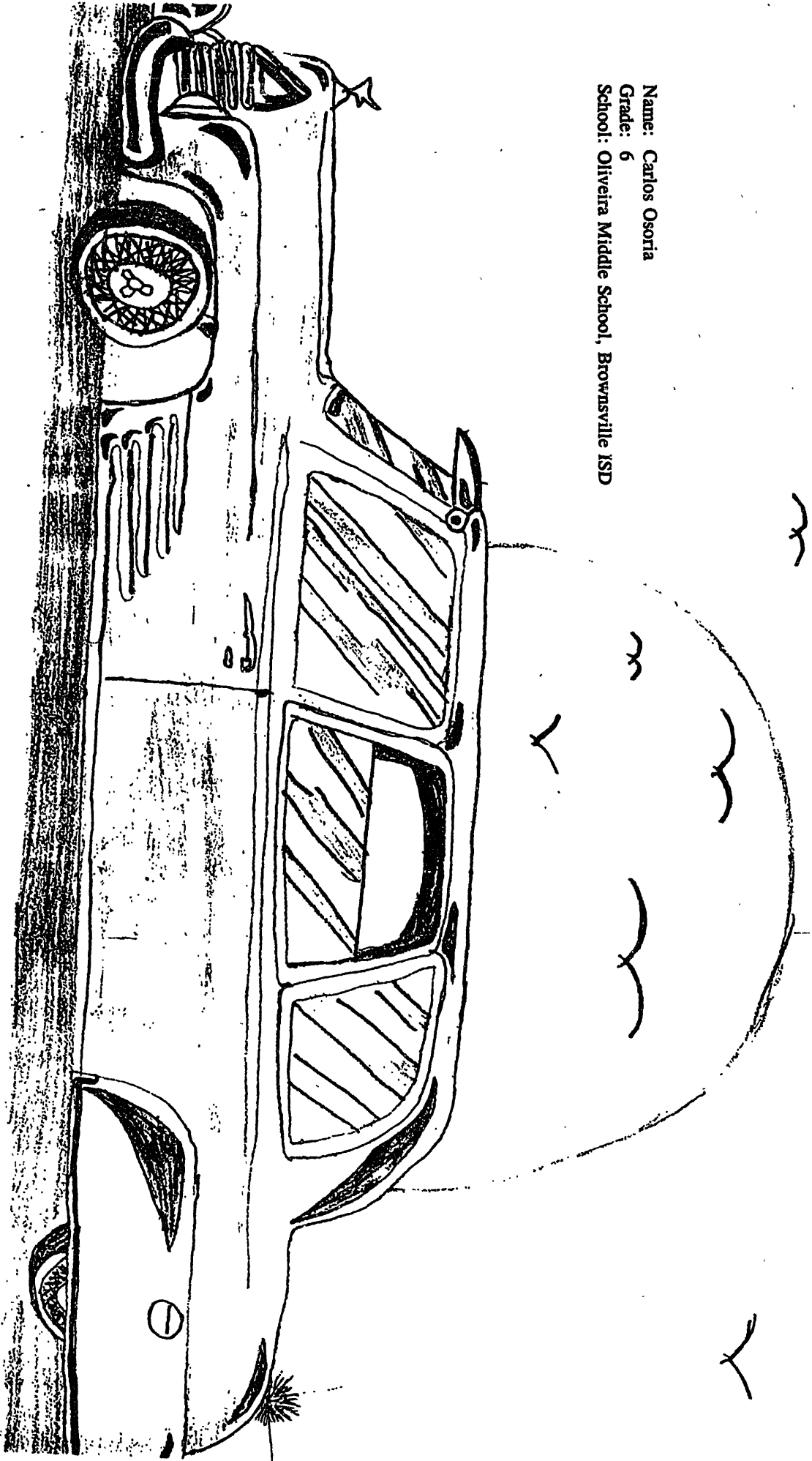
Quitman, May 12, 1995, at 9:00 a.m. Information may be obtained from W. Carson Wages or Lou Brooke, P.O. Box 518, Quitman, Texas 75783-0518, (903) 763-4891. TRD-9505549.

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**Meetings Filed May 9, 1995**

The Rio Grande Council of Governments Board of Directors will meet at Mesilla Valley Inn, Best Western, 901 Avenida de Mesilla, Las Cruces, May 19, 1995, at 1:00 p.m. Information may be obtained from Lidia Flynn, 1100 North Stanton, Suite 610, El Paso, Texas 79902, (915) 533-0098. TRD-9505593.

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Name: Carlos Osoria  
Grade: 6  
School: Oliveira Middle School, Brownsville ISD



# IN ADDITION

The **Texas Register** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards. To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

## 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 formu-

las and methods described in Title 79, Texas Civil Statutes, Article 1.04, as amended (Texas Civil Statutes, Article 5069-1.04).

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer (1)/Agricultural/ Commercial (2) thru \$250,000</u>	<u>Commercial(2) over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	05/08/95-05/14/95	18.00%	18.00%

(1)Credit for personal, family or household use. (2)Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on May 1, 1995.

TRD-9505340

Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner

Filed: May 3, 1995

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.

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## Texas Department of Health

### Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading

**NEW LICENSES ISSUED:**

Location	Name	License#	City	Amend- ment #	Date of Action
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Throughout Texas	Anatec, Inc.	L04865	Nederland	0	04/27/95

**AMENDMENTS TO EXISTING LICENSES ISSUED:**

Location	Name	License#	City	Amend- ment #	Date of Action
-----	----	-----	----	-----	-----
Abilene	Abilene Cardiology Consultants, P.A.	L04315	Abilene	10	04/14/95
Abilene	National Central Pharmacy	L04781	Abilene	4	04/25/95
Abilene	Abilene Cardiology Consultants, P.A.	L04315	Abilene	11	04/26/95
Amarillo	Northwest Texas Hospital	L02054	Amarillo	42	04/19/95
Austin	South Austin Medical Center	L03273	Austin	27	04/25/95
Baytown	San Jacinto Methodist Hospital	L02388	Baytown	22	04/14/95
Baytown	Exxon Chemical Company	L03335	Baytown	14	04/20/95
Brownwood	Brownwood Regional Medical Center	L02322	Brownwood	25	04/21/95
Carrollton	Theratronics International Limited	L02623	Carrollton	19	04/05/95
Dallas	Kaiser Foundation Health Plan of Texas	L03755	Dallas	21	04/21/95
Denton	Texas Woman's University	L00304	Denton	42	04/14/95
Fredericksburg	Fredericksburg Imaging Center	L03516	Fredericksburg	10	04/14/95
Georgetown	Georgetown Hospital	L03152	Georgetown	13	04/27/95
Houston	Institute of Biosciences and Technology	L04681	Houston	2	04/14/95
Houston	West Houston Medical Center	L02224	Houston	26	04/06/95
La Porte	Air Products, Inc.	L03475	La Porte	5	04/13/95
Missouri City	Fort Bend Hospital, Inc.	L03457	Missouri City	12	04/28/95
Palestine	Trinity Valley Medical Center	L04137	Palestine	13	04/21/95
Pampa	Coronado Hospital	L03123	Pampa	14	04/28/95
San Antonio	Southwest Texas Methodist Hospital	L00594	San Antonio	110	04/14/95
Texarkana	Wadley Regional Medical Center	L02486	Texarkana	21	04/25/95
Throughout Texas	Pickett Jacobs Consultants, Inc.	L03690	Tyler	14	04/17/95
Throughout Texas	Hercules Engineering & Testing Services, Inc.	L03642	Houston	13	04/14/95
Throughout Texas	METCO	L03018	Houston	38	04/19/95
Throughout Texas	Halliburton Energy Services	L02113	Houston	79	04/17/95
Throughout Texas	HMA Environmental Services, Inc.	L04779	Houston	2	04/18/95
Throughout Texas	Southwest Research Institute	L00775	San Antonio	54	04/20/95



AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

				Amend-	Date of
Throughout Texas	Logtech Wireline Services, Inc.	L02501	Tyler	23	04/20/95
Throughout Texas	McBride-Ratcliff & Associates, Inc.	L02346	Houston	13	04/20/95
Throughout Texas	Raytheon Engineers and Contractors, Inc.	L02662	Houston	48	04/21/95
Throughout Texas	Halliburton Energy Services	L02113	Houston	79	04/17/95
Throughout Texas	R-MCO	L03145	Refugio	9	04/12/95
Throughout Texas	Inspection Management Corporation	L02513	Wichita Falls	12	04/26/95
Throughout Texas	Texas Department of Transportation	L00197	Austin	73	04/25/95
Throughout Texas	Oxy Petrochemicals, Inc.	L03363	Alvin	12	04/26/95
Throughout Texas	Mobil Oil Corporation	L00603	Beaumont	55	04/26/95
Throughout Texas	Bix Testing Laboratories	L02143	Baytown	64	04/26/95
Throughout Texas	Longview Inspection	L01774	Houston	92	04/26/95
Throughout Texas	Gilbert Texas Construction Corp.	L04569	Fort Worth	9	04/27/95
Throughout Texas	Big State X-Ray	L02693	Odessa	21	04/27/95

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Austin	CEDRA Corporation	L04427	Austin	6	04/25/95
Fort Worth	Carter Blood Center	L03676	Fort Worth	6	04/14/95

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
San Antonio	Santa Rosa Northwest Hospital	L03983	San Antonio	20	04/25/95
Throughout Texas	Elkco Wire Line Services	L04701	Snyder	2	04/17/95

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).

Issued in Austin, Texas, on May 2, 1995.

TRD-9505379 Susan K. Steeg  
General Counsel, Office of General  
Counsel  
Texas Department of Health

Filed: May 4, 1995

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Notices of Intent to Revoke a Certificate of Registration

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13 (25 TAC §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed a complaint against the following registrant: Bay Area MRI and Diagnostic Center, Limited, Houston, R18872.

The department intends to revoke the certificate of registration; order the registrant to cease and desist use of such

radiation machine(s); order the registrant to divest himself of such equipment; and order the registrant to present evidence satisfactory to the bureau that he has complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the items in the complaint are corrected within 30 days of the date of the complaint, the department will not issue an order.

This notice affords the opportunity to the registrant for a hearing to show cause why the certificate of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the items in the complaint are not corrected, the certificate of registration will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on May 5, 1995.

TRD-9505490 Susan K. Steeg  
General Counsel  
Texas Department of Health

Filed: May 5, 1995

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13 (25 Texas Administrative Code §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed a complaint against the following registrant: Hernandez Chiropractic Clinic, McAllen, R18788.

The department intends to revoke the certificate of registration; order the registrant to cease and desist use of radiation machine(s); order the registrant to divest himself of such equipment; and order the registrant to present evidence satisfactory to the bureau that he has complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid and the items in the complaint are corrected within 30 days of the date of the complaint, the department will not issue an order.

This notice affords the opportunity to the registrant for a hearing to show cause why the certificate of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid or if the items in the complaint are not corrected, the certificate of registration will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on May 5, 1995.

TRD-9505489 Susan K. Steeg  
General Counsel  
Texas Department of Health

Filed: May 5, 1995

## Notice of Rescission of Order

Notice is hereby given that the Bureau of Radiation Control, Texas Department of Health, rescinded the following order: Emergency Cease and Desist Order issued April 10, 1995, to Doctor's Office Center Medical Group of Houston, P.A., doing business as University Medical Group, 1806 Southgate, Second Floor, Houston, Texas 77030, holder of Certification of Mammography Systems Number M00564.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, the Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on May 5, 1995.

TRD-9505488 Susan K. Steeg  
General Counsel  
Texas Department of Health

Filed: May 5, 1995

## Notice of Revocation of a Certificate of Registration

The Texas Department of Health, having duly filed complaints pursuant to Texas Regulations for Control of Radiation, Part 13 (25 Texas Administrative Code §289.112), has revoked the following certificate of registration: M. Stuart Altman, D.P.M., Inc., Denton, R20648, April 28, 1995.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on May 5, 1995.

TRD-9505487 Susan K. Steeg  
General Counsel  
Texas Department of Health

Filed: May 5, 1995

## Public Health Regions 4 and 5(N) Community Oriented Primary Care (COPC) Program Project

Texas Department of Health, Public Health Regions 4 and 5(N) are considering the development of Community Oriented Primary Care (COPC) Program projects through community development/planning grants in the 35 counties coterminous with Public Health Regions 4 and 5(N). COPC is designed to bridge public health and community health services in community settings. Financial assistance is available from Public Health Regions 4 and 5(N) ranging in amounts up to \$50,000 depending on the number of proposals considered and approved for funding.

Public Health Regions 4 and 5(N) are requesting information and proposals for piloting innovative COPC variations of community health care delivery models in which there are: goals emphasizing the integration of community public health and primary care functions; methods for commu-

nity definition, characterization, and involvement that are responsive to the community; processes to identify community health problems that are to be impacted; provisions to modify and customize community health care resources responding to identified community health problems; and means/methods to measure, evaluate, and determine outcomes and success in impacting identified community health problems.

Any organization interested in recommending a COPC Program project possessing the above characteristics should contact Public Health Regions 4 and 5(N) for application materials on or after May 12, 1995. Final proposals should be mailed or faxed by the close of business June 8, 1995. Awards decisions will be made June 16, 1995, by a panel. Awards will be granted July 1, 1995, and funds must be used by September 1, 1995. Responses should be limited to no more than 12 pages. All proposals will be considered as prospective candidates for future COPC Program projects and funding. Public Health Regions 4 and 5(N) reserve the right not to fund any proposal(s).

Creative suggestions and innovative approaches to a health care delivery system that promote accessible, comprehensive, coordinated and continuous care to community populations in a cost efficient manner are encouraged and welcomed.

For additional information, please contact: Kevin T. Collins, COPC Coordinator, Texas Department of Health, Public Health Regions 4 and 5 North, 1517 West Front Street, Tyler, Texas 75702-7854, (903) 595-3585, Fax (903) 593-4187.

Issued in Austin, Texas, on May 5, 1995.

TRD-9505486 Susan K. Steeg  
General Counsel  
Texas Department of Health

Filed: May 5, 1995

## Texas Department of Insurance Company License

The following applications have been filed with the Texas Department of Insurance and are under consideration:

1. Application for incorporation in Texas for Aviation and Marine Insurance Company of America, a domestic fire and casualty company. The home office is in Dallas, Texas.
2. Application for incorporation in Texas for Republic National Life Insurance Company, a domestic life, accident and health company. The home office is in Houston, Texas.
3. Application for a name reservation in Texas for Aetna Health Plans of North Texas, Inc., a domestic health maintenance organization. The home office is in Irving, Texas.
4. Application for a name reservation in Texas for TexCare HMO, Inc., a domestic health maintenance organization. The home office is in Richardson, Texas.

Any objections must be filed within 20 days after this notice was filed with the Texas Department of Insurance, addressed to the attention of Cindy Thurman, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

Issued in Austin, Texas, on May 4, 1995.

TRD-9505398 Alicia M. Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: May 4, 1995

## Notice of Public Hearing

Amendments to the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas **DOCKET Number 2149**

Notice is hereby given that a hearing under new Docket Number 2149 will be held before the Commissioner of Insurance at 1:30 p.m. on June 14, 1995, and continuing thereafter at dates, times and places designated by the Commissioner until conclusion. The purpose of the hearing will be consideration of possible amendments to Section 9.1 of Title 28 of the Texas Administrative Code and to the *Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas* (the Basic Manual). The hearing will be held in room 100 of the first floor of the Texas Department of Insurance Building, 333 Guadalupe St., Austin, Texas 78701. Notice of public hearing of amendments to the Basic Manual was previously published in 19 TexReg 9051 under Texas Department of Insurance Docket Number 2124 and subsequently under State Office of Administrative Hearings Docket Number 454-94-2015.G1. Authority, Jurisdiction and Statutes and Rules Involved.

The Commissioner of Insurance has jurisdiction over amendments to or promulgation of rules, over amendments to or promulgation of approved forms, and over other matters set out in this notice pursuant to Texas Insurance Code, Articles 1.02, 9.01, 9.07, and 9.21, and pursuant to the Texas Administrative Code, Title 28, Section 9.1.

The procedure of the hearing will be governed by the Rules of Practice and Procedure before the Department of Insurance (Texas Administrative Code, Title 28, Chapter 1, Subchapter A) and the Administrative Procedure Act (Texas Gov't Code, Ch. 2001). Matters to be Considered.

The commissioner will consider testimony presented and information filed by title insurers, title agents, the Office of Public Insurance Counsel and other interested parties relating to the following items:

Agenda item 94-4, Submission by Texas Land Title Association to adopt a new Insured Closing Service Letter form for purchaser and seller.

Agenda item 94-5, Submission by Texas Land Title Association to adopt a new Procedural Rule P-\_\_ permitting a Company to computer generate or electronically produce a hard copy of any Texas promulgated endorsement form.

Agenda item 94-6, Submission by Texas Land Title Association to revise Form T-35, Revolving Credit Endorsement to the Mortgagee Policy to except bankruptcies and government statutory liens and to clarify that it does not extend the date of the Mortgagee Policy.

Agenda item 94-7, Submission by Texas Department of Insurance to amend the Minimum Escrow Accounting Procedures and Internal Controls, in Section V of the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas. This will

strengthen accounting controls over trust funds held by the industry, and revise the reporting instructions to facilitate better understanding of the minimum standards for trust fund audits thereby increasing the quality of audits.

Agenda item 94-8, Submission by Texas Department of Insurance to amend the Insured Closing Service form for lenders to include licensed Texas direct operations in addition to licensed Texas agents.

Agenda item 94-9, Submission by Texas Department of Insurance to amend and add definitions to Procedural Rule P-1 consistent with legislative requirements.

Agenda item 94-10, Submission by Texas Department of Insurance to amend Procedural Rule P-34 due to the repeal of Article 9.37.B (5).

Agenda item 94-11, Submission by Texas Department of Insurance to amend the Arbitration Provisions in Procedural Rule P-36, Owner Policy of Title Insurance (Form T-1), Mortgagee Policy of Title Insurance (Form T-2), and Commitment for Title Insurance form to provide for consistency in punctuation, spelling and grammar and correct typographical errors in previous amendments to the rule and forms, and to amend Commitment for Title Insurance form to correct an omission of the words "is furnished" in Schedule B, Exceptions from Coverage, number 7, and to amend the forms for Mortgagee Title Policy on Interim Construction Loan and the Immediately Available Funds Procedure Agreement to reflect the elimination of the term "State Board of Insurance".

Agenda item 94-12, Submission by Texas Department of Insurance to amend Form T-40, Texas Title Insurance Proof of Loss Form, to include a jurat.

Agenda item 94-13, Submission by Texas Department of Insurance to amend Form T-20, Owner Title Policy Commitment to the Texas State Highway Department, the Owner Title Policy Commitment for Eminent Domain Proceedings form, Procedural Rule P-24, and Rate Rule R-23 to reflect the name change of the Texas State Highway Department to the Texas Department of Transportation and the elimination of the terms "State Board of Insurance".

Agenda item 94-14, Submission by the Office of Public Insurance Counsel to amend Procedural Rule P-2 and adopt new Procedural Rule P-41 to require title insurers to accept an affidavit by the mortgagor in lieu of a current survey.

Complete copies of the requested rule changes, as amended, in Agenda Items 4-14 may be obtained from the Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104. Conduct of the Hearing.

Each page of any exhibit offered in evidence at a hearing before the Department of Insurance, including prefiled testimony, must be numbered consecutively at the center of the bottom margin, be on 8" by 11" paper, and must be three-hole-punched along the left margin. The front page of each exhibit should indicate that the exhibit would be part of the record of a public hearing before the Department of Insurance and should identify the subject of the hearing, the docket number, the date of the hearing, and the party offering the exhibit. On the front page, the party offering the exhibit should also describe the exhibit and leave a space for numbering the exhibit. For example:

Public Hearing before the Department of Insurance

Subject of Hearing: Promulgation of Amendments to the Basic Manual of Rules.

Rates and Forms for the Writing of Title Insurance in the State of Texas

Docket Number 2149

Date: \_\_\_\_\_

Party: \_\_\_\_\_

Exhibit # \_\_\_\_\_

Description of Exhibit \_\_\_\_\_

Parties offering exhibits into evidence at the hearing should be prepared with sufficient copies of each proposed exhibit to furnish the following:

1. the original exhibit, which will be tendered to the Commissioner for marking and retention for the official record;

2. one copy each for every other party testifying at the hearing.

All deadlines in this notice are subject to change at the Commissioner's discretion to the extent permitted by statute and rule.

Issued in Austin, Texas, on May 8, 1995.

TRD-9505531 Alicia M. Fectel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: May 8, 1995

### Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for incorporation in Texas of Employers Services, Inc., a domestic third party administrator. The home office is in Tyler, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

Issued in Austin, Texas, on May 8, 1995.

TRD-9505532 Alicia M. Fectel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: May 8, 1995

### Texas Natural Resource Conservation Commission

#### Enforcement Orders

An agreed enforcement order was entered regarding CMH PARKS, INC.; Docket Number 95-0660-MWD-E (Permit Number 12849-01) on April 28, 1995; assessing \$2, 500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Roxanne Cook; Enforcement Coordinator; Texas Natural Resource Conservation Commission; P.O. Box 13087; Austin, Texas 78711-3087; (512) 239-4496.

An agreed enforcement order was entered regarding WAYNE PITTMAN; Docket Number 95-0607-AGR-E (No Permit) on April 28, 1995; assessing \$100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Geoff Petrov; Staff Attorney; Texas Natural Resource Conservation Commission; P.O. Box 13087; Austin, Texas 78711-3087; (512) 239-0677.

Issued in Austin, Texas, on May 5, 1995.

TRD-9505502 Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: May 5, 1995

### Notice of Applications for Waste Disposal Permits

Notices of Applications for waste disposal permits issued during the period of May 1st to May 5, 1995.

These applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 30 days after newspaper publication of this notice.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a public hearing;" a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. In the event a hearing is held, the Office of Hearings Examiners will submit a recommendation to the Commission for final decision. If no protests or requests for hearing are filed, the Executive Director will sign the permit 30 days after newspaper publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, Chief Clerks Office-MC105, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number and type of application-new permit, amendment, or renewal.

THE DOW CHEMICAL COMPANY; an organic and inorganic manufacturing facility; the plant site is near the City of Freeport at 2301 North Brazosport Boulevard, Brazoria County, Texas; amendment and request for temporary water quality variance; 00007.

CITY OF GORMAN; the Town Wastewater Treatment Facilities; the wastewater treatment facilities are southwest of the City of Gorman, west of FM Road 679 (Crescent Street) in Eastland County, Texas; renewal; 10091-01.

CITY OF GRUVER; the Gruver Wastewater Treatment Facilities; the wastewater treatment facilities are approximately 0.8 mile east of State Highway 136 and approximately 0.6 mile west of State Highway 15; southeast of the City of Gruver in Hansford County, Texas; renewal; 10751-01.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT Number 358; the Fairfield Village Regional Wastewater Treatment Facilities; the wastewater treatment facilities are approximately 1,500 feet north of U.S. Highway 290 and 2,700 feet west of Mueschke Road in Harris County, Texas; renewal; 13296-02.

LOWER COLORADO RIVER AUTHORITY; the Fayette Power Project, a steam electric station, is adjacent to the south shore of Cedar Creek Reservoir, approximately two miles north of State Highway 71 and east of the City of La Grange, Fayette County, Texas; renewal; 02105.

MEDINA COUNTY WATER CONTROL & IMPROVEMENT DISTRICT Number 2; the wastewater treatment facilities are on the west side of Nester Lane approximately 2,000 feet south of the intersection of Nester Lane and South Street in the City of D'Hanis in Medina County, Texas; renewal; 11144-01.

1920 INTERPARK RANKIN ASSOCIATES, A TEXAS LIMITED PARTNERSHIP; the wastewater treatment facilities are 1,000 feet southwest of the intersection of Rankin Road and Aldine-Westfield Road in Harris County, Texas; renewal; 12913-01.

TURKEY CREEK FARMS, INC.; a 120 acre woody ornamental plant nursery; the plant site is in the City of Humble, Harris County, Texas; renewal; 03076.

CITY OF AMARILLO, ORVILLE H. LADEHOFF, HAROLD LADEHOFF AND HAROLD L. ERWIN; to authorize the land application of liquid and dewatered domestic wastewater treatment plant sludge from the Hollywood Road Wastewater Treatment Plant; the land application site is approximately 6.8 miles east of the intersection of Interstate Highway 27 and State Highway 335, between Hollywood Road and Farm-to-Market Road 1151 in Randall County, Texas; new; 03703.

Issued in Austin, Texas, on May 5, 1995.

TRD-9505501 Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: May 5, 1995

### Notice of Opportunity to Comment on Permitting Actions

For the Week Ending May 5, 1995

The following application is subject to a Commission resolution adopted August 18, 1993, which directs the

Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue the permit unless one or more persons file written protests and/or requests for hearing within ten days of the date notice concerning the application(s) is published in the *Texas Register*.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a public hearing"; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. If no protests or requests for hearing are filed, the Executive Director will sign the permit ten days after publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing on this application should be submitted in writing to the Chief Clerk's Office (Mailcode 105), Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number and type of application-new permit, amendment, or renewal.

Approval of D & M Water Supply Corporation to Transfer Water CCN Number 12105 from Cedar Ridge Enterprises, Inc.; Amend Water CCN Number 10958; and Cancel Water CCN Number 12105 in Nacogdoches County, Texas. (Application #30699-S, Albert Holck)

Issued in Austin, Texas, on May 5, 1995.

TRD-9505500 Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: May 5, 1995

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**Notice of Opportunity to Comment on  
Settlement Agreements of  
Administrative Enforcement Actions**

The Texas Natural Resource Conservation Commission (TNRCC) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AO's) pursuant to §382.096 of the Texas Clean Air Act (the Act), Health and Safety Code Chapter 382. Section 382.096 of the Act requires that the TNRCC may not approve these AO's unless the public has been provided an opportunity to submit written comments. Section 382.096 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the thirtieth day before the date on which the public

comment period closes, which in this case is **June 10, 1995**. Section 382.096 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment indicates the proposed AO is inappropriate, improper, inadequate or inconsistent with the requirements of the Texas Clean Air 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 AO's is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, Third Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed. Written comments about these AO's should be sent to the Staff Attorney 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 June 10, 1995**. Written comments may also be sent by facsimile machine to the Staff Attorney at (512) 239-3434. The TNRCC Staff Attorneys are available to discuss the AO's and/or the comment procedure at the listed phone numbers; however, §382.096 provides that comments on the AO's should be submitted to the TNRCC in writing.

(1) COMPANY: Ashtola Exploration Company, Inc.; DOCKET NUMBER: 95-0793-AIR-E; ACCOUNT NUMBER: MI-0026-T; LOCATION: Eagle Pass, Maverick County; TYPE OF FACILITY: gas plant; RULE VIOLATED: TNRCC Rule 30 TAC §116.110(a) and §382.0518(a) and §382.085(b) of the Act, by owning and operating a gas plant which may emit air contaminants into the air of the state without first obtaining a permit or qualifying for a standard exemption. PENALTY: \$900; STAFF ATTORNEY: Patricia Hershey, (512) 239-0587; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(2) COMPANY: Burl's Used Cars; DOCKET NUMBER: 95-0751-AIR-E; ACCOUNT NUMBER: CP-0319-R; LOCATION: Melissa, Collin County; TYPE OF FACILITY: motor vehicle sales; RULE VIOLATED: TNRCC Rule 30 TAC §114.1(c)(1) and §382.085(b) of the Act, by offering for sale a vehicle with faulty or missing emission control systems or devices. PENALTY: \$0.00; STAFF ATTORNEY: Peter Gregg, (512) 239-0450; REGIONAL OFFICE: 1231 Agnes Street, Suite 103, Corpus Christi, Texas 78401, (512) 882-5828.

(3) COMPANY: Champion Technologies, Inc.; DOCKET NUMBER: 95-0752-AIR-E; ACCOUNT NUMBER: EB-0038-F; LOCATION: Odessa, Ector County; TYPE OF FACILITY: oilfield chemicals plant; RULE VIOLATED: Alleged to have violated: (a) TNRCC Rule 30 TAC §101.4 and §382.085(a) and (b) of the Act by discharging from a source one or more air contaminants (fugitive emissions) or combinations thereof in such concentration and of such duration as are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation or property, or as to interfere with the normal use and enjoyment of animal life, vegetation or property; and (b) is alleged to have violated §382.085(a) of the Act by violating prior Agreed Board Orders 86-114(d) and 89-03(d). PENALTY: \$18,000; STAFF ATTORNEY: Paul Sarahan, (512) 239-3422; REGIONAL OFFICE: 2626 J.B. Shepperd Parkway, Boulevard, Building B-101, Odessa, Texas 79761, (915) 362-6997.

(4) COMPANY: Class A Auto; DOCKET NUMBER: 95-0803-AIR-E; ACCOUNT NUMBER: DB-3637-T; LO-

CATION: Garland, Dallas County; TYPE OF FACILITY: used car sales lot; RULE VIOLATED: TNRCC Rule 30 TAC §114.1(c)(1) and §382.085(b) of the Act by offering for sale a vehicle with faulty or missing emission control systems or devices. PENALTY: \$0.00; STAFF ATTORNEY: Peter Gregg, (512) 239-0450; REGIONAL OFFICE: 301 West Beauregard Avenue, Suite 202, San Angelo, Texas 76903, (915) 655-94779.

(5) COMPANY: Coastal Oil and Gas Corporation; DOCKET NUMBER: 95-0753-AIR-E; ACCOUNT NUMBER: HN-0306-J, ZA-0022-W, and ZA-0021-B; LOCATION: near McCook, Hidalgo County; and near Ignacio, Zapata County; TYPE OF FACILITY: natural gas processing stations; RULE VIOLATED: Alleged to have violated TNRCC Rule 30 TAC §116.110(a) and §382.0518(a) and §382.085(b) of the Act by constructing and operating the station, which may emit air contaminants into the air of the state, without first obtaining a permit or qualifying for a standard exemption. PENALTY: \$5,575; STAFF ATTORNEY: William C. Foster, (512) 239-3407; REGIONAL OFFICE: Matz Building, Room 204, 513 East Jackson, Harlingen, Texas 78550, (210) 425-6010.

(6) COMPANY: Cost Plus Grocery; DOCKET NUMBER: 95-0794-AIR-E; ACCOUNT NUMBER: TA-2254-S; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: private property; RULE VIOLATED: Alleged to have violated TNRCC Rule 30 TAC §111.121(7), and §382.085(b) of the Act by exceeding the five percent smoke emission opacity limit from its incinerator on August 19, 1993, for a total smoke emission opacity of ten percent. Also alleged to have violated TNRCC Rule 30 TAC §111.121(7), and §382.085(b) of the Act by exceeding the five percent smoke emission opacity limit from its incinerator on January 14, 1994, for a total smoke emission opacity of nineteen percent. PENALTY: \$500; STAFF ATTORNEY: Thomas Corwin, (512) 239-5915; REGIONAL OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(7) COMPANY: D and D Auto Sales; DOCKET NUMBER: 95-0795-AIR-E; ACCOUNT NUMBER: HG-5213-I; LOCATION: Humble, Harris County; TYPE OF FACILITY: motor vehicle sales business; RULE VIOLATED: TNRCC Rule 30 TAC §114.1(c)(1) and (2) and §382.085(b) of the Act, by offering for sale a vehicle with faulty or missing emission control systems or devices. PENALTY: \$500; STAFF ATTORNEY: Peter Gregg, (512) 239-0450; REGIONAL OFFICE: 4150 Westheimer, Houston, Texas 77027-4417, (713) 625-7900.

(8) COMPANY: DeBruce Grain; DOCKET NUMBER: 95-0745-AIR-E; ACCOUNT NUMBER: MR-0020-G; LOCATION: Dumas, Moore County; TYPE OF FACILITY: grain storage and drying plant; RULE VIOLATED: Alleged to have violated TNRCC Rule 30 TAC §116.110(a), Agreed Board Order NUMBER 91-03(h), and §382.0518(a) and §382.085(b) of the Act by constructing and operating at the plant a second grain dryer, which may emit air contaminants into the air of the state, without first obtaining a permit amendment. PENALTY: \$1,500; STAFF ATTORNEY: William C. Foster, (512) 239-3407; REGIONAL OFFICE: 3218 Canyon Drive, Amarillo, Texas 79109-4996, (806) 353-9251.

(9) COMPANY: Dixon Motors; DOCKET NUMBER: 95-0755-AIR-E; ACCOUNT NUMBER: HG-9716-S; LOCATION: Humble, Harris County; TYPE OF FACILITY: motor vehicle sales; RULE VIOLATED: TNRCC Rule 30

TAC §114.1(c)(1) and (2) and §382.085(b) of the Act, by offering for sale vehicles with faulty or missing emission control systems or devices. PENALTY: \$0.00; STAFF ATTORNEY: Peter Gregg, (512) 239-0450; REGIONAL OFFICE: 4150 Westheimer, Houston, Texas 77027-4417, (713) 625-7900.

(10) COMPANY: E. I. Du Pont De Nemours and Company; DOCKET NUMBER: 95-0804-AIR-E; ACCOUNT NUMBER: HG-0218-K; LOCATION: La Porte, Harris County; TYPE OF FACILITY: organic and inorganic chemical plant, RULE VIOLATED: Alleged to have violated (a) TNRCC Rule 30 TAC §115.112(a)(3) and §382.085(b) of the Act by failing to maintain a minimum 90% efficiency on a vapor recovery system used as a control device on Methanol Tank FD-01T at the Formaldehyde unit; (b) is alleged to have violated TNRCC Rule 30 TAC §115.116(a)(3)(B) and §382.085(b) of the Act by failing to install and maintain monitors to continuously measure and record the inlet and outlet gas temperature on Vinyl Acetate Tanks VS-201T, VS-202T, VS-203T, VS-204T, VS-205T, VS-206T, AND VS-208T which are vented to condensers EPNs VS-210 AND VS-211, and Methanol Tank VS-212T and "B" Plant Convertible Tank VS-213T which are vented to condenser EPNs VS-0337 AND VS-338. PENALTY: \$8,500; STAFF ATTORNEY: Greg Warmink, (512) 239-0612; REGIONAL OFFICE: 4150 Westheimer, Houston, Texas 77027-4417, (713) 625-7900.

(11) COMPANY: Eules Auto Sales; DOCKET NUMBER: 95-0796-AIR-E; ACCOUNT NUMBER: TA-2840-W; LOCATION: Eules, Tarrant County; TYPE OF FACILITY: used car sales lot; RULE VIOLATED: TNRCC Rule 30 TAC §114.1(c)(1) and §382.085(b) of the Act, by offering for sale motor vehicles with faulty or missing emission control systems or devices. PENALTY: \$250; STAFF ATTORNEY: Peter Gregg, (512) 239-0450; REGIONAL OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(12) COMPANY: Fleetwood Homes of Texas, Inc.; DOCKET NUMBER: 95-0792-AIR-E; ACCOUNT NUMBER: MB-0048-R; LOCATION: Waco, McLennan County; TYPE OF FACILITY: mobile home manufacturing plant RULE VIOLATED: Alleged to have violated TNRCC Rule 30 TAC Section 116.110(a) and Sections 382.0518(a) and 382.085(b) of the Act by owning and operating a sawdust collection system which may emit air contaminants into the air of the state without first obtaining a permit or qualifying for a standard exemption. PENALTY: \$250; STAFF ATTORNEY: Greg Warmink, (512) 239-0612; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7807, (817) 751-0335.

(13) COMPANY: G.T. Motors; DOCKET NUMBER: 95-0756-AIR-E; ACCOUNT NUMBER: HG-9145-S; LOCATION: Baytown, Harris County; TYPE OF FACILITY: motor vehicle sales; RULE VIOLATED: TNRCC Rule 30 TAC §114.1(c)(1) and (2) and §382.085(b) of the Act, by offering for sale a vehicle with faulty or missing emission control systems or devices. PENALTY: \$0.00; STAFF ATTORNEY: Peter Gregg, (512) 239-0450; REGIONAL OFFICE: 4150 Westheimer at Midlane, Houston, Texas 77027-4417, (713) 625-7900.

(14) COMPANY: H and H Carwash; DOCKET NUMBER: 95-0797-AIR-E; ACCOUNT NUMBER: EE-0864-A; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: carwash and gas station; RULE VIOLATED:



TNRCC Rule 30 TAC §114.13(a) and §382.085 (b) of the Act, by dispensing gasoline that was below the required oxygenate weight content of 2.7%. PENALTY: \$1,000; STAFF ATTORNEY: Aaron DePass, (512) 239-3408; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925, (915) 778-9634.

(15) COMPANY: Hart Sandblasting; DOCKET NUMBER: 95-0757-AIR-E; ACCOUNT NUMBER: TA-2651-E; LOCATION: Benbrook, Tarrant County; TYPE OF FACILITY: sandblasting operation; RULE VIOLATED: TNRCC Rule 30 TAC §116.110(a) and §382.085(b) and §382.0518(a) of the Act, by operating a sandblasting operation, without first obtaining a permit or qualifying for a standard exemption. PENALTY: \$0.00; STAFF ATTORNEY: Aaron DePass, (512) 239-3408; REGIONAL OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(16) COMPANY: Hobbs Industries; DOCKET NUMBER: 95-0758-AIR-E; ACCOUNT NUMBER: LI-0011-D; LOCATION: Groesbeck, Limestone County; TYPE OF FACILITY: synthetic filter media manufacturing plant; RULE VIOLATED: TNRCC Rule 30 TAC §116.110(a) and §382.0518(a) and §382.085(b) of the Act, by operating a synthetic filter media manufacturing plant without first obtaining a permit or qualifying for a standard exemption. PENALTY: \$2,350; STAFF ATTORNEY: Aaron DePass, (512) 239-3408; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7807, (817) 751-0335.

(17) COMPANY: Hoechst Celanese Corporation; DOCKET NUMBER: 95-0798-AIR-E; ACCOUNT NUMBER: HG-0126-Q; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: TNRCC Rule 30 TAC §101.20(1) and §382.085(b) of the Act, by violating Federal New Source Performance Standards regulations by: failing to conduct the following tests on the Acetic Acid Process Unit Flare NUMBER MN-134/138 within 180 days after the initial startup of the Unit: EPA Method 18 test to determine the net heating value of the gas being combusted; and EPA Methods 2, 2A, 2C, or 2D tests, as appropriate, to determine the actual exit velocity; and by failing to maintain a net heating value of at least 11.2 MJ/SCM (300 BTU/SCFT) for the gas being combusted in Flare NUMBER MN-134/138. PENALTY: \$6,500; STAFF ATTORNEY: Lisa D. Uselton, (512) 239-5692; REGIONAL OFFICE: 4150 Westheimer, Houston, Texas 77027-4417, (713) 625-7900.

(18) COMPANY: International Paper Company; DOCKET NUMBER: 95-0759-AIR-E; ACCOUNT NUMBER: CG-0010-G; LOCATION: Domino, near Texarkana, Cass County; TYPE OF FACILITY: paper mill; RULE VIOLATED: TNRCC Rule 30 TAC §116.110(a) and §382.085(b) of the Act, by constructing and operating two 1,500 gallon tanks without first obtaining a permit or qualifying for a standard exemption; TNRCC Rule 30 TAC §§116.115, 112.51(b)(4), 101.20(1), 101.20(3) and 382.085(b) of the Act, by emitting excess total reduced sulfur emissions; TNRCC Rule 30 TAC §116.115 and §382.085(b) of the Act, by exceeding production limits for the NUMBER 2 lime kiln; TNRCC Rule 30 TAC §116.116(a) and §382.085(b) of the Act, by emitting chlorine from a vent near the top of a chlorine dioxide tower; and TNRCC Rule 30 TAC §116.115 and §382.085(b) of the Act, operating an incinerator in which the combustion chamber temperature was below the required 1400 degrees F. PENALTY: \$80,000; STAFF ATTORNEY: Kerri

Rowland, (512) 239-5693; REGIONAL OFFICE: 1304 South Vine Avenue, Tyler, Texas 76116, (817) 732-5531.

(19) COMPANY: J. J. Rankin's Used Cars and Trucks; DOCKET NUMBER: 95-0760-AIR-E; ACCOUNT NUMBER: TA-1952-R; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: used car dealership; RULE VIOLATED: Alleged to have violated TNRCC Rule 30 TAC §114.1(c)(1) and §382.085(b) of the Act by offering for sale in the State of Texas a motor vehicle which was not equipped with the emission control systems or devices with which the motor vehicle was originally equipped. PENALTY: \$500; STAFF ATTORNEY: Paul C. Sarahan, (512) 239-3422; REGIONAL OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(20) COMPANY: Jim Franklin Auto Sales; DOCKET NUMBER: 95-0761-AIR-E; ACCOUNT NUMBER: EE-1583-E; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: used car dealership; RULE VIOLATED: TNRCC Rule 30 TAC §114.1(c)(1) and §382.085(b) of the Act by offering for sale a vehicle with faulty or missing emission control systems or devices. PENALTY: \$250; STAFF ATTORNEY: Peter Gregg, (512) 239-0450; REGIONAL OFFICE: 1200 Golden Key Circle, Suite 369, El Paso, Texas 79925, (915) 591-8128.

(21) COMPANY: Jim Miller Aircraft Painting, Incorporated; DOCKET NUMBER: 95-0762-AIR-E; ACCOUNT NUMBER: UC-0046-C; LOCATION: Uvalde, Uvalde County; TYPE OF FACILITY: aircraft painting plant; RULE VIOLATED: TNRCC Rule 30 TAC §116.110(a) and §382.0518(a) and §382.085(b) of the Act, by constructing and operating an aircraft painting plant without a permit or standard exemption. PENALTY: \$250; STAFF ATTORNEY: Lisa D. Uselton, (512) 239-5692; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(22) COMPANY: K C Investments Auto Sales; DOCKET NUMBER: 95-0764-AIR-E; ACCOUNT NUMBER: TA-2833-T; LOCATION: Haltom City, Tarrant County; TYPE OF FACILITY: used car sales lot; RULE VIOLATED: TNRCC Rule 30 TAC §114.1(c)(1) and §382.085(b) of the Act by offering for sale a vehicle with faulty or missing emission control systems or devices. PENALTY: \$250; STAFF ATTORNEY: Peter Gregg, (512) 239-0450; REGIONAL OFFICE: 301 West Beauregard Avenue, Suite 202, San Angelo, Texas 76903, (915) 655-9479.

(23) COMPANY: Kaiser Aluminum and Chemical Corporation; DOCKET NUMBER: 95-0767-AIR-E; ACCOUNT NUMBER: GI-0037-L; LOCATION: Sherman, Grayson County; TYPE OF FACILITY: aluminum remelting and casting plant; RULE VIOLATED: Alleged to have violated TNRCC Rule 30 TAC §116.115 and §382.085(b) of the Act by using fluoride salt as a fluxing agent in the furnace and TNRCC Rule TAC §116.116(a) and §382.085(b) of the Texas Clean Air Act by exceeding the aluminum production levels represented in its application for TNRCC Permit NUMBER R-17823. Specifically, the permit allows a maximum aggregate annual raw material input of aluminum scrap and new raw aluminum of 30,000 tons. PENALTY: \$5,000; STAFF ATTORNEY: Greg Warmink, (512) 239-0612; REGIONAL OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(24) COMPANY: Lewisville Countertops, Inc.; DOCKET NUMBER: 95-0766-AIR-E; ACCOUNT NUMBER: DF-



0156-R; LOCATION: Corinth, Denton County; TYPE OF FACILITY: synthetic marble manufacturing plant; RULE VIOLATED: TNRCC Rule 30 TAC §116.110(a) and §382.0518(a) and §382.085(b) of the Act, by operating a surface coating operation without first obtaining a permit or qualifying for a standard exemption. PENALTY: \$500; STAFF ATTORNEY: Aaron DePass, (512) 239-3408; REGIONAL OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(25) COMPANY: Lonza, Inc.; DOCKET NUMBER: 95-0767-AIR-E; ACCOUNT NUMBER: HG-0457-N; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: petro-chemical plant; RULE VIOLATED: Alleged to have violated: (a) TNRCC Rule 30 TAC §101.20(1), TNRCC Rule 116.115, and §382.085(b) of the Act by failing to conduct the performance tests on the plant flare within 180 days of start-up of the Diketene "B Train"; and (b) is alleged to have violated Section 115.116(a)(3) of the Act by failing to install a continuous monitor to monitor and record the inlet and outlet gas temperatures of the vent condenser on storage tank T-2901. PENALTY: \$6,500; STAFF ATTORNEY: Greg Warmink, (512) 239-0612; REGIONAL OFFICE: 4150 Westheimer, Houston, Texas 77027-4417, (713) 625-7900.

(26) COMPANY: David Nichols; DOCKET NUMBER: 95-0768-AIR-E; ACCOUNT NUMBER: CW-0045-F; LOCATION: Gatesville, Coryell County; TYPE OF FACILITY: owns property; RULE VIOLATED: Alleged to have violated TNRCC Rule 30 TAC §111.101 by conducting unauthorized outdoor burning of scrap asphaltic roofing material. PENALTY: \$450; STAFF ATTORNEY: Paul Sarahan, (512) 239-3422; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7807, (817) 751-0335.

(27) COMPANY: Paktank Corporation Deer Park Terminal; DOCKET NUMBER: 95-0769-AIR-E; ACCOUNT NUMBER: HG-0629-I; LOCATION: Deer Park, Harris County; TYPE OF FACILITY: storage terminal; RULES VIOLATED: TNRCC Rule 30 TAC §101.20(1) and §382.085(b) of the Act, by failing to install and operate a control device on Tank NUMBER 803 containing isopropyl ether so that inlet volatile organic compound emissions are controlled with 95% or greater efficiency; and TNRCC Rule 30 TAC §115.216(a)(2)(B) and §382.085(b) of the Act, by failing to continuously record and monitor the inlet and outlet gas temperatures of vapor condensers on Station Numbers 1 and 20, which are used to control loading emissions. PENALTY: \$15,000; STAFF ATTORNEY: Lisa D. Uselton, (512) 239-5692; REGIONAL OFFICE: 4150 Westheimer, Houston, Texas 77027-4417, (713) 625-7900.

(28) COMPANY: Parkview Metal Products, Inc.; DOCKET NUMBER: 95-0799-AIR-E; ACCOUNT NUMBER: HK-0046-W; LOCATION: San Marcos, Hays County; TYPE OF FACILITY: metal stamping plant; RULE VIOLATED: Alleged to have violated TNRCC Rule 30 TAC §116.115 and §382.085(b) of the Act by exceeding the Maximum Allowable Usage Rate limits for trichlorethylene during the 12-month period ending November 30, 1992. PENALTY: \$5,600; STAFF ATTORNEY: William C. Foster, (512) 239-3407; REGIONAL OFFICE: 1700 South Lamar Boulevard, Building 1, Number 101, Austin, Texas 78704-3360, (512) 463-7803.

(29) COMPANY: Penske Truck Leasing; DOCKET NUMBER: 95-0770-AIR-E; ACCOUNT NUMBER: EE-1048-I; LOCATION: El Paso, El Paso County; TYPE OF

FACILITY: maintenance yard; RULE VIOLATED: TNRCC Rule 30 TAC §114.13(a) and §382.085(b) of the Act, by dispensing gasoline that was below the required oxygenate weight content of 2.7%. PENALTY: \$2,000; STAFF ATTORNEY: Aaron DePass, (512) 239-3408; REGIONAL OFFICE: 1200 Golden Key Circle, Suite 369, El Paso, Texas 79925, (915) 591-8128.

(30) COMPANY: Pioneer Aggregates; DOCKET NUMBER: 95-0771-AIR-E; ACCOUNT NUMBER: WN-0019-Q; LOCATION: approximately three miles west of Bridgeport, Wise County; TYPE OF FACILITY: rock crusher plant RULE VIOLATED: Alleged to have violated TNRCC Rule 30 TAC §101.20(1) and TNRCC Rule 30 TAC §116.115, and §382.085(b) of the Act by failing to conduct performance tests in accordance with methods and procedures established in 40 CFR Part 60, Subpart 000, Section 60.675. PENALTY: \$1,000; STAFF ATTORNEY: William C. Foster, (512) 239-3407; REGIONAL OFFICE: 4621 Camp Bowie Boulevard, Suite 321, Fort Worth, Texas 76116, (817) 732-5531.

(31) COMPANY: Plantowsky's Motor Company; DOCKET NUMBER: 95-0772-AIR-E; ACCOUNT NUMBER: HG-9696-W; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: motor vehicle sales business; RULE VIOLATED: TNRCC Rule 30 TAC §114.1(c)(1) and §382.085(b) of the Act by offering for sale a vehicle with faulty or missing emission control systems or devices. PENALTY: \$250; STAFF ATTORNEY: Peter Gregg, (512) 239-0450; REGIONAL OFFICE: 4150 Westheimer at Midlane, Houston, Texas 77027-4417, (713) 625-7900.

(32) COMPANY: Precision Techniques, Inc.; DOCKET NUMBER: 95-0773-AIR-E; ACCOUNT NUMBER: DB-3253-S; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: miscellaneous metal parts coating plant; RULE VIOLATED: Alleged to have violated TNRCC Rule 30 TAC §101.4 and §382.085(a) and (b) of the Act by discharging from a source one or more air contaminants (particulate matter) or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation or property, or as to interfere with the normal use and enjoyment of animal life, vegetation or property. PENALTY: \$0.00; STAFF ATTORNEY: Paul Sarahan, (512) 239-3422; REGIONAL OFFICE: 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531.

(33) COMPANY: Reef Chemical Company; DOCKET NUMBER: 95-0774-AIR-E; ACCOUNT NUMBER: SG-0039-W; LOCATION: Snyder, Scurry County; TYPE OF FACILITY: oil field chemical blending plant; RULE VIOLATED: Alleged to have violated: (a) TNRCC Rule 30 TAC §116.115, and §382.085(b) of the Act by operating Tank Numbers 11, 27, 28, 29, 30, 33, 34, 36, 37, 39, 40, 41, 42, 42, and 44 without scrubbers; and (b) is alleged to have violated §116.115 of the Act by storing citric acid, which was not on the Company's approved chemical list. PENALTY: \$7,000; STAFF ATTORNEY: Greg Warmink, (512) 239-0612; REGIONAL OFFICE: 209 South Danville, Suite 200B, Abilene, Texas 79605, (915) 698-9674.

(34) COMPANY: S. S. Motors; DOCKET NUMBER: 95-0775-AIR-E; ACCOUNT NUMBER: HG-9697-U; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: motor vehicle sales business; RULE VIOLATED: TNRCC Rule 30 TAC §114.1(c)(1) and §382.085(b) of

the Act by offering for sale a vehicle with faulty or missing emission control systems or devices. PENALTY: \$0.00; STAFF ATTORNEY: Peter Gregg, (512) 239-0450; REGIONAL OFFICE: 4150 Westheimer at Midlane, Houston, Texas 77027-4417, (713) 625-7900.

(35) COMPANY: Safeguard Security Services, Inc.; DOCKET NUMBER: 95-0776-AIR-E; ACCOUNT NUMBER: BG-0689-A; LOCATION: San Antonio, Bexar County, TYPE OF FACILITY: fiberglass manufacturing plant, RULE VIOLATED: TNRCC Rule 30 TAC §116.110(a) and §382.0518(a) and §382.085(b) of the Act, by operating a fiberglass manufacturing plant without first obtaining a permit or qualifying for a standard exemption. PENALTY: \$500; STAFF ATTORNEY: Aaron DePass, (512) 239-3408, REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(36) COMPANY: Southwest Convenience Stores, Inc.; DOCKET NUMBER: 95-0777-AIR-E; ACCOUNT NUMBERS EE-0312-V, EE-0973-R, EE-1050-V, EE-1155-G, EE-1158-A, EE-1165-D, EE-1166-B, EE-1171-I, EE-1175-A, EE-1178-R, EE-1179-P, EE-1181-F, EE-1184-W, EE-1185-U, EE-1186-S; LOCATION: El Paso, El Paso, County; TYPE OF FACILITY: convenience stores, RULE VIOLATED: TNRCC Rule 30 TAC §114.13(a) and §382.085(b) of the Act, by dispensing gasoline that was below the required oxygenate weight content of 2.7% PENALTY: \$18,000; STAFF ATTORNEY: Aaron DePass, (512) 239-3408; REGIONAL OFFICE: 1200 Golden Key Circle, Suite 369, El Paso, Texas 79925, (915) 591-8128.

(37) COMPANY: Spin Dismantling, Inc.; DOCKET NUMBER: 95-0780-AIR-E; ACCOUNT NUMBER: HG-4659-R; LOCATION: Houston, Harris County; TYPE OF FACILITY: demolition company; RULE VIOLATED: Alleged to have violated TNRCC Rule 30 TAC §101.20(2) and §382.085(b) of the Act by failing to submit a written notification to TNRCC ten days prior to the demolition start date. PENALTY: \$0.00; STAFF ATTORNEY: William C. Foster, (512) 239-3407; REGIONAL OFFICE: 4150 Westheimer, Houston, Texas 77027-4417, (713) 625-7900

(38) COMPANY: Star Disposal Systems, Inc., Wholly-Owned Subsidiary of Watts Trucking Services, Inc.; DOCKET NUMBER: 95-0778-AIR-E; ACCOUNT NUMBER: HG-1719-W; LOCATION: Houston, Harris County; TYPE OF FACILITY: garbage collection and disposal operation, RULE VIOLATED: Alleged to have violated TNRCC Rule 30 TAC §101.4 and §382.085(a) and (b) of the Act by emitting one or more air contaminants, or combinations thereof, in such concentration and of such duration as were or tended to be injurious to or to adversely affect human health or welfare, animal life, vegetation or property, or as to interfere with the normal use and enjoyment of animal life, vegetation or property. PENALTY: \$5,000; STAFF ATTORNEY: Greg Warmink, (512) 239-0612; REGIONAL OFFICE: 4150 Westheimer, Houston, Texas 77027-4417, (713) 625-7900.

(39) COMPANY: Tomball Auto Sales; DOCKET NUMBER: 95-0779-AIR-E; ACCOUNT NUMBER: HG-9685-E; LOCATION: Tomball, Harris County; TYPE OF FACILITY: motor vehicle sales, RULE VIOLATED: TNRCC Rule 30 TAC §114.1(c)(1) and §382.085(b) of the Act by offering for sale a vehicle with faulty or missing emission control systems or devices. PENALTY: \$250, STAFF ATTORNEY: Peter Gregg, (512) 239-0450;

REGIONAL OFFICE: 4150 Westheimer at Midlane, Houston, Texas 77027-4417, (713) 625-7900.

(40) COMPANY: Valley Proteins, Inc.; DOCKET NUMBER: 95-0781-AIR-E; ACCOUNT NUMBER: PG-0003-C; LOCATION: Amarillo, Potter County; TYPE OF FACILITY: rendering plant; RULE VIOLATED: Alleged to have violated TNRCC Rule 30 TAC §116.115 and §382.085(b) of the Act by failing to keep the large exterior doors closed at all times. PENALTY: \$1,000; STAFF ATTORNEY: Greg Warmink, (512) 239-0612; REGIONAL OFFICE: 3218 Canyon Drive, Amarillo, Texas 79109-4996, (806) 353-9251.

Issued in Austin, Texas, on May 8, 1995.

TRD-9505529 Lydia Gonzales  
Acting Director, Legal Services Division  
Texas Natural Resource Conservation  
Commission

Filed: May 8, 1995

## Notice of Public Hearing

Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code Annotated, §382.017 (Vernon's 1992); Texas Government Code Annotated, Subchapter B, Chapter 2001 (Vernon's 1993), 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency regulations concerning State Implementation Plans (SIP), the Texas Natural Resource Conservation Commission (TNRCC) will conduct a public hearing to receive testimony regarding a revision to the SIP for Milam County, as required by §110(a) of the Federal Clean Air Act. The proposed SIP revision would make administrative changes to the original 1972 sulfur dioxide SIP to make it compatible with federal regulations regarding lignite coal sulfur content.

A public hearing on the proposal will be held on May 31, 1995 at 7:00 p.m. at the Rockdale Volunteer Fire Department, Bell and Wilcox Streets, Rockdale, Texas. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a TNRCC 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 not presented at the hearing may be submitted to the TNRCC central office in Austin through May 31, 1995. Material received by the TNRCC Office of Policy and Regulatory Development by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposal. Copies of the proposal are available at the central office of the TNRCC located at 12118 North IH-35, Building E, Austin. Please mail written comments to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 and reference Rule Log Number 95003-SIP-AI. For further information contact Sam Wells at (512) 239-1441.

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.

Issued in Austin, Texas, on April 26, 1995.

Filed: May 5, 1995

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### Provisionally-Issued Temporary Permits to Appropriate State Water

Permits issued during the period of May 2-5, 1995.

Application Number TA-7448 by DIAMOND L. DRILLING AND PRODUCTION WITNESSES, INC., for diversion of eight acre-feet of water in a one-year period for mining use. Water may be diverted from the unnamed tributary just to the north of the New Hope Community and off to the east of Beaver Run Creek and SH 322, approximately 5-1/2 miles north of Henderson, Rusk County, Texas, Sabine River Basin.

Application Number TA-7447 by J-W PAYNE CONSTRUCTION CO., INC., for diversion of four acre-feet of water in a one-year period for industrial use (highway construction). Water may be diverted near the stream crossing of FM 3129, approximately 17 miles east of Linden, Cass County, Texas, Cypress Basin.

Application Number TA-7443 by NORAM GAS TRANSMISSION, for diversion of one acre-foot of water in a one-year period for industrial use. Water may be diverted approximately five miles east of Mount Pleasant in Titus County, Texas, Cypress Basin

Provisionally-Issued Temporary permits to appropriate state water are issued for a period of not more than one year and authorize the use of not more than ten acre-feet of water. The Executive Director of the TNRCC has reviewed each application for the permits listed and determined that sufficient water is available at the proposed point of diversion to satisfy the requirements of the application as well as all existing water rights. Any person or persons who own water rights or who are lawful users of water on a stream affected by the temporary permits listed above and who believe that the diversion of water under the temporary permit will impair their rights may file a complaint with the TNRCC. The complaint can be filed at any point after the application has been filed with the TNRCC and the time the permit expires. The Executive Director shall make an immediate investigation to determine whether there is a reasonable basis for such a complaint. If a preliminary investigation determines that diversion under the temporary permit will cause injury to the complainant the commission shall notify the holder that the permit shall be cancelled without notice and hearing. No further diversions may be made pending a full hearing as provided in 30 TAC §295.174. Complaints should be addressed to Water Rights Permitting Section, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-4433. Information concerning these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

Issued in Austin, Texas, on May 5, 1995.

TRD-9505503

Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: May 5, 1995

## Texas Parks and Wildlife Department Notice of Public Comment-Sand and Gravel Dredging-Brazos River

Notice is hereby given that Sand Supply, Incorporated, whose address is 12603 Southwest Freeway, Suite 620, Stafford, Texas 77477, as of December 19, 1994, filed an administratively complete application with the Texas Parks and Wildlife Department for a revenue permit to remove up to 94,500 tons of sand, gravel and/or marl per month from the Brazos River, Fort Bend County, at a site located approximately 3.5 miles southeast of Richmond, Texas starting 1.8 miles northwest from the intersection of Crabb River Road and U.S. Highway 59, and extending upstream along the northwest side of the Brazos River for approximately 3,000 feet adjacent to the R. E. Smith Interest, and Joe C. Wessendorff properties.

This permit is requested under the authority granted to the Texas Parks and Wildlife Commission in Chapter 86 of the Parks and Wildlife Code and will not authorize the crossing of any private property.

The hearing to receive public comment on this application will be conducted on Tuesday, May 30, 1995 at 3:00 p.m. in Conference Room A-200, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Travis County, Texas, at which time all interested persons may appear and be heard. Comments may be mailed to the Department at the following address, or presented orally or in writing at the hearing. Comments sent by mail should be received by the Department prior to the public comment hearing.

In addition, any person who can demonstrate a justiciable interest may request a formal contested case hearing pursuant to the Administrative Procedure Act and Government Code, §2001.054. Any person wishing to request such a hearing should submit a written request to Ms. Catherine Livingston at the following address. Such a request should include a short statement of the nature of any objections to the requested permit and a description of the potential adverse impact that may be suffered by the requestor. Requests for formal contested case hearings must be received by the Department no later than 30 days after the date of issuance of this notice as listed, or by the close of the public comment hearing, whichever is later.

Further information concerning any aspect of the application or hearing may be obtained by contacting Catherine Livingston, Resource Protection Attorney, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8006.

Issued in Austin, Texas, on May 4, 1995.

TRD-9505511

Paul M. Shinkawa  
Acting General Counsel  
Texas Parks and Wildlife Department

Filed: May 5, 1995

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### Notice of Public Comment-Sand and Gravel Dredging-Colorado River

Notice is hereby given that City of Austin, Water and Wastewater Utility, whose address is 625 East Tenth Street, #500, Austin, Texas 78701, as of April 30, 1995, filed an administratively complete application with the

Texas Parks and Wildlife Department for a revenue permit to remove up to 800 cubic yards of marl from the Colorado River, Travis County, at a site approximately 45 feet long by 90 feet wide located at River Mile 286.7 in east Austin, approximately 1.65 miles southeast of the intersection of Highway 183 and County Road 969 adjacent to the R. L. Alexander and City of Austin properties.

This permit is requested under the authority granted to the Texas Parks and Wildlife Commission in Chapter 86 of the Parks and Wildlife Code and will not authorize the crossing of any private property.

The hearing to receive public comment on this application will be conducted on Tuesday, May 30, 1995 at 3:00 p.m. in Conference Room A-200, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Travis County, Texas, at which time all interested persons may appear and be heard. Comments may be mailed to the Department at the following address, or presented orally or in writing at the hearing. Comments sent by mail should be received by the Department prior to the public comment hearing.

In addition, any person who can demonstrate a justiciable interest may request a formal contested case hearing pursuant to the Administrative Procedure and Government Code, §2001.054. Any person wishing to request such a hearing should submit a written request to Ms. Catherine Livingston at the following address. Such a request should include a short statement of the nature of any objections to the requested permit and a description of the potential adverse impact that may be suffered by the requestor.

Requests for formal contested case hearings must be received by the Department no later than 30 days after the date of issuance of this notice as listed, or by the close of the public comment hearing, whichever is later.

Further information concerning any aspect of the application or hearing may be obtained by contacting Catherine Livingston, Resource Protection Attorney, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8006.

Issued in Austin, Texas, on May 4, 1995.

TRD-9505510 Paul M. Shinkawa  
Acting General Counsel  
Texas Parks and Wildlife Department

Filed: May 5, 1995

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**Public Utility Commission of Texas**  
**Notices 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 an application on April 25, 1995, to amend a certificate of convenience and necessity pursuant to §§1.101, 3.051(b), 3.251, 3.253, and 3.254 of the Public Utility Regulatory Act of 1995, Senate Bill 319, 74th Legislature Regular Session 1995. A summary of the application follows.

Docket Title and Number: APPLICATION OF SOUTHWESTERN BELL TELEPHONE COMPANY TO AMEND CERTIFICATE OF CONVENIENCE AND NECESSITY WITHIN SMITH COUNTY, Docket Number 14146, before the Public Utility Commission of Texas.

The Application: In Docket Number 14146, Southwestern Bell Telephone Company seeks approval to amend the exchange area boundary between its Tyler and Lindale-Swan exchanges in order to reflect the manner in which telecommunications service is presently being administered.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf on or before June 9, 1995.

Issued in Austin, Texas, on May 4, 1995

TRD-9505394 John M. Rentrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: May 4, 1995



Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 29, 1995, to amend a Certificate of Convenience and Necessity pursuant to Public Utility Regulatory Act, §§1.101(a), 2.201, 2.101(e), 2.252, 2.255, 3.252, and 3.254. A summary of the application follows.

Docket Title and Number: APPLICATION OF TEXAS UTILITIES ELECTRIC COMPANY TO AMEND CERTIFICATED SERVICE AREA WITHIN FANNIN COUNTY, Docket Number 14052 before the Public Utility Commission of Texas.

The Application: In Docket Number 14052, Texas Utilities Electric Company requests approval of its application to revise current certificated service area boundaries with Fannin County Electric Cooperative, Inc. in Fannin County.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0388, or (512) 458-0221 for teletypewriter for the deaf within 15 days of this notice.

Issued in Austin, Texas, on May 5, 1995.

TRD-9505451 John M. Rentrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: May 5, 1995



Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 25, 1995, to amend a Certificate of Convenience and Necessity pursuant to Public Utility Regulatory Act, §§1.101(a), 2.201, 2.101(e), 2.252, 2.255, 3.252, and 3.254. A summary of the application follows.

Docket Title and Number: APPLICATION OF THE CITY OF COLLEGE STATION TO AMEND CERTIFICATED SERVICE AREA BOUNDARIES WITHIN BRAZOS COUNTY, Docket Number 14161 before the Public Utility Commission of Texas.

The Application: In Docket Number 14161, City of College Station requests approval of its application to revise current certificated service area boundaries with the City of Bryan in Brazos County.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0388, or (512) 458-0221 for teletypewriter for the deaf within 15 days of this notice.

Issued in Austin, Texas, on May 5, 1995.

TRD-9505452      John M. Rentrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: May 5, 1995

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### Notice of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.28

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.28 for approval of promotional rates.

Tariff Title and Number. Application of GTE Southwest Inc. for Approval of Promotional Rates Pursuant to Public Utility Commission Substantive Rule 23.28. Tariff Number 14177.

The Application. GTE Southwest, Inc. intends to file an application to seek promotional rates for its In Contact service. In Contact service is a call management service that allows customers to receive calls without being restricted to a physical location. GTE proposes to offer a 30 day money back guarantee for this service. The promotional period shall be for a two month period, beginning on June 15, 1995 and ending on August 15, 1995.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512)458-0256, or (512)458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on May 4, 1995

TRD-9505395      John M. Rentrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: May 4, 1995

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### Teacher Retirement System of Texas Consultant Contract Award

This consultant contract information is filed in compliance with the notice requirement under the Government Code, §2254.30.

The Teacher Retirement System of Texas (TRS) has contracted with a private consultant to assist TRS is employing an executive director. TRS has engaged a consultant to advise and assist the agency in an extensive search for candidates for the position, identifying qualified persons

interested in the position, recommending five such persons to the Search Committee of the Board of Trustees for consideration and conducting background checks, evaluating, and developing descriptive portrayal portfolios for each of the recommended candidates. The consultant shall work closely with the Search Committee of the Board of Trustees to develop and apply approved criteria and qualifications for the position.

On April 28, 1995, TRS executed a contract with Korn/Ferry International, 3232 Lincoln Plaza, 500 North Akard, Dallas, Texas 75201 to provide the services listed in this notice.

The agreed compensation set forth in the contract is \$40,000 payable in two installments of \$15,000 and a final payment of \$10,000 when the Board of Trustees of TRS hires an executive director. Final written recommendations and resumes of recommended candidates are to be received by the TRS Search Committee and the Board of Trustees by June 9, 1995. If an executive director is not chosen Korn/Ferry shall continue for up to an additional 12 months from the effective date of the contract.

Issued in Austin, Texas on May 5, 1995.

TRD-9505524      John R. Mercer  
Interim Executive Director  
Teacher Retirement System of Texas

Filed: May 8, 1995

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### Texas Department of Transportation Request for Proposal

Notice of Invitation: The Texas Department of Transportation (TxDOT) intends to engage an architect, pursuant to Texas Government Code, Chapter 2254, Subchapter A, to provide the following services. The architect selected must perform a minimum of 30% of the actual contract work to qualify for contract award.

Contract(s) #13-545P8001—to perform various architectural type services for the following five districts; Laredo, Pharr, San Antonio, Corpus Christi, and Yoakum. Contract will be for a two year period with a maximum dollar amount of \$100,000.

Deadline: A letter of interest notifying TxDOT of the provider's intent to submit a proposal shall be either hand-delivered to TxDOT, Yoakum District Office, 403 Huck Street, Yoakum, Texas or mailed to P.O. Box 757, Yoakum, Texas 77995. Letters of interest will be received until 5:00 p.m. on Tuesday, May 23, 1995. The letter of interest must include the engineer's name, address, telephone number, name of engineer's contact person and number of TxDOT contract. Upon receipt of the letter of interest a Request for Proposal packet will be issued.

Pre-proposal Meeting: A pre-proposal meeting will be held on Thursday, May 25, 1995, at the TxDOT Yoakum District Office, 403 Huck Street, Yoakum, Texas 77995 beginning at 1:30 p.m. (TxDOT will not accept a proposal from an architect who has failed for any reason to attend the mandatory pre-proposal meeting.)

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 Billy



the maximum amount. Fixed rate bond sales from approximately \$50,000,000 to \$150,000,000 in size will be conducted each six months for the next two years. The U.T. System employs a revenue bond program which offers a combined pledge of all legally available revenues with certain exceptions (the Revenue Financing System). Advance refunding of bonds and escrow restructures of previously defeased bonds, based on market timing, may be expected. Federal tax related matters regarding bonds issued by the U. T. System, including strategies and management practices in the conduct of an exempt debt program requires a close working relationship with bond counsel. Contact is frequent, particularly in regard to the Revenue Financing System program due to the significant level of capital improvements anticipated throughout the system over the next two years. U. T. System invites responses to this RFI from qualified firms for the provision of such legal services under the direction and supervision of U. T. System's Office of General Counsel.

**Responses.** Responses to this RFI 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 prior experience in bond issuance matters, the names, experience, and technical expertise of the attorneys who may be assigned to work on such matters, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision both of the firm's legal services generally and bond matters in particular; the submission of fee information (either in the form of hourly rates for each attorney who may be assigned to perform services in relation to U. T. System's bond matters, flat fees, or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the U. T. System or to the State of Texas, or any of its boards, agencies, commissions, universities, or elected or appointed officials); and confirmation of willingness to comply with policies, directives and guidelines of the U. T. System and the Attorney General of the State of Texas.

**Format and Person to Contact.** Three copies of the response are requested. The response should be typed, preferably double spaced, on 8 1/2 x 11 inch paper with all pages sequentially numbered, either stapled or bound together. They should be sent by mail or delivered in person, marked "Response to Request for Information," and addressed to Ray Farabee, Vice Chancellor and General Counsel, Office of General Counsel, The University of Texas System, 201 West Seventh Street, Austin, Texas 78701, (512) 499-4462 for questions.

**Deadline for Submission of Response.** All responses must be received by the Office of General Counsel of U. T. System at the address set forth previously no later than 5:00 p.m., Monday, June 12, 1995.

Issued in Austin, Texas, on May 3, 1995

TRD-8505372      Arthur H. Dilly  
                          Executive Secretary to the Board of  
                          Regents  
                          The University of Texas System

Filed: May 4, 1995



## Request for Proposal (RFP)

The University of Texas System (U. T. System) requests information from law firms interested in representing U. T. System and its component institutions in certain federal tax matters. This RFP is issued for the purpose of establishing (for the biennium beginning September 1, 1995) a referral list from which U. T. System, by and through its Office of General Counsel, will select appropriate counsel for representation on specific federal tax matters as the need arises.

**Description.** The U. T. System comprises six health component universities and nine academic component universities 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 Regulations of the Internal Revenue Service. For assistance with such issues, U. T. System will engage outside legal counsel to provide legal counsel and advice to the University of Texas System on matters pertaining to federal income, estate, gift, and excise taxes. This legal counsel and advice will include, but not be limited to, the following: dealings with the I.R.S. in audits, I.R.S. appeals, U.S. Tax Court, and other tax matters. Also benefits such as the Optional Retirement Program, 403(b) and 457(a) and (f) plans. Income Tax matters will also include unrelated business income tax as it relates to universities; and federal tax matters regarding compensation issues related to university hospitals and physicians.

U. T. System invites responses to this RFP from qualified firms for the provision of such legal services under the direction and supervision of U. T. System's Office of General Counsel.

**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 prior experience in federal tax-related matters including experience handling state pension issues and plans available only to universities, 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, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision of legal services; the submission of fee information (either in the form of hourly rates for each attorney who may be assigned to perform services in relation to U. T. System's federal tax matters, 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; disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the U. T. System or to the State of Texas, or any of its boards, agencies, commissions, universities, or elected or appointed officials); and confirmation of willingness to comply with policies, directives and guidelines of the U. T. System and the Attorney General of the State of Texas.

**Format and Person to Contact.** Three copies of the response are requested. The response should be typed, pref-

erably double spaced, on 8 1/2 x 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 "Response to Request for Proposal," and addressed to David W. Lacy, Attorney, Office of General Counsel, The University of Texas System, 201 West Seventh Street, Austin, Texas 78701, (512) 499-4462 for questions.

**Deadline for Submission of Response.** All responses must be received by the Office of General Counsel of U. T. System at the address set forth previously no later than 5:00 p.m., Monday, June 12, 1995.

**Issued in Austin, Texas, on May 3, 1995**

TRD-9505373

Arthur H. Dilly  
Executive Secretary to the Board of  
Regents  
The University of Texas System

Filed: May 4, 1995

