

TEXAS REGISTER

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Texas Register



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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Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.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
40 TAC §3.704.....950, 1820

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

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

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4 TAC §30.3..... 4048

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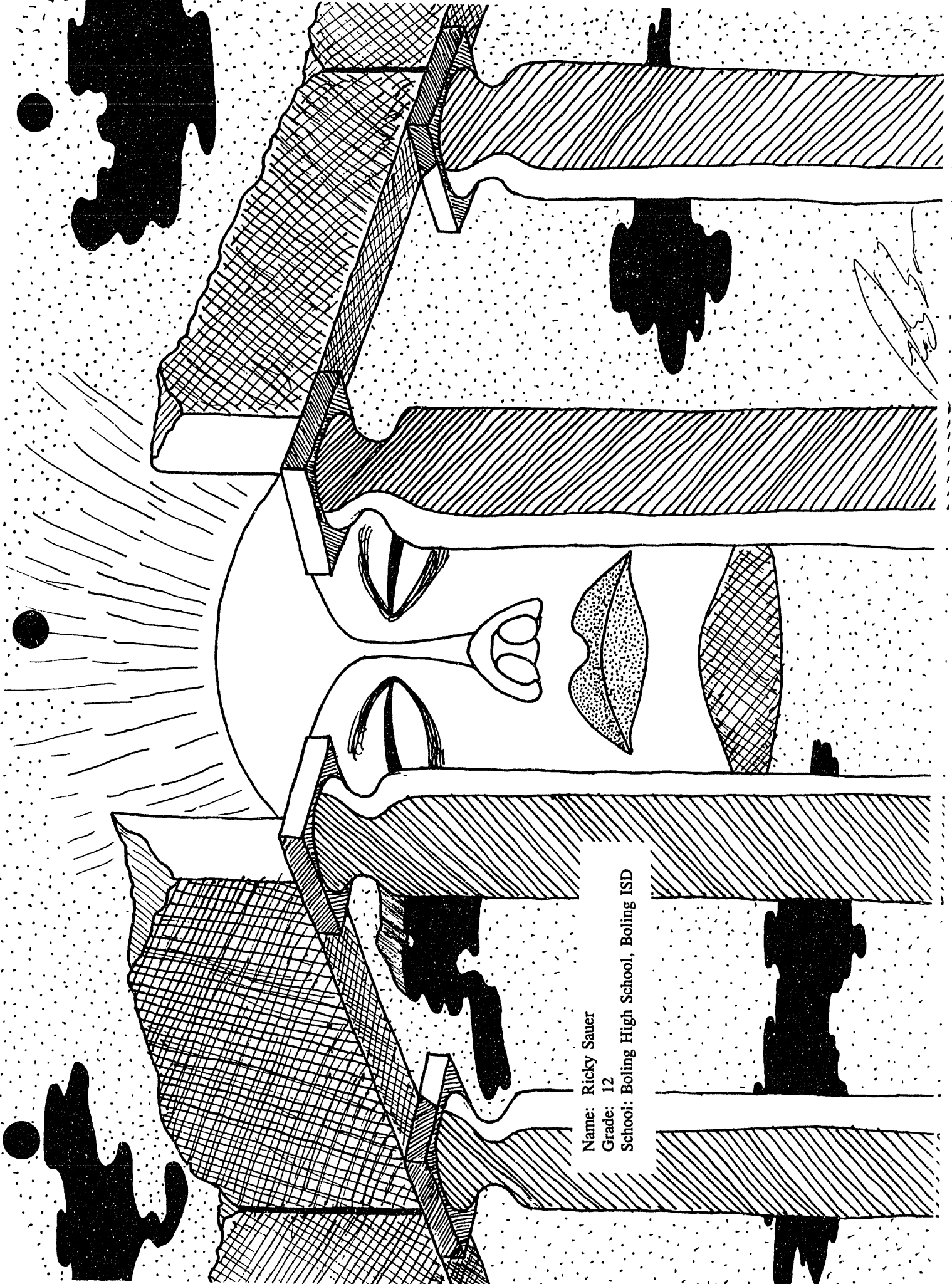
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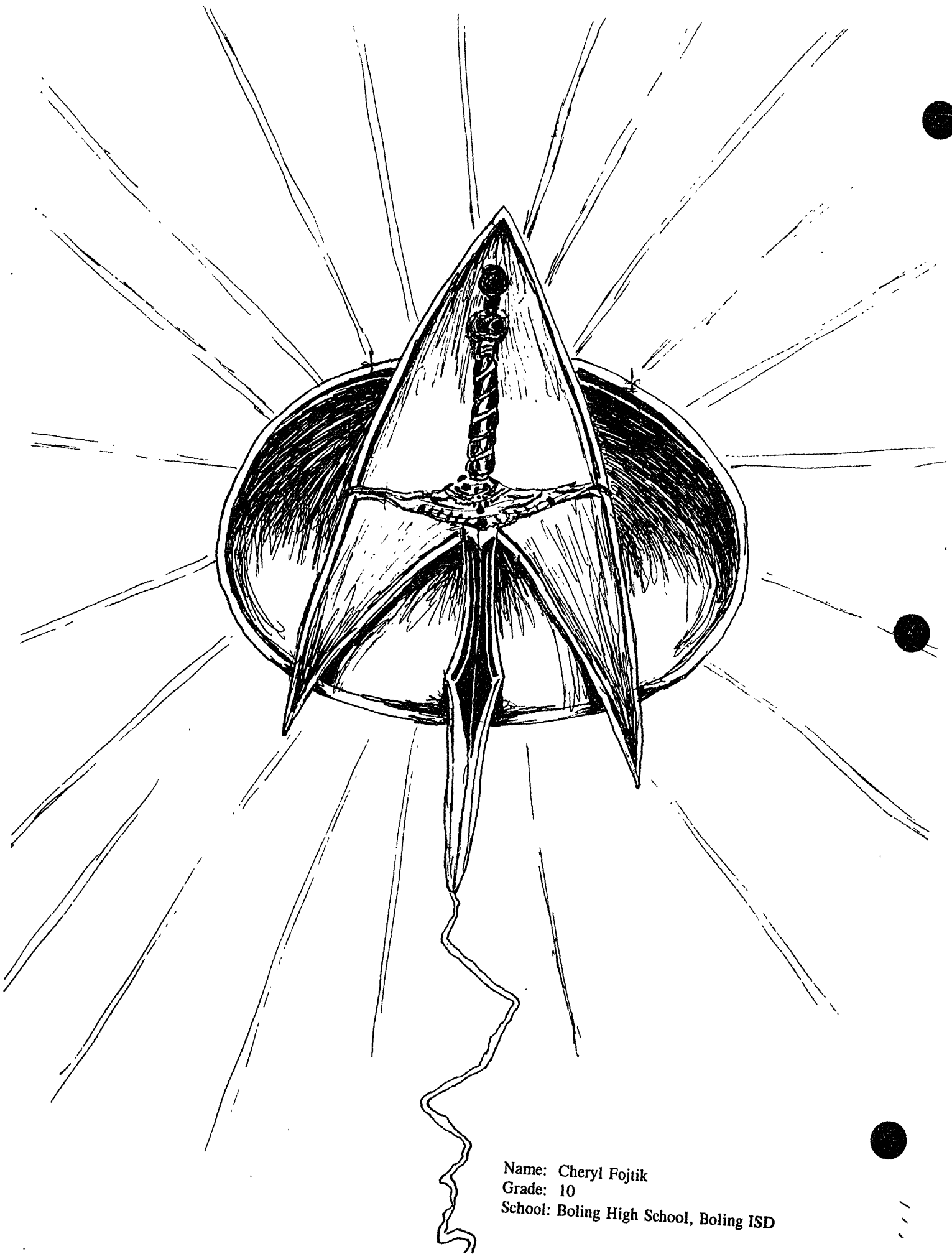
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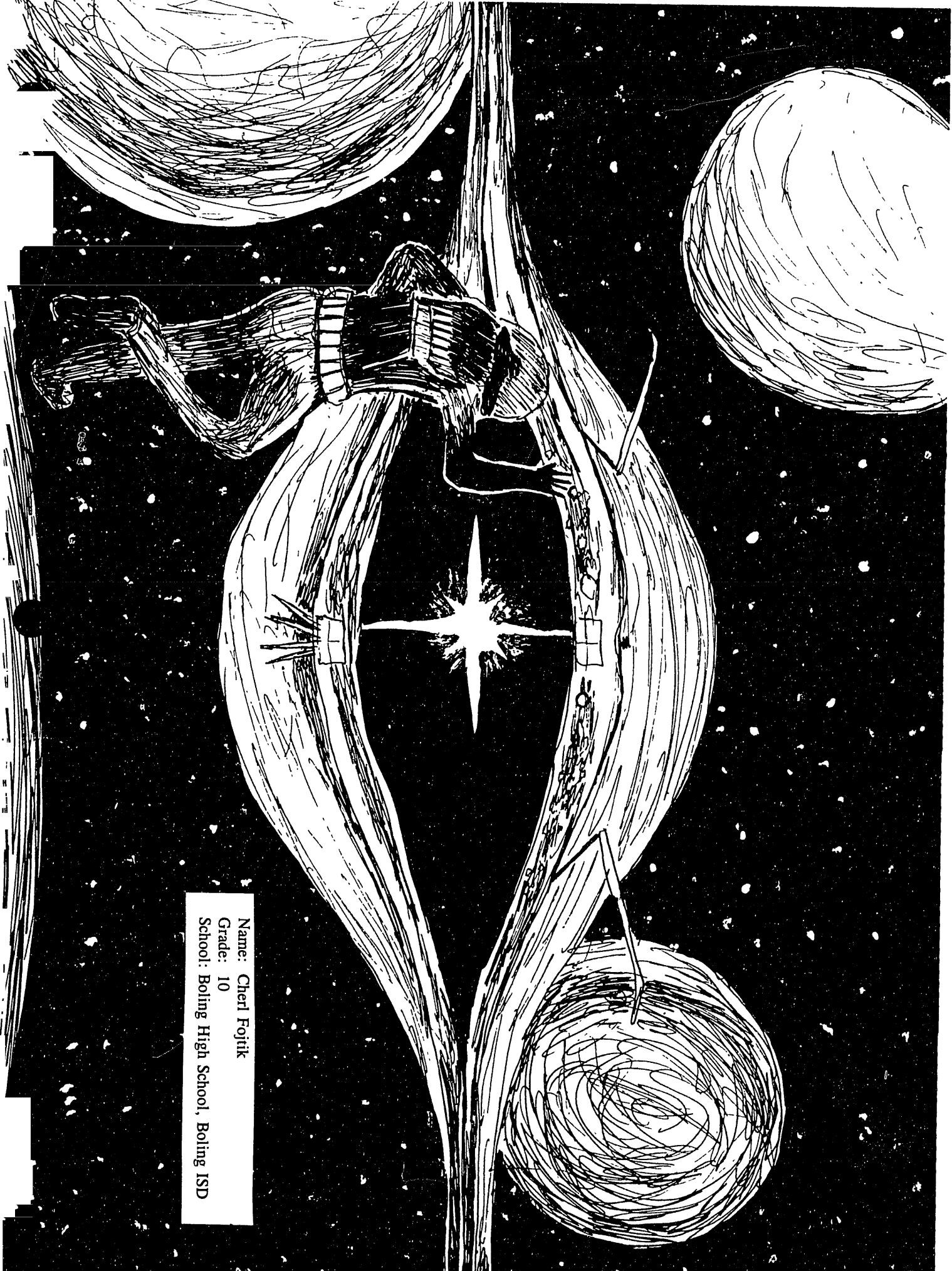
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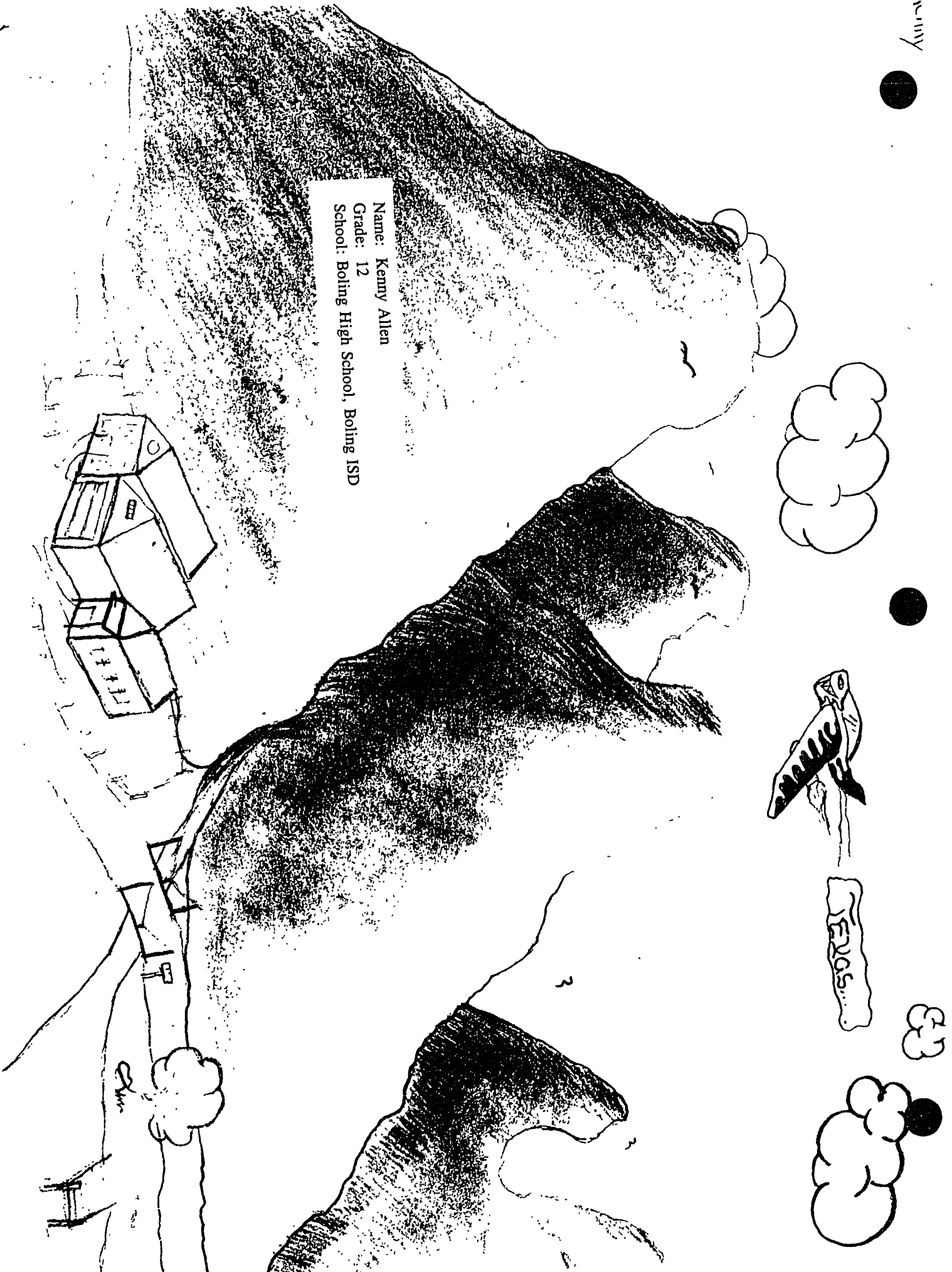
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PROPOSED RULES

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 4. AGRICULTURE Part I. Texas Department of Agriculture

Chapter 23. Family Farm and Ranch Security Program

Subchapter A. General Provi- sions

• 4 TAC §23.6

The Texas Department of Agriculture (the department) proposes new §23.6, concerning expiration provision. The new section is proposed to require the department to review all sections in Chapter 23 and determine what, if any, sections need to be repealed, replaced or amended. The new section provides an expiration date of August 31, 1996, for all sections that are not repealed, amended, or reaffirmed by the department by that date.

Robert Kennedy, deputy assistant commissioner for finance and agribusiness development, 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. Kennedy also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarification of existing regulations and elimination of unnecessary regulations. There will be no effect on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Robert Kennedy, Deputy Assistant Commissioner for Finance and Agribusiness Development, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new section is proposed under the Texas Agriculture Code, §252.011, which provides the Texas Department of Agriculture with the authority to adopt rules necessary for administration of the department's family farm and ranch security program.

The Texas Agriculture Code, Chapter 252 is affected by this proposal.

§23.6. Expiration Provision. Unless specifically acted upon by amendment or repeal and substitution of a new section or sections in accordance with the Texas Government Code, Chapter 2001, Subchapter B, or specific reactivation by the department, all of the sections in this chapter shall expire on August 31, 1996.

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 26, 1995.

TRD-9506411

Dolores Alvarado Hibbs
Chief Administrative Law
Judge
Texas Department of
Agriculture

Earliest possible date of adoption: July 3, 1995

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

Chapter 25. Agricultural Development Board

Subchapter A. General Provi- sions

• 4 TAC §25.13

The Texas Department of Agriculture (the department) proposes new §25.13, concerning expiration provision. The new section is proposed to require the department to review all sections in Chapter 25 and determine what, if any, sections need to be repealed, replaced or amended. The new section provides an expiration date of August 31, 1996, for all sections that are not repealed, amended, or reaffirmed by the department by that date.

Robert Kennedy, deputy assistant commissioner for finance and agribusiness development, 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. Kennedy also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarification of existing regulations and elimination of unnecessary regulations. There will be no effect on small or large businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Robert Kennedy, Deputy Assistant Commissioner for Finance and Agribusiness Development, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new section is proposed under the Texas Agriculture Code, §12.001 and §12.006, which provides the Texas Department of Agriculture with the authority to adopt rules necessary for administration of the Texas Agriculture Code; and, the Texas Government Code, §2001.004, which provides the department with the authority to adopt rules of practice setting forth the nature and requirements of all formal and informal administrative procedures available.

The Texas Agriculture Code, Chapter 252 is affected by this proposal.

§25.13. Expiration Provision. Unless specifically acted upon by amendment or repeal and substitution of a new section or sections in accordance with the Texas Government Code, Chapter 2001, Subchapter B, or specific reactivation by the department, all of the sections in this chapter shall expire on August 31, 1996.

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 26, 1995.

TRD-9506413

Dolores Alvarado Hibbs
Chief Administrative Law
Judge
Texas Department of
Agriculture

Earliest possible date of adoption: July 3, 1995

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

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**TITLE 16. ECONOMIC
REGULATION**
**Part VIII. Texas Racing
Commission**
**Chapter 303. General
Provisions**

**Subchapter B. Powers and Du-
ties of the Commission**

• **16 TAC §303.33**

The Texas Racing Commission proposes an amendment to §303.33, concerning subpoenas. The amendment requires the commission to pay all taxes associated with travel expenses for witnesses who are not state employees. The amendment also permits the executive secretary to authorize the payment of a witness fee of not more than \$200 per day.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for local government as a result of enforcing the section. For the first five-year period the section is in effect there may be fiscal implications for state government, if the commission requests the attendance of witnesses. The exact cost will vary depending on the number of witnesses subpoenaed and compensated pursuant to this amendment. Therefore, the fiscal implications for state government cannot be determined at this time.

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the commission's adjudicatory processes will be conducted in accordance with the interests of justice. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted on or before July 1, 1995, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §2001.004, Government Code, which requires the commission to adopt rules of practice; and §2001.103, Government Code, which authorizes the commission to adopt rules specifying the compensation for witnesses' travel expenses.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§303.33. Subpoenas.

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

(e) For an individual compelled to appear before the commission under this section, the commission shall pay travel expenses in accordance with the provisions in effect for state employees. For a witness who is not a state employee, the commission shall pay for all taxes associated with the travel expenses that are not applicable to state employees. The executive secretary may authorize the payment of a witness fee in an amount not to exceed \$200 per day. The commission reserves the right to bill the expenses to parties requiring the appearance of the individual.

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 22, 1995.

TRD-9506366

Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 3, 1995

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

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**Chapter 305. Licenses for
Pari-mutuel Racing**

**Subchapter B. Individual Li-
censes**

Specific Licensees

• **16 TAC §305.44**

The Texas Racing Commission proposes an amendment to §305.44, concerning trainer's licenses. The amendment requires the commission to print on the trainer's test the standard for passing the test.

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

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that applicants for a pari-mutuel trainer's license will have notice of the standards for licensing. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted on or before July 1, 1995, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which au-

thorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §7.02, which authorize the commission to adopt rules specifying the qualifications and experience for occupational licenses.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§305.44. Trainer or Assistant Trainer.

(a) (No change.)

(b) The standard for passing the written examination must be printed on the examination. [A passing grade for the written examination is 75 on a scale of 100.] An applicant who fails the examination may not take the examination again before the 60th day after the date the applicant failed the examination. The commission may waive the requirement of a written examination for a person who has a current license issued by another pari-mutuel racing jurisdiction. If a person for whom the examination requirement was waived demonstrates an inability to adequately perform the duties of a trainer, through excessive injuries, rulings, or other behavior, the stewards or racing judges may require the person to take the written examination. If such a person fails the examination, the stewards or racing judges shall suspend the person's license for 60 days.

(c)-(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 22, 1995.

TRD-9506367

Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 3, 1995

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

◆ ◆ ◆
**Chapter 309. Operation of
Racetracks**

**Subchapter B. Horse Race-
tracks**

Facilities for Employees

• **16 TAC §309.183**

The Texas Racing Commission proposes an amendment to §309.183, concerning living quarters for licensees at horse racetracks. The amendment permits a horse racetrack to allow licensees to sleep in barns and tack rooms, provided the barns and tack rooms are constructed of fire retardant materials and have other safety features.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has deter-

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

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that pari-mutuel racing will attract high quality trainers and horses currently running in other states. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed

Comments on the proposal may be submitted on or before July 1, 1995, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §6.06 which authorizes the commission to adopt rules relating to all aspects of the operation of pari-mutuel racetracks.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§309.183. *Living Quarters for Employees.*

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

(d) An association may not permit an individual to sleep in the stable area except:

(1) in a facility provided in accordance with this section;

(2) in a barn that was constructed after 1990 of fire retardant materials; or

(3) in a tack room that was constructed after 1990 of fire retardant materials, provided the tack room has a window that opens.

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 22, 1995.

TRD-9506368 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 3, 1995

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

Chapter 311. Conduct and Duties of Individuals

Subchapter B. Specific Licenses

Licensees for Horse Racing

• 16 TAC §311.159

The Texas Racing Commission proposes an amendment to §311.159, concerning conduct in the stable area. The amendment permits licensees to sleep in barns and tack rooms at horse racetracks, provided the barns and tack rooms are constructed of fire retardant materials and have other safety features

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

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that pari-mutuel racing will attract high quality trainers and horses currently running in other states. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted on or before July 1, 1995, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §6.06 which authorizes the commission to adopt rules relating to all aspects of the operation of pari-mutuel racetracks

The proposed amendment implements Texas Civil Statutes, Article 179e.

§311.159. *Conduct in Stable Area.*

(a) An individual licensee may not sleep in the stable area of an association's grounds except:

(1) in a facility provided for that purpose by the association in accordance with commission rules;

(2) in a barn that was constructed after 1990 of fire retardant materials; or

(3) in a tack room that was constructed after 1990 of fire retardant materials, provided the tack room has a window that opens.

(b)-(e) (No change.)

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

Issued in Austin, Texas, on May 22, 1995

TRD-9506369 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 3, 1995

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

Chapter 313. Officials and Rules of Horse Racing

Subchapter E. Training Facilities

• 16 TAC §313.503

The Texas Racing Commission proposes an amendment to §313.503, concerning the requirements for a licensed training facility. The amendment reduces the required width of a training track to 40 feet on each straightaway and turn.

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

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that more training tracks will be eligible for a training facility license, thereby increasing the number of locations at which a trainer may obtain an official workout. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted on or before July 1, 1995, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act, and §7.02, which authorizes the commission to adopt rules specifying the qualifications for various types of licenses

The proposed amendment implements Texas Civil Statutes, Article 179e

§313.503 *Physical Plant*

(a) (No change.)

(b) The racetrack at a training facility must have a chute at least 250 yards long from the back of the chute to the finish line. The racetrack must be an oval that is at least:

(1) (No change.)

(2) 40 [45] feet wide on each straightaway, and

(3) 40 [45] feet wide on each turn

(c)-(f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and

found to be within the agency's authority to adopt.

Issued in Austin, Texas, on May 22, 1995.

TRD-9506370 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 3, 1995

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

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**Chapter 319. Veterinary
Practices and Drug Testing**

Subchapter A. General Provisions

• **16 TAC §319.7**

The Texas Racing Commission proposes an amendment to §319.7, concerning the medication labeling requirements for certain medications for greyhounds. The amendment permits a veterinarian to prescribe certain medications for entire kennels of greyhounds without having to list the names of the greyhounds on the medication container.

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

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

Comments on the proposal may be submitted on or before July 1, 1995, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §6.06 which authorizes the commission to adopt rules relating to all aspects of the operation of pari-mutuel racetracks.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§319.7. Medication Labeling.

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

(c) The executive secretary may, from time to time, designate certain medications or classes of medications that may be prescribed for an entire kennel. A list of all medications and classes of medications designated under this sub-

section must be made available in the commission office at each greyhound racetrack.

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 22, 1995.

TRD-9506371 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: July 3, 1995

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

◆ ◆ ◆
**TITLE 31. NATURAL RE-
SOURCES AND CON-
SERVATION**

**Part II. Texas Parks and
Wildlife Department**

Chapter 53. Finance

**License Fees and Boat and
Motor Fees**

• **31 TAC §53.7**

The Texas Parks and Wildlife Commission proposes new §53.7, concerning license exemptions to be established by the Commission.

The new section proposes continuation of existing fishing license exemptions. House Bill 1785 deletes the statutory fishing license exemptions for the four categories included in the new section. Adoption of the proposed rule is required or fishing licenses will be required of the exempt categories as of September 1, 1995.

The new section also clarifies who may purchase the special resident fishing. It provides that persons who are exempt from fishing license requirements (whether by Commission rule or statute) and wish to obtain a red drum tag, may do so by purchasing the special resident fishing license.

Jim Dickinson, Chief of Staff, has determined that for the first five-year period the rule will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Dickinson also has determined that for each year of the first five years the rule as proposed is in effect the public will benefit because categories of persons currently exempt from fishing license requirements will continue to be exempt. There will be minimal effect on small businesses. There is no anticipated economic cost to persons required to comply with the rule as proposed.

The Department has not filed a local employment impact statement with the Texas Employment Commission in compliance with the Administrative Procedure Act, Chapter 2001, as this agency has determined that the rules

as proposed will not impact local economies.

Public comment is invited and may be submitted to Paul Israel, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4823 or 1-800-792-1112, extension 4823.

The new section is proposed under the authority of the Texas Parks and Wildlife Code, which provides the Texas Parks and Wildlife Commission with the authority to waive the license fee or waive the license requirement or establish a lower fee for the currently exempt categories. Section 46.002(a) and §46.004(b) (sections amended by House Bill 1785) allows the commission exempt the groups from fishing license requirements.

Parks and Wildlife Code §46.002 and §46.004 is affected by the proposed new section.

§53.7. License Exemptions.

(a) The following categories of persons are exempt from fishing license requirements and fees from the licensing period beginning September 1, 1995, and thereafter:

- (1) residents under 17 years of age;
- (2) non-residents under 17 years of age;
- (3) non-residents 65 years of age or older from Kansas and Louisiana; and
- (4) non-residents 64 years of age or older from Oklahoma.

(b) Any person who is exempt from fishing license requirements (whether by rule or by statute) who wishes to obtain a red drum tag is authorized to purchase the special resident fishing license.

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 26, 1995.

TRD-9506423 Paul M. Shinkawa
Acting General Counsel
Parks and Wildlife
Department

Earliest possible date of adoption: July 3, 1995

For further information, please call: (512) 389-4642

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License Deputies

• **31 TAC §53.25**

The Texas Parks and Wildlife Commission proposes new §53.25, concerning license deputy issuance and collection fees to be set by the Commission.

The proposed new section is necessary because House Bill 2216 deletes existing exact

amounts of license deputy issuance and collection fees contained in all sections of Parks and Wildlife Code and replaces those amounts with new general Commission authority to set those fees. House Bill 2216 also provides that issuance and collection fees cannot be set below existing levels.

The proposed new section sets existing amounts for license fees which are not being increased for the licensing period beginning on September 1, 1995 and proposes issuance and collection fee ranges for those license fees which may increase (non-resident hunting licenses) Also, certain licenses and tags which previously had no issuance and collection fee are set in the proposal.

Jim Dickinson, Chief of Staff, has determined that for the first five-year period the rule will be in effect there will be fiscal implications as a result of enforcing or administering the rule. The estimated decrease in revenue to state government will vary from \$0 to \$121,444, depending on the amounts selected for implementation by the Commission; however, the \$121,444 amount would apply only if non-resident hunting license fees are increased, generating an estimated total (gross) revenue increase of \$1,063,000. Thus, there will be an estimated net increase in revenue to state government of \$941, 556. There will be no fiscal implications for local governments.

Mr. Dickinson also has determined that for each year of the first five years the rule as proposed is in effect that the public will benefit because license deputies will be more fairly compensated for the services they provide to customers and will encourage license deputies to carry inventories of certain items such as non-resident hunting licenses and tarpon tags to ensure greater public availability. There will be minimal effects on small businesses. There is no anticipated economic cost to persons required to comply with the rule as proposed.

The Department has not filed a local employment impact statement with the Texas Employment Commission in compliance with the Administrative Procedure Act, Chapter 2001, as this agency has determined that the rules as proposed will not impact local economies.

Public comment is invited and may be submitted to Paul Israel, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4823 or 1-800-792-1112, extension 4823.

The new section is proposed under the authority of the Texas Parks and Wildlife Code, which provides the Texas Parks and Wildlife Commission with the authority to set license deputy issuance and collection fees. Section 12.702(b) (new section added in House Bill 2216) allows the commission to set collection and issuance fees for licenses, stamps, tag, permits, or other similar items issued under any chapter of Parks and Wildlife Code.

Parks and Wildlife Code, §12.702, is affected by the proposed new section.

§53.25. License Deputy Issuance and Collection Fees.

(a) The following license deputy is-

suance and collection fee amounts are effective from the licensing period beginning September 1, 1995, and thereafter:

- (1) resident combination hunting and fishing-\$1.00;
- (2) duplicate resident combination hunting and fishing-\$.50;
- (3) resident hunting-\$.50,
- (4) special resident hunting-\$.50;
- (5) duplicate hunting-\$.50;
- (6) general nonresident hunting-\$.75-\$5.00;
- (7) resident trapper-\$.75;
- (8) nonresident special hunting-\$.75-\$3.00;
- (9) nonresident five-day special hunting \$.75-\$2.00,
- (10) nonresident banded bird hunting \$.75;
- (11) nonresident spring turkey hunting \$.75-\$3.00;
- (12) turkey stamp-\$.50;
- (13) white-winged dove stamp-\$.50;
- (14) archery hunting stamp-\$.50;
- (15) waterfowl hunting stamp-\$.50;
- (16) muzzleloader hunting stamp-\$.50;
- (17) nongame stamp-\$.50;
- (18) conservation permit-\$.50;
- (19) resident fishing-\$.50;
- (20) special resident fishing-\$.50-\$1.00;
- (21) non-resident fishing-\$.50,
- (22) fishing duplicate-\$.50;
- (23) temporary nonresident fishing-\$.50,
- (24) temporary resident sportfishing-\$.50;
- (25) saltwater sportfishing stamp-\$.50,
- (26) freshwater trout stamp-\$.50;
- (27) saltwater trotline tags-\$.50;
- (28) individual bait shrimp trawl tags-\$.75;
- (29) tarpon tag-\$2.00; and
- (30) duplicate tarpon tag-\$.50.

(b) The Lake Texoma fishing license deputy issuance and collection fee

amount is \$.75 and is effective from the licensing period beginning January 1, 1996, and thereafter.

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

TRD-9506424

Paul M. Shinkawa
Acting General Counsel
Parks and Wildlife
Department

Earliest possible date of adoption:
July 3, 1995

For further information, please call:
(512) 389-4642

Chapter 59. Parks

Park Entrance and Park User Fees

• 31 TAC §59.2, §59.3

The Texas Parks and Wildlife Commission proposes amendments to §59.2 and §59.3, concerning Park Entrance and Use Fees. The proposed fee increases are necessary to provide additional funding to maintain the current level of park services for the benefit of the public.

The proposed amendment to §59.2 sets the upper range for the annual park entrance permit at \$75 and establishes an upper range for a duplicate permit at \$25. The replacement permit range is established as \$3.00-\$5.00. The amendment also extends use of a youth-group annual entrance permit for entrance to parks which have a per-vehicle entrance fee and parks which have a historic-site tour fee, and renders the permit non-refundable; sets the range for an entrance fee at \$.50-\$5.00 and applies the fee for entrance to parks or historical sites for educational purposes to all persons in private or public institutions of learning. The amendment exempts persons 65 or older prior to September 1, 1995 from entrance fees at state parks and sets the entrance fee in state parks for persons 65 or older after August 31, 1995 at 50% of the entrance fee for individual parks visited. Finally, the amendment delegates authority to set the fee for a replacement or duplicate annual or seasonal permit.

The amendment to §59.3, concerning activity and facility use fees, sets the fee range for a regular campsite at \$5.00-\$18; sets the fee range for a campsite with electricity at \$9-\$23; establishes the fee range for campsites with electricity and sewer connections at \$10-\$25; establishes a fee range for shelters with amenities at \$25-\$40; establishes new fees for recreational hall use with day-use only fees ranging from \$50-\$150 and overnight use ranging from \$80-\$200; sets fees for group lodge accommodations based on accommodations at individual sites; sets a fee range for dining halls at \$65-\$100; sets the fee range for pavilion use at \$17-\$40; establishes the fee range for amphitheaters at \$10-\$100; sets the fee range for auditorium use at \$200-\$500; establishes a fee range for gymnasium use at \$300-\$500; establishes an additional fee of \$50-\$100 if kitchen and din-

ing hall privileges are required; establishes a fee range for group picnic areas at \$17-\$60; sets the fee range for picnic shelters with kitchen facilities at \$30-\$125; sets the fee range for individual additional adult lodging at \$5-\$15 at Indian Lodge; sets the fee range for each additional adult lodging at \$5-\$15 at Balmorhea-San Solomon Springs Court; sets the fee range of \$5-\$15 for lodging with a kitchen unit at this site; sets the fee range of \$5-\$15 for additional adult lodging at Landmark Inn; and increases the group rate fee range for swimming from \$35-\$500

The amendment also increases the range of Lockhart Golf Course annual family greens fee permit from \$150-\$500; establishes new fees for boat transportation to Matagorda Island, establishes the range for excess vehicle parking from \$1-\$4, establishes a fee range of \$2-\$25 for activity use fees per person; establishes a fee based on a discounted daily rate for use of seasonal or annual use permits; establishes a visitor shuttle fee range of \$2-\$10; establishes a tour fee for educational, interpretive, instructional, adventure and entertainment tours at \$25-\$500; establishes educational seminar fees, equipment rental fees and event fees, and sets the range of excess occupancy fees at \$1-\$15; and a commercial boat landing fee at \$50-\$500.

Jim Dickinson, Chief of Staff, has determined that for the first five-year period the rules are in effect, the fiscal implications to state government as a result of enforcing or administering the rule will be an estimated net increase in revenue of \$250,000 in 1996; \$384,000 in 1997; \$391,000 in 1998; \$399,000 in 1999, and \$407,000 in 2000. There will be no fiscal implications for local governments.

Mr Dickinson also has determined that for each of the first five years the amendments as proposed are in effect the anticipated public benefit expected as a result of enforcing or administering the rules will be continuation of services for the public good. There will be no effect on small businesses. The anticipated economic cost to persons required to comply with the rules as proposed will be the payment of the fees indicated.

The department has not filed a local employment impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, §2001.022, as this agency has determined that the amendments as proposed will not impact local economies.

Public comments concerning the proposed fee increases may be directed to Ron Holliday, Director of Public Lands Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744; (512) 389-4866 or 1-800-792-1112, extension 4866.

The amendments are proposed under the authority of Parks and Wildlife Code, §13.015, which provides the Parks and Wildlife Commission with authority to set certain park user fees.

Parks and Wildlife Code, §13.015, is affected by the proposed rules.

§59.2. Park Entrance and Use Fees.

(a) An entrance/use fee will be levied at state parks. The fee will grant entry and presence privileges for a specific 24-hour period or part thereof, regardless of the number of times of entry during the valid period. At the end of each 24-hour period, the fee will become due for the succeeding 24-hour period or part thereof.

(b) An annual \$25-\$75 [\$50] entrance permit and use fee may apply at certain state parks where entrance fees are prescribed in lieu of a daily entrance fee. The annual permit will admit the purchaser and all occupants of his private, noncommercial vehicle, but will not apply to commercial, quasi-public, or public buses, or other such vehicles. [A duplicate permit may be available at a rate of \$8.00 each. A replacement permit will be available at a rate of \$2.00 each.]

(c) Annual entrance permits are not valid for conducted tours, or for fishing privileges on fishing piers.

(d) A Youth Group Annual Entrance Permit may be purchased by youth organizations composed of individuals age 18 and under for an annual fee of \$50-\$300. The group must have state or national affiliation and be sponsored by a governmental agency or nonprofit organization, as defined under the Internal Revenue Code, §501. The permit is valid for entry [only] at parks with a per vehicle entrance fee and at parks with a historic site tour fee. It is nontransferable and nonrefundable. No more than 50 persons, including adult supervisors will be admitted with each permit. The [and the] number of vehicles or the number of individual persons per historic site tour may be limited by the park manager [superintendent]. Additional permit(s) is required if the group exceeds 50 persons. Permit is valid for 12 months from date of purchase. To purchase the group permit, eligible organizations must submit an application along with the required fee to the chief, park operations, or designee, for approval. The permit authorizes entry of vehicles carrying group members provided the adult sponsor presents the permit(s) at the park entrance and identifies each vehicle carrying group members.

(e) An entrance and use fee of \$2.00 to \$6.00 per motorized vehicle per day will apply at parks designated by the department in lieu of an annual or parklands passport. Where variable entrance and use fees are authorized by the commission, they may be set on an individual park basis.

(f) An entrance fee of \$.50 -\$.00 will apply on a per person basis at parks designated by the department.

(g) The executive director may, at his discretion, temporarily waive any en-

trance fees or conditions thereof established in this section at any park when construction activities at the park adversely affect public enjoyment of the recreational opportunities normally available. The executive director may discount or waive entrance fees in order to enhance utilization of existing facilities.

(h) No entrance fee will be charged or collected at parks unless the department deems it feasible to collect the fees.

(i) Persons entering parks by boat, bicycle, or on foot are authorized to use a valid annual park entrance permit receipt in lieu of paying an individual entrance fee. An individual presenting a receipt must be the same person to whom the annual permit was issued or a member of the original permit holder's immediate family. Individuals eligible for park entry as specified herein may be accompanied by as many as three other persons

(j) Persons whose date of birth is before September 1, 1930 [65 years of age or over] and veterans of the armed services of the United States who, as a result of military service, have a service-oriented disability as defined by the Veterans Administration, consisting of the loss of the use of a lower extremity or of a 60% disability rating and who are receiving compensation from the United States government because of the disability, will not be required to pay an entrance fee at state parks. Residents of this state whose birth date is after August 31, 1930 shall pay 50% of the normal entrance fee rounded to the nearest higher whole dollar. Non-residents of this state whose birth date is after August 31, 1930 shall pay the normal entrance fee. State parklands passports will be issued to eligible persons at state parks and the Austin headquarters. A driver's license, birth certificate, military discharge papers, or any other suitable identification considered sufficient proof for establishing the age and identity of an individual must be presented at the time the passport is issued to persons 65 years of age and over. Disabled veterans must establish eligibility by presenting one of the following:

(1) disabled veteran's of Texas license plate receipt;

(2) veteran's award letter (which establishes the degree of service-connected disability);

(3) tax exemption letter for Texas veterans.

(k) All motor vehicles carrying either a person whose date of birth is before September 1, 1930 or other eligible holders [the holder] of a state parklands passport may enter the park without payment of an entrance fee. All motor vehicles carrying a resident of this state whose

date of birth is after August 31, 1930 and who is also the holder and in possession of a state parklands passport may enter a park site upon payment of 50% of the normal entrance fee for that site, rounded to the nearest higher whole dollar. This passport does not exempt the holder from payment of fees for fishing privileges or tour fees required in certain units of the state park system.

(l) A duplicate state parklands passport may be issued for use on additionally owned motor vehicles. A replacement for a state parklands passport may be issued when the original registration or windshield sticker is lost, stolen, damaged, or the motor vehicle is sold, traded, or stolen, or when the motor vehicle windshield is replaced.

(m) Entrance fees established in subsections (b) and (d) of this section will apply to all private aircraft noncommercial motorized vehicles which includes two or more-wheeled vehicles. Commercial, quasi-public, or public buses or other vehicles are excluded.

(n) Persons entering parks by bus, where entrance and use fees are charged on a per-car basis, will be charged as follows: adults, \$1.00-\$3.00 each, minimum \$4.00-\$20; children 12 years of age and under, \$.50-\$1.50 each, minimum \$4.00-\$20.

(o) Students, teachers, bus drivers, and children on group, school-sponsored visits to historic sites or parks for educational purposes may enter at the rate of \$.50-\$1.00 per person at historic sites where a tour fee is charged or at a park where entrance and use fees are charged on a per-vehicle basis. The group or class must be accompanied by an adult supervisor(s). The \$.50-\$1.00 per person fee applies to individuals from all public or private schools, colleges, and universities offering accredited courses.

(p) Students of any age are entitled to the student historic site tour fee. Students 19 and over are required to present a current, valid student identification card.

(q) Persons entering parks on foot, bicycle, or by boat where entrance and use fees are charged on a per-car basis will be charged an individual rate of \$1.00-\$3.00 for adults and \$.50-\$1.50 for children 12 years of age and under.

(r) The valid time period for daily entrance fees will be:

(1) for day use, the time period encompassing the day-use opening hours of the park on the date on which admission is paid; and

(2) for overnight use, a 24-hour period beginning at 2:00 p.m. on the date admission is paid.

(s) At the discretion of the executive director, any person or persons may be exempted from the provisions of this section if the entry of such person or persons to a park or parks is necessary or desirable in order to provide a service for the state. The executive director is authorized to issue such entrance fee waivers under certain circumstances and conditions. [A written record shall be maintained of all such exemptions.]

(t) The executive director is authorized to establish an entrance fee in accordance with these sections at any site hereafter established as a state park when he deems such action is appropriate and in accord with applicable statutes.

(u) When an annual or seasonal permit is offered for entrance in lieu of a daily fee, the executive director is authorized to establish a fee for a replacement and/or a duplicate permit.

(v)[(u)] Any fees established in this section may be waived or reduced at the discretion of the executive director for public use of a park during special events or exhibitions.

(w)[(v)] The executive director may designate the amount of use fee and entrance fee within the total amount provided for by this section.

§59.3. Activity and Facility Use Fees. The amount of user fees will be determined by the Parks and Wildlife Commission and will be based primarily on comparisons of current fees for facilities and services of comparable character under similar conditions, with due consideration for length of season, provisions for peak loads, average percentage of occupancy, accessibility, availability, cost of labor, materials and supplies, type of patronage, and other such factors deemed significant, except the costs of park acquisition, development, and major repairs. The executive director will cause to be collected a user fee at the time a park facility is assigned or occupied, and as new parks, activities and facilities are added to the system, the approved fee schedule will be implemented when feasible. Where variable use fees are authorized by the commission they may be set on an individual park basis, individual activity or an individual facility basis by the department based on visitation and site desirability. Fees may also be set on a basis other than daily, e.g., weekly, monthly, etc. When an annual or seasonal permit is offered for a facility or activity in lieu of a daily fee, the executive director is authorized to establish a fee for a replacement and/or a duplicate permit. The executive director may discount or waive use fees in order to enhance utilization of existing facilities or activities. The following park use fees are effective Janu-

ary 1, 1996 [March 1, 1993]:

(1) campsite--primitive--\$4.00-\$12;

(2) campsite--regular--\$5.00-\$18 [\$16];

(3) campsite--with electricity--\$9.00-\$23 [\$18];

(4) campsite--with electricity and sewer connection--\$10-\$25 [\$20];

(5) screened shelter--\$15-\$30;

(6) shelter with amenities--\$25-\$40;

(7)[(6)] recreation hall:

(A) day use only--\$50-\$150 [\$100];

(B) overnight use--\$80-\$200 [\$150; (if equipped with kitchen add)--\$25-\$45];

(8)[(7)] group lodge:

(A) variable based on accommodations--\$70-\$400 [Bastrop--Lost Pines, one-eight persons--\$70-\$150];

(B) variable based on per person--\$10-\$50 [Lake Brownwood--beach, one-26 persons--\$110-\$180];

(C) each additional person above capacity--\$5.00-\$15 [Lake Brownwood--fisherman's, one-10 persons--\$80-\$125];

[(D)] Daingerfield--bass, one-20 persons--\$105-\$160;

[(E)] special--one-eight persons--\$70-\$125; each additional person--\$5.00-\$15];

(9)[(8)] dining hall--\$65-\$100;

(9) tabernacle:

[(A)] one-25 persons--\$17-\$40;

[(B)] 26 or more--\$29-\$60;

(10) pavilion--\$17 [\$25]-\$200 according to type of facility and size of group;

(11) amphitheater--\$10-\$100;

(12)[(11)] auditorium--\$200-\$500 [\$300];

(13)[(12)] gymnasium--\$300-\$500 [[200-\$300]; (with kitchen/dining hall privileges add)--\$50-\$100 [\$25-\$45];

(14)[(13)] group picnic area--\$17-\$60; [;]

(A) one-25 persons--\$17-\$40;

(B) 26 or more--\$29-\$60;]

(15)[(14)] picnic shelter with kitchen--\$30-\$125; [;]

(A) one-25 persons--\$17-\$40;

(B) 26 or more--\$29-\$60;

(C) (with kitchen privileges add)--\$25-\$45;]

(16)[(15)] group camp with bunkhouses and dining hall (Lake Brown-wood State Park only)--\$65-\$100; plus \$12-\$30 for each bunkhouse used (bunkhouses not rented without dining hall);

(17)[(16)] group camp with screened shelters and dining hall--\$65-\$100 plus \$15-\$30 for each screened shelter used;

(18)[(17)] group camp with campsites--fee determined according to number and type of campsites used;

(19)[(18)] group camp with barracks or screened shelters with bunk beds; dining hall and restroom with showers available [(screened shelters with bunk beds rented to individuals on the 90-day reservation system after annual drawings, except at Garner)]--\$150-\$250 screened shelter only--\$17-\$30;

(20)[(19)] lodge, court, or inn:

(A) Indian lodge:

(i) single--\$40-\$70;

(ii) double--\$45-\$75;

(iii) double with double beds--\$50-\$80;

(iv) suite with double beds--\$55-\$100;

(v) each additional adult--\$5.00-\$15 [\$10];

(vi) each additional child (six-12)--\$2.00-\$4.00;

(vii) children under six--free;

(B) Balmorhea--San Solomon Springs Court:

(i) single--\$35-\$50;

(ii) each additional adult--\$5.00-\$15 [\$10];

(iii) each additional child (six-12)--\$2.00-\$4.00;

(iv) children under six--free;

(v) with kitchen unit add--\$5.00-\$15 [\$10];

(C) Landmark Inn:

(i) single--\$35-\$50;

(ii) double (two persons)--\$40-\$55;

(iii) children (six-12)--\$2.00-\$4.00;

(iv) children under six--free;

(v) additional adult (when space is available for cot)--\$5.00-\$15 [\$10];

(21)[(20)] cabins--\$35-\$100;

(22)[(21)] swimming pools:

(A) adults--\$2.00-\$4.00;

(B) child (six-12)--\$1.00-\$2.00;

(C) group rate (before or after closing hours)--\$35-\$500 [\$50];

(23)[(22)] golf course (staff operated) Lockhart only--nine holes:

(A) green fees--daily--\$7.00-\$10;

(i) weekends and holidays--\$8.00-\$11;

(ii) annual family--\$150-\$300 [\$200];

(iii) annual individual--\$100-\$150;

(iv) 18 years of age and under excluding (weekends and holidays)--\$3.00-\$6.00;

(B) trail fee for privately owned golf carts:

(i) daily--\$3.00-\$6.00;

(ii) annual--\$50-\$100;

(24)[(23)] Texas State Railroad:

(A) fares:

(i) adult (one-way)--\$8.-\$13;

(ii) adult (R-T)--\$13-\$18;

(iii) child (three-12) (one-way)--\$4.00-\$9.00;

(iv) child (three-12) (R-T)--\$7.-\$12;

(B) train lease for filming purposes:

(i) steam locomotive and tender (per day)--\$1,500-\$2,000;

(ii) diesel locomotives (per day)--\$700-\$1,000;

(iii) steam engine firing fuel and lubricants (per running hour) --\$100-\$200;

(iv) diesel locomotives fuel and lubricants (per running hour) --\$50-\$100;

(v) railroad car per unit (any type) (per day)--\$120-\$200;

(vi) rail mounted truck with driver (per day)--\$280-\$400;

(vii) motor car with driver (per day)--\$240-\$400;

(viii) short-term steam train use (after regular schedule run) three-hour minimum (per hour)--\$400-\$1,000;

(ix) plus salaries for train crew. Surety bond of \$500,000 may be required; train charter rates: 50-mile round trip--regular passenger fares--minimum--\$2,500-\$3,500;

(x) 15-mile round trip--regular passenger fares--minimum--\$1,650-2,500;

(25) Matagorda Island:

(A) boat transportation fee;

(i) adults (R-T)--\$10-\$15;

(ii) child (six-12) (R-T)--\$5.00-\$10;

(B) on island tour fee--\$3.00-\$12;

(C) beach shuttle fee:

(i) adults--\$2.00-\$4.00;

(ii) child (six-12)--\$1.00-\$2.00;

(26)[(24)] fees for filming purposes by private, profit-oriented businesses (per day). Surety bond may be required--\$250-\$5,000;

(27)[(25)] excess vehicle parking [(with overnight facility use only)] per vehicle--\$1.00-\$4.00 [\$2.00-\$4.00] (areas for parking designated by the park manager);

(28)[(26)] activity use fee per person (day or overnight) --\$2.00-\$25

[\$6.00];

[(27) overnight activity use fee per person--\$2.00-\$6.00;]

[(29)(28)] lake [Purtis Creek Lake] use fee--\$5. 00-\$10;

[(29) Big Bend Ranch State Natural Area bus tour fee--\$30-\$60;]

[(30) seasonal or annual use permit--fee based on a discounted daily rate;

[(30) Matagorda Island boat transportation fee:

[(A) adults (R-T)--\$10-\$15;

[(B) child (six-12) (R-T)--\$5.00-\$10;

[(C) on island tour fee--\$3.00-\$12;]

[(31) visitor shuttle fee per person--\$2.00-\$10;

[(31) beach shuttle fee:

[(A) adults--\$2.00-\$4.00;

[(B) child (six-12)--\$1.00-\$2.00;]

[(32) tour fee (includes educational, interpretive, instructional, adventure and entertaining) per person--\$.25-\$500.

[(32) historic site tour fees:

[(A) adult (19 and over)--\$2.00-\$6.00;

[(B) student--\$1.00-\$3.00;]

[(33) fishing pier fees--per fishing device--\$1.00-\$3.00;

[(34) educational seminar fee--variable according to type of seminar, size of group and other applicable considerations;

[(35) equipment rental fee--variable according to type of equipment and other applicable considerations;

[(36) park operations fee (operating cost for special services and/or resources utilized)--cost plus 10%;

[(37) event fee:

(A) Wedding ceremonies and receptions or other special receptions and meetings--\$50-\$1,000.

(B) Special public activi-

ties, festivals and exhibitions when authorized and conducted--fee is negotiated.

[(38)(34)] recreational vehicle--annual fee--\$5.00-\$25;

[(39)(35)] excess occupancy fee (with [overnight] facility use fee) per person--\$1.00-\$15 [\$3.00];

[(40) commercial boat landing fee--\$50-\$500;

[(41)(36)] fees for special events, new activities, or new facilities are authorized by the commission. These fee amounts shall be established by the executive director or 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 26, 1995.

TRD-8508425

Paul M. Shinkawa
Acting General Counsel
Parks and Wildlife
Department

Earliest possible date of adoption: July 3, 1995

For further information, please call: (512) 389-4642

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part III. Texas Commission on Alcohol and Drug Abuse

Chapter 141. General Provisions

• 40 TAC §§141.1-141.7, 141.31, 141.34

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §§141.1-141.7, 141.31, and 141.34, concerning the composition, makeup, and powers of the commission. The amendment defines the officers of the commission, and the establishment and function of the commission committees.

Thomas Mann, Jr., general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. Mr. Mann also has determined that there will be no effect on local employment or the local economy. To the extent that the sections are statutorily derived, the enforcement and administration of the sections are revenue neutral.

Mr. Mann 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 fair, orderly, efficient and integrated operation of the commission. There will be no change in the effect on small businesses, and there will be no new economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Thomas Mann, Jr., General Counsel, Texas Commission on Alcohol and Drug Abuse, 710 Brazos Street, Austin, Texas 78701-2576.

The amendments are proposed under the Texas Health and Safety Code, Chapter 461.012(15), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by these amendments is the Texas Health and Safety Code, Chapter 461.012(15).

§141.1. Origin of the Commission. The Texas Commission on Alcohol and Drug Abuse was created through the Texas Alcohol and Drug Services Act, Texas Civil Statutes, Article 5561c-2, Acts of the 69th Legislature, Chapter 632, 1985, which continued, renamed, and expanded the duties of the former Texas Commission on Alcoholism, originally created in 1953. The commission exists in response to the need to provide services for compulsive gambling and for chemical dependency prevention, intervention, treatment, and rehabilitation, and to educate all citizens about the problems of alcohol and drug abuse and compulsive gambling. The current enabling act for the commission is found at Texas Health and Safety Code, Chapter 461.

§141.2. Commission Composition and Officers [of Commission].

(a) **Officers.** The governing board of the Texas Commission on Alcohol and Drug Abuse is composed of nine members appointed by the governor with the advice and consent of the Senate. In addition to a chairperson, to be appointed by the governor, commission officers shall be a vice-chairperson and a secretary.

(b) **Election of officers.** The vice-chair and secretary shall be elected annually. A quorum of five members must be present for the election to be held. Elections to fill the posts of vice-chair and secretary will be held prior to September of each year, and the term of the office of the vice-chair and secretary shall expire on September 1 of each year.

(c) **Vacancies in offices.** In the event of the resignation, death or incapacity of a Commissioner serving as Vice-Chair or Secretary, whose term has

not expired, an election to fill that office will be held at the next meeting following the vacancy.

(d) **Dual offices.** A commissioner may not hold two offices concurrently, except as an officer-elect for a brief interim to allow for an orderly transfer of office.

(e) **Holdover service.** Each officer of the commission shall continue to serve until a successor is duly qualified and assumes the post. Upon the expiration of the term of appointment, a commissioner should continue to actively perform assigned duties until such time as or public notification has been made of the appointment of a replacement. The vice-chair shall assume the duties of the chair in the event of the resignation, death, or incapacity of the chair until such time as the governor shall appoint a new chair. [The commission employs an executive director who administers policy decisions of the commission.]

§141.3. Purpose of the Commission. The commission is the principal authority in the state on matters relating to chemical dependency prevention, intervention, treatment, and rehabilitation. The commission is the designated agency to receive and administer federal funds for chemical dependency services in Texas. The commission may provide [provides] services directly or through grants and contracts, subject to the availability of state and federal funds. The commission licenses individual counselors and chemical dependency treatment facilities. The commission works cooperatively with interested and affected federal, state, and local agencies and organizations to plan, develop, coordinate, evaluate, and implement programs relating to chemical dependency services in Texas.

§141.4. Authority to Accept Funds [Legal Basis]. The state constitutional authority for the acceptance by the commission of money from private or federal sources is the Texas Constitution, Article 16, §3. The state statutory authority for supervision of substance abuse programs by the commission is found in Texas Health and Safety Code (1995), Chapter 461.012 [Texas Civil Statutes (1985), Article 5561c-2], as amended from time to time. In accordance with Texas Health and Safety Code (1995), Chapter 461.012(2) [Texas Civil Statutes (1985), Article 5561c-2, §1.14], the commission cooperates with the federal government in carrying out its charge to provide for the needs of chemically dependent persons through the administration of federal funds under state and federal law, adopting such methods of administration as are found to be necessary and not contrary to existing federal or state laws. The commission shall

comply with necessary requirements to receive [complies with such requirements as may be necessary to obtain] federal funds in the maximum amount and most advantageous proportion authorized.

§141.5. Organization for Chemical Dependency Services. Under operational policies established by the commission, the executive director is responsible for the administration, supervision, planning, [and direction of funding,] licensing, funding preparation, and all other activities of the commission. The commission shall maintain [maintains] an organizational chart which will illustrate [illustrating] its functional organization.

§141.6. Relation to Other Agencies and Endorsements. Many state and federal agencies provide services that benefit the commission and those persons receiving benefits or privileges from the commission or its funded programs. The commission shall work [works] cooperatively with these agencies to plan, develop, coordinate, implement, and evaluate programs for chemical dependency prevention, intervention, treatment, and rehabilitation. In addition, the commission shall work [works] cooperatively with local governments, non-profit and proprietary service providers, state planning regions, the criminal justice system, school districts, health organizations, and other groups and individuals. It provides technical assistance, funds, and consultation services for the development, enhancement, and coordination of community services. It is the policy of the commission that any such cooperation or sponsorship with other agencies or groups, public or private, shall not be interpreted as an endorsement of its program(s) by the commission.

§141.7. Committees of the Commission.

(a) **Appointment of committees.** The chair shall, from time to time as needed, appoint committees or task forces of a standing or temporary nature to perform specific functions with regard to policy in conjunction with the duties and purposes of the commission.

(b) **Committee powers.** The chair may appoint members of the commission, in numbers less than a quorum, to serve on such bodies, and to travel and attend meetings on behalf of the commission. Such committees may not take final action, but shall study issues, make recommendations, and report conclusions and actions to the full commission for consideration and final action [deliberation and action by the commissioners] The commission shall not delegate its rule or policy-making powers to its committees or to individual mem-

bers, except as delegated to the Executive Committee by these rules.

(c) **Standing committees.** The standing committees of the agency shall be the Executive Committee, the Audit Committee, the Grants and Contracts Review Committee, the Offender Credentialing Committee, and the Programming and Initiatives Committee.

(d) **Executive Committee.** An Executive Committee, composed of the Chair, Vice-Chair, and Secretary shall be presided over by the Chair. The Executive Committee shall be empowered to make emergency decisions when the commission is not meeting. An emergency, under this policy, is defined as an unforeseen combination of circumstances that call for immediate action without time for deliberation by the full commission. The Executive Committee shall be empowered to exercise all powers and duties of the commission as set forth in Texas Health and Safety Code, §461.012. Decisions of the Executive Committee shall be submitted to the commission for ratification at the next meeting, regular or called. The Executive committee shall meet as necessary upon the call of the chair, and shall publish notice of its agenda as required by law.

§141.31. Approval of Budgets and Receipt of Funds [Funding and Fees]. The commission shall approve budget requests to be submitted to the legislature and the receipt of grant funds as recommended by the executive director, and shall approve [board approves legislative budget requests and grant funds as prepared by the executive director, and approves] the agency's budget of appropriated funds and funds from other sources. In addition, the commission shall approve the [board approves] acceptance of donations, set [and sets] fees for licensure programs, for technical or administrative assistance, consultant services, and [or] specialized services provided by the commission.

§141.33. Policies of the Commission. Policies of general applicability of the commission are those formal written policies approved by the commission and adopted as administrative rules or as announced in a decision resulting from a contested case. [board to carry out statutory mandates. The chair signs new or amended policies, which are effective on the date of adoption unless otherwise specified. Specific policies are adopted or amended only when their approval is an official agenda item.] An individual commission member's opinion does not necessarily represent the opinion or policy of the commission.

§141.34. Commission Records. The executive director of the commission is the custodian of all public records of the commission. These records shall be [are] available upon reasonable notice and compliance with commission procedures to any person who makes a written request to examine or duplicate public records, unless the records are made confidential by law. The commission may charge a reasonable fee for the costs of providing records, which shall be in accordance with rules established by the Texas General Services Commission or other applicable law.

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 26, 1995.

TRD-9506404

Thomas Mann, Jr.
General Counsel
Texas Commission on
Alcohol and Drug
Abuse

Earliest possible date of adoption: July 3, 1995

For further information, please call: (512) 867-8720

◆ ◆ ◆
• 40 TAC §§141.8-141.14

The Texas Commission on Alcohol and Drug Abuse proposes new §§141.8-141.14, concerning the composition, makeup, and powers of the commission. The new sections define the officers of the commission, the establishment and function of the commission committees, and delineates the commission's policy on historically underutilized businesses.

Thomas Mann, Jr., general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. Mr. Mann also has determined that there will be no effect on local employment or the local economy. To the extent that the sections are statutorily derived, the enforcement and administration of the sections are revenue neutral.

Mr. Mann 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 fair, orderly, efficient and integrated operation of the commission. There will be no change in the effect on small businesses, and there will be no new economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Thomas Mann, Jr., General Counsel, Texas Commission on Alcohol and Drug Abuse, 710 Brazos Street, Austin, Texas 78701-2576.

The new sections are proposed under the Texas Health and Safety Code, Chapter 461.012(15), which provides the Texas Com-

mission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the new sections is the Texas Health and Safety Code, Chapter 461.012(15).

§141.8. Advisory Council.

(a) Council established. The commission shall establish a committee known as the Texas Commission on Alcohol and Drug Abuse Council (Advisory Council). The advisory council shall consist of 39 voting members. The voting members shall be appointed by the commission for a term of three years and shall be composed of a representative from each of the 24 state planning regions and 15 members at-large. Ex-officio members having non-voting status may be appointed to the advisory council by the commission.

(b) Council meetings and quorum. The advisory council shall meet twice a year on a date and at a place and time determined by the council, and, if needed, as requested by the chair of the council, the commission's liaison to the council, and the executive director of the commission. A quorum shall constitute one-half of the appointed membership plus one, and the business of the council shall only be conducted when a quorum is present. Proxy voting shall not be permitted.

(c) Council expenses. Members of the advisory council, with the exception of at-large and ex-officio members, shall be reimbursed for travel and actual expenses incurred for attendance at semiannual meetings in accordance with the guidelines set out for all representatives of the state as stated in the most current appropriations act and State Employees Travel Allowance Guide published by the Comptroller of Public Accounts. Any reimbursement for travel and/or actual expenses in addition to those incurred by attendance at the semiannual council meetings must have prior authorization by the executive director, based upon the recommendation of the chair of the advisory council and the commission's liaison to the council.

(d) Duties and functions. The duties and functions of the advisory council shall be to consult with and make recommendations to the commission regarding its policies, programs and activities to:

(1) promote the development of a continuum of services that will effect a fundamental change in the behavior of Texas citizens about the use of alcohol and other drugs and compulsive gambling;

(2) reduce the risk of Texas citizens abusing alcohol and other drugs or

becoming chemically dependent and to reduce the risk of compulsive gambling;

(3) ensure accessibility to treatment for every person in Texas in need of such treatment services; and

(4) through the chair, report its findings, recommendations and activities to the commission at the meeting of the commission that follows after the semiannual advisory council meeting.

(e) Rules of procedure. The advisory council shall adopt bylaws and procedures appropriate to the accomplishment of its functions consistent with the statutes, rules, and policies of the commission.

§141.9. Commission Meetings. The commission shall meet at least quarterly. Commission meetings may be held anywhere within the State of Texas. Prior to each meeting the chair, with the assistance of the executive director, shall prepare and submit to each member of the commission the agenda, listing items to be considered. Materials supplementing the agenda may be included. All meetings shall be held pursuant to public notice as required by law. The chair, or four or more members by written request, may call special meetings on dates and at such places and times as are determined by the executive director and the chair.

§141.10. Public Comment and Requests. At its meetings, the commission shall receive public comment from any person on any issue which is not otherwise provided for by rule or procedure. The commission may limit public comment to five minutes per person, unless the individual previously submitted a written request to appear as an item on the commission's agenda, and such request was received prior to submitting the agenda to the *Texas Register* for publication. The commission shall maintain a list of visitors attending meetings.

§141.11. Minutes and Recordings. At all open meetings written minutes shall be taken and the meeting recorded electronically. In addition, any person in attendance may make visual or auditory electronic recordings of open meetings, subject to the availability of space and technical limitations, by prearrangement with the executive director at least 24 hours in advance of the meeting. The chair shall certify the agenda of each executive session or direct that such session be recorded electronically as required by law.

§141.12. Commissioner Travel and Expense Reimbursement.

(a) Official business. Commission-

ers may travel and incur expenses only when conducting official business. Meals and lodging, public and private transportation, fees, and other allowable expenses and compensatory per diem shall be in accordance with the guidelines as stated in the most current Appropriations Act and the Travel Allowance Guide published by the Comptroller of Public Accounts.

(b) Commissioner duties. A commissioner may travel to perform official duties. A commissioner's duties may include but not be limited to speaking on behalf of the commission to groups with a direct interest in substance abuse related issues; receiving endowments, awards or commendations on behalf of the commission; giving presentations or testimony to the legislature or other official body; and visiting contractors or grantees, licensed facilities or other facilities regulated by the commission, including potential facility locations and/or persons directly associated with a facility. A commissioner shall be accompanied by a commission staff person when making site visits, as practical and appropriate.

§141.13. Signature Authority. The commission shall employ an executive director and the executive director shall hire other necessary employees. Duly authorized employees shall have the authority to bind the agency by making contracts and signing vouchers; provided that no contracts for consulting services may be entered into without prior approval by the commission. The executive director, the deputy directors, the director of the Funding and Program Management Division, the director of the Program Compliance Division, the director of the Research and Development Division, the director of the Fiscal Services Division, and any other person approved upon a duly adopted motion of the commission shall have authority to enter into contracts or approve vouchers for payment from funds appropriated to the commission.

§141.14. Historically Underutilized Business Programs (HUB).

(a) HUB policy. The commission is committed to providing procurement and contracting opportunities for minority and women-owned businesses. It is the policy of the commission to create an environment that will enhance Historically Underutilized Business (HUB) participation in state procurements, purchases and contracts.

(b) HUB definition. A Historically Underutilized Business is defined as a corporation, sole proprietorship, partnership, or joint venture formed for the purpose of making a profit in which at least 51% of all classes of the shares of stock or other equitable securities are owned by one or more

persons who have been historically underutilized (socially disadvantaged) because of their identification as members of the following groups: African American, Hispanic American, Asian Pacific American, Native American and Women. These individuals must have a proportionate interest and demonstrate active participation in the control, operation, and management of the business.

(c) HUB procedure. In accordance with Texas Revised Civil Statutes, Article 601b, the commission will ensure that:

(1) it makes a good faith effort to award at least 30% of the total value of all applicable procurements, purchases and contracts, to certified HUBs.

(2) it requires prime contractors and subgrantees to make good faith efforts to award at least 30% of the total value of all applicable procurements, purchases and contracts, to certified HUBs.

(3) it identifies minority and women-owned businesses and provide them an equal opportunity to submit bids or proposals on applicable commission procurement projects, that is, materials, supplies, equipment, and services.

(4) it undertakes special outreach efforts to identify noncertified HUB vendors currently used by the commission because assisting them in obtaining HUB certification will benefit the commission as well as other agencies utilizing the same HUB in the future.

(5) the executive director establishes written agency procedures to implement and monitor compliance with this policy, and, compile and prepare such necessary reports as required by law.

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 26, 1995.

TRD-9506403

Thomas Mann, Jr.
General Counsel
Texas Commission on
Alcohol and Drug
Abuse

Earliest possible date of adoption: July 3, 1995

For further information, please call: (512) 867-8720

◆ ◆ ◆
• 40 TAC §§141.21-141.24, 141.32

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

The Texas Commission on Alcohol and Drug Abuse proposes the repeal of §§141.21-141.24 and 141.32, concerning the composition, makeup, and powers of the commission. The section provides information regarding commission meetings, public comment, minutes, officers and amendment of rules.

Thomas Mann, Jr., general counsel, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals. Mr. Mann also has determined that there will be no effect on local employment or the local economy. To the extent that the sections are statutorily derived, the repeal of the sections are revenue neutral.

Mr. Mann also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be a more fair, orderly, efficient and integrated operation of the commission. There will be no change in the effect on small businesses, and there will be no new economic cost to persons who were previously required to comply with the repeals.

Comments on the proposal may be submitted to Thomas Mann, Jr., General Counsel, Texas Commission on Alcohol and Drug Abuse, 710 Brazos Street, Austin, Texas 78701-2576.

The repeals are proposed under the Texas Health and Safety Code, Chapter 461.012(15), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the repeals is the Texas Health and Safety Code, Chapter 461.012(15).

§141.21. Commission Meetings.

§141.22. Public Comment and Requests.

§141.23. Minutes and Recordings.

§141.24. Officers.

§141.32. Amendment of Rules.

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 26, 1995.

TRD-9506405

Thomas Mann, Jr.
General Counsel
Texas Commission on
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Abuse

Earliest possible date of adoption: July 3, 1995

For further information, please call: (512) 867-8720

Chapter 149. Project Funding

Funding Overview

• 40 TAC §149.26

(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 Commission on Alcohol and Drug Abuse or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Commission on Alcohol and Drug Abuse proposes the repeal of §149.26, concerning the uniform grant and contract management standards. The repeal eliminates this section of the code.

Thomas Mann, Jr., general counsel, has determined that for the first five-year period the

repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal. Mr. Mann also has determined that there will be no effect on local employment or the local economy. To the extent that the sections are statutorily derived, the repeal of the section is revenue neutral.

Mr. Mann also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be a more fair, orderly, efficient and integrated operation of the commission. There will be no change in the effect on small businesses, and there will be no new economic cost to persons who were required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Thomas Mann, Jr., General Counsel, Texas Commission on Alcohol and Drug Abuse, 710 Brazos Street, Austin, Texas 78701-2576.

The repeal is proposed under the Texas Health and Safety Code, Chapter 461.012(15), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the repeal is the Texas Health and Safety Code, Chapter 461.012(15).

§149.26. Uniform Administrative Requirements.

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

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

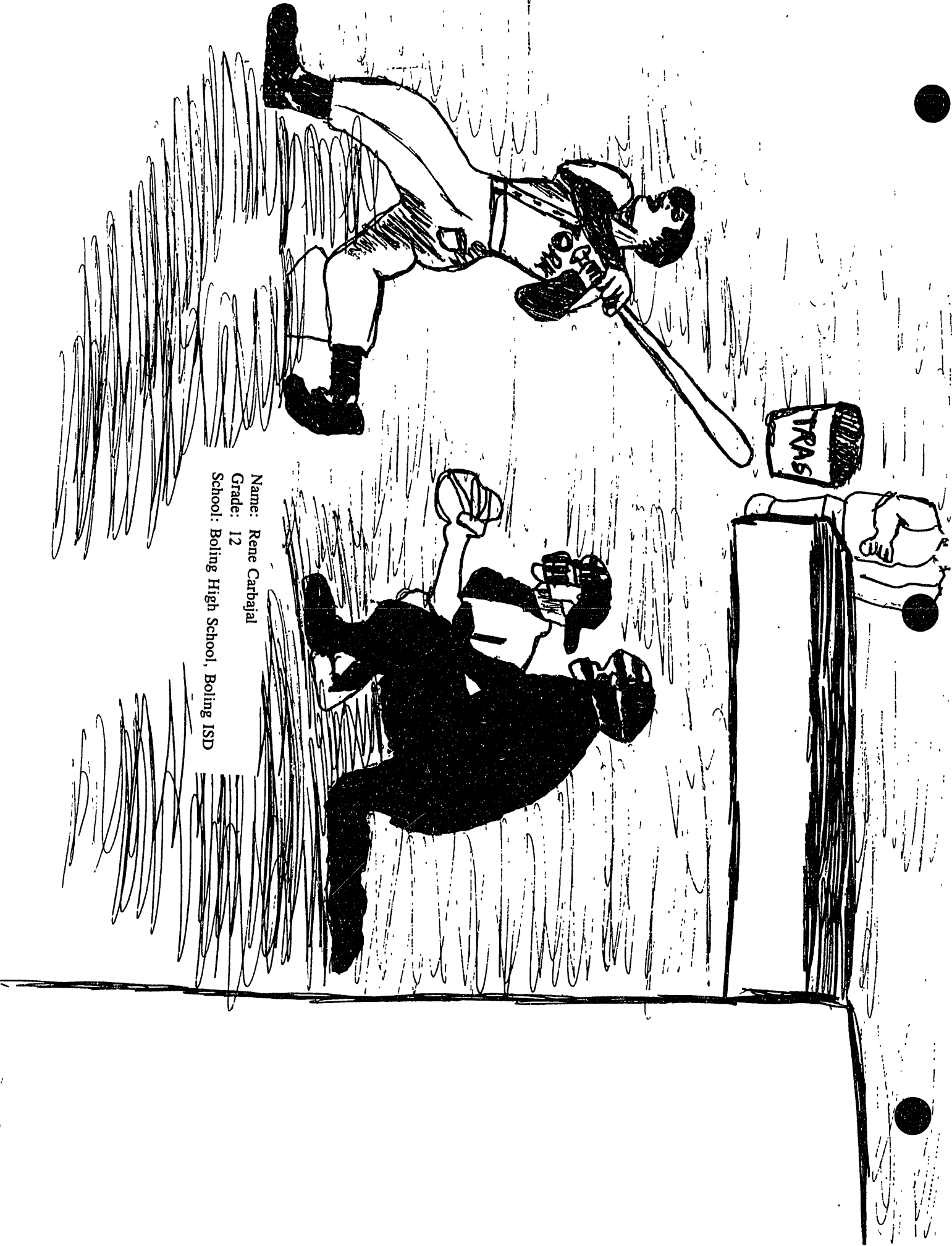
TRD-9506407

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Abuse

Earliest possible date of adoption: July 3, 1995

For further information, please call: (512) 867-8720

◆ ◆ ◆



Name: Rene Carbajal
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WITHDRAWN RULES

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**.

TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 1. Management

Claim Procedure

• 43 TAC §1.68

The Texas Department of Transportation has withdrawn from consideration for permanent adoption a proposed amendment to §1.68, which appeared in the December 16, 1994, issue of the *Texas Register* (19 TexReg 9986). The effective date of this withdrawal is May 25, 1995.

Issued in Austin, Texas, on May 25, 1995.

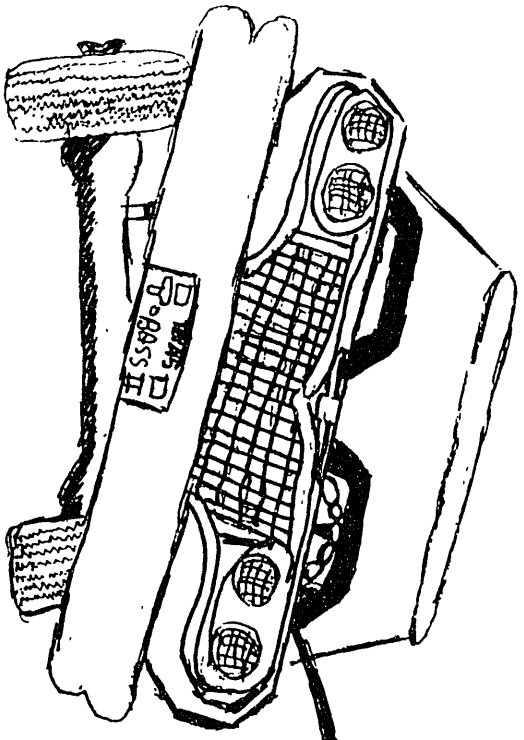
TRD-9506433

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General Counsel
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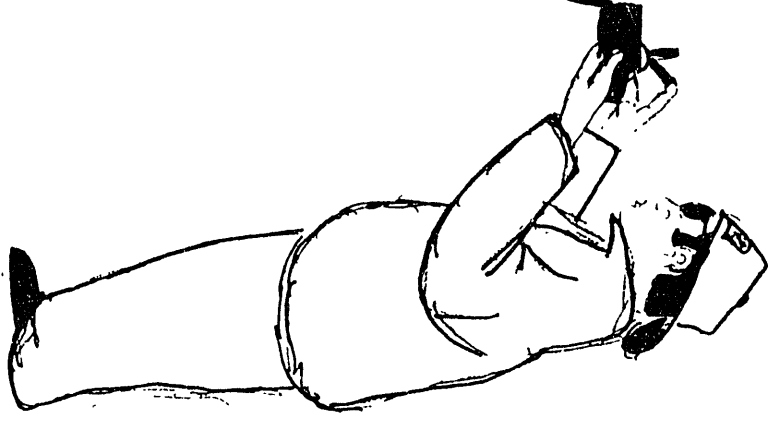
Effective date: May 25, 1995

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JOSHUA RANGEL

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 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 24. Texas Agricultural Finance Authority: Farm and Ranch Finance Program

• 4 TAC §§24.1-24.16

The Board of Directors of the Texas Agricultural Finance Authority (TAFE), a public authority within the Texas Department of Agriculture, adopts new §§24.1-24.16, concerning the Farm and Ranch Finance Program. Section 24.10 is adopted with changes to the proposed text as published in the April 7, 1995, issue of the *Texas Register* (20 TexReg 2573). Sections 24.1-24.9 and 24.11-24.16 are adopted without changes and will not be republished.

The new sections are adopted for the implementation and administration of the Farm and Ranch Finance Program pursuant to Texas Agriculture Code, Chapter 59. The requirement for inclusion of a copy of the applicant's current driver's license as part of the loan application has been replaced with the requirement that the application include the applicant's current driver's license number. This change is the result of comments received from Jack M. Burkett of the Independent Bankers Association of Texas (IBAT). Mr. Burkett expressed concern that the driver's license provides information, such as age, sex, and race, which lenders are prohibited from using as a basis for credit decisions pursuant to the Equal Credit Opportunity Act. Mr. Burkett indicated that it is permissible to inquire whether the borrower has a current driver's license, and to use the license to verify the address of the borrower. Mr. Burkett pointed out that these uses could be satisfied by obtaining the driver's license number, as opposed to an actual copy of the license. The TAFE board agreed with Mr. Burkett's comments.

The new sections will function by providing definitions, describing the procedure for open records requests, describing the Farm and Ranch Finance Program Fund and listing eligible uses for loan proceeds, stating applicant requirements and providing procedures for the filing and consideration of applications, stating the loan criteria that will be considered by TAFE, stating the general terms and conditions of TAFE's financial commitment, in-

cluding fees, down payment, and interest rate, providing conditions for the partial release of a portion of property purchased by a borrower under the program, describing the conditions constituting default of a loan, providing for default proceedings, and providing authority to the staff to act as necessary for the collection, settlement and enforcement of financing approved under the program.

No comments, other than those submitted by IBAT, were received regarding adoption of the new sections.

The new sections are adopted under the authority of the Texas Agriculture Code (the Code), §59.022, which provides that TAFE may adopt rules governing various aspects of the program; the Code, §59.023, which states that TAFE has the power to adopt rules and procedures as necessary to carry out Chapter 59; and Texas Government Code, §2001.004, which requires that the department adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§24.10. Contents of the Application.

(a) Required information. Applicants must complete an application as required by the lender assisting in origination of the loan. The application must contain adequate information to determine eligibility and creditworthiness. Such information must include but is not limited to:

- (1) the applicant's name and address;
- (2) the applicant's current valid driver's license number;
- (3) the applicant's resume which identifies the agricultural experience of the applicant;
- (4) a completed personal history questionnaire;
- (5) two credit references and two personal references, all from different sources and none from the applicant's immediate family;
- (6) information and/or letters of commitment regarding other funding sources, if applicable;
- (7) disclosure of any and all business affiliations or familial relationships

of the applicant with members of the Board or Authority Board of Directors, employees of the department and the staff which could present a conflict of interest; and

(8) any other information which the applicant, the lender, or the Authority decide may be useful in the determination of the applicant's eligibility and/or creditworthiness.

(b) Financial statement. Financial statements must be provided on the form and/or in the same format included in the application package. They should be typed or written in ink, dated (no more than three months old), and signed by the applicant and spouse, if applicable. Printed forms of other lending institutions will be accepted. A financial statement will be required from each person/entity who will become personally liable on the loan.

(c) Business plan. A business plan for the applicant's proposed operation including the land acquisition, must be provided. It must provide a comprehensive overview of the proposed operation including pro forma operating statements, balance sheets and sources and uses of funds for the first three years of operation and must provide sufficient cash flow for the requested financing and all other indebtedness of the applicant. The assumptions on which the plan is based must be provided, including the interest rate used.

(d) Tax returns. The applicant's complete tax returns including W-2 forms, if applicable, for the preceding three years.

(e) Farm or ranch land appraisal. An appraisal of the farm or ranch land must be submitted which identifies the appraised market value and the income potential of the farm or ranch land. The appraisal must be completed by an appraiser, selected by the lender, who is duly qualified to perform such task under the Texas Appraiser Licensing and Certification Act. A letter stating the appraiser's qualifications and experience must be submitted with the appraisal. The Authority may require the applicant to obtain an additional appraisal from another appraiser when comparable sales do not

reasonably reflect the value of the farm or ranch land stated in the original appraisal.

(f) Earnest money contract. The seller of the farm or ranch land to be acquired and the applicant must enter into a binding earnest money contract. The earnest money contract must contain all terms and conditions agreed to by the parties thereto.

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 26, 1995.

TRD-9506414 Dolores Alvarado Hibbs
Chief Administrative Law
Judge
Texas Department of
Agriculture

Effective date: June 16, 1995

Proposal publication date: April 7, 1995

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

Chapter 30. Young Farmer Loan Guarantee Program

Subchapter A. General Proce- dures

• 4 TAC §30.3

The Board of Directors of the Texas Agricultural Finance Authority (TAFA), a public authority within the Texas Department of Agriculture, adopts an amendment to §30.3, concerning the definition of a first farm or ranch operation under the Texas Young Farmer Loan Guarantee Program, without changes to the proposed text as published in the March 28, 1995, issue of the *Texas Register* (20 TexReg 2257).

The amendment is adopted in order to provide for greater participation by young farmers in the loan guarantee program.

The amendment will function by allowing young farmers to have a greater percentage of farm and ranch income and still be eligible for the loan guarantee program.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Agriculture Code (the Code), §253.007(e), which provides the Board of Directors of the Texas Agricultural Finance Authority with the same authority in administering the Young Farmer Loan Guarantee Program as it has in administering programs established by the board under the Code, Chapter 58; Texas Agriculture Code, §58.022, which provides the board with the authority to adopt rules and procedures for administration of its programs; Texas Agriculture Code, §58.023, which provides the TAFA Board with the authority to adopt rules to establish criteria for eligibility of applicants and lenders under the TAFA Loan Guaranty Program; and Texas Government Code, §2001.004, which requires that the de-

partment adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

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 26, 1995.

TRD-9506415 Dolores Alvarado Hibbs
Chief Administrative Law
Judge
Texas Department of
Agriculture

Effective date: June 16, 1995

Proposal publication date: March 28, 1995

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

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 105. Enforcement Rules

• 30 TAC §§105.1, 105.3, 105.11, 105.13, 105.15, 105.21, 105.23, 105.25, 105.31, 105.33, 105.35, 105.41

The Texas Natural Resource Conservation Commission (TNRCC) adopts the repeal of §§105.1, 105.3, 105.11, 105.13, 105.15, 105.21, 105.23, 105.25, 105.31, 105.33, 105.35, and 105.41, concerning Enforcement Rules, without changes to the proposed text as published in the January 3, 1995, issue of the *Texas Register* (20 TexReg 14).

The TNRCC is repealing the entire Chapter 105 because a new Chapter 337 for TNRCC enforcement rules is being adopted concurrently. The new chapter will serve as the procedural rules for TNRCC enforcement, including contested enforcement case hearings and TNRCC mandatory enforcement hearings. The new chapter is not intended to address the informal enforcement settlement process utilized in the majority of enforcement cases.

A public hearing was held January 26, 1995, in Austin. No comments were received regarding the repeal of Chapter 105.

The repeals are adopted under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

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 24, 1995.

TRD-9506416

Lydia Gonzalez-Gromatzky
Acting Director, Legal
Services Division
Texas Natural Resource
Conservation
Commission

Effective date: June 16, 1995

Proposal publication date: January 3, 1995

For further information, please call: (512) 239-1966

Chapter 115. Control of Air Pollution From Volatile Organic Compounds

Subchapter C. Volatile Organic Compound Transfer Opera- tions

Loading and Unloading of Volatile Organic Compounds

• 30 TAC §§115.212-115.217, 115.219

The Texas Natural Resource Conservation Commission (TNRCC) adopts amendments to §§115.212-115.217 and 115.219, concerning Loading and Unloading of Volatile Organic Compounds. Sections 115.212, 115.214, 115.216, 115.217, and 115.219 are adopted with changes to the proposed text as published in the December 23, 1994, issue of the *Texas Register* (19 TexReg 10203). Section 115.213 and §115.215 are adopted without changes and will not be republished.

Revisions to Chapter 115, concerning Control of Air Pollution from Volatile Organic Compounds (VOC) and the State Implementation Plan (SIP) are adopted in order to restore an allowance for nonvapor-tight conditions during gauging and unloading of transport vessels. The amendments are also adopted in order to clarify existing requirements and delete obsolete or unnecessary language.

The amendments to §115.212, concerning Control Requirements, revise the land-based VOC loading and unloading requirements to restore an allowance for nonvapor-tight conditions during gauging and sampling, provided that nonvapor-tight conditions are limited in duration to the time necessary to practicably gauge and/or sample, and VOC transfer is discontinued prior to gauging and sampling. The revisions also specify the requirements for minimizing emissions during unloading operations. The marine vessel loading allowance for nonvapor-tight conditions during gauging and sampling has been likewise revised to require that VOC transfer be discontinued prior to gauging and sampling, and that nonvapor-tight conditions be limited in duration to the time necessary to practicably gauge and/or sample. The amendments to §115.212 also clarify the "Once-In-Always-In" language. Once-In-Always-In (OIAI) is a United States Environmental Protection Agency (EPA) concept which means that once emissions from a source exceed the applicability cutoff for a particular VOC regulation in the SIP, that source is always subject to the control requirements of the regulation. In addition, the amendments to §115.212

clarify that the use of a vapor balance system is an acceptable method to control VOC emissions.

The changes to §115.213, concerning Alternate Control Requirements, update a reference to §115.910 to reflect a title change.

The amendments to §115.214, concerning Inspection Requirements, delete a paragraph made obsolete because the May 31, 1995 compliance date has passed, and clarify that the existing fugitive emission monitoring requirements for marine terminals include components between the marine loading facility and the vapor recovery system. The amendments to §115.215, concerning Approved Test Methods, correct the test method for determining true vapor pressure.

The amendments to §115.216, concerning Monitoring and Recordkeeping Requirements, correct a typographical error, clarify the recordkeeping requirements for tank-truck leak testing by replacing "certification number" with the more appropriate term "identification number," and update rule references to reflect paragraphs which are being renumbered due to the deletion of obsolete language.

The amendments to §115.217, concerning Exemptions, clarify the applicability of existing exemptions. In response to previous EPA comments, the revisions to §115.217 also add language to the 90% and 80% overall VOC loading control options available under §115.217(b)(4)-(5) and §115.217(c) (4)-(5) which specifies that all representations in initial control plans and annual reports become enforceable conditions.

The amendments to §115.219, concerning Counties and Compliance Schedules, delete language made obsolete because the May 31, 1995 compliance date has passed, delete language which gave a compliance date for maintaining vapor-tight conditions during gauging and sampling, update rule references to reflect paragraphs which are being renumbered due to the deletion of obsolete language, and correct a typographical error in a rule reference.

A public hearing was held on January 11, 1995 in Houston. Written comments were initially to be accepted through January 13, 1995; however, the comment period was extended to January 27, 1995.

The Texas Chemical Council (TCC) and Texas Mid-Continent Oil & Gas Association (TMOGA) submitted joint comments. Dow Chemical Company (Dow), Exxon Company, U.S.A. -Baytown (Exxon Baytown), and Exxon Chemical Americas (Exxon Chemical) fully supported the TCC/TMOGA comments.

Thirteen commenters submitted testimony on §§115.212, 115.213, 115.214, 115.215, 115.216, 115.217, and 115.219, concerning Loading and Unloading of VOC. The EPA fully supported the proposed revisions, while Amoco, Dow, Exxon Chemical, Exxon Baytown, Galveston-Houston Association for Smog Prevention (GHASP), Hollywood Marine, Inc. (Hollywood), Phillips 66 Company (Phillips), Quantum Chemical Company (Quantum), Texas Instruments (TI), TCC, TMOGA, and Texas Waterway Operators As-

sociation (TWOA) generally supported the proposed revisions but suggested changes.

It has come to the TNRCC's attention that revisions to reorganize §115.212(c)(1) adopted on November 10, 1993 inadvertently excluded gasoline terminals in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties from the control requirements, while §115.212(c)(1), as in effect prior to that date, clearly included gasoline terminals in the control requirements. The TNRCC has corrected §115.212(c)(1) to make it clear that gasoline terminals in these counties continue to be affected by the control requirements.

Exxon Baytown noted that the phrase "gauging and sampling" was sometimes used, while in other places the phrase "sampling and gauging" was used. Exxon Baytown suggested that this activity be consistently referred to as "gauging and sampling."

The suggested change has been made.

Exxon Chemical, GHASP, and Phillips commented on §115.212(a)(1), (2), (b) (1), and (c)(1). Exxon Chemical and Phillips supported the addition of wording to clarify that a vapor balance system is an acceptable means of controlling emissions. GHASP opposed this change and recommended that both a vapor recovery system and a vapor balance system be required.

The TNRCC disagrees with GHASP. Section 115.10 defines a vapor balance system as "a system which provides for containment of hydrocarbon vapors by returning displaced vapors from the receiving vessel back to the originating vessel," while a vapor recovery system is defined as "any control system which utilizes vapor collection equipment to route VOC to a control device that reduces VOC emissions." If a VOC loading operation is controlled by a vapor recovery system such as a flare or carbon adsorption unit, then a vapor balance would not be applicable because displaced vapors from the receiving vessel would be routed to the vapor recovery system rather than back to the originating vessel. GHASP objected to the 90% control efficiency requirement of §115.212(a)(2) for the Houston/Galveston ozone nonattainment area and suggested that a higher control efficiency be required.

The TNRCC agrees that well-maintained and properly operated control equipment can readily achieve 95% control efficiency or better, and notes further that some control devices can maintain greater than 98% control efficiency. However, a 90% control efficiency was included many years ago in some Chapter 115 rules because it was considered reasonable at that time. Since nitrogen oxide (No.) controls may be important in the future and the major modification threshold for NO_x in the Houston/Galveston area, the lower control efficiency of 90% was adopted for consistency with the existing 90% control requirements for other Chapter 115 rules and to allow and encourage non-combustion methods of control. Additional control requirements, such as a higher minimum control efficiency, will be contemplated in the future if the emission reductions are needed to meet EPA and/or Federal Clean Air Act (FCAA) requirements.

TCC and TMOGA commented on §115.212(a)(5)(A), (b)(3)(A), and (c)(3)(A) and objected to relocating the wording concerning "vapor-tight connections." TCC and TMOGA also suggested that wording be added to clarify that a vapor balance system is an acceptable means of controlling emissions.

As suggested, the TNRCC did not relocate the wording concerning "vapor-tight connections." However, the wording of these rules was slightly altered for improved semantics. The TNRCC added wording to clarify that a vapor balance system is an acceptable means of controlling emissions.

Amoco, Exxon Baytown, GHASP, Hollywood, Phillips, TCC, TMOGA, and TWOA commented on §115.212(a)(5)(C) and (10)(C). Amoco, Exxon Baytown, GHASP, Hollywood, Phillips, TCC, TMOGA, and TWOA objected to the proposed three-minute limit on the time allowed for hatches to be open during gauging and sampling. Hollywood suggested that a six-minute time limit was appropriate, while GHASP stated that this provision would be difficult to enforce. In lieu of a time limit, Amoco and TWOA suggested the inclusion of language limiting nonvapor-tight conditions to the time necessary to practicably gauge and/or sample. Amoco, Exxon Baytown, GHASP, Hollywood, Phillips, TCC, TMOGA, and TWOA also objected to the proposed limitation of one nonvapor-tight gauging or sampling event per vessel per VOC transfer event. GHASP stated that this provision would be difficult to enforce, while Amoco, Exxon Baytown, Hollywood, Phillips, TCC, TMOGA, and TWOA cited circumstances in which multiple gauging and/or sampling is necessary. Amoco, Exxon Baytown, Phillips, TCC, TMOGA, and TWOA supported the inclusion of a requirement that nonvapor-tight gauging or sampling not occur while VOC is being transferred. GHASP stated that emissions from nonvapor-tight gauging or sampling would be hazardous to the person doing the gauging or sampling.

The TNRCC prefers technology which avoids all emissions, but recognizes that in some cases nonvapor-tight gauging and/or sampling will occur. After further consideration, including tours of several loading facilities, the TNRCC staff concluded that gauging and sampling operations are simple and, if required to be made separately from VOC transfer, will not likely be subject to differing opinions on whether a condition of a transport vessel being open to the atmosphere constitutes gauging and sampling. Consequently, the specific time limit has been replaced by language limiting nonvapor-tight conditions to the time necessary to practicably gauge and/or sample, and the limitation of one nonvapor-tight gauging and/or sampling event has been deleted. The requirement that nonvapor-tight gauging and/or sampling not occur while VOC is being transferred has been retained.

For unloading operations, emissions can be reasonably controlled by having sufficiently small openings in the transport vessel during unloading such that a vacuum is maintained across the entire face of each opening. The TNRCC anticipates that immediately prior to initiating unloading of a transport vessel, in-

dustry personnel would fully open the hatch under the auspices of gauging and/or sampling as allowed under §115.212(a)(5)(C), (b)(6), or (c)(5). The TNRCC expects that industry personnel would then close the hatch most, but not all, of the way (i.e., "cracked open") and initiate unloading of the transport vessel. Ambient air will be drawn into the vessel through the partially open hatch, preventing collapse of the vessel and speeding up the unloading operation.

The TNRCC anticipates that immediately after completion of unloading, industry personnel will again fully open the hatch under the auspices of gauging and/or sampling as allowed under §115.212(a)(5)(C), (b)(6), or (c)(5). Industry personnel would then fully close the hatch and return the vessel to vapor-tight conditions. Because gauging and/or sampling does not occur while the hatch is cracked open during actual unloading, the nonvapor-tight conditions would not be allowed under an exemption for "necessary gauging and/or sampling." Consequently, the TNRCC has added new §115.212(a)(5)(D), (b)(3)(C), and (c)(3)(C) which specifically address the nonvapor-tight conditions which may occur during unloading operations. This will permit sufficient openings in the transport vessel during unloading to prevent collapse of the vessel, while at the same time requiring the openings to be sufficiently small so a vacuum is maintained across the face of the opening(s) such that emissions which would constitute a leak, as specified in §115.212(a)(5)(B), (b)(3)(B), and (c)(3)(B), do not occur during unloading. Worker safety issues are regulated by the Occupational Safety and Health Administration.

GHASP commented on §115.212(a)(12), concerning the OIAI requirements, and objected to the inclusion of any exceptions to the OIAI rule.

The OIAI concept is an EPA requirement. There are methods available to remove a source from the OIAI requirements; for example, a federally enforceable permit or the Alternative Means of Control (AMOC) process. On August 11, 1993, the staff met with members of the TCC and EPA Region 6 to discuss this and other issues. EPA firmly stood by its policy, which was first stated in the November 1987 SIP call and which the former Texas Air Control Board was required to include in the Reasonably Available Control Technology (RACT) fixups. EPA indicated the intent was to provide for federal enforcement of sources, not to allow for an exceedance of the exemption level, and to prevent the dismantling of the control device which would result in a significant increase in the emissions inventory (i.e., a throughput reduction of 5.0% could result in an emissions increase of 90% if the control device were removed). A policy memo from G.T. Helms dated August 23, 1990 states that the purpose of this requirement is to discourage a source already subject to the regulation from installing minimal ("less than RACT") controls to circumvent RACT requirements, and to improve the clarity of VOC regulations by minimizing confusing variations in production over whether a particular source is covered by a regulation. The language is the result of negotiations with EPA

and the affected industries to maintain the OIAI concept while allowing an incentive for cost effective and innovative approaches to pollution prevention and waste minimization which would reduce emissions at or below the controlled levels prior to removal of control devices.

GHASP requested the TNRCC define "substantially equivalent" and "continuous compliance" in §115.213, regarding Alternative Control Requirements.

The TNRCC position remains that these terms have the meaning commonly ascribed to them in the field of air pollution control, and the TNRCC does not believe that further definition is necessary.

GHASP commented on §115.214(a)(4)(E) and recommended that the requirements include marine unloading in addition to marine loading.

The majority of emissions created by the transfer of VOC to and from marine vessels result from loading operations. Consequently, unloading of marine vessels is exempt, although additional control requirements will be contemplated in the future if the emission reductions are needed to meet EPA and/or FCAA requirements.

GHASP commented on §115.216, concerning Recordkeeping Requirements, and stated that all records should be kept for five years rather than two years.

The suggested five-year timeframe is being used for compliance history determination for permitting issues. The TNRCC Central Office keeps records of facility violations indefinitely. The two-year period is considered sufficient for a field investigator to determine the facility's daily compliance with applicable rules for routine spot inspections, as well as annual/biennial investigations.

No comments were received on §115.216(a)(3) and (4). However, the reference to the tank-truck leak testing requirements of §115.214(a)(3)-(4) was corrected to §115.214(a)(3).

Amoco, Exxon Baytown, GHASP, Phillips, TCC, TMOGA, and TWAO commented on the proposed requirement to keep records of gauging and sampling, §115.216(a) (9). GHASP suggested that the number of times gauging or sampling occurred also be recorded. Amoco, Exxon Baytown, Phillips, TCC, TMOGA, and TWAO objected to keeping records of nonvapor-tight conditions during gauging and sampling as being burdensome and unnecessary. Exxon Baytown felt that keeping records would not provide any appreciable disincentive for those who are not trying to comply. Exxon Baytown, TCC, and TMOGA noted that if open hatches are found and no gauging or sampling is in progress, the TNRCC can take appropriate enforcement action.

The adopted rule has been simplified by eliminating a specified period of time for gauging and sampling. This simplification eliminates the enforcement value of keeping records of the duration of gauging and sampling; merely recording the occurrence of the operation would not be likely to improve enforceability, either. The proposed recordkeeping require-

ments have been deleted. The TNRCC agrees that appropriate enforcement action as necessary should be taken if open hatches are found and no gauging or sampling is in progress.

TI commented on §115.216 and stated that the recordkeeping requirements were an unreasonable burden for very small operations.

The TNRCC believes that this recordkeeping is not an unreasonable requirement and that it is necessary to allow for adequate determination of compliance with the rule.

Quantum and TI commented on the proposed clarification to §115.217(a)(3) and §115.217(a)(4) and noted that these throughput-based exemptions apply only to VOC loaded into transport vessels, while the exemptions available under §115.217(a)(1) and §115.217(a)(2), which are based upon vapor pressure, apply to loading and unloading. Quantum and TI requested that §115.217(a)(3) and §115.217(a)(4) also apply to unloading operations.

The TNRCC disagrees with the commenters. Control requirements for land-based VOC loading facilities were initially adopted on January 27, 1972. Considerable controversy ensued in recent years concerning the definition of "facility" as it related to land-based VOC loading operations, and this in turn affected which VOC emissions must be controlled and which were exempt.

In order to resolve these issues, on November 10, 1993, the TNRCC revised the basis for the 20,000 gallon per day exemption from the difficult-to-define term "facility" to "TNRCC air quality account number," and concurrently revised previously existing exemptions to specifically exclude low vapor pressure VOCs from the control requirements. The 20,000 gallon per day exemption was the level at which installation of add-on controls is considered reasonable at VOC loading operations, while for unloading operations it is considered reasonable to meet the basic control requirements (for example, no liquid or vapor leaks from the transport vessel and transfer system) at any throughput rate since no add-on controls are necessary. Low vapor pressure VOCs were exempted from the control requirements of §115.212 for both loading and unloading activities because the emissions associated with these VOCs are relatively insignificant compared to VOCs above the threshold vapor pressure.

GHASP commented on §115.217(b)(4)(D), (5)(C), (c)(4)(D), and (5)(C), which provide an exemption from the specific control requirements of §115.212 if a plant has a control plan which achieves a 90% (or 80%) overall reduction in VOC emissions. GHASP objected to allowing an 80% reduction and stated that maximum emission reductions were needed. GHASP also recommended that revised control plan submittals should include the opportunity for public comment and TNRCC approval.

The November 10, 1993 change in the basis for the 20,000 gallon per day exemption from "facility" to "TNRCC air quality account number" in some cases resulted in a previously exempt loading operation now being subject to the control requirements. The TNRCC rec-

ognized that consideration should be given to unique situations, such as relatively small "satellite" loading operations which may be isolated on a plant property from other loading operations such that the cost of control is unreasonable. To address industry's concerns, the TNRCC established the availability of exemptions (which more accurately might be termed alternate control requirements) to provide relief for such unique situations. These exemptions did not include VOC being loaded into marine vessels or gasoline being loaded at gasoline terminals or gasoline bulk plants since these operations are regulated separately from the general land-based VOC loading rules. Sections 115.217(a)(8), 115.217(b)(4), and 115.217(c)(4) established the availability of a 90% overall control option which provided equivalent emission reductions and also provided significant flexibility to industry. Sections 115.217(a)(9), 115.217(b)(5), and 115.217(c)(5) established an 80% overall control level for situations in which it was not economically reasonable to achieve at least 90% control following a detailed case-by-case review. The TNRCC believes that it is appropriate to provide industry with the flexibility to achieve the required reductions in the most cost-effective manner possible while still insuring that the required emission reductions are achieved. Specific TNRCC approval of revised control plans is not necessary to achieve the required emission reductions, particularly since all representations in control plans and annual reports are enforceable conditions. Likewise, sufficiently detailed conditions were included in the 80%/90% overall control rules in order to avoid the need for submittal of the plans to EPA as site-specific SIP revisions, including a public comment period.

GHASP commented on §115.217(a)(6) and objected to the exemption for marine vessel unloading. GHASP also stated that the November 15, 1996 compliance date for controlling emissions from marine vessel loading in the Houston/Galveston nonattainment area (HGA) and from transfer of crude oil and condensate should be accelerated to require immediate compliance.

The majority of emissions created by the transfer of VOC to and from marine vessels result from loading operations. Consequently, unloading of marine vessels is exempt, although additional control requirements will be contemplated in the future if the emission reductions are needed to meet EPA and/or FCAA requirements. The compliance schedule for control of emissions from marine vessel loading and transfer of crude oil and condensate was established in prior rulemaking and is still considered reasonable.

Exxon Baytown commented on the marine vessel loading exemption in §115.217(a)(6)(B) and suggested that the language be revised to clarify that marine vessel loading will continue to be exempt after November 15, 1996, except in the HGA nonattainment area.

The suggested change has been made.

On January 4, 1995, the TNRCC adopted new §115.219(c) which established marine vessel loading as a contingency measure for the Beaumont/Port Arthur ozone

nonattainment area, as published in the January 13, 1995, issue of the *Texas Register* (20 TexReg 221). Because §115.219(b) is being deleted, §115.219(c) has been renumbered as §115.219(5).

The reference in §115.219(1) to §115.214(a)(3) (formerly §115.214(a) (4)) has been deleted because the requirements of §§115.234-115.237 and 115.239 referenced in §115.214(a)(3) have a compliance date of May 31, 1995.

The amendments are adopted under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§115.212. Control Requirements.

(a) For all persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following control requirements shall apply:

(1) Until November 15, 1996 at volatile organic compound (VOC) loading operations other than gasoline terminals, gasoline bulk plants, and marine terminals, no person shall permit the loading of VOC with a true vapor pressure greater than or equal to 1.5 pounds per square inch absolute (psia) under actual storage conditions to transport vessels unless the vapors are processed by a vapor recovery system or are controlled by a vapor balance system, as defined in §115.10 of this title (relating to Definitions). The vapor recovery system shall control the VOC emissions such that the aggregate true vapor pressure of all VOC does not exceed 1.5 psia.

(2) After November 15, 1996, at VOC loading operations other than gasoline terminals, gasoline bulk plants, and marine terminals, no person shall permit the loading of VOC with a true vapor pressure greater than or equal to 0.5 psia under actual storage conditions to transport vessels unless the vapors are processed by a vapor recovery system or are controlled by a vapor balance system, as defined in §115.10 of this title. The vapor recovery system shall maintain a control efficiency of at least 90%.

(3)-(4) (No change.)

(5) All land-based loading and unloading of VOC shall be conducted such that:

(A) All liquid and vapor lines are:

(i) equipped with fittings which make vaportight connections that close automatically when disconnected; or

(ii) equipped to permit residual VOC in the loading line after loading is complete to discharge into a recovery or disposal system which routes all VOC emis-

sions to a vapor recovery system or a vapor balance system.

(B) (No change.)

(C) All gauging and sampling devices are vaportight except for necessary gauging and sampling. Any nonvaportight gauging and/or sampling shall:

(i) be limited in duration to the time necessary to practicably gauge and/or sample; and

(ii) not occur while VOC is being transferred.

(D) Any openings in a transport vessel during unloading are limited to minimum openings which are sufficient to prevent collapse of the transport vessel.

(6)-(9) (No change.)

(10) After November 15, 1996, for marine terminals in the Houston/Galveston area, the following control requirements shall apply.

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

(C) All gauging and sampling devices shall be vapor-tight except for necessary gauging and sampling. Any nonvapor-tight gauging and/or sampling shall:

(i) be limited in duration to the time necessary to practicably gauge and/or sample; and

(ii) not occur while VOC is being transferred.

(11) (No change.)

(12) Any loading or unloading operation that becomes subject to the provisions of this subsection by exceeding provisions of §115.217(a) of this title (relating to Exemptions) will remain subject to the provision of this subsection, even if throughput or emissions later fall below exemption limits unless and until emissions are reduced to at or below the controlled emissions level existing prior to implementation of the project by which throughput or emission rate was reduced and less than the applicable exemption limits in §115.217(a) of this title; and

(A) (No change.)

(B) if authorization by permit or standard exemption is required for the project, the owner/operator has given the Texas Natural Resource Conservation Commission (TNRCC) 30 days notice of the project in writing.

(b) For all persons in Gregg, Nueces, and Victoria Counties, the following control requirements shall apply:

(1) At VOC loading operations other than gasoline terminals, no person shall permit the loading of VOC with a true vapor pressure greater than or equal to 1.5 psia under actual storage conditions to a transport vessel unless the vapors are processed by a vapor recovery system or are controlled by a vapor balance system, as defined in §115.10 of this title. The vapor recovery system shall control the VOC emissions such that the aggregate true vapor pressure of all VOC does not exceed 1.5 psia.

(2) (No change.)

(3) All loading and unloading of VOC shall be conducted such that:

(A) All liquid and vapor lines are:

(i) equipped with fittings which make vaportight connections that close automatically when disconnected; or

(ii) equipped to permit residual VOC in the loading line after loading is complete to discharge into a recovery or disposal system which routes all VOC emissions to a vapor recovery system or a vapor balance system.

(B) (No change.)

(C) Any openings in a transport vessel during unloading are limited to minimum openings which are sufficient to prevent collapse of the transport vessel.

(4)-(6) (No change.)

(c) For all persons in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties, the following requirements shall apply.

(1) No person shall permit the loading of VOC with a true vapor pressure greater than or equal to 1.5 psia under actual storage conditions to a transport vessel unless the vapors are processed by a vapor recovery system or are controlled by a vapor balance system, as defined in §115.10 of this title. The vapor recovery system shall control the VOC emissions such that the aggregate true vapor pressure of all VOC does not exceed 1.5 psia.

(2) No person shall permit the unloading of VOC with a true vapor pressure greater than or equal to 1.5 psia under actual storage conditions from any transport vessel unless the transport vessel is kept vapor-tight at all times until the vapors remaining in the transport vessel after unloading are discharged to a vapor recovery

system if the transport vessel is refilled in Aransas, Bexar, Calhoun, Matagorda, San Patricio, or Travis Counties.

(3) All loading and unloading of VOC shall be conducted such that:

(A) All liquid and vapor lines are:

(i) equipped with fittings which make vaportight connections that close automatically when disconnected; or

(ii) equipped to permit residual VOC in the loading line after loading is complete to discharge into a recovery or disposal system which routes all VOC emissions to a vapor recovery system or a vapor balance system.

(B) (No change.)

(C) Any openings in a transport vessel during unloading are limited to minimum openings which are sufficient to prevent collapse of the transport vessel.

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

§115.214. Inspection Requirements.

(a) For all persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following inspection requirements shall apply.

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

(3) All tank-truck tanks loading or unloading VOC having a true vapor pressure greater than or equal to 0.5 pounds per square inch absolute under actual storage conditions shall have been legk tested within one year in accordance with the requirements of §§115.234-115.237 and 115.239 of this title (relating to Control of Volatile Organic Compound Leaks From Transport Vessels) as evidenced by prominently displayed certification affixed near the U.S. Department of Transportation certification plate.

(4) After November 15, 1996 for marine terminals in the Houston/Galveston area, the following inspection requirements shall apply.

(A) Inspection for visible liquid leaks, visible fumes, or significant odors resulting from VOC transfer operations shall be conducted during each transfer by the owner or operator of the VOC loading and unloading operation or the owner or operator of the marine vessel.

(B) If a liquid leak is detected during the loading operation and can not be repaired immediately (for example, by tightening a bolt or packing gland), then

the transfer operation shall cease until the leak is repaired.

(C) If a vapor leak is detected by sight, sound, smell, or hydrocarbon gas analyzer during the loading operation, then a "first attempt" shall be made to repair the leak. Cargo loading operations need not be ceased if the first attempt to repair the leak, as defined by §115.10 of this title (relating to Definitions), to less than 10,000 parts per million by volume (ppmv) or 20% of the lower explosive limit is not successful provided that the first attempt effort is documented by the owner or operator of the marine vessel as soon as practicable and a copy of the repair log made available to a representative of the marine loading facility. No additional loadings shall be made into the cargo tank until a successful repair has been completed and certified by a 40 Code of Federal Regulations (CFR) 61.304(f) or equivalent inspection.

(D) The intentional bypassing of a vapor control device during marine loading operations is prohibited.

(E) All shore-based equipment is subject to the fugitive emissions monitoring requirements of §§115.352-115.359 of this title (relating to Fugitive Emission Control in Petroleum Refining and Petrochemical Processes). For the purposes of this paragraph, shore-based equipment includes, but is not limited to, all equipment such as loading arms, pumps, meters, shutoff valves, relief valves, and other piping and valves between the marine loading facility and the vapor recovery system and between the marine loading facility and the associated land-based storage tanks, excluding working emissions from the storage tanks.

(5) After November 15, 1996, each gasoline terminal, as defined in §115.10 of this title, in the Dallas/Fort Worth, El Paso, and Houston/Galveston areas is subject to the fugitive emissions monitoring requirements of §§115.352-115.359 of this title.

(b) (No change.)

§115.216. Monitoring and Recordkeeping Requirements.

(a) For volatile organic compound (VOC) loading or unloading operations in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas affected by §115.211(a) or §115.212(a) of this title (relating to Emission Specifications; and Control Requirements), the owner or operator shall maintain the following information at the plant as defined by its Texas Natural Resource Conservation Com-

mission (TNRCC) air quality account number for at least two years and shall make such information available upon request to representatives of the TNRCC, United States Environmental Protection Agency (EPA), or any local air pollution control agency having jurisdiction in the area:

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

(3) For gasoline terminals:

(A) a comprehensive record of all tank-trucks loaded, including the identification number of the tank-truck and the date of the last leak testing required by §115.214(a)(3) of this title (relating to Inspection Requirements);

(B) a daily record of the identification number of all tank-trucks loaded at the affected terminal;

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

(4) For gasoline bulk plants:

(A) a comprehensive record of all tank-trucks loaded, including the identification number of the tank-truck and the date of the last leak testing required by §115.214(a)(3) of this title;

(B) a daily record of the identification number of all tank-trucks loaded at the affected bulk plant;

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

(5) For VOC loading or unloading operations other than gasoline terminals, gasoline bulk plants, and marine terminals, a daily record of each transport vessel loaded or unloaded, including:

(A) the identification number of each tank-truck loaded or unloaded and the date of the last leak testing required by §115.214(a)(3) of this title;

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

(6) After November 15, 1996 for marine terminals in the Houston/Galveston area:

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

(C) a copy of each marine vessel's first attempt repair log required by §115.214(a)(4)(C) of this title shall be maintained on file by the marine terminal for a minimum of two years.

(D) (No change.)

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

(b) (No change.)

§115.217. Exemptions.

(a) For all persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following exemptions apply.

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

(3) Until November 15, 1996, any plant, as defined by its Texas Natural Resource Conservation Commission (TNRCC) air quality account number, excluding gasoline bulk plants, having less than 20,000 gallons (75,708 liters) of VOC loaded into transport vessels per day (averaged over any consecutive 30-day period) with a true vapor pressure greater than or equal to 1.5 psia under actual storage conditions is exempt from the requirements of §115.212(a) of this title. The owner or operator of any VOC loading operation for which the VOC loading operation was previously exempt under §115.217(a)(2) of this title (as in effect October 16, 1992) from the control requirements of this undesignated head, and which does not otherwise qualify for exemption under this paragraph, shall:

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

(4) After November 15, 1996, any plant, as defined by its TNRCC air quality account number, excluding gasoline bulk plants, having less than 20,000 gallons (75,708 liters) of VOC loaded into transport vessels per day (averaged over any consecutive 30-day period) with a true vapor pressure greater than or equal to 0.5 psia under actual storage conditions is exempt from the requirements of §115.212(a) of this title.

(5) (No change.)

(6) The following are exempt from the requirements of §115.212(a) of this title:

(A) all unloading of marine vessels;

(B) all loading of marine vessels in ozone nonattainment areas other than the Houston/Galveston area;

(C) until November 15, 1996 in the Houston/Galveston area, all loading of marine vessels; and

(D) until November 15, 1996, all land-based loading and unloading of crude oil and condensate.

(7)-(11) (No change.)

(b) For all persons in Gregg, Nueces, and Victoria Counties, the following exemptions apply.

(1) (No change.)

(2) Any plant, as defined by its TNRCC air quality account number, having less than 20,000 gallons (75,708 liters) of VOC loaded into transport vessels per day (averaged over any consecutive 30-day period) with a true vapor pressure greater than or equal to 1.5 psia under actual storage conditions is exempt from the requirements of §115.212(b) of this title. The owner or operator of any VOC loading operation for which the VOC loading operation was previously exempt under §115.217(b)(2) of this title (as in effect October 16, 1992) from the control requirements of this undesignated head, and which does not otherwise qualify for exemption under this paragraph, shall:

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

(3) (No change.)

(4) VOC loading operations other than gasoline terminals, gasoline bulk plants, and marine terminals are exempt from the control requirements of §115.212(b)(1) of this title if the overall control of emissions at the account from the loading of VOC (excluding VOC loading into marine vessels and VOC loading at gasoline terminals and gasoline bulk plants) with a true vapor pressure between 1.5 and 11 psia under actual storage conditions is at least 90%, and the following requirements are met:

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

(D) All representations in initial control plans and annual reports become enforceable conditions. It shall be unlawful for any person to vary from such representations if the variation will cause a change in the identity of the specific emission sources being controlled or the method of control of emissions unless the owner or operator of the VOC loading operation submits a revised control plan to the TNRCC Austin Office (Office of Air Quality), the appropriate TNRCC Regional Office, and any local air pollution control program with jurisdiction within 30 days of the change. All control plans and reports shall demonstrate that the overall control of emissions at the account from the loading of VOC with a true vapor pressure between 1.5 and 11 psia under actual storage conditions continues to be at least 90%. The emission rates shall be calculated in a manner consistent with the 1990 emissions inventory.

(5) The owner or operator of a VOC loading operation subject to the control requirements of §115.212(b)(1) of this

title may request an exemption determination from the Executive Director if the overall control of emissions at the account from the loading of VOC (excluding VOC loading into marine vessels and VOC loading at gasoline terminals and gasoline bulk plants) with a true vapor pressure between 1.5 and 11 psia under actual storage conditions is at least 80%, and the following requirements are met:

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

(C) All representations in initial control plans and annual reports become enforceable conditions. It shall be unlawful for any person to vary from such representations if the variation will cause a change in the identity of the specific emission sources being controlled or the method of control of emissions unless the owner or operator of the VOC loading operation submits a revised control plan to the TNRCC Austin Office (Office of Air Quality), the appropriate TNRCC Regional Office, and any local air pollution control program with jurisdiction within 30 days of the change. All control plans and reports shall demonstrate that the overall control of emissions at the account from the loading of VOC with a true vapor pressure between 1.5 and 11 psia under actual storage conditions continues to be at least 80%. The emission rates shall be calculated in a manner consistent with the 1990 emissions inventory.

(c) For all persons in Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties, the following exemptions apply.

(1) (No change.)

(2) Any plant, as defined by its TNRCC air quality account number, having less than 20,000 gallons (75,708 liters) of VOC loaded into transport vessels per day (averaged over any consecutive 30-day period) with a true vapor pressure greater than or equal to 1.5 psia under actual storage conditions is exempt from the requirements of §115.212(c) of this title. The owner or operator of any VOC loading operation for which the VOC loading operation was previously exempt under §115.217(c)(2) of this title (as in effect October 16, 1992) from the control requirements of this undesignated head, and which does not otherwise qualify for exemption under this paragraph, shall:

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

(3) (No change.)

(4) VOC loading operations other than gasoline terminals, gasoline bulk plants, and marine terminals are exempt from the control requirements of §115.212(c)(1) of this title if the overall

control of emissions at the account from the loading of VOC (excluding VOC loading into marine vessels and VOC loading at gasoline terminals and gasoline bulk plants) with a true vapor pressure between 1.5 and 11 psia under actual storage conditions is at least 90%, and the following requirements are met:

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

(D) All representations in initial control plans and annual reports become enforceable conditions. It shall be unlawful for any person to vary from such representations if the variation will cause a change in the identity of the specific emission sources being controlled or the method of control of emissions unless the owner or operator of the VOC loading operation submits a revised control plan to the TNRCC Austin Office (Office of Air Quality), the appropriate TNRCC Regional Office, and any local air pollution control program with jurisdiction within 30 days of the change. All control plans and reports shall demonstrate that the overall control of emissions at the account from the loading of VOC with a true vapor pressure between 1.5 and 11 psia under actual storage conditions continues to be at least 90%. The emission rates shall be calculated in a manner consistent with the 1990 emissions inventory.

(5) The owner or operator of a VOC loading operation subject to the control requirements of §115.212(c)(1) of this title may request an exemption determination from the Executive Director if the overall control of emissions at the account from the loading of VOC (excluding VOC loading into marine vessels and VOC loading at gasoline terminals and gasoline bulk plants) with a true vapor pressure between 1.5 and 11 psia under actual storage conditions is at least 80%, and the following requirements are met:

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

(C) All representations in initial control plans and annual reports become enforceable conditions. It shall be unlawful for any person to vary from such representations if the variation will cause a change in the identity of the specific emission sources being controlled or the method of control of emissions unless the owner or operator of the VOC loading operation submits a revised control plan to the TNRCC Austin Office (Office of Air Quality), the appropriate TNRCC Regional Office, and any local air pollution control program with jurisdiction within 30 days of the change. All control plans and reports shall demonstrate that the overall control of emissions at the account from the loading of VOC with a true vapor pressure between 1.5 and 11 psia

under actual storage conditions continues to be at least 80%. The emission rates shall be calculated in a manner consistent with the 1990 emissions inventory.

§115.219. *Counties and Compliance Schedules.* All affected persons in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas shall be in compliance with this undesignated head (relating to Loading and Unloading of Volatile Organic Compounds) in accordance with the following schedules.

(1) All affected persons shall be in compliance with §115.211(a)(1)(B), §115.212(a)(2) and (4), and §115.217(a)(2) and (4) of this title (relating to Emission Specifications; Control Requirements; and Exemptions) as soon as practicable, but no later than November 15, 1996.

(2) All land-based loading and unloading of crude oil and condensate to and from transport vessels, as defined in §115.10 of this title (relating to Definitions), shall be in compliance with §§115.211(a), 115.212(a), 115.213(a), 115.214(a), 115.215(a), 115.216(a), and 115.217(a) of this title (relating to Emission Specifications; Control Requirements; Alternate Control Requirements; Inspection Requirements; Monitoring and Recordkeeping Requirements; Approved Test Methods; and Exemptions) as soon as practicable, but no later than November 15, 1996.

(3) All affected marine terminals in Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties shall be in compliance with §§115.211(a), 115.212(a), 115.213(a), 115.214(a), 115.215(a), 115.216(a), and 115.217(a) of this title as soon as practicable, but no later than November 15, 1996.

(4) All affected gasoline terminals in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Harris, Liberty, Montgomery, Tarrant, and Waller Counties shall be in compliance with §§115.212(a)(11), 115.214(a)(5), and 115.216(a)(7) of this title as soon as practicable, but no later than November 15, 1996.

(5) All affected marine terminals in Hardin, Jefferson, and Orange Counties shall be in compliance with §§115.211(a), 115.212(a), 115.213(a), 115.214(a), 115.215(a), 115.216(a), and 115.217(a) of this title as soon as practicable, but no later than three years after the Texas Natural Resource Conservation Commission publishes notification in the *Texas Register* of its determination that this contingency rule is necessary as a result of failure to attain the national ambient air quality standard for ozone by the November 15, 1999 attainment deadline or failure to demonstrate reasonable further progress as

set forth in the 1990 Amendments to the Federal Clean Air Act, §172(c)(9).

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 26, 1995

TRD-9506392 Lydia Gonzalez-Gromatzky
Acting Director, Legal
Services Division
Texas Natural Resource
Conservation
Commission

Effective date: June 16, 1995

Proposal publication date: December 23, 1994

For further information, please call (512) 239-1970

Chapter 331. Underground Injection Control

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts the repeal of §331.62 and the adoption of new §331.62, concerning underground injection control. New §331.62 is adopted with changes to the proposed text as published in the December 20, 1994, issue of the *Texas Register* (19 TexReg 10080).

Section 331.62 was originally proposed for public comment in the June 28, 1994, issue of the *Texas Register* (19 TexReg 5022). Due to the nature of the public comments received in response to the rules, the proposed new §331.62 was withdrawn and republished in the December 20, 1994, issue of the *Texas Register* (19 TexReg 10080) for additional comment. The public comment period was extended on January 27, 1995 until February 20, 1995.

Comments were received from: Brown McCarroll & Oaks Hartline, Gardere & Wynne, L.L.P., the Texas Chemical Council (TCC), Monsanto, Terra Dynamics, and concerned citizens. The TCC, Monsanto and Brown McCarroll were basically in favor of the proposed regulation, with a few modifications requested to the language. Gardere & Wynne and the individual were opposed to the proposed language, arguing that the proposal was less protective than the federal construction rules.

Several commenters opposed the requirement in §331.62(4)(A) that wells be drilled according to established TNRCC guidance, since this requirement would have the effect of elevating guidance to the status of rules. The agency agrees and has deleted any reference to "established TNRCC guidance" from the requirement. Several commenters also recommended that the word "minimize" should be substituted for "prevent." The agency agrees and has changed the language.

It was also recommended that the language in §331.62(5) be modified to be consistent with §331.62(1) so that the language reads "and to prevent movement of fluids along the

borehole into or between USDWs or freshwater aquifers and to prevent the movement of fluids along the borehole out of the injection zone." The commission agrees with this comment and the language has been modified.

Commenters, in opposition to the proposal, expressed concern that the rulemaking effort was an attempt to help Gibraltar Chemical Resources, Inc., Winona, Texas (now known as American Ecology Environmental Services) obtain a no-migration petition for WDW-229 by weakening the construction standards. The commission disagrees with this comment because the proposed cementing standards are for wells constructed or converted to Underground Injection Control (UIC) Class I status after the promulgation of these rules and the proposed changes are not intended as a "fix" for any previously converted or constructed well. The performance standard of §331.62(5) is the only part of these construction standards that will apply to WDW-229 or other previously constructed or converted wells.

The opposing commenters further stated that the proposed rules were less protective than current state and federal regulations. A concern was expressed that the construction performance standard §331.62(5) would be difficult or impossible to enforce. The commission disagrees that the performance standard is unenforceable because the U.S. Environmental Protection Agency (EPA) has approved methods to test for fluid movement along the borehole, such as the radioactive tracer log (RAT), oxygen activation log (OAL) or temperature log. These tools are routinely used to test for fluid movement along the borehole of all UIC Class I wells. The RAT, which tests for fluid flow along the wellbore out of the injection zone, is required to be run annually and the rest of the wellbore is tested at least every five years, using the OAL or temperature log. If one of these tests shows that there is fluid flow along the wellbore either out of the injection zone or into or between an Underground Source of Drinking Waters (USDWs), then the commission can require corrective action to ensure that the construction performance standard is met (see 30 TAC §331.44(b)(7)).

The commission also disagrees with commenters' argument that the proposed rule is less protective because it does not require that cement be circulated to the surface or be "continuous." As the commenters acknowledged, while the current federal requirement relies heavily on cement being circulated to the surface, or being continuous when staged, such a requirement does not assure that fluid does not leave either the injection zone or move into or between USDWs, along the borehole. This argument relies on the use of the word "continuous" in the federal regulation. The commission believes that this reliance is misplaced because "continuous" only appears in the federal construction regulations once in reference to the staging of cement in 40 CFR §146.65(c)(4). The agency believes that the real issue that should be considered is not whether cement is "continuous" or "to the surface," but whether the well's construction prevents or allows the vertical movement of fluid out of the injection zone or into or between USDWs. The agency

believes that the emphasis of the construction rules should be whether an injection well's construction is protective.

Commenters discussed a federal court decision which vacated a "no-migration" petition which had been issued by the EPA to Gibraltar Chemical Resources, Inc. Brent Kay, *et al v. United States Environmental Protection Agency, et al*, No. 5:9cv582 (E.D. Tex. June 30, 1992). We do not believe that this court decision has an impact on this rulemaking.

The commission believes that the intent of the federal construction standard is to ensure that there is no fluid movement along the wellbore either out of the injection zone or into or between USDWs. According to 40 CFR 145.11(b)(1), "States need not implement provisions identical to the provisions listed in paragraphs (a)(1)-(31) of this section. Implemented provisions must, however, establish requirements at least as stringent as the corresponding listed provisions. States may impose more stringent requirements. ..." 40 CFR 145.11(b)(1) indicates that it is not necessary to use the exact wording as the comparable federal rule nor be identical to the federal standard, as long as the state standard is as stringent (protective) as the federal standard. Since the proposed State standard requires that standard be tested directly and met before initial or continued injection is allowed as found in §331.44(b)(7), §331.45(1)(J), and §331.62(5), the proposed State standard is as stringent as the federal standard and therefore meets the test.

Subchapter D. Standards for Class I Wells Other than Salt Cavern Solid Waste Disposal Wells

• 30 TAC §331.62

The repeal is adopted under the Texas Water Code, §5.103 and §5.105, which authorizes the TNRCC to promulgate rules necessary to carry out the powers and duties under the provisions of the Texas Water Code, Chapter 27, and other laws of the state; and under the Texas Health and Safety Code, §361.017 and §361.024, which further authorizes the TNRCC to promulgate rules necessary to manage industrial solid and municipal hazardous waste.

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 25, 1995.

TRD-9506356 Lydia Gonzalez-Gromatzky
Acting Director, Legal
Services Division
Texas Natural Resource
Conservation
Commission

Effective date: June 15, 1995

Proposal publication date: December 20, 1994

For further information, please call: (512) 239-6087

The new sections are adopted under the Texas Water Code, §5.103 and §5.105, which authorize the TNRCC to promulgate rules necessary to carry out the powers and duties under the provisions of the Texas Water Code, Chapter 27, and other laws of the state; and under the Texas Health and Safety Code, §361.017 and §361.024, which further authorizes the TNRCC to promulgate rules necessary to manage industrial solid and municipal hazardous waste.

§331.62. *Construction Standards.* All Class I wells shall be designed, constructed and completed to prevent the movement of fluids that could result in the pollution of an underground source of drinking water.

(1) Design criteria. Casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well, including the post closure care period. The well shall be designed and constructed to prevent potential leaks from the well, prevent the movement of fluids along the wellbore into or between Underground Source of Drinking Waters (USDWs), to prevent the movement of fluids along the wellbore out of the injection zone, to permit the use of appropriate testing devices and workover tools, and to permit continuous monitoring of injection tubing, long string casing and annulus, as required by this chapter. All well materials must be compatible with fluids with which the materials may be expected to come into contact. A well shall be deemed to have compatibility as long as the materials used in the construction of the well meet or exceed standards developed for such materials by the American Petroleum Institute, the American Society for Testing Materials, or comparable standards acceptable to the executive director.

(A) Casing design. Surface casing shall be set to a minimum subsurface depth, as determined by the executive director, which extends into the confining bed below the lowest formation containing a USDW or freshwater aquifer. At least one long string casing, using a sufficient number of centralizers, shall extend to the injection interval. In determining and specifying casing and cementing requirements, the following factors shall be considered:

- (i) depth of lowermost USDW or freshwater aquifer;
- (ii) depth to the injection interval;
- (iii) injection pressure, external pressure, internal pressure, and axial loading;
- (iv) hole size;
- (v) size and grade of all casing strings (wall thickness, diameter,

nominal weight, length, joint specification, and construction material);

(vi) the maximum burst and collapse pressures, and tensile stresses which may be experienced at any point along the length of the casings at any time during the construction, operation, and closure of the well;

(vii) corrosive effects of injected fluids, formation fluids, and temperatures;

(viii) lithology of injection and confining intervals;

(ix) presence of lost circulation zones or other subsurface conditions that could affect the casing and cementing program;

(x) types and grades of cement; and

(xi) quantity and chemical composition of the injected fluid.

(B) Tubing and packer design. All Class I injection wells shall inject fluids through tubing with a packer, set at a depth specified by the executive director. Fluid seal systems will not be approved by the commission. The annulus system shall be designed and constructed to prevent the leak of injection fluids into any unauthorized zones. In determining and specifying requirements for tubing and packer, the following factors shall be considered:

(i) depth to the injection zone;

(ii) characteristics of injection fluid (chemical content, corrosiveness, temperature and density);

(iii) injection pressure;

(iv) annular pressure;

(v) rate (intermittent or continuous), temperature, and volume of injected fluid;

(vi) size of casing; and

(vii) tensile, burst, and collapse strengths of the tubing.

(2) Plans and specifications. Except as specifically required in the terms of the disposal well permit, the drilling and completion of the well shall be done in accordance with the requirements of this chapter and all permit application plans and specifications.

(3) Changes to plans and specifications. Any proposed changes to the plans and specifications must be approved in writing by the executive director that said changes provide protection standards equivalent to or greater than the original design criteria.

(A) If during the drilling and/or completion of the well, the operator proposes to change the cementing of the surface casing, the executive director shall require a written description of the proposed change, including any additional data necessary to evaluate the request. The operator may not execute the change until the executive director gives written approval. The operator may change the setting depth of the surface casing to a depth greater than that specified in the permit, either during drilling and/or completion, without approval from the executive director. Approval for setting depths shallower than specified in the permit will not be authorized.

(B) If the operator proposes to change the injection interval to one not reviewed during the permit application process, the operator shall submit an application to amend the permit. The operator may not inject into any unauthorized zone.

(C) Any other changes, including but not limited to the number of casing strings, changes in the size or material of intermediate and production casings, changes in the completion of the well, changes in the exact setting of screens or injection intervals within the permitted injection zone, and changes in the type of cement used, or method of cementing shall be considered minor changes. If minor changes are requested, the executive director may give immediate oral and subsequent written approval or written approval for those changes. The operator is required to submit a detailed written description of all minor changes, along with the information required in §331.65 of this title (relating to Reporting Requirements), before approval for operation of the well may be granted.

(4) Drilling requirements.

(A) The well shall be drilled according to sound engineering practices to minimize problems which may jeopardize completion attempts, such as deviated holes, washouts and stuck pipe.

(B) As much as technically practicable and feasible, the hole should be drilled under laminar flow conditions, with appropriate fluid loss control, to minimize hole washouts.

(C) Immediately prior to running casing, the drilling fluid in the hole is to be circulated and conditioned to establish rheological properties commensurate with proper cementing practices.

(5) Construction performance standard. All Class I wells shall be cased and all casings shall be cemented to prevent

the movement of fluids along the borehole into or between USDWs or freshwater aquifers, and to prevent movement of fluids along the borehole out of the injection zone.

(6) Cementing requirements, for all Class I wells constructed after the promulgation of this rule, including wells converting to Class I status.

(A) Cementing shall be by the pump and plug or other method approved by the executive director. Cementing may be accomplished by staging Cement pumped shall be of a volume equivalent to at least 120% of the volume calculated necessary to fill the annular space between the hole and casing and between casing strings to the surface of the ground. The executive director may require more than 120% when the geology or other circumstances warrant it. A two-dimensional caliper shall be used to measure the hole diameter. If the two-dimensional caliper can not measure the diameter of the hole over an interval, then the minimum amount of cement needed for that interval shall be a volume calculated to be equivalent to or greater than 150% of the space between the casing and the maximum measurable diameter of the caliper.

(B) If lost circulation zones or other subsurface conditions are anticipated and/or encountered, which could result in less than 100% filling of the annular space between the casing and the borehole or the casings, the owner/operator shall implement the approved contingency plan submitted according to §331.121(a)(2)(O) of this title (relating to Class I Wells).

(7) Logs and tests.

(A) Integrity testing. Appropriate logs and other tests shall be conducted during the drilling and construction of Class I wells. All logs and tests shall be interpreted by the service company which processed the logs or conducted the test; or by other qualified persons. A minimum of the following logs and tests shall be conducted:

(i) deviation checks on all holes, conducted at sufficiently frequent intervals to assure that avenues for fluid migration in the form of diverging holes are not created during drilling;

(ii) for surface casing;

(I) spontaneous potential, resistivity, natural gamma, and caliper logs before the casing is installed; and

(II) cement bond with variable density log, and temperature logs after casing is set and cemented; and

(III) and any other test required by the executive director;

(IV) the executive director may allow the use of an alternate to subclauses (I) and (II) of this clause when an alternative will provide equivalent or better information; and

(iii) for intermediate and long string casing;

(I) spontaneous potential, resistivity, natural gamma, compensated density and/or neutron porosity, dipmeter/ fracture finder, and caliper logs, before the casing is installed; and

(II) a cement bond with variable density log, casing inspection, and temperature logs after casing is set and cemented, and an inclination survey; and

(III) any other test required by the executive director; and

(iv) a mechanical integrity test consisting of:

(I) a pressure test with liquid or gas;

(II) a radioactive tracer survey;

(III) a temperature or noise log;

(IV) a casing inspection log, if required by the executive director; and

(V) any other test required by the executive director.

(B) Pressure tests. Surface casing shall be pressure tested to 1,000 psig for at least 30 minutes, and long string casing shall be tested to 1,500 psig for at least 30 minutes, unless otherwise specified by the executive director.

(C) Core samples. Full-hole cores shall be taken from selected intervals of the injection zone and lowermost overlying confining zone; or, if full-hole coring is not feasible or adequate core recovery is not achieved, sidewall cores shall be taken at sufficient intervals to yield representative data for selected parts of the injection zone and lowermost overlying confining zone. Core analysis shall include a determination of permeability, porosity, bulk density, and other necessary tests.

(8) Injectivity tests. After completion of the well, injectivity tests shall be performed to determine the well capacity and reservoir characteristics. Surveys shall be performed to establish preferred injection intervals. Prior to performing injectivity tests, the bottom hole pressure, bottom hole temperature, and static fluid level shall be determined, and a representative sample of formation fluid shall be obtained for chemical analysis. Information concerning the fluid pressure, temperature, fracture pressure and other physical and chemical characteristics of the injection and confining zones shall be determined or calculated.

(9) Construction and workover supervision. All phases of well construction and all phases of any well workover shall be supervised by qualified individuals acting under the responsible charge of a licensed, professional engineer, with current registration pursuant to the Texas Engineering Practice Act, who is knowledgeable and experienced in practical drilling engineering and who is familiar with the special conditions and requirements of injection well construction.

(10) The executive director shall have the opportunity to witness all cementing of casing strings, logging and testing. The owner or operator shall submit a schedule of such activities to the executive director at least 30 days prior to commencing drilling of the well. The executive director shall be given at least 24 hour notice before each activity in order that a representative of the executive director may be present.

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 25, 1995.

TRD-9506357

Lydia Gonzalez-Gromatzky
Acting Director, Legal
Services Division
Texas Natural Resource
Conservation
Commission

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Chapter 337. Enforcement Rules

The Texas Natural Resource Conservation Commission ("TNRCC" or "commission") adopts the repeal of §§337.1-337.6, 337.31-337.40, 337.51-337.54 and new §§337.1-337.6, 337.8-337.10, 337.21-337.30, 337.32-337.48, 337.50-337.58, and 337.71, concerning enforcement.

New §§337.3-337.6, 337.8, 337.9, 337.21-337.24, 337.28-337.30, 337.32, 337.37-337.38, 337.40-337.42, 337.45-337.46, 337.50-337.51, 337.56-337.57, and 337.71 are adopted with changes to the proposed text as published in the December 2, 1994, issue of the *Texas Register* (19 TexReg 9468). The repeal of §§337.1-337.6, 337.31-337.40, 337.51-337.54 and new §§337.1-337.2, 337.10, 337.25-337.27, 337.33-337.36, 337.39, 337.43-337.44, 337.47-337.48, 337.52-337.55, and 337.58, are adopted without changes and will not be republished.

The repeal of §§337.1-337.6, 337.31-337.40, 337.51-337.54 is required by, and premised upon, the adoption of the new §§337.1-337.10, 337.21-337.58, and 337.71 that will serve as the procedural rules for TNRCC enforcement generally, the TNRCC's contested enforcement case hearings, and the TNRCC's mandatory enforcement hearings, respectively.

A public hearing was held on January 26, 1995, in Austin. The comment period closed on February 13, 1995. Comments were received from the following groups, associations, businesses, and industries: Texas Mid-Continent Oil & Gas Association; Thompson & Knight, P.C.; Brown McCarroll & Oaks Hartline; American Electronics Association; Exxon Company, U.S.A.; DuPont Gulf Coast Regional Manufacturing Services; Galveston-Houston Association for Smog Prevention; Vinson & Elkins; Guida, Slavich & Flores; The Dow Chemical Company; Amoco; Kelly, Hart & Hallman, P.C.; Texas Chemical Council; Eastman Chemical Company and other concerned citizens. The commission responds to the comments received as follows:

In §337.3, the definitions section, the second sentence of the definition of "petition" was removed because it was unnecessarily confusing. Some commenters opposed the definition of parties set forth in §337.3 because it did not include members of the general public, environmental groups, and others interested in contested enforcement case hearings. The commission disagrees that these persons or groups have standing to participate as parties in contested enforcement case hearings, but reiterates its willingness to receive input from such individuals and groups about enforcement cases. In addition, the Public Interest Counsel does have statutory authorization to participate in contested enforcement case hearings.

A change in §337.4 was made in response to comments concerning the filing of pleadings after the issuance of a Proposal for Decision ("PFD"). (See, comments regarding §337.53, following).

Section 337.5 has been changed in response to a request from a commenter to restate the language from §263.14 of this title, rather than just incorporating it by reference.

In response to comments, the commission removed the reference to "federal" in §337.6, making it clear that it does not intend to enforce federal laws or rules that have not been adopted and thus incorporated as state rules. Commenters also suggested that the commission add a sentence that states that

the commission cannot prosecute an administrative and judicial enforcement action at the same time. The commission responds that such a provision is unnecessary under current Texas law. One commenter suggested that this section be amended to require notice to the commission before referring cases to the attorney general's office, in accordance with §382.081 of the Health and Safety Code. The commission notes that all sections are to be construed in a manner consistent with applicable statutes.

Comments on §337.7 included complaints that this section goes beyond the commission's statutory authority. Based on these comments and upon internal agency review, the Commission decided to delete this section.

The originally proposed §337.8, and sections which similarly refer to circumstances not requiring the normal process (see, also, §337.25) were the subject of many comments indicating confusion with the commission's intent. These sections refer to situations which are anticipated to occur extremely rarely, ones for which the applicable statutes do not require the normal process for a contested enforcement case. An example of such an exceptional case would be an action for an emergency order under §361.301 of the Health and Safety Code, which statute neither provides for a hearing prior to issuance nor describes the procedures for a hearing on the action when such hearing is held. Thus, in §337.8, the commission has retained the authority to prescribe rules on an ad hoc basis for hearings, such as the Health and Safety Code §361.301 emergency order hearing, which do not fit within the standard contested enforcement case context. Similarly, §337.25(a) allows the executive director to file a petition as the instrument initiating an enforcement action, only where the statutes do not provide for an initial Executive Director's Preliminary Report ("EDPR"). For the vast majority of enforcement hearings, these sections, or subsections, will not be relevant.

Section 337.9 was modified in response to comments. The word "use" was substituted for "adopt," and the phrases "in appropriate circumstances" and "tentatively" were deleted. Also, staff noticed that the term "commission" had been used instead of the term, "executive director." Often times these terms are used interchangeably by commenters and staff, but in this instance "executive director" more accurately reflected the intent of the rule and has, thus, been substituted in the final version.

In response to comments on §337.21, a slight change was made to make clear that the rules do not contemplate an entity other than the commission or the office of hearings examiners to preside over contested enforcement cases. The remainder of this section, as well as the entirety of §337.31, have been deleted, in order to allow the commission to assess the ramifications of new legislation transferring the function of the commission's office of hearings examiners to the State Office of Administrative Hearings.

Some commenters expressed concerns that these rules might indicate that informal resolution of enforcement matters would no longer

be possible. Nothing in these rules was intended to produce such a result. A sentence was added to §337.22 to make that absolutely clear.

Regarding §337.23 the commission received comments which requested expansion upon the statutory processes and content for EDPR's, as well as some which would have had the commission diminish the legal significance given to the EDPR by the statutes. As to the latter, such a change could only be made by the legislature. As to the former category of comment, while the commission notes that agency programs and practices often do grant to respondents more process than required by constitutional "due process," the intent of this section was to state the statutory requirements for an EDPR.

In response to comments requesting same, the commission has added a cross-reference in §337.24(d), making clear that these instruments are pleadings, as defined in §337.3 and §337.24, and in §337.24(d), showing that these pleadings are, in turn, subject to the general service and notice provision of §337.27. As an interpretive note, the commission points out that these additions are redundant, as the terms, "petition" and "answer," are mentioned explicitly as fitting within the definition of "pleading" in §337.3, and are thereby subject to requirements of service under §337.27, as well. The commission would add that failure in other sections or subsections of these rules to state, as here, that an instrument is a "pleading" or that service should be in accordance with §337.27 should not be construed as an indication of an exception to the broad meaning of §337.24 and §337.27.

In response to comments complaining that §337.24 (c), granting parties the right to file amended or supplemental pleadings up to 7 days before a hearing, is confusing and unfair, the commission has re-arranged the order of the language and added the last phrase of §337.24(c) ("and may constitute grounds for continuance"). It should be noted that this subsection provides for the same time limits on filing as do the Texas Rules of Civil Procedure.

Similarly, in response to comments that suggested that the rights to file amended and supplemental petitions were broader than those found in the Texas Rules of Civil Procedure, the commission points out that amendment and supplementation of petitions as provided by §337.24, is within the statutory authority of the commission and the executive director and is in accord with analogous procedures for amended and supplemental petitions found in the Texas Rules of Civil Procedure.

Some commenters also opposed the basic right, reflected in §337.24(d) of the executive director to use a petition as an instrument in a contested enforcement case in addition to EDPRs. It should be noted that these commenters cited no statutory limitation on the executive director, limiting that office to using EDPRs alone. This position has not been adopted in the rules.

One commenter asked that §337.26 address service of petitions which initiate a cause of

action. The commission disagreed with this comment because this has been done in §337.25.

In response to several commenters who interpreted §337.28 as requiring an answer analogous to a "general denial" in state district court, the commission has decided to allow the answer to be filed "in the nature of a general denial." Also, regarding §337.28, a commenter requested a revision to make it clear that a respondent may consent to one or more issues in the EDPR or petition. As a result, §337.28(f) has been added.

Agency staff noted in its review that the inclusion of the sanction of a default order based upon failure to comply with discovery in §337.29(c) was redundant of similar language in §337.38(d). As a result, the proposed §337.29(c) has been deleted and the former subsection (d) renumbered.

Some commenters pointed out that the wording of §337.30 might have limited the scope of agreed orders unnecessarily. The commission agrees, and thus, the "any other lawful provisions" has been added. The majority of comments on this section, however, were based on the notion that the commission should address standardization of agreed orders and mandate particular language of agreed order provisions through this section. The commission disagrees, believing that limiting the executive director's power to negotiate with flexibility to address the circumstances of each individual case is not an appropriate use of the commission's rulemaking authority; nor would such a rule be likely to significantly improve the efficiency of the enforcement process.

In response to several commenters who complained that the executive director was given unilateral authority to sever or consolidate cases and/or claims, the commission has changed §337.32 to provide that the executive director must get the hearings examiner's permission to consolidate or sever if the hearings examiner has assumed jurisdiction. The commission did not feel any additional changes to this section were necessary.

One comment, directed toward §337.33, requested a change to address notice in the event a continuance were granted by a hearings examiner. The commission agrees with this comment, but has modified §337.57 to reflect this change. Section 337.57 did not address rulings and decisions of a hearings examiner issued during the course of the case. The final version applies Government Code §2001.142, the Administrative Procedures Act ("APA") notice requirements to hearings examiner rulings and addresses the commenter's concerns about notice in the event of continuance. A commenter requested definitions of several terms in §337.37(d) in order to make it more difficult to seal records. The commission notes that this section requires that, at a minimum, sealing of records be in accordance with the Texas Open Records Act ("the Act"). Sections 337.37 (d)(3)(a) and (b) go beyond the Act in establishing safeguards to protect the public interest in openness of records, and the commission believes additional definitions are unnecessary.

It was pointed out by agency staff, that the discovery sanctions in §337.38 included recommendation by the hearing examiner of a default order but did not contain an allowance for "issue preclusion" based upon failure to comply with discovery. Therefore, this option has been included through additional language in §337.38(d).

The commission has corrected §337.37(f), for which the published proposal inadvertently left out the words "are hereby incorporated by reference."

Based on staff review §337.40, regarding interlocutory appeals and certified questions, the commission has changed that section to allow interlocutory appeals for jurisdictional questions only.

For §337.41, one commenter suggested adding a subsection requiring hearings examiner to make written summaries of any prehearing conference. The commission has not added a subsection; however, subsection (b) has been modified to make clear that the hearings examiner has the authority to prepare his/her own prehearing order, or have the parties draft one. The sentence requiring a showing of manifest injustice to alter such orders, has been removed to allow more flexibility to the parties and the hearings examiner.

Based upon staff's review, the word, "offer," has been added to §337.42(c). This term avoids ambiguity as to the intent of the section.

Agency staff noted that prefiled testimony could actually slow down proceedings in matters that would not otherwise require much time to hear. As a result, §337.45(e) now requires the hearings examiner to conclude that a hearing would be expected to last more than 5 working days, before he/she may order prefiled testimony.

Commenters suggested that the burden of proof provision in §337.46 did not address the executive director's burden of proof on penalties. A proposed provision would have required the executive director to prove by a preponderance of the evidence "the appropriateness of the requested penalty," but such a provision would inaccurately reflect the law. The statutes do not require the executive director to prove that his/her recommendation is appropriate to the exclusion of any alternative penalty amount. Rather, the statutes require that the commission decide what penalty amount is appropriate based on evidence submitted by all parties which is relevant to certain listed statutory factors.

In other words, analogous to criminal punishment proceedings, the executive director's "recommendation" is in the nature of argument, not an element to be proven. Since some of the factors to be considered by the commission are mitigating factors, there is a strong possibility that the respondent will proffer more evidence relevant to these mitigating factors than the executive director. As a result, the final version of §337.46 requires that either party prove by a preponderance of the evidence, facts which it wants the commission to rely upon in making the penalty assessment.

In further response to comments on §337.46, a sentence was also added requiring respon-

dents to carry the burden of proof on any asserted affirmative defenses.

Section 337.49, regarding requesting parties to submit findings of fact and conclusions of law, was deleted as unnecessary in light of commission rule §263.2(15) which authorizes an examiner to exercise any appropriate powers necessary or convenient to carry out his/her responsibilities.

In §337.50(a) staff deleted "issued under Texas Water Code, §26.136(d) or any other pleading" because that clause was unnecessarily narrow, and the word "petition" was added to reflect that the rules allow for petitions to either amend or substitute for EDPRs. Also, the term "decision" in the first sentence of §337.50(a) was changed to "recommendation," because the executive director's role in enforcement actions is that of a party and not that of the decision-maker or trier of fact.

In response to a comment, the commission is amending §337.53 by adding 10 days to the time period within which parties may file exceptions or briefs regarding the hearings examiner's PFD. The commission also added the phrase "with approval of the hearings examiner" at the end of the section to ensure that the process is not unnecessarily delayed by agreements among the parties without approval of the hearings examiner. Another comment on this section suggested clarifying language to ensure that pleadings are filed in accordance with §337.4 on filing of written instruments. Those changes have been made to §337.4. Language reiterating the need to serve pleadings in accordance with §337.27 was suggested but not added because it would be redundant.

Sections 337.51 and 337.56 are analogous provisions detailing what is required of a hearings examiner to be included in a PFD and what is required of the commission to be included in its final enforcement order, respectively, following a contested enforcement case hearing. Staff recognized that rulings on submitted findings and conclusions were not required by the applicable statutes. Thus, such rulings were changed from being mandatory to being permissive.

Other changes were made to §337.56 because, as commenters pointed out, there was no requirement that the commission rule on "remedial" provisions. The phrase "other provisions as appropriate" has also been added to reflect that this rule is not designed to limit the flexibility of the commission. In response to another commenter, the word, "applicable" was inserted in subsection (b), in front of "statute," as it was in the similar section of §337.51.

Several commenters suggested adding a requirement of notice of orders not assessing administrative penalties to §337.57(c); in response, the commission has edited §337.57(c) to require notice for all enforcement orders, while reserving *Texas Register* publication for only those orders assessing administrative penalties.

Many commenters from the regulated community opposed §337.56(d) which required prior notice of proposed agreed enforcement orders containing penalties of or above \$100,000. That subsection has been deleted.

Except as indicated in the following paragraph, §337.58 has not been changed from the proposed version, which was developed through modification of the predecessor rule to §337.58, 30 TAC §337.40. In order to comply with the Texas Supreme Court's ruling in the Texas Association of Business v. Texas Air Control Board, et al. case, the former §337.40(c) was changed by deleting the phrase, "shall result in a waiver of all legal rights to judicial review." The commission believes that this change will bring its rules into compliance with the Supreme Court's ruling. One commenter objected that the section was still violative of that ruling because it maintains the right of the commission to seek enforcement through the attorney general's office for failure to either pay the penalty or submit a supersedeas bond. The Supreme Court's ruling directly addresses the commenter's question and affirms the right of the commission to seek enforcement through the attorney general's office for failure to either pay the penalty or submit a supersedeas bond. (Texas Association of Business v. Texas Air Control Board, et al., 852 S.W. 2d. 440 (Tex 1993), at 449).

Subsection (c) of §337.58 was modified to delete the phrase "upon approval by the commission" because the executive director has authority to refer cases to the Office of the Attorney General as indicated in §337.6.

One commenter requested a new section to set out procedural requirements for perfecting appeal that are found in statutes; however, the commission believes that §337.58(g) is sufficient to alert practitioners of the need to look to the relevant statutes.

Many of the comments received on this rule were of a general nature, not specific to a given section or subsection of the chapter. One commenter stated that the commission should incorporate the penalty matrix in these rules; that without it, it appears that the commission could amend and seek additional penalties if a case goes to hearing. Although the use of penalty matrices extends throughout the agency, different matrices are used by different programs and sometimes within the same program for different types of violations. These internal guidance mechanisms are more appropriately located in Enforcement Guidelines (see, §337.9) which are tailored to each program. The commission also notes that the executive director has the authority to amend and seek additional penalties up to the statutory maximum at any time that the petition can be amended, in the same way in which an enforcement petition in district court can be amended. Additional information may be discovered during the discovery and preparation for contested enforcement case hearings that will make it appropriate to adjust the recommended penalty assessment. The penalty assessment that appears in the EDPR is in the nature of a settlement offer, subject to change.

One commenter suggested that §337.71 did not properly implement Health and Safety Code §382.082. Changes have been made in §337.71 by adding (a) (4) to make it clear that it is intended to implement Water Code §5.117 and that "substantial noncompliance" under Chapter 382 of the Health and Safety Code will be handled according to §382.082.

Subchapter A. Enforcement Generally

• 30 TAC §§337.1-337.6

The repeals are adopted under the Texas Water Code, §5.103 and §5.105, which provides the TNRC with the authority to adopt any regulations necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas.

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 26, 1995.

TRD-9506417 Lydia Gonzalez-Gromatzky
Acting Director, Legal
Services Division
Texas Natural Resource
Conservation
Commission

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Proposal publication date: December 2, 1994

For further information, please call: (512)
239-4640

• 30 TAC §§337.1-337.6, 337.8-337.10

The new sections are adopted under the Texas Water Code, §5.103 and §5.105, and Health and Safety Code, §382.017, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and the Health and Safety Code, respectively, and other laws of the State of Texas, and to establish and approve all general policy of the commission.

§337.3. Definitions. Unless specifically defined in this chapter, all terms used in these rules bear the same definitions ascribed by the Texas Water Code, the Texas Health and Safety Code, the Administrative Procedure Act, the Rules of Procedure of the Texas Natural Resource Conservation Commission and the substantive regulations promulgated by the Texas Natural Resource Conservation Commission. The terms specifically defined for the purposes of this chapter are as follows.

Contested Enforcement Case—An action in which the executive director seeks an enforcement order and the respondent, where having a right to do so, contests the issuance of the order by requesting an evidentiary hearing.

Contested Enforcement Case Hearing—The evidentiary hearing on the merits in a contested enforcement case, presided over by the office of hearings examiners.

Executive Director's Preliminary Report ("EDPR")—A pleading filed by the executive director, which when issued and served in accordance with §337.26, seeks

an enforcement order against a respondent. Upon such pleading, a default order may be granted by the commission, in accordance with §337.29. EDPR is further defined in §337.23 of this chapter.

Enforcement Action—A legal action initiated by the executive director seeking an enforcement order.

Enforcement Hearings—Any hearing, whether required by law, or ordered based upon the discretion of the commission, held as a prerequisite by the commission to issuance of an enforcement order. Enforcement Hearings include, but are not limited to, hearings before the commission concerning actions brought pursuant to the Texas Health and Safety Code, §§361.301-361.303, 361.272, 361.252, and §§382.088 and 382.023; the Texas Water Code, §§26.136, 5.117, 13.4151, 27.1015, and 28.067.

Enforcement Order—Any commission order enforcing or directing compliance with any provisions; whether of statutes, rules, regulations, permits or licenses, or orders; which the commission is entitled by law to enforce or with which the commission is entitled by law to compel compliance.

Parties—The parties to a contested enforcement case hearing shall include the Executive Director, the Respondent(s), and any other parties authorized by statute.

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

Petition—The instrument by which the Executive Director states a cause of action for an enforcement order against a respondent. When an EDPR is filed and issued in accordance with the general requirements of §337.23 and §337.26 (regarding notice of EDPR), such EDPR and notice constitute a petition, as do amended EDPRs and amended or supplemental petitions.

Pleadings—Any written petition, answer, motion or other written instrument, except exhibits, including an "EDPR," filed with the commission or the office of hearings examiners in a contested enforcement case; further defined in §337.24 of this title (relating to Requirements for Pleadings Other than EDPR).

Respondent—A person against whom the executive director is seeking an enforcement order.

§337.4. Filing of Written Instruments. Any pleading filed pursuant to this chapter, unless presented orally during a hearing, shall be filed with the chief clerk with a copy to the hearings examiner where one is presiding in the case. Written decisions, rulings, or orders by the commission or a hearings examiner shall be filed with the chief clerk.

§337.5. *Computation of Time.* For purposes of this chapter, in computing any period of time prescribed or allowed by regulations of the commission, by order of the commission, or by any applicable statute, the period shall begin on the day after the act, event, or default in question and it shall conclude on the last day of that designated period, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday.

§337.6. *Judicial Civil Enforcement.* The executive director is authorized to institute or cause to be instituted, in courts of competent jurisdiction, legal proceedings to enforce and compel compliance with any provisions; whether of statutes, rules, regulations, permits or licenses, or orders; which the commission is entitled or required by law to enforce or with which the commission is entitled or required by law to compel compliance. Such legal proceedings may be initiated at any time by the executive director by a letter from the executive director referring the matter to the Texas attorney general's office and requesting that the attorney general take action on behalf of the commission.

§337.8. *Enforcement Hearings.* If required by law, an enforcement hearing shall be held prior to commission issuance of any final enforcement order. In cases for which an enforcement hearing is not required by law to be held prior to issuance of an enforcement order, the commission may elect to hold a hearing, on its own motion, or upon the request of the executive director, prior to issuing a final enforcement order or direct the office of hearings examiners to hold such a hearing. In those cases for which an enforcement hearing is not required by law to be held prior to issuance of an enforcement order, or for which procedures for an enforcement hearing are not specifically prescribed by rule or statute, the commission may elect to have such hearings be held by the office of hearings examiners under rules prescribed by the commission, including the procedures established by this chapter for contested enforcement cases.

§337.9. *Enforcement Guidelines.* The executive director may use enforcement guidelines which are neither rules nor precedents but rather announce the manner in which the agency expects to exercise its discretion in future proceedings. These guidelines do not establish rules which the public is required to obey or with which it is to avoid conflict. These guidelines do not convey any rights or impose any obligations on members of the public. These guidelines will be available to the public under the

terms of the Texas Open Records Act, Texas Civil Statutes, Article 6252-17(a) (Vernon's Supplement 1992).

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 26, 1995.

TRD-9506420

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Conservation
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For further information, please call: (512) 239-4640

Subchapter B. Contested Enforcement Case Hearings

- 30 TAC §§337.21-337.30,
337.32-337.48, 337.50-337.58

The new sections are adopted under Texas Water Code, §5.103 and §5.105, and Health and Safety Code, §382.017, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and the Health and Safety Code, respectively, and other laws of the State of Texas, and to establish and approve all general policy of the commission.

§337.21. *Contested Enforcement Case Hearings to be Held by Office of Hearings Examiners.* In a contested enforcement case, unless the commission chooses to hear the case itself, the office of hearings examiners shall have the delegated authority to preside over the case proceedings in accordance with the rules of this chapter.

§337.22. *Remedies.* Remedies available to the commission in enforcement actions conducted pursuant to these rules include all those found in the Texas Water Code, the Texas Health and Safety Code, and the Administrative Procedure Act. Nothing herein shall be construed to preclude the executive director from seeking any remedy in law or equity not specifically mentioned in these rules. In addition, an enforcement matter may be resolved informally without the necessity of a contested enforcement case proceeding in appropriate circumstances.

§337.23. *Executive Director's Preliminary Report ("EDPR").*

(a) Any enforcement action brought under these rules may be initiated by the EDPR being filed by the executive director.

(b) The EDPR shall include a brief statement of the nature of the violation, the statute or statutes violated, the facts relied upon by the executive director in concluding that a violation has occurred, a recommendation that an administrative penalty be assessed, the amount of the recommended penalty and an analysis of the factors required in the relevant statute to be considered by the commission in determining the amount of the penalty. This EDPR may be superseded by a petition as provided in §337.24(d) of this title (relating to "Pleadings Other than EDPR").

§337.24. *Pleadings Other than EDPR.*

(a) In a contested enforcement case, all pleadings for which no other form is prescribed shall contain:

(1) the name of the party seeking to bring about or prevent action by the commission;

(2) the names of all other known parties;

(3) a concise statement of the facts and the law relied upon by the pleader;

(4) a prayer stating the type of relief, action, or order desired by the pleader;

(5) any other matter required by statute;

(6) a certificate in accordance with §337.27(b) of this title (relating to Service of Notice and Pleadings), showing service; and

(7) the signature of the submitting party or the party's authorized representative.

(b) All pleadings shall include the docket number assigned the case by the Chief Clerk and shall be served on the parties in accordance with §337.27 of this title.

(c) Up to seven days prior to the hearing, parties may file pleadings, supplemental or amended, so long as such do not operate as an unfair surprise to the opposite party. Amendments after that time will be at the discretion of the hearings examiner and may constitute grounds for a continuance.

(d) The executive director may amend an EDPR by filing a petition, in which the executive director may make such changes as the law allows, including but not limited to changes in the following: the amount of the penalty, up to the maximum allowable by statute, the violations alleged to include any or all violations which are not precluded by law from being brought, the number of days of occurrence of previously alleged violations, and the injunctive relief (or remedial ordering provisions) sought. The right to change the

violations alleged includes the right to add causes of action based on statutes within the Commission's jurisdiction other than the one or ones upon which the EDPR in the case was based. Petitions are pleadings and shall be served on the parties in accordance with §337.27 of this title.

(e) Any pleading may adopt and incorporate, by specific reference thereto, any part of any document or entry in the official files and records of the agency. Copies of the relevant portions of such documents must be attached to the pleadings.

§337.28. Answer.

(a) A respondent may file a pleading, which may be in the nature of a "general denial" as that term is used in state district courts, entitled an "answer," either consenting to the imposition of the penalties and injunctive relief recommended in the EDPR, or requesting a contested enforcement case hearing. Any answer must be filed no later than the 20th day after the date on which notice of an EDPR is received. Failure to file the answer by the 20th day after the date on which notice of EDPR is received may result in a default order, as described in §337.29 of this title (relating to Default Order), being issued against respondent.

(b) If the person charged consents to the EDPR including the recommended penalty, the answer shall affirmatively so state.

(c) An answer as described herein must also be filed in response to a petition which initiates an enforcement action (as described in §337.25 of this title (relating to Petitions which Initiate a Cause of Action)).

(d) Answers to amended or supplemental petitions shall be filed if additional facts and claims are alleged in response to the said amended or supplemental petitions.

(e) Any affirmative defenses must be specifically pled in an answer.

(f) A respondent may consent in writing to parts of the EDPR, initial petition, or amended or supplemental petition, whichever is the most recent pleading. He/she may also enter into agreements with the executive director regarding evidence or other issues pending in the enforcement action by stipulations presented in writing to the hearings examiner.

§337.29. Default Order.

(a) How and when. If any respondent to an EDPR or petition initiating an enforcement action fails to timely file an answer as required by §337.28 of this title (relating to Answer), the executive director may make a motion that a default order be entered against the respondent. The execu-

tive director may support the motion with such documentary evidence, including affidavits, exhibits and pleadings, and oral testimony to demonstrate that the respondent received proper notice, under §337.25 or §337.26 of this title (relating to Petitions which Initiate a Cause of Action and Notice of EDPR), of the pleading initiating the cause of action; and that the respondent failed to timely file an answer under §337.28 of this title, and that the respondent is liable for the violations asserted in the cause of action. The executive director may also present documentary evidence and oral testimony regarding the amount of penalties that should be assessed against the respondent. In the motion for default order, or at the hearing on the motion, the executive director may also ask for additional penalties for violations alleged in the EDPR or petition, which have continued from the time of the filing of the EDPR or petition, up to the date of the default order. If the executive director recommends additional penalties for continuing violations, he shall briefly describe, either orally or in writing, the continuing violations and the evidence, circumstantial or otherwise, that forms the basis for the allegation that the violations are in fact continuing. The commission may grant the relief recommended in the EDPR or petition, or such other amount as may be justified by the evidence presented by the executive director.

(b) Failure to appear at hearing. Even though some or all of the parties fail to appear at a contested enforcement case hearing in person or through their duly authorized representatives, the commission may consider fully and dispose of the matter pending if notice has been given in accordance with law.

(c) Upon issuance of a default order, notice of such order shall be given to the respondent according to the provisions of §337.28 of this title.

§337.30. Agreed Orders.

(a) The executive director and the respondent may reach an agreement, or settlement, in an enforcement action such that an agreed order is recommended to the commission for approval and issuance. In such an agreed order, the respondent may agree to: admit to none, any, or all of the violations alleged in any EDPR or petition in the case; assessment of a specific administrative penalty; remedial ordering provisions; any combination of the above; and any other lawful provisions agreed to by the Executive Director and the respondent. In order to have legal effect as an order of the commission, and in any case in which penalties are assessed, an agreed order must be approved and issued by the commission.

(b) The issuance date of an Agreed Order shall be the date upon which the

order is signed indicating commission approval.

(c) When an agreement is reached, the case may then be set for consideration of an agreed order on the commission's agenda as soon as practicable, without need for a proposal for decision from the presiding officer, or hearings examiner.

§337.32. Consolidation and Severance. Once the office of hearings examiners has assumed jurisdiction over the contested case, the executive director may consolidate or sever cases or claims involving any person or persons against whom the executive director has a right to proceed, including the consolidation or severance of claims involving different media, with permission of the hearings examiner. The hearings examiner may sever contested enforcement cases or claims involving any number of parties, upon motion by any respondent, where the respondent can show that he/she would be unduly prejudiced if severance were not granted.

§337.37. Discovery.

(a) Discovery Generally. The hearings examiner may order that discovery be conducted in accordance with Rules 166b-169 of the Texas Rules of Civil Procedure, through a scheduling order as discussed in §337.34(a)(3) of this title (relating to Preliminary Hearing), so long as the Rules of Civil Procedure are interpreted in a manner consistent with this chapter, the Texas Water Code, the Texas Health and Safety Code, and the Administrative Procedure Act.

(b) Forms of Discovery. Parties may use any form of discovery provided in the Texas Rules of Civil Procedure or the Administrative Procedure Act. Discovery forms include requests for production of documents and other things for inspection, written interrogatories to a party, requests for admissions to a party, oral or written depositions, requests for entry upon and examination of real property, and motions for a mental and physical examination of a party or person under the legal control of a party.

(c) Scope of Discovery. Parties may obtain discovery regarding any matter which is relevant to the subject matter of the proceeding. It is not ground for objection that the information sought will be inadmissible at hearing, if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Nor is it ground for objection that the discovery request involves an opinion or contention that relates to fact, the application of law to fact, or mixed questions of law and fact, but the hearings examiner, upon a party's motion, may order that such

a request need not be answered until a later date.

(d) Protective Orders. On motion specifying the grounds and made by any person against or from whom discovery is sought, the hearings examiner may make a ruling in the interest of justice necessary to protect the person from undue burden, unnecessary expense, harassment or annoyance, or invasion of personal, constitutional or property rights. Specifically, the hearings examiner may issue an order:

(1) that requested discovery not be sought in whole or in part, or that the extent or subject of discovery be limited, or that it not be undertaken at the time or place specified;

(2) that the discovery be undertaken only by such method or upon such terms and conditions or at the time and place directed by the hearings examiner;

(3) that results of discovery be sealed or otherwise adequately protected, that its distribution be limited, or that its disclosure be restricted. However, in considering such an order, no order or decision issued by the hearings examiner or the commission may be sealed and other records filed pursuant to contested enforcement case procedures shall be presumed to be open to the general public. That presumption of openness may be overcome only upon a showing of all of the following:

(A) a specific, serious and substantial interest which clearly outweighs:

(i) this presumption of openness; and

(ii) any probable adverse effect that sealing will have upon the general public health or safety;

(B) no less restrictive means than sealing records will adequately and effectively protect the specific interest asserted; and

(C) sealing of the records in question can be achieved in accordance with the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a (Vernon Supplement 1992).

(e) Discovery compellable. The hearings examiner may compel any form of discovery if a party to a contested enforcement case fails to comply with appropriate rules. A party may file a motion to compel discovery at least 10 days prior to hearing. Motions to compel discovery may be filed less than 10 days prior to a hearing upon a showing of good cause.

(f) Incorporation of other rules. In addition to the foregoing subsections relating to discovery, §265.37(c) and (f); and

§§265.42-265.49, of this title (relating to Forms and Scope of Discovery; Protective Orders; Supplementation of Responses; Depositions; Issuance of Commission to Take Deposition; Witness Shall Comply with Discovery; Non-Stenographic Recording; Deposition by telephone; Failure of Party or Witness to Attend or to Serve Subpoena; Expenses; Deposition Examination, Cross-Examination and Objections, Submission to Witness; Changes; Signing and Use of Deposition Transcripts in Commission Proceedings).

§337.38. Abuse of Discovery; Sanctions.

(a) Section 265.50 and §265.51 of this title (relating to Abuse of Discovery; Sanctions; and Sanctions for Failure to Service or Deliver Copy of Pleadings and Motions) are hereby incorporated by reference.

(b) If a hearings examiner requires, or approves an agreement between the parties requiring that parties identify their witnesses according to a discovery schedule, the hearings examiner may impose as a sanction upon a party who violates such requirement, that the party be barred from calling any witness not properly identified.

(c) Absent good cause, a witness shall be barred from testifying about matters which were not identified by the sponsoring party in its witness list and amendments thereto, and/or in that witness' prefiled testimony, when election to prefile testimony has been noticed by the sponsoring party or when prefiled testimony has been directed by the examiner.

(d) In addition to the foregoing, if a respondent fails to comply with discovery procedures, the hearings examiner may issue a proposal for decision recommending preclusion of the offending party from contesting a given issue of fact, or that a default judgment be rendered against the respondent, in accordance with §337.29 of this title (relating to Default Order).

§337.40. *Interlocutory Appeals.* No interlocutory appeals may be made to the commission by a party to a contested enforcement case before a hearings examiner, except on jurisdictional issues. However, at any time during a contested enforcement case, on a motion by a party, or on the hearings examiner's own motion, the office of hearings examiners may certify a question to the commission for guidance regarding commission policy, jurisdiction or the imposition of any sanction by the hearings examiner that would substantially impair a party's ability to present his/her case.

§337.41. Final Prehearing Conference.

(a) Upon a request by any party, and at the discretion of the hearings exam-

iner, the hearing examiner may order that the parties and/or their designated representatives appear before him/her for a final prehearing conference as close to the time of an enforcement hearing as is reasonable under the circumstances. The purposes of such a conference are to:

(1) expedite the disposition of the enforcement action;

(2) establish the structure that will govern the enforcement hearing;

(3) improve the quality of the enforcement hearing; and

(4) facilitate the settlement of the enforcement action.

(b) The hearings examiner may prepare, or may order that the parties draft, a prehearing order in preparation for the final prehearing conference. Such an order, upon the hearings examiner's approval, will control the subsequent course of the enforcement hearing.

(c) If a party or his/her representative fails to appear at a prehearing conference, is substantially unprepared to participate in the conference, or fails to participate in good faith, the hearings examiner, upon motion or on the hearings examiner's own initiative, may make such orders as are just, including those included in §337.38 of this title (relating to Abuse of Discovery; Sanctions).

§337.42. Exhibits.

(a) Exhibits sought to be introduced by a party in a contested enforcement case hearing shall not exceed 8 1/2 by 11 inches unless they are folded to the required size. Maps and drawings that are offered as exhibits shall be rolled or folded so as not to unduly encumber the record. Exhibits not conforming to this rule may be excluded.

(b) Each exhibit offered shall be tendered for identification and placed in the record. Copies shall be furnished to the hearings examiner, each of the parties, and the hearings reporter, unless the hearings examiner rules otherwise.

(c) If an exhibit has been identified, offered, objected to and excluded, it may be withdrawn by the offering party. If withdrawn, the exhibit will be returned and the offering party will have waived all objections to the exclusion of the exhibit. If not withdrawn, the exhibit shall be included in the record for the purpose of preserving the offering party's objection to the exclusion of the exhibit.

§337.45. Presentation of Evidence.

(a) In addition to the following subsections relating to presentation of evidence, §§265.31-265.35 (relating to

Subpoena of Witnesses and for the Production of Documentary Evidence; Form of Subpoena; Witness Shall Attend Hearing; Evidence; and Additional Testimony), are hereby incorporated by reference.

(b) Oral testimony offered by any witness shall be under oath.

(c) The parties shall each have the right to call and examine witnesses, and to introduce exhibits. In a contested case, a party may conduct cross-examination required for a full and true disclosure of the facts. The rules of privilege shall be effective to the extent that they are otherwise required to be recognized by Texas statute.

(d) Official notice may be taken of any generally accepted technical or scientific matter within the commission's field of competence or any matter which may be judicially noticed by the courts of this state. Parties present at the hearing shall be informed of and given an opportunity to rebut the matters proposed to be noticed.

(e) If in the opinion of the hearings examiner, it appears that the presentation of live testimony in a contested enforcement case hearing may last for more than 5 working days, the hearings examiner may order that the parties introduce their witnesses' direct testimony through prefiled written questions and answers. If the hearings examiner so orders, the parties shall provide the pre-filed testimony for each witness it intends to present at the enforcement hearing to all other parties of record within a reasonable time prior to the presentation of the testimony of the witness at hearing, with such reasonable time period to be determined by the hearings examiner. The prefiled testimony of a witness shall not be admissible if the witness is not available at the hearing for cross-examination.

§337.46. Burden of Proof. The executive director shall have the burden of proving by a preponderance of the evidence the occurrence of any violation and the appropriateness of any proposed technical ordering provisions. The respondent shall have the burden of proving by a preponderance of the evidence all elements of any affirmative defense he/she asserts. Any party submitting facts relevant to the factors prescribed by the applicable statute to be considered by the commission in determining the amount of the penalty shall have the burden of proving those facts by a preponderance of the evidence.

§337.50. Financial Inability to Pay; Amount Necessary to Obtain Compliance.

(a) If any respondent, in response to an EDPR or petition asserts an inability to pay the penalty recommended in that pleading or challenges the executive direc-

tor's recommendation regarding the amount of penalty which is necessary to deter future violations, that party shall have the burden of establishing that a lesser penalty is justified under that party's financial circumstances.

(b) A party asserting a claim under this section must produce all financial records that would be potentially relevant to that issue within thirty days of raising that claim, but no later than thirty days prior to the specified date for hearing without leave from the hearings examiner. The executive director is not required to make a discovery request for such financial records. The failure of the party raising such a claim to provide all potentially relevant financial records within the time discussed in this subsection shall constitute a waiver of the claim.

§337.51. Proposal for Decision ("PFD").

(a) After closing the hearing record in any contested enforcement case hearing, the hearings examiner shall file a written proposal for decision, which shall contain a statement of the reasons for the proposal, findings of fact, conclusions of law, a proposal for remedial relief (technical ordering provisions) where appropriate, and one of the following recommendations:

(1) that a violation has occurred and that a specific amount of penalties should be assessed;

(2) that a violation has occurred but that no penalty should be assessed; or

(3) that no violation has occurred.

(b) The proposal may also contain, rulings on any findings of fact and conclusions of law that have been submitted by the parties, and other provisions deemed appropriate by the hearings examiner.

(c) When recommending the assessment of an administrative penalty, the hearings examiner shall analyze each factor prescribed by the applicable statute to be considered by the commission in determining the amount of the penalty. The hearings examiner shall recommend to the commission an appropriate penalty amount based upon the evidence adduced at the hearing and the factors articulated in the applicable statutes.

(d) Weight to be given by the hearings examiner to individual statutory factors for determining penalty amount need not be equal and may vary depending on the facts of the particular case. The absence of evidence as to any particular factor does not negate the ability of the hearings examiner to arrive at a finding of an appropriate penalty based upon the totality of the circumstances, though such lack of evidence

may be a factor in determining the penalty amount.

§337.56. Commission's Decision after Contested Enforcement Case Hearing.

(a) After its receipt of the hearings examiner's proposal for decision, the commission shall review the proposal and shall issue a decision, which shall contain findings of fact and conclusions of law, provisions requiring remedial relief (technical ordering provisions), as necessary, and one of the following findings:

(1) that a violation has occurred and that a specific amount of penalties should be assessed;

(2) that a violation has occurred but that no penalty should be assessed; or

(3) that no violation has occurred.

(b) The decision may also contain rulings on any findings of fact and conclusions of law that have been submitted by the parties and other provisions deemed appropriate by the commission.

(c) When assessing an administrative penalty, the commission shall analyze each factor prescribed by the applicable statute to be considered by the commission in determining the amount of the penalty.

(d) Weight to be given by the commission to individual statutory factors for determining penalty amount need not be equal and may vary depending on the facts of the particular case. The absence of evidence as to any particular factor does not negate the ability of the commission to arrive at a finding of an appropriate penalty based upon the totality of the circumstances, though such lack of evidence may be a factor in reducing or increasing the penalty amount.

§337.57. Notice of Decisions and Orders.

(a) Notice of enforcement orders and decisions. For rulings, orders, or decisions issued by the commission or a hearings examiner in a contested enforcement case, parties shall be given notice, either personally or by first class mail, in accordance with the Administrative Procedure Act, §2001.142. Notice shall also be given in accordance with the Texas Health and Safety Code, §382.096, where applicable.

(b) Effective date. Effective date of an order for purposes of compliance with terms and conditions therein, including deadlines, shall be the date on which service of notice of the order is achieved in accordance with the Administrative Procedure Act, §2001.142.

(c) Notice of Enforcement Orders. In addition to the requirements of

§337.27(a) of this title, (relating Service of Notice and Pleadings) when the commission issues an enforcement order, notice of the order shall include: a copy of the order, a statement of the amount of the penalty, and a statement that the respondent has a right to judicial review of the order. For cases in which administrative penalties have been assessed, the chief clerk shall file notice of the commission's decision and order in the *Texas Register* not later than 10 days after the date on which the decision is adopted.

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 26, 1995.

TRD-9506419 Lydia Gonzalez-Gromatzky
Acting Director, Legal
Services Division
Texas Natural Resource
Conservation
Commission

Effective date: June 16, 1995

Proposal publication date: December 2, 1994

For further information, please call: (512) 239-4640

Subchapter B. Enforcement Hearings

• 30 TAC §§337.31-337.40

The repeals are adopted under the Texas Water Code, §5.103 and §5.105, which provides the TNRCC with the authority to adopt any regulations necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas.

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 26, 1995.

TRD-9506422 Lydia Gonzalez-Gromatzky
Acting Director, Legal
Services Division
Texas Natural Resource
Conservation
Commission

Effective date: June 16, 1995

Proposal publication date: December 2, 1994

For further information, please call: (512) 239-4640

Subchapter C. Water Rights Enforcement

• 30 TAC §§337.51-337.54

The repeals are adopted under the Texas Water Code, §5.103 and §5.105, which provides the TNRCC with the authority to adopt any regulations necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas.

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 26, 1995.

TRD-9506421 Lydia Gonzalez-Gromatzky
Acting Director, Legal
Services Division
Texas Natural Resource
Conservation
Commission

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Proposal publication date: December 2, 1994

For further information, please call: (512) 239-4640

Subchapter C. Special Enforcement Proceedings

• 30 TAC §337.71

The new section is adopted under the Texas Water Code, §5.103 and §5.105, and Health and Safety Code, §382.017, which provide the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and the Health and Safety Code, respectively, and other laws of the State of Texas, and to establish and approve all general policy of the commission.

§337.71. Mandatory Enforcement Hearings.

(a) The executive director shall monitor compliance with all permits and licenses issued by the commission. If the evidence available to the executive director through the monitoring process indicates that a permittee or licensee is in substantial noncompliance for a period of four consecutive months, or for a shorter period of time if the executive director considers an emergency to exist, the executive director shall report this fact to the commission together with the information relating to the noncompliance. A certificate of convenience and necessity is not considered to be a permit or license for the purpose of this section.

(1) The executive director may consider the magnitude and frequency of noncompliances with permit or license limitations and conditions in determining the existence of substantial noncompliance.

(2) "Substantial noncompliance" includes situations involving permit or license violations which cause or have the potential to cause a significant water quality problem in, or impairment of the uses of a receiving stream, groundwater or other water in the state, infringes upon the water rights of diverters or appropriators of water of the state, or results in a release or threat of release of hazardous waste to the environment, or any other set of circumstances which present a threat to public health or

safety or the environment. This set of circumstances includes but is not limited to a failure to monitor operations or report information required by a permit or license regarding the operation of a facility without which the operator and/or the commission may be unable to adequately assess the performance of the facility and thereby assure that environmental harm or threats to public health have not occurred and may not occur. In addition, "substantial noncompliance" will be assessed in terms of the degree of deviation from any requirement of a permit or license independent of the harm or potential harm to the environment or to public health.

(3) An "emergency," for purposes of this subsection, involves an unforeseen set of circumstances which calls for immediate commission action due to an actual or potential hazard to public health and safety, or severe adverse impact on or to the uses of a receiving stream, groundwater or other water in the state. If the emergency is of sufficient gravity, the executive director shall report the emergency to the commission together with the information relating to the noncompliance and shall advise the commission of the necessity of seeking a temporary restraining order, temporary injunction, or any other remedy in equity or law necessary for the abatement of the condition or conditions causing or contributing to the emergency, if such remedy is authorized by statute.

(4) Substantial noncompliance with provisions of the Texas Health and Safety Code, Chapter 382 or with rules, permits or orders promulgated pursuant to that Chapter, shall be handled pursuant to the Texas Health and Safety Code, §382.082.

(b) On receiving a report under subsection (a) of this section, the commission shall call and hold a hearing to determine whether the permittee or licensee who is the subject of the executive director's report to the commission has been in substantial noncompliance with his or her permit or license. Notice for this hearing shall issue in accordance with §337.26(b) and (c) of this title (relating to Notice of EDPR), except that in the event that notice is performed under §337.26(c) of this title, by publication, the contents of that notice need only include the name of the respondent, a summary of the relief sought by the executive director, and the right of the person to a hearing if such exists.

(c) At the conclusion of the hearing, the commission shall issue an order stating one of the following:

(1) no violation of the permit or license has occurred;

(2) a violation of the permit or license has occurred but has been corrected

and no further action is necessary to protect the public interest;

(3) the executive director is authorized to enter into a compliance agreement;

(4) a violation of the permit or license has occurred and an administrative penalty is assessed as provided by the Texas Water Code or the Texas Health and Safety Code; or

(5) a violation of the permit or license has occurred, and the executive director is directed to have enforcement proceedings instituted against the permittee or licensee through the office of the attorney general

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 26, 1995.

TRD-9506418 Lydia Gonzalez-Gromatzky
Acting Director, Legal Services Division
Texas Natural Resource Conservation Commission

Effective date: June 16, 1995

Proposal publication date: December 2, 1994

For further information, please call: (512) 239-4640

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

**Part III. Texas
Commission on Alcohol and Drug Abuse**

**Chapter 150. Licensure of
Chemical Dependency
Counselors**

Counselor Licensure Rules

• 40 TAC §150.1

The Texas Commission on Alcohol and Drug Abuse adopts an amendment to §150.1, concerning licensure requirements for licensed chemical dependency counselors, without changes to the proposed text as published in the January 6, 1995, issue of the *Texas Register* (20 TexReg 66).

This rule is being amended to further define criminal justice peer intern in order to clarify requirements for licensure of counselors working in the Texas Criminal Justice Chemical Dependency Treatment Initiative.

The section defines terms commonly used in the profession, sets standards and procedures for licensure and renewal as a licensed chemical dependency counselor, and provides grounds for disciplinary action. The sec-

tion also clarifies requirements for internship and licensure, provides for a new internship designation under the criminal justice setting, and defines requirements for applicants with criminal history.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4512o, which provide the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules and standards for licensure of chemical dependency counselors.

The code affected by this amendment is Texas Civil Statutes, Article 4512o

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 25, 1995.

TRD-9506351 Tom Mann
General Counsel
Texas Commission on
Alcohol and Drug Abuse

Effective date: June 15, 1995

Proposal publication date: January 6, 1995

For further information, please call: (512) 867-8720

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**Part XIX. Texas
Department of Protective
and Regulatory Services**

**Chapter 700. Child Protective
Services**

The Texas Department of Protective and Regulatory Services (TDPRS) adopts new §§700.2301-700.2310 and §§700.2401-700.2407, without changes to the proposed text as published in the April 21, 1995, issue of the *Texas Register* (20 TexReg 3009).

The justification for the new sections is to establish by rule the definitions and standards that the department uses to: identify the typical characteristics of foster children, foster caregivers, and the services provided at each of the six levels of residential care that TDPRS provides to children who have been placed in TDPRS-paid foster care; and assess and monitor the services provided at each of those levels of care.

The department's level-of-care standards and definitions were originally developed by the Texas Health and Human Services Coordinating Council (THHSCC) pursuant to state legislation requiring the establishment of a methodology for determining levels of care for children placed into foster care by the Texas Department of Human Services. (See Acts 1987, 70th Legislature, Chapter 1052, §3.03(b), effective September 1, 1987.) In November 1992, a working committee of the Texas Health and Human Services Commission updated the THHSCC's original standards and definitions. The new sections are

based directly on the 1992 version of the THHSCC's standards and definitions.

The sections will function by ensuring that the care provided to abused and neglected children who have been removed from their homes and placed in TDPRS-paid foster care is closely suited to their differing circumstances and needs.

No comments were received regarding adoption of the sections.

**Subchapter W. Definitions of
Levels of Care**

• 40 TAC §§700.2301-700.2310

The new sections are adopted under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs, and Chapter 41, which authorizes the department to enforce laws for the protection of children. The new sections are also adopted under the Texas Family Code, Title 5, Subtitle E, Chapter 264, Subchapters B and C, which authorizes the department to provide services to alleviate the effects of child abuse and neglect. In addition, the new sections are adopted under Public Law Number 96-272, Title I, which authorizes the department to administer foster-care and adoption assistance programs provided for under the Social Security Act, Title IV-E.

The new sections are also adopted under Texas Civil Statutes, Article 4413(503) historical note (Vernon Supplement 1993), 72nd Legislature, which transferred all functions, programs, and activities related to the child protective services program from the Texas Department of Human Services (TDHS) to the Texas Department of Protective and Regulatory Services (TDPRS). Article 4413(503) §12(a)(4) also authorizes the department to propose and adopt rules to ensure the department's compliance with state and federal law and facilitate the implementation of departmental programs.

The new sections implement the Human Resources Code, §41.027(a), which requires TDPRS to use a levels-of-care system for placing children in contracted residential care.

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 25, 1995.

TRD-9506354 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Protective and
Regulatory Services

Effective date: July 15, 1995

Proposal publication date: April 21, 1995

For further information, please call: (512) 450-3765

Subchapter X. Level-of-Care Standards for Foster Caregivers

• 40 TAC §§700.2401-700.2407

The new sections are adopted under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs, and Chapter 41, which authorizes the department to enforce laws for the protection of children. The new sections are also adopted under the Texas Family Code, Title 5, Subtitle E, Chapter 264, Subchapters B and C, which authorizes the department to provide services to alleviate the effects of child abuse and neglect. In addition, the new sections are adopted under Public Law Number 96-272, Title I, which authorizes the department to administer foster-care and adoption assistance programs provided for under the Social Security Act, Title IV-E.

The new sections are also adopted under Texas Civil Statutes, Article 4413(503) historical note (Vernon Supplement 1993), 72nd Legislature, which transferred all functions, programs, and activities related to the child protective services program from the Texas Department of Human Services (TDHS) to the Texas Department of Protective and Regulatory Services (TDPRS). Article 4413(503) §12(a)(4) also authorizes the department to propose and adopt rules to ensure the department's compliance with state and federal law and facilitate the implementation of departmental programs.

The new sections implement the Human Resources Code, §41.027(a), which requires TDPRS to use a levels-of-care system for placing children in contracted residential care.

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 25, 1995.

TRD-9506355

Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Protective and
Regulatory Services

Effective date: July 15, 1995

Proposal publication date: April 21, 1995

For further information, please call: (512) 450-3765

Chapter 710. Protection of Clients and Staff

Subchapter A. Abuse, Neglect, and Exploitation of Persons Served by TDMHMR Facilities

• 40 TAC §710.4

(Editor's Note. The Department of Protective and Regulatory Services adopted new §§710.3-710.15 in the May 23, 1995, issue of the Texas Register. Section 710.4 was adopted with changes, however the text was inadvertently omitted from the issue. The text to that section is being printed in

this issue of the Texas Register for clarification. The preamble to this section can be found in the May 23, 1995, issue of the Texas Register (20 TexReg 3840). The effective date to this section is June 15, 1995.

§710.4. Abuse, Neglect, and Exploitation of an Adult Defined.

(a) When the perpetrator is an employee, contractor, or agent of the Texas Department of Mental Health and Mental Retardation (TDMHMR), or the perpetrator is unknown, abuse, neglect, or exploitation shall be defined as follows.

(1) Abuse includes:

(A) any act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, which caused or may have caused physical injury or death to a person served;

(B) any act of inappropriate or excessive force or corporal punishment, regardless of whether the act results in an injury to a person served;

(C) any use of chemical or bodily restraints not in compliance with federal and state laws and regulations;

(D) sexual abuse; or

(E) any act or use of verbal or other communication, including gestures, to curse, vilify, or degrade a person served or threaten a person served with physical or emotional harm.

(2) Neglect means a negligent act or omission by any individual responsible for providing services in a facility rendering care or treatment which caused or may have caused physical or emotional injury or death to an individual with mental illness or mental retardation which placed an individual with mental illness or mental retardation at risk of physical or emotional injury or death, and includes an act or omission such as failure to establish or carry out an appropriate individual program plan or treatment plan for a person served, the failure to provide adequate nutrition, clothing, or health care to a person served, or the failure to provide a safe environment for a person served, including the failure to maintain adequate numbers of appropriately trained staff.

(A) Complaints concerning failure to carry out an appropriate individual program plan or treatment plan or involving the failure to maintain adequate numbers of appropriately trained staff which do not relate to a specific allegation of abuse or neglect will be investigated administratively by TDMHMR.

(B) Within 24 hours of receipt of such an allegation, the adult protective services investigator will refer the allegation to the head of the facility using the Adult Protective Services Referral Form.

(3) Exploitation means the illegal or improper act or process of using a person or the resources of a person served for monetary or personal benefit, profit, or gain.

(b) Abuse does not include:

(1) the proper use of restraints or seclusion, including TDMHMR's prevention and management of aggressive behavior (PMAB), and the approved application of behavior modification techniques as described in 25 Texas Administrative Code (TAC), Chapter 405, Subchapter F, concerning Restraint and Seclusion—Mental Health Facilities, 25 TAC Chapter 405, Subchapter G, concerning Behavior Therapy Programs (MH), and 25 TAC Chapter 405, Subchapter H, concerning Behavior Management—Facilities Serving Persons with Mental Retardation,

(2) other actions taken in accordance with the rules of TDMHMR;

(3) actions an employee reasonably believes to be immediately necessary to avoid imminent harm to self, persons served, or other individuals, if the actions are limited only to those actions reasonably believed to be necessary under the existing circumstances. The actions do not include acts of unnecessary force or the inappropriate use of restraints or seclusion, or PMAB; or

(4) complaints related to rights violations, theft of property, or daily administrative operations of a facility. Such complaints will be referred to the head of the facility for administrative action by the head of the facility, the facility rights protection officer, or other appropriate parties, using the Adult Protective Services Referral Form.

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 16, 1995.

TRD-9505923

Nancy Murphy
Section Manager, Media
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Texas Department of
Protective and
Regulatory Services

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For further information, please call: (512) 450-3765

TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 2. Environmental Policy

Subchapter C. Environmental Review and Public Involvement for Transportation Projects

• 43 TAC §2.51

The Texas Department of Transportation permanently adopts new §2.51, concerning coastal management program, with changes to the proposed text as published in the March 24, 1995, issue of the *Texas Register* (20 TexReg 2199). Section 2.51 is adopted to comply with the rules promulgated by the Coastal Coordination Council (CCC).

Texas Natural Resources Code, Chapter 33, Subchapter F (Coastal Coordination Act), requires the CCC to promulgate rules adopting the goals and policies of the state's Coastal Management Program (CMP). It also requires actions taken or authorized by state agencies that may adversely affect coastal natural resource areas to comply with the goals and policies of the CMP, and the CCC to review those actions to insure consistency with the goals and policies.

Pursuant to those requirements, the CCC adopted rules, codified as 31 TAC, Part XVI (Coastal Coordination Council), which implement the goals and policies of the CMP and establish procedures for the review by the CCC of state agency actions and authorizations. Section 505.26 of those rules authorize an agency to propose thresholds for referral of actions to the CCC. New §2.51 limits the number of actions subject to review by the CCC and focuses CCC attention on those actions which have the most potential to impact coastal natural resources.

Permanent adoption of new §2.51 is necessary to provide that transportation projects and programs for which an environmental document is prepared will be approved unless found to be inconsistent with the goals and policies of the CMP; establish as thresholds for referral of actions to the CCC the approval of transportation projects and programs requiring an environmental impact statement except that for actions concerning the Gulf Intracoastal Waterway, the threshold shall be Texas Transportation Commission approval of the acquisition of rights of way for dredged material disposal, and channel expansion, relocation, or alteration; provide that the department will request preliminary review by the CCC for all transportation projects and programs requiring an environmental impact statement; and provide that if the CCC does not issue a consistency finding within 45 days of the date a request is submitted, the department will assume that the project or program is consistent with the goals and policies of the CMP, and the department will proceed with final action.

On April 7, 1995, the department conducted a public hearing on proposed new §2.51 and to receive data, comments, views, and testimony, and no oral or written comments were received.

Proposed §2.51 contained the provision that if the CCC does not issue a consistency finding within 30 days of the date a request is submitted, the department will assume that the project or program is consistent with the goals and policies of the CMP, and the department will proceed with final action. To be consistent with recently enacted legislation which allows the CCC to review the submittal for 45 days, §2.51 has been revised to provide that the department will proceed with final action after 45 days.

The new section is adopted under Texas Civil Statutes, Articles 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.

§2.51. Coastal Management Program.

(a) Scope. The approval of transportation projects and programs located in whole or in part within the coastal boundary as defined in 31 TAC §503.1 (relating to Coastal Management Program Boundary) are actions subject to the Texas Coastal Management Program (CMP), 31 TAC Part XVI. Such projects will be approved unless found to be inconsistent with the goals and policies of the CMP, as described in 31 TAC §§501.10-501.15 (relating to Council Procedures). For purposes of this section, the term transportation projects and programs includes: maintenance programs, highway construction projects, public transportation projects, and aviation projects for which an environmental document is prepared under this subchapter; maintenance programs; and Gulf Intracoastal Waterway projects for which the commission authorizes right-of-way acquisition.

(b) Thresholds.

(1) In accordance with 31 TAC §505.26 (relating to Council Review and Approval of Thresholds for Referral), the department's thresholds for referral of actions to the Coastal Coordination Council (CCC) shall be the approval of transportation projects and programs requiring an environmental impact statement; provided, however, that the threshold for actions concerning the Gulf Intracoastal Waterway shall be approvals by the commission for acquisitions of rights of way for dredged material disposal, and channel expansion, relocation, or alteration.

(2) The department will request from the CCC, as authorized by 31 TAC §505.31 (relating to Preliminary Review of Individual Agency Actions by the Coastal Coordination Council), preliminary review of all transportation projects and programs requiring an environmental impact state-

ment. If the CCC does not issue a consistency finding within 45 days of the date a request is submitted, the department will assume that the project or program is consistent with the goals and policies of the CMP, and the department will proceed with final action.

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 25, 1995.

TRD-9506391 Robert E. Shaddock
General Counsel
Texas Department of
Transportation

Effective date: June 15, 1995

Proposal publication date: March 24, 1995

For further information, please call: (512) 463-8630

Chapter 17. Vehicle Titles and Registration

Subchapter A. Motor Vehicle Certificates of Title

• 43 TAC §§17.1-17.6

The Texas Department of Transportation adopts the repeal of §§17.1-17.6, concerning certificates of title for camper trailers, double wide mobile homes, trailers and semi-trailers, carrying capacity, initial applications: where filed, machinery plated vehicles, and permit plated vehicles, without changes to the proposed text as published in the February 3, 1995, issue of the *Texas Register* (20 TexReg 620)

The subject matter of the sections adopted for repeal is consolidated in new §§17.1-17.3, which are being contemporaneously adopted.

On February 14, 1995, the department conducted a public hearing on the proposed repeal of §§17.1-17.6 and no oral or written comments were received.

The repeals 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 6687-1, et seq, which authorize the department to promulgate rules necessary to carry out the provisions of laws governing the issuance of motor vehicle certificates of title

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 26, 1995.

TRD-9506396 Robert E. Shaddock
General Counsel
Texas Department of
Transportation

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Proposal publication date: February 3, 1995

For further information, please call: (512) 463-8630

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• 43 TAC §§17.1-17.3

The Texas Department of Transportation adopts new §§17.1-17.3, concerning Motor Vehicle Certificates of Title, with changes to the proposed text as published in the February 3, 1995, issue of the *Texas Register* (20 TexReg 620).

The new sections replace existing §§17.1-17.6, which are being contemporaneously repealed.

The department has determined that §17.3 should be permanently adopted with changes to delete references to a requirement for exterior vehicle color on the certificate of title application and the manufacturer's certificate of origin, because the certificate of title and certificate of origin do not reflect this information.

On February 14, 1995, the department conducted a public hearing on the proposed adoption of §§17.1-17.3 and no oral or written comments were received.

The new sections 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 6687-1, et seq, which authorize the department to promulgate rules necessary to carry out the provisions of laws governing the issuance of motor vehicle certificates of title.

§17.1. Purpose and Scope. The Certificate of Title Act, Texas Civil Statutes, Article 6687-1, charges the department with the responsibility of issuing certificates of title for motor vehicles, unless such motor vehicles are otherwise exempted by law. In order for the department to efficiently and effectively issue motor vehicle certificates of titles, maintain records, and collect the applicable fees consistent with the Certificate of Title Act, and to ensure proper application by motor vehicle owners in accordance with statutory provisions, the sections under this subchapter prescribe the policies and procedures for the application and issuance of motor vehicle certificates of titles.

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

Bond release letter—Written notification from the United States Department of Transportation authorizing United States Customs to release the bond posted for an imported motor vehicle to ensure compliance with federal motor vehicle safety standards.

Certificate of title—A written instrument which may be issued solely by and under the authority of the department, which reflects the purchase, sale, vehicle, license plate and lien information disclosed on the certificate of title application as specified in this subchapter or as may be required by the department.

Certificate of title application—A form prescribed by the division director that reflects the information required by the department to create a motor vehicle title record.

Date of sale—The date of the transfer of possession of a specific vehicle from a seller to a purchaser.

Department—The Texas Department of Transportation.

Distributor—A person engaged in the business of selling to a dealer motor vehicles bought from a manufacturer.

Division director—The director of the department's Vehicle Titles and Registration Division.

Federal motor vehicle safety standards—Motor vehicle safety requirements promulgated by the United States Department of Transportation, National Highway Traffic Safety Administration, set forth in Title 19, Code of Federal Regulations.

First sale—A bargain, sale, transfer, or delivery with intent to pass an interest therein, other than a lien, and accompanied by registration, of a motor vehicle which has not been previously registered in this state or elsewhere.

House moving dolly—An apparatus consisting of metal beams and axles used to move houses. House moving dollies, by nature of their construction and use, actually form a large semi-trailer.

House trailer—A vehicle without automotive power designed for human habitation and for carrying persons and property upon its own structure and for being drawn by a motor vehicle, not to include manufactured housing.

Identification certificate—A form issued by an inspector of an authorized safety inspection station on a vehicle previously registered or titled in another state or country in accordance with Texas Civil Statutes, Article 6701d, §142A.

Implements of husbandry—Farm implements, machinery and tools used in tilling the soil, including self-propelled machinery specifically designed or especially adapted for applying plant food materials or agricultural chemicals. This term does not include implements that are not designed or adapted for the sole purpose of transporting the farm materials or chemicals, or any passenger car or truck.

Importer—A person, except a manufacturer, who brings any used motor vehicle into this state for the purpose of sale within this state.

Lien—A security interest, as defined in Business and Commerce Code,

§1.201(37), of whatsoever kind or character whereby an interest, other than an absolute title, is sought to be held or given in a motor vehicle, and a lien created or given by constitution or statute in a motor vehicle.

Manufacturer—A person regularly engaged in the business of manufacturing or assembling new motor vehicles, either within this state or elsewhere.

Manufacturer's certificate of origin—A form prescribed by the department showing the original transfer of a new motor vehicle from the manufacturer to the original purchaser, whether importer, distributor, dealer, or owner, and when presented with an application for certificate of title show thereon, on appropriate forms to be prescribed by the department, each subsequent transfer between distributor and dealer, dealer and dealer, and dealer and owner.

Moped—A motor driven cycle whose attainable speed is not more than 30 miles per hour and that is equipped with a motor that produces not more than two-brake horsepower. If an internal combustion engine is used, the piston displacement may not exceed 50 cubic centimeters and the power drive system may not require the operator to shift gears.

Motor vehicle—Every kind of motor driven or propelled vehicle required to be registered under the laws of the state, including trailers, house trailers, and semi-trailers, and shall also include motorcycles, motor-driven cycles, mopeds, and four-wheel all-terrain vehicles designed by the manufacturer for off-highway use, whether or not the vehicle is required to be registered under Texas Civil Statutes, Article 6675a-1. The term motor vehicle does not include manufactured housing, motorcycles, motor-driven cycles, and mopeds, designed for and used exclusively on golf courses.

Motor vehicle importation form—An importer's declaration form prescribed by the United States Department of Transportation and certified by United States Customs that relates to an imported motor vehicle's compliance with federal motor vehicle safety standards.

Negotiable title—A title that may be used to transfer an interest or ownership in a motor vehicle, or to establish a new lien.

New motor vehicle—A motor vehicle which has never been the subject of a first sale either within this state or elsewhere.

Non-negotiable title—A title that may be used only as evidence of title and may not be used to transfer any interest or ownership in a motor vehicle, or to establish a new lien.

Non United States standard motor vehicle—A motor vehicle not manufactured in compliance with federal motor vehicle safety standards.

Owner—A person, firm, association, or corporation other than a manufacturer, importer, distributor, or dealer claiming title

to, or having a right to operate pursuant to a lien on a motor vehicle after the first sale, except the Federal Government and its agencies, and the State of Texas and a governmental subdivision or agency thereof not required by law to register motor vehicles owned or used thereby in this State.

Safety certification label—A label placed on a motor vehicle by a manufacturer certifying that the motor vehicle complies with all federal motor vehicle safety standards.

Semi-Trailer—A vehicle of the trailer type having a gross weight in excess of four thousand (4,000) pounds so designed or used in conjunction with a motor vehicle that some part of its own weight and that of its load rests upon or is carried by another vehicle.

Statement of fact—A written declaration executed by the seller or involved party of a motor vehicle that clarifies an error made on evidence of ownership which supports the application for certificate of title.

Subsequent sale—A bargain, sale, transfer, or delivery, with intent to pass an interest therein, other than a lien, of a motor vehicle which has been registered with this state or elsewhere, save and except when such vehicle is not required under law to be registered in this State.

Token trailer fee—A registration fee paid for certain semi-trailers, meeting the qualifications delineated in Texas Civil Statute, Article 6675a-6a, and used in combination with truck tractors or commercial motor vehicles whose registration is based upon a combined gross weight.

Trailer—Every vehicle having a gross unloaded weight in excess of four thousand (4,000) pounds and designed or used to carry its load wholly on its own structure and to be drawn by a motor vehicle.

Used motor vehicle—A motor vehicle that has been the subject of a first sale whether within this state or elsewhere.

Vehicle identification number—A number assigned by the manufacturer of a motor vehicle or the department that describes the motor vehicle for purposes of identification.

§17.3. Motor Vehicle Certificates of Title.

(a) Certificates of Title. Unless otherwise exempted by law or this chapter, the owner of any vehicle that is required to be registered in accordance with Texas Civil Statutes, Article 6675a-1, shall be required to apply for a Texas Certificate of Title in accordance with the Certificate of Title Act, Texas Civil Statutes, Article 6687-1.

(1) Motorcycles, motor-driven cycles, and mopeds.

(A) The title requirements of a motorcycle are the same requirements prescribed for any motor vehicle.

(B) A motorcycle, motor-driven cycle, or a moped designed for or used exclusively on golf courses is not classified as a motor vehicle and, therefore, title cannot be issued until such time as the unit is registered.

(C) A vehicle which meets the criteria for a moped and has been certified as a moped by the Department of Public Safety, must be registered and titled as a moped; otherwise, if the vehicle does not appear on the list of certified mopeds published by that agency, the vehicle will be treated as a motorcycle for title and registration purposes.

(D) A motor installed on a bicycle must be certified by the Department of Public Safety before the vehicle may be classified as a moped.

(2) Farm vehicles.

(A) The term motor vehicle does not apply to implements of husbandry and may not be titled.

(B) Farm tractors owned by agencies exempt from registration fees in accordance with Texas Civil Statutes, Article 6675a-5b, and farm tractors used as road tractors to mow rights-of-way or used to move commodities over the highway for hire are required to be registered and titled.

(3) Exemptions from title. Vehicles registered with the following distinguishing license plates may not be titled under the Certificate of Title Act:

(A) vehicles eligible for machinery license plates in accordance with Texas Civil Statutes, Article 6675a-2;

(B) vehicles eligible for farm trailer license plates in accordance with Texas Civil Statutes, Article 6675a-6a; and

(C) vehicles eligible for permit license plates in accordance with Texas Civil Statutes, Article 6675a-6b, Article 6675a-6c, and Article 6675a-6d.

(4) Trailers, semi-trailers, and house trailers. Owners of trailers, semi-trailers, and house trailers must apply for and receive a Texas Certificate of Title for any stand alone (full) trailer, including homemade full trailers, having an empty weight in excess of 4,000 pounds or any semi-trailer having a gross weight in excess of 4,000 pounds. House trailer-type vehicles must meet the criteria outlined in subsection (c) of this section in order to be titled.

(A) In the absence of a manufacturer's rated carrying capacity for trailers and semi-trailers, the rated carrying capacity shall not be less than one-third of its empty weight.

(B) Mobile office trailers, mobile oil field laboratories, and mobile oil field bunkhouses are not designed as a dwelling, but classified as commercial semi-trailers, and must be registered and titled as such if operated upon the public streets and highways.

(C) House trailer-type vehicles and camper trailers must meet the following criteria in order to be titled.

(i) A house trailer-type vehicle designed for living quarters and which is eight body feet or more in width or 40 body feet or more in length (not including the hitch), is classified as a mobile home and is titled under the Texas Manufactured Housing Standards Act, Texas Civil Statutes, Article 5221f, administered by the Department of Licensing and Regulation.

(ii) A house trailer-type vehicle which is less than eight feet in width and less than 40 feet in length is classified as a travel trailer and must be registered and titled.

(iii) A camper trailer must be titled as a house trailer and must be registered with travel trailer license plates.

(b) Initial application for Certificate of Title.

(1) Place of application. When motor vehicle ownership is transferred, except as provided by §17.74(c) of this title (relating to Dealers and Manufacturers Vehicle License Plates), a certificate of title application must be filed with the county tax assessor-collector in the county in which the applicant resides, or the county in which the motor vehicle was purchased or encumbered, within 20 working days of the date of sale.

(2) Information to be included on application. An applicant for an initial certificate of title shall file an application on a form prescribed by the department. The form shall at a minimum require the:

(A) motor vehicle description which includes, but is not limited to, the motor vehicle's:

(i) year;

(ii) make;

(iii) model;

(iv) identification number;

(v) body style;

(vi) manufacturer's rated carrying capacity in tons for commercial motor vehicles; and

(vii) empty weight;

(B) license plate number, if the motor vehicle is subject to registration under Texas Civil statutes, Article 6675a-1;

(C) odometer reading and brand, or the word "exempt" if the motor vehicle is exempt from federal and state odometer disclosure requirements;

(D) previous owner's name and city and state of residence;

(E) name and complete address of the applicant;

(F) name and mailing address of any lienholder and the date of lien, if applicable;

(G) signature of the seller of the motor vehicle or the seller's authorized agent and the date the certificate of title application was signed; and

(H) the signature of the applicant or the applicant's authorized agent and the date the certificate of title application was signed.

(3) Serial Number. If no serial number is die-stamped by the manufacturer upon a motor vehicle, house trailer, trailer, semi-trailer, or an item of equipment required to be titled, or if the serial number assigned and die-stamped by the manufacturer has been lost, removed or obliterated, the department will, upon proper application, presentation of evidence of ownership, and presentation of a law enforcement physical inspection, assign a serial number to the motor vehicle, trailer or equipment; the manufacturer's serial number or the assigned serial number will be used by the department as the major identification of the motor vehicle, trailer or equipment in the issuance of a certificate of title.

(4) Accompanying documentation. The certificate of title application shall be supported by, at a minimum, the following documents:

(A) evidence of vehicle ownership, as described in subsection (c) of this section;

(B) odometer disclosure statement properly executed by the seller of the motor vehicle and acknowledged by the purchaser, if applicable;

(C) the identification certificate required by Texas Civil Statutes, Article 6701d, and Texas Civil Statutes, Article 6687-1, §30(a), if the vehicle was last registered in another state or country; and

(D) release of any liens or, if not released, the liens shall be carried forward on the new certificate of title application pursuant to the following limitations.

(i) An out-of-state lien recorded on out-of-state evidence as described in subsection (c) of this section cannot be carried forward to a Texas title when there is a transfer of ownership, unless a release of lien or authorization from the lienholder is attached.

(ii) A lien recorded on out-of-state evidence as described in subsection (c) of this section is not required to be released when there is no transfer of ownership from an out-of-state title and the same lienholder is being recorded on the Texas application as is recorded on the out-of-state title.

(c) Evidence of motor vehicle ownership. Evidence of motor vehicle ownership properly assigned to the applicant shall accompany the certificate of title application. Evidence shall include, but is not limited to, the following documents.

(1) New motor vehicles. A manufacturer's certificate of origin assigned by the manufacturer or the manufacturer's representative or distributor to the original purchaser shall be required for a new motor vehicle that is sold or offered for sale.

(A) The manufacturer's certificate of origin shall be in the form prescribed by the division director and shall contain, at a minimum, the following information:

(i) motor vehicle description which includes, but is not limited to, the motor vehicle's year, make, model, identification number, body style and empty weight;

(ii) the manufacturer's rated carrying capacity in tons when the manufacturer's certificate of origin is invoiced to a Texas dealer as defined in §17.60 of this title (relating to Dealers and Manufacturers Vehicle License Plates), and is issued for commercial motor vehicles as that term is defined in Texas Civil Statutes, Article 6675a-1; and

(iii) a statement identifying a motor vehicle designed by the manufacturer for off-highway use only.

(B) When a motor vehicle manufactured in another country is sold di-

rectly to a non-manufacturer's representative or distributor, the manufacturer's certificate of origin shall be assigned to the purchaser by the importer.

(2) Used motor vehicles. A certificate of title issued by the department, a certificate of title issued by another state if the motor vehicle was last registered and titled in another state, or other evidence of ownership shall be relinquished in support of the certificate of title application for any used motor vehicle. A letter of Title and Registration verification is required from a vehicle owner coming from a state that no longer titles vehicles after a certain period of time.

(3) Imported motor vehicles. An application for certificate of title for a motor vehicle last registered or titled in a foreign country shall be supported by, but is not limited to, the following documents:

(A) the motor vehicle registration certificate or other verification issued by a foreign country which reflects the name of the applicant as the motor vehicle owner, or reflects that such evidence of ownership has been legally assigned to the applicant; and

(B) proof of compliance with United States Department of Transportation regulations for all 1968 and subsequent year model motor vehicles and for all 1969 and subsequent year model motorcycles which shall include, but is not limited to, the following documents:

(i) the original bond release letter with all attachments advising that the motor vehicle meets federal motor vehicle safety requirements or a letter issued by the United States Department of Transportation, National Highway Traffic Safety Administration, verifying the issuance of the original bond release letter;

(ii) a legible copy of the motor vehicle importation form validated with an original United States Customs stamp, date, and signature as filed with the United States Department of Transportation confirming the exemption from the bond release letter required in subitem (i) of this subparagraph, or a copy thereof certified by United States Customs;

(iii) a verification of motor vehicle inspection by United States Customs certified on United States Customs letterhead and signed by a United States Customs agent verifying that the motor vehicle complies with United States Department of Transportation regulations;

(iv) a written confirmation that a physical inspection of the safety certification label has been made by the department and that the motor vehicle meets

United States motor vehicle safety standards;

(v) the original bond release letter, or verification thereof, or written confirmation from the previous state verifying that a bond release letter issued by the United States Department of Transportation was relinquished to that jurisdiction, if the non United States standard motor vehicle was last titled or registered in another state for one year or less; or

(vi) verification from the vehicle manufacturer on their letterhead stationery.

(4) Alterations to documentation. An alteration to a registration receipt, certificate of title, manufacturer's certificate, or other evidence of ownership shall constitute valid reason for the rejection of any transaction to which such altered evidence is attached. The department may accept certain types of alterations provided that they are corrected in accordance with the following procedures.

(A) Altered lien information on any surrendered evidence of ownership requires a release from the original lienholder or a statement from the proper authority of that state in which the lien originated verifying the correct lien information.

(B) A strikeover on any document which leaves any doubt as the legibility of any digit in a number will not be accepted.

(C) A correct manufacturer's certificate of origin will be required if the documents shows an:

(i) incomplete or altered vehicle identification number;

(ii) alteration or strikeover of the vehicle's year model;

(iii) alteration or strikeover to the body style, or omitted body style on the manufacturer's certificate of origin; or

(iv) alteration or strikeover to the manufacturer's rated carrying capacity.

(D) A Statement of Fact may be requested to explain errors, corrections, or conditions from which doubt does or could arise concerning the legality of any instrument. A Statement of Fact will be required in all cases:

(i) where the date of sale on an assignment has been erased or altered in any manner; or

(ii) of alteration or erasure on a Dealer's Reassignment of Title.

(d) Certificate of title issuance. Upon receiving a completed application for certificate of title, along with the applicable fees, the department or its designated agent will process and issue a certificate of title.

(1) Negotiable titles. The department will issue and mail or deliver negotiable titles, marked "Original," to the applicant or, in the event that there is a lien disclosed in the application, to the first lienholder.

(2) Non-negotiable titles. The department will issue non-negotiable titles, which may be used only as evidence of title and may not be used to transfer any interest or ownership in a motor vehicle, or to establish a new lien:

(A) in the event that there is a lien disclosed in the application a duplicate certificate of title marked "Duplicate Original," will be mailed or delivered to the address of the applicant as disclosed upon the application;

(B) in the event that the owner of a vehicle last registered or titled in another state (and subject to registration in this state) cannot or does not wish to relinquish the negotiable out-of-state evidence of ownership to obtain a negotiable Texas title, a duplicate certificate of title marked "Registration Purposes Only" will be mailed or delivered to the address of the applicant as disclosed upon the application (in instances where the title or registration receipt is assigned to the applicant, an application for "Registration Purposes Only" will not be processed).

(e) Replacement of certificate of title. The owner or lien holder of a lost or destroyed certificate of title may obtain a certified copy of that title upon proper application with the department.

(1) Certified Copy. A certificate of title will be marked "Certified Copy" until such time that ownership of the vehicle is transferred, when the words "Certified Copy" will be eliminated from the new certificate of title.

(2) Recovery of lost title. In the event that the "Duplicate Original" or "Original" certificate of title is recovered, the owner shall relinquish the certified copy to the department for cancellation and the words "Certified Copy" will be eliminated from certificates issued thereafter by the department as a result of transfer of ownership.

(f) Suspension, revocation, or refusal to issue Certificates of Title.

(1) Grounds for title suspension, revocation, or refusal to issue. The depart-

ment will refuse issuance of a certificate of title, or having issued a certificate of title, suspend or revoke the certificate of title if the:

(A) application contains any false or fraudulent statement;

(B) applicant has failed to furnish required information requested by the department;

(C) applicant is not entitled to the issuance of a certificate of title under the Certificate of Title Act, Texas Civil Statutes, Article 6687-1;

(D) department has reasonable ground to believe that the vehicle is a stolen or converted vehicle, or that the issuance of a certificate of title would constitute a fraud against the rightful owner or a mortgagee;

(E) registration of the vehicle stands suspended or revoked; or

(F) required fee has not been paid.

(2) Contested case procedure. Any person who has an interest in a motor vehicle to which the department has refused to issue a certificate of title or has suspended or revoked the certificate of title may contest such decisions in accordance with the with the Certificate of Title Act, Texas Civil Statutes, Article 6687-1, §39, in the following manner:

(A) Hearing. Any person who has an interest in a motor vehicle to which the department has refused to issue a certificate of title or has suspended or revoked the certificate of title may apply to the designated agent of the county in which they reside for a hearing. At the hearing the applicant and the department may submit evidence, and a ruling of the designated agent will bind both parties. An applicant wishing to appeal the ruling of the designated agent may do so to the county court of the county in which the applicant resides.

(B) Alternative to hearing. In lieu of a hearing, any person who has an interest in a motor vehicle to which the department has refused to issue a certificate of title or has suspended or revoked a certificate of title may file a bond with the department, in an amount equal to one and one-half times the value of the vehicle as determined by the department, and in a form prescribed by the department. Upon the filing of the bond, the department may issue a certificate of title. The bond shall

expire three years after the date it becomes effective and shall be returned to the person posting bond, upon expiration, unless the department has been notified of the pendency of an action to recover on the bond.

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 26, 1995.

TRD-9506397

Robert E. Shaddock
General Counsel
Texas Department of
Transportation

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Proposal publication date: February 3, 1995

For further information, please call: (512) 463-8630

The Texas Department of Transportation adopts an amendment to §17.21, concerning definitions; new §17.36, concerning water well drilling equipment to reflect the merger of the Texas Water Well Drillers Board with the Texas Natural Resource Conservation Commission reenacting §17.24, in an amended form, which is being simultaneously repealed; new §17.37, concerning equipment and vehicles within road construction projects, reenacting §17.57; new §17.24, concerning disabled person license plates and identification placards; and new §17.28, concerning special category license plates, symbols and tabs, without changes to the proposed text as published in the February 3, 1995, issue of the *Texas Register* (20 TexReg 625).

The department also adopts new §17.30, concerning commercial vehicle registration and new §17.39, concerning water well drilling vehicles reenacting §17.58, which is also simultaneously adopted for repeal with changes to the proposed text as published in the February 3, 1995, issue of the *Texas Register* (20 TexReg 625).

These new sections replace §§17.28-17.31, 17.36, 17.37, and 17.39-17.48, concerning: personalized license plates: exceptions; personalized license plates: surrender of current plates; personalized license plates: transfers; personalized license plates: cancellation; conventional vehicle defined; weight certificates; commercial vehicles; empty weight; rated carrying capacity; gross weight; fixed weight criteria; additional weight; combination registration; house moving dollies; ready mix concrete trucks; travel trailers, mobile homes; and alteration of house trailers which are being simultaneously adopted for repeal.

On February 14, 1995, the department conducted a public hearing on the proposed adoption of amendment to §17.21 and new §§17.24, 17.28, 17.30, and 17.36-17.38 and one written comment was received. The Texas Cotton Ginners' Association submitted a written comment supporting the new rules and requesting that new §17.30 be revised to include a reference to cotton vehicle license plates as a commercial vehicle registration classification. The department agrees with this revision. Section 17.30 has also been

revised to remove references to §17.80 concerning vehicle emission verification system, to reflect the elimination of the requirement of vehicle emissions inspection in compliance with Senate Bill 178 which was enacted by the Texas Legislature and signed into law by the governor on May 1, 1995.

Proposed new §17.38 is adopted with a change to the section number. The new number is §17.39. The section number is changed because a rule presently existing with the same number was not repealed at the same time the new section was proposed. In the near future, existing §17.38 will be repealed because the subject matter of that section has now been incorporated into new §17.30.

Motor Vehicle Registration

• 43 TAC §17.21

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, Articles 6675a-1, et seq, which authorize the department to promulgate rules necessary to carry out the provisions of laws governing the issuance of disabled person license plates and identification placards; special category license plates, symbols and tabs; and commercial vehicle registration.

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 26, 1995.

TRD-9506398

Robert E. Shaddock
General Counsel
Texas Department of
Transportation

Effective date: June 16, 1995

Proposal publication date: February 3, 1995

For further information, please call: (512) 463-8630

• 43 TAC §§17.24, 17.28, 17.30, 17.36, 17.37, 17.39

The new sections 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, Articles 6675a-1, et seq, which authorize the department to promulgate rules necessary to carry out the provisions of laws governing the issuance of disabled person license plates and identification placards; special category license plates, symbols and tabs; and commercial vehicle registration.

§17.30. Commercial Vehicle Registration.

(a) Eligibility. A motor vehicle, other than a motorcycle, designed or used primarily for the transportation of property, including any passenger car which has been reconstructed so as to be used, and which is

being used, primarily for delivery purposes, with the exception of a passenger car used in the delivery of the United States mails, must be registered as a commercial vehicle.

(b) Commercial vehicle registration classifications.

(1) Apportioned license plates. Apportioned license plates are issued in lieu of Combination or Truck license plates to Texas carriers who proportionally register their fleets in other states, in conformity with §17.51 of this title (relating to Registration Reciprocity Agreements).

(2) City Bus license plates. A street or suburban bus shall be registered with license plates bearing the legend "City Bus."

(3) Combination license plates.

(A) Specifications. A truck or truck tractor with a manufacturer's rated carrying capacity in excess of one ton used or to be used in combination with a semitrailer having a gross weight in excess of 6,000 pounds, shall be registered with combination license plates. Such vehicles must be registered for a gross weight equal to the combined gross weight of all the vehicles in the combination. When displaying a combination license plate, a truck or truck tractor is not restricted to pulling a semitrailer licensed with a Token Trailer license plate; and may legally pull semitrailers and full trailers displaying other types of Texas license plates or license plates issued out of state. The following vehicles are not required to be registered in combination:

(i) trucks or truck tractors having a manufacturer's rated carrying capacity of one ton or less, or trucks or truck tractors to be used exclusively in combination with semitrailers having gross weights not exceeding six thousand pounds;

(ii) semitrailers with gross weights of six thousand pounds or less, or semitrailers which are to be operated exclusively with trucks or truck tractors having manufacturer's rated carrying capacities of one ton or less;

(iii) trucks or truck tractors used exclusively in combination with semitrailer-type vehicles displaying Machinery, Permit, or Farm Trailer license plates;

(iv) trucks or truck tractors used exclusively in combination with travel trailers and manufactured housing;

(v) trucks or truck tractors to be registered with Farm Truck or Farm Truck Tractor license plates;

(vi) trucks or truck tractors and semitrailers to be registered with Disaster Relief license plates;

(vii) trucks or truck tractors and semitrailers to be registered with Soil Conservation license plates;

(viii) trucks or truck tractors and semitrailers to be registered with U.S. Government license plates or Exempt license plates issued by the State of Texas; and

(ix) vehicles which are to be issued temporary permits, such as 72-Hour Permits, 24-Hour Permits, 144-Hour permits, One Trip Permits, or 30-day permits in accordance with Texas Civil Statutes, Articles 6675a-6b, 6675a-6c, and 6675a-6d.

(B) Converted semitrailers. Semitrailers which are converted to full trailers by means of auxiliary axle assemblies will retain their semitrailer status, and such semitrailers are subject to the combination and token trailer registration requirements.

(C) Axle assemblies. Various types of axle assemblies which are specially designed for use in conjunction with other vehicles or combinations of vehicles may be used to increase the load capabilities of such vehicles or combinations.

(i) Auxiliary axle assemblies such as trailer axle converters, jeep axles, and drag axles, which are used in conjunction with truck tractor and semitrailer combinations, are not required to be registered, however, the additional weight which is acquired by the use of such axle assemblies must be included in the combined gross weight of the combination.

(ii) Ready-mix concrete trucks which have an auxiliary axle assembly installed for the purpose of increasing a load capacity of such vehicles must be registered for a weight which includes the axle assembly.

(D) Exchange of Combination license plates. A Combination license plate shall not be exchanged for another type of registration during the registration year unless:

(i) a major permanent reconstruction change occurs, then Combination license plate may be exchanged for Truck license plates, provided a corrected title is applied for;

(ii) the department initially issues a Combination license plate in error, then it will be exchanged for license plates of the proper classification;

(iii) the department initially issues a Truck or Trailer license plate in error to vehicles which should have been

registered in combination, then such plates will be exchanged for Combination and Token Trailer license plates; or

(iv) a Texas apportioned carrier acquires a combination license power unit, then the Combination license plate will be exchanged for an Apportioned license plate.

(4) Cotton vehicle license plates. The department will issue Cotton vehicle license plates in accordance with §17.28(b)(9) of this title (relating to Special Category License Plates, Symbols and Tabs).

(5) Forestry Vehicle license plates. The department will issue Forestry vehicle license plates in accordance with §17.28(b)(12) of this title (relating to Special Category License Plates, Symbols, and Tabs).

(6) Intransit license plates. The department may issue an Intransit license plate annually to any person, firm or corporation engaged in the primary business of transporting and delivering by means of the full mount, saddle mount, tow bar or any other combination, new vehicles and other vehicles from the manufacturer or any other point of origin to any point of destination within the State. Each new vehicle being transported or delivered, or being moved under its own power in accordance with this paragraph must display an Intransit license plate in accordance with Texas Civil Statutes, Article 6686(b).

(7) Motor Bus license plates. A motor bus as well as a taxi and other vehicles which transport passengers for compensation or hire, must display Motor Bus license plates when operated outside the limits of a city or town, or adjacent suburb, in which its company is franchised to do business.

(8) Token Trailer license plates.

(A) Qualification. The department will issue Token Trailer license plates for semitrailers which are required to be registered in combination.

(B) Validity. A Token Trailer license plate is valid only when it is displayed on a semitrailer that is being pulled by a truck or a truck tractor which has been properly registered with Forestry (in accordance with Texas Civil Statutes, Article 6675a-5p), Combination (in accordance with Texas Civil Statutes, Article 6675a-6) or Apportioned (in accordance with Texas Civil Statutes, Article 6675a-16) license plates for combined gross weights that include the weight of the semitrailer, unless exempted by Texas Civil Statutes, Articles 6675a-6d or 6701d-11.

(C) License receipt. The operator shall carry a copy of the license receipt on the vehicle at all times when operating a vehicle with Token Trailer license plates upon the public highways.

(D) House-moving dollies. House-moving dollies are to be registered with Token Trailer license plates and titled as semitrailers; however, only one such dolly in a combination is required to be registered and titled. The remaining dolly (or dollies) is permitted to operate unregistered, since by the nature of its construction, it is dependent upon another such vehicle in order to function. The pulling unit must display a Combination or Apportioned license plate.

(E) Full trailers. The department will not issue a Token Trailer license plate for a full trailer.

(9) Tow Truck license plates. A Tow Truck license plate must be obtained for all tow trucks operating and registered in this state. The department will not issue a Tow Truck license plate to tow trucks which are not registered in compliance with Texas Civil Statute, Article 6687-9b.

(c) Application for Commercial Vehicle Registration.

(1) Application form. An applicant shall apply for commercial license plates through the appropriate county tax assessor-collector upon forms prescribed by the director and shall require, at a minimum, the following information:

(A) owner name and complete address;

(B) complete description of vehicle, including empty weight; and

(C) motor number or serial number.

(2) Empty weight determination.

(A) The weight of a Motor Bus shall be the empty weight plus carrying capacity, in accordance with Texas Civil Statutes, Article 6675a-8a.

(B) The weight of a vehicle cannot be lowered below the weight indicated on a Manufacturer's Certificate of Origin unless a corrected Manufacturer's Certificate of Origin is obtained.

(C) In all cases where the department questions the empty weight of a particular vehicle, the applicant should pre-

sent a weight certificate from a public weight scale or the Department of Public Safety License and Weight.

(3) Gross weight.

(A) Determination of Weight. The combined gross weight of vehicles registering for combination license plates shall be determined by the empty weight of the truck or truck tractor combined with the empty weight of the heaviest semitrailer or semitrailers used or to be used in combination therewith, plus the heaviest net load to be carried on such combination during the motor vehicle registration year, provided that in no case may the combined gross weight be less than eighteen thousand pounds.

(B) Restrictions. The following restrictions apply to combined gross weights.

(i) After a truck or truck tractor is registered for a combined gross weight, such weight cannot be lowered at any subsequent date during the registration year (the owner may, however, lower the gross weight when registering the vehicle for the following registration year, provided that the registered combined gross weight is sufficient to cover the heaviest load to be transported during the year); and such weight may not be less than eighteen thousand pounds.

(ii) A combination of vehicles is restricted to a total gross weight not to exceed 80,000 pounds; however, all combinations may not qualify for eighty thousand pounds unless such weight can be properly distributed in accordance with axle load limitations, tire size, and distance between axles, in accordance with Texas Civil Statutes, Articles 6701d-11 and 6675a-6.

(4) Motor number or serial number. Ownership must be established by a court order if no motor or serial number can be identified. Once ownership has been established, the department will assign a number upon payment of the fee.

(5) Accompanying documentation. Unless otherwise exempted by law, completed applications for commercial license plates shall be accompanied by:

(A) prescribed registration fees;

(B) local fees or other fees as may be prescribed by law and collected in conjunction with registering a vehicle;

(C) evidence of financial responsibility as required by Texas Civil Statutes, Article 6675a-2a;

(D) an application for Texas Certificate of Title in accordance with §17.3 of this title (relating to Motor Vehicle Certificates of Title), or other proof of ownership;

(E) proof of payment of the Federal Heavy Vehicle Use Tax, if applicable;

(F) an original or certified copy of the Certificate of Registration issued in accordance with Texas Civil Statutes, Article 6687-9b, if application is being made for Tow Truck license plates; and

(G) other documents or fees required by law.

(6) Proof of payment required. Proof of payment of the Federal Heavy Vehicle Use Tax is required for vehicles with a gross registration weight of 55,000 pounds or more, or in cases where the vehicle's gross weight is voluntarily increased to 55,000 pounds or more. Proof of payment shall consist of an original or photocopy of the Schedule 1 portion of the Form 2290 received by the Internal Revenue Service (IRS), or a copy of the Form 2290 with Schedule 1 attached as filed with the Internal Revenue Service, along with a photocopy of the front and back of the canceled check covering the payment to the IRS.

(7) Proof of payment not required. Proof of payment of the Federal Heavy Vehicle Use Tax is not required:

(A) for new vehicles when an application for title and registration is supported by a Manufacturer's Certificate of Origin;

(B) on used vehicles when an application for title and registration is filed within 60 days from the date of transfer to the applicant as reflected on the assigned title if an out-of-state title has been transferred to the applicant and is being registered and titled in Texas or if an out-of-state title is recorded in the name of the applicant, proof of payment will be required if the vehicle is subject to the Federal Heavy Use Tax;

(C) when a vehicle was previously wrecked, in storage, or otherwise out of service and, therefore, not registered or operated during the current registration year or during the current tax year, provided that a non-use affidavit is signed by the operator; and

(D) as a prerequisite to registration of vehicles apprehended for operat-

ing without registration or reciprocity or when an owner or operator purchases temporary operating permits or additional weight.

(d) Renewal of commercial license plates.

(1) Registration period. The registration periods of commercial license plates are as follows.

(A) March expiration. The following license plates are issued for the established annual registration period of April 1st through March 31st of the following year:

- (i) Apportioned license plates;
- (ii) City Bus license plates;
- (iii) Combination license plates;
- (iv) Intransit license plates;
- (v) Forestry vehicle license plates;
- (vi) Motor Bus license plates; and
- (vii) Token Trailer license plates.

(B) January expiration. Tow Truck license plates are issued for the established annual registration period of February 1st through January 31st of the following year.

(C) Five-year registration with March 31st expiration. The following license plates are available with a five-year registration period. Registration fees for the license plates listed below may be paid on an annual basis, or may be paid up front for the entire five-year period:

(i) Five-year Apportioned Trailer license plates, issued for company-owned semitrailers in a carrier's apportioned trailer fleet; and

(ii) Five-year Token Trailer license plates, available to owners of intrastate fleets consisting of 50 or more company-owned semitrailers.

(2) License Plate Renewal Notice. The department will mail a License Plate Renewal Notice, indicating the proper registration fee and the month and year the registration expires, to each vehicle owner approximately six to eight weeks prior to the expiration of the vehicle's registration.

(3) Return of License Plate Renewal Notices. License Plate Renewal Notices must be returned by the vehicle owner to the department or the appropriate county

tax assessor-collector, as indicated on the License Plate Renewal Notice. Unless otherwise exempted by law, License Plate Renewal Notices may be returned either in person or by mail, and shall be accompanied by:

(A) registration renewal fees as may be prescribed by law;

(B) local fees or other fees as may be prescribed by law and collected in conjunction with registration renewal;

(C) evidence of financial responsibility as required by Texas Civil Statutes, Article 6675a-2a; and

(D) other documents or fees as required by law.

(4) Lost or destroyed License Plate Renewal Notice. If a License Plate Renewal Notice is lost, destroyed, or not received by the vehicle owner, the vehicle may be registered if the owner presents personal identification acceptable to the tax assessor-collector. Failure to receive the notice does not relieve the owner of the responsibility to renew the vehicle's registration.

(e) Transfer of commercial vehicle license plates.

(1) Transfer between persons. With the exceptions noted in paragraph (3) of this subsection, when ownership of a vehicle displaying commercial vehicle license plates is transferred, application for transfer of such license plates shall be made with the county tax assessor-collector in the county in which the purchaser resides. If the purchaser does not intend to use the vehicle in a manner which would qualify it for the license plates issued to that vehicle, such plates must be exchanged for the appropriate license plates.

(2) Transfer between vehicles. Commercial vehicle license plates are non-transferable between vehicles.

(3) Transfer of Apportioned and Tow Truck license plates. Apportioned and Tow Truck license plates are non-transferable between persons or vehicles, and become void if the vehicle to which the license plates were issued is sold.

(f) Replacement of lost, stolen, or mutilated commercial vehicle license plates.

(1) Intransit and Tow Truck license plates. Replacement Intransit and Tow Truck license plates will not be issued. Additional Intransit and Tow Truck license plates may be obtained at any time during the registration year by submitting a new application in accordance with subsection (d) of this section.

(2) Other license plates. Except for the vehicle license plates identified in paragraph (1) of this subsection, an owner of lost, stolen, or mutilated commercial vehicle license plates may obtain replacement license plates by filing an Application for Replacement Plates and remitting the prescribed fee to the county tax assessor-collector of the county in which the owner resides.

§17.39. Water Well Drilling Vehicles. Every truck or trailer, whether conventional or unconventional, which has mounted thereon machinery used exclusively for drilling water wells may qualify for a \$5.30 machinery license plate.

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 26, 1995.

TRD-9506399 Robert E. Shaddock
General Counsel
Texas Department of
Transportation

Effective date: June 16, 1995

Proposal publication date: February 3, 1995

For further information, please call: (512) 463-8630

◆ ◆ ◆
• 43 TAC §§17.24, 17.28-17.31,
17.36, 17.37, 17.39-17.48

The Texas Department of Transportation adopts the repeal of §§17.28-17.31, 17.36, 17.37, and 17.39-17.48, concerning personalized license plates: exceptions; personalized license plates: surrender of current plates; personalized license plates: transfers; personalized license plates: cancellation; conventional vehicle defined; weight certificates; commercial vehicles; empty weight; rated carrying capacity; gross weight; fixed weight criteria; additional weight; combination registration; house moving dollies; ready mix concrete trucks; travel trailers, mobile homes; and alteration of house trailers, without changes to the proposed text as published in the February 3, 1995, issue of the *Texas Register* (20 TexReg 626). The sections are no longer necessary due to the consolidation of the subject matter in amendment to §17.21, concerning definitions; new §17.24, concerning disabled person license plates and identification placards; new §17.28, concerning special category license plates, symbols and tabs; and new §17.30, concerning commercial vehicle registration which are being simultaneously adopted.

The department also adopts the repeal of §17.24, concerning water well drilling equipment, which is being renumbered and reenacted in an amended form as new §17.36, to reflect the merger of the Texas Water Well Drillers Board with the Texas Natural Resource Conservation Commission; §17.57, concerning equipment and vehicles within road construction projects, which is being re-

numbered and reenacted as new §17.37; and §17.58, concerning water well drilling vehicles, which is being renumbered and reenacted as new §17.39.

On February 4, 1995, the department conducted a public hearing on the proposed repeal of §§17.28-17.31, 17.36, 17.37, and 17.39-17.48 and no oral or written comments were received.

The repeals 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, Articles 6675a-1, et seq, which authorize the department to promulgate rules necessary to carry out the provisions of laws governing the issuance of disabled person license plates and identification placards; special category license plates, symbols and tabs; and commercial vehicle registration.

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 26, 1995.

TRD-9506400 Robert E. Shaddock
General Counsel
Texas Department of
Transportation

Effective date: June 16, 1995

Proposal publication date: February 3, 1995

For further information, please call: (512) 463-8630

◆ ◆ ◆
Miscellaneous Registration Provisions

• 43 TAC §17.57, §17.58

The repeals 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, Articles 6675a-1, et seq, which authorize the department to promulgate rules necessary to carry out the provisions of laws governing the issuance of disabled person license plates and identification placards; special category license plates, symbols and tabs; and commercial vehicle registration.

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 26, 1995.

TRD-9506401 Robert E. Shaddock
General Counsel
Texas Department of
Transportation

Effective date: June 16, 1995

Proposal publication date: February 3, 1995

For further information, please call: (512) 463-8630

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

Tuesday, June 6, 1995, 10:30 a.m.

Board Room, Texas Sheep and Goat Raisers, 233 West Twohig

San Angelo

Texas Sheep and Goat Commodity Board

AGENDA:

Opening remarks and welcome

Review and approval on minutes of last meeting

Review and approval of fiscal affairs

Reports of officers and directors

Discussion and action: New business—Review of telephone messages; replace one director for District 1; review proposal for assistance with reprinting publication and assistance with symposium; review proposal for additional traps; review research proposal from Denver Wildlife Center; review "hot spots" proposals

Unfinished business—Review status on various projects; review reports from Gary Nunley on Animal Damage Control

Scheduling of next meeting

Discussion: Other business

Adjourn

Contact: Minnie Savage, 233 West Twohig, San Angelo, Texas 76902-3543, (915) 659-8777.

Filed: May 25, 1995, 3:22 p.m.

TRD-9506378

Thursday, June 22, 1995, 1:00 p.m.

Texas Department of Agriculture, 900-B East Expressway 83

San Juan

Office of Hearings

AGENDA:

Administrative hearing to review alleged violation of Texas Agriculture Code Annotated, §§103.001-103.015 (Vernon 1995) by Lin-Co Brokerage as petitioned by Valley Onions, Inc.

Contact: Barbara B. Deane, P.O. Box 12847, Austin, Texas 78711, (512) 463-7448.

Filed: May 25, 1995, 3:53 p.m.

TRD-9506381

Thursday, June 22, 1995, 2:00 p.m. (Rescheduled from May 3, 1995, 3:00 p.m.)

Texas Department of Agriculture, 900-B East Expressway 83

San Juan

Office of Hearings

AGENDA:

Administrative hearing to review alleged violation of Texas Agriculture Code Annotated, §§103.001-103.015 (Vernon 1995) by Teddy Bertuca Company, Incorporated as petitioned by Charles Wetegrove Company, Incorporated.

Contact: Barbara B. Deane, P.O. Box 12847, Austin, Texas 78711, (512) 463-7448.

Filed: May 25, 1995, 3:53 p.m.

TRD-9506382

Texas Appraiser Licensing and Certification Board

Tuesday, June 6, 1995, 1:00 p.m.

Conference Room 123, 1101 Camino La Costa

Austin

Enforcement Committee

AGENDA:

Tuesday, June 6, 1995.

Call to order; discussion and possible recommendations to the Texas Appraiser Licensing and Certification Board concerning any or all of filed complaints 94-001 through 95-050; informal conferences with respondents in File Numbers 95-013 and 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. Liner, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3950.

Filed: May 30, 1995, 9:48 a.m.

TRD-9506496

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State Board of Barber Examiners

Tuesday, June 6, 1995, 10:00 a.m.

333 Guadalupe, William P. Hobby Building, Room 216

Austin

Board of Directors

AGENDA:

Opening of meeting; roll call; read and possibly approve minutes of November 14, 1994 and January 10, 1995 board meetings; executive session to interview candidates' for an Inspector I position, pursuant to Texas Government Code, §551.074; return to open session for further discussion and possible action regarding the hiring of an Inspector I, pursuant to Texas Government Code, §551.074; return to executive session to consider the employment, evaluation, reassignment, duties, discipline, or dismissal of Billie Lankford, Inspector II, pursuant to Texas Government Code, §551.074; return to open session for further discussion and possible action involving the employment, evaluation, reassignment, duties, discipline or dismissal of Billie Lankford, Inspector II, pursuant to Texas Government Code, §551.074; executive director's report to the board: a) financial report; b) inspection report; c) update regarding House Bill 1223; d) update regarding budget request for 1996-1997; e) update regarding cases filed with the Commission on Human Rights; f) update regarding Louie Armstrong vs. State Board of Barber Examiners case; g) update regarding Bettie Sam case; NEW BUSINESS: discussion and possible action regarding "Revolving Door" policy and former board members; discussion and possible action regarding attendance of school owners at exams; discussion and possible action regarding the examination schedule for July-December; discussion and possible action regarding the dates of board meetings from July-December; discussion and possible action regarding board member travel; the following individuals requested information about obtaining a permit to operate a barber college: December 9, 1994-Pam Yancy, 12811 Clay Gate, Houston, Texas; not a barber; December 19, 1994-Donald Lawson, KCM Barber School, 2408 Lafayette Boulevard, Norfolk, Virginia; out-of-state barber; January 6, 1995-Shirley Perry, 5122 Overridge Drive, Arlington, Texas; January 13, 1995-Ken Sajfi, 3345 La Narc Drive, Plano, Texas; January 18, 1995-David Dukes, Sir Dukes Barber Shop, 2709 Rogge Lane, Austin, Texas; February 2, 1995-Dave Jeurgenson,

17011 Clan MacIntosh, Houston, Texas; February 7, 1995-Ike Raphel, 1803 East Anderson Lane, Austin, Texas; March 15, 1995-Sam Hudson, Capital Grounds, Box 2910, Austin, Texas; March 28, 1995-Donald Nash, 5542 South Hamton Road, Dallas, Texas; May 1, 1995-Charlie Mackey, 500 Grapevine Hw. Suite 400, Hurst, Texas; May 1, 1995-Barbara Johnson, 7027 Foster, Houston, Texas; May 22, 1995-Mabel Mbachu, 6261 Ludington #805, Houston, Texas; and adjournment.

Contact: Michael Rice, 333 Guadalupe, Austin, Texas 78701, (512) 305-8475.

Filed: May 26 1995, 4:22 p.m.

TRD-9506470

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Texas Catastrophe Property Insurance Association

Thursday, June 1, 1995, 8:30 a.m. (via conference call at TCPIA offices)

2028 East Ben White, Suite 200

Austin

Board of Directors

AGENDA:

- 1. 1995 legislative results
- 2. Any other business

Contact: Charles F. McCullough, 2028 East Ben White, Suite 200, Austin, Texas 78741, (512) 444-9612.

Filed: May 25, 1995, 3:23 p.m.

TRD-9506379

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Comptroller of Public Accounts

Friday, June 9, 1995, 9:00 a.m.

111 East 17th, LBJ Office Building, Room 104

Austin

Property Tax Timber Manual Advisory Committee

AGENDA:

- I. Introduction of committee and purpose of meeting
- II. Mediated discussion of issues relating to contest of Property Tax Timberland Valuation Manual
- III. Summary and conclusion of meeting

Contact: Koren Sherrill, General Services Building, Room 415, Austin, Texas 78711, (512) 305-9841.

Filed: May 30, 1995, 9:38 a.m.

TRD-9506494

Conservatorship Board

Wednesday, May 31, 1995, 9:00 a.m.

710 Brazos, Perry Brooks Building

Austin

Emergency Meeting

AGENDA:

Call to order; approval of minutes; action on authorization of single conservator to authorize licensure, contracting and grant terminations and changes; eligibility criteria for providers; meet in executive session to discuss personnel matters; reconvene and adjournment.

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 26 1995, 2:15 p.m.

TRD-9506448

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The Daughters of the Republic of Texas, Inc.

Thursday-Friday, June 8-9, 1995, 8:45 a.m. and 1:00 p.m., respectively.

Menger Hotel, 204 Alamo Plaza

San Antonio

Emergency Meeting

Board of Management

AGENDA:

The Daughters of the Republic of Texas, Inc., exercising an over abundance of caution, hereby notice a portion of this Board of Management meeting as an open meeting under Texas Open Meeting Act with regard to all matters pertaining to state-owned properties which are under the management or control of D.R.T., Inc.

Friday, June 9, 1995, 1:00 p.m.-Reconvene-open session, determination of quorum, reports or discussion preview to reports of committees operating state-owned properties which are under the management or control of D.R.T., Inc., Alamo Committee, DRT Library Committee, French Legation.

Closed/executive session-determination of quorum.

Adjourn

Contact: Mary Kathryn Briggs, 510 East Anderson Lane, Austin, Texas 78752, (409) 846-0871.

Filed: May 30, 1995, 8:18 a.m.

TRD-9506484

Texas Education Agency

Friday-Saturday, June 9-10, 1995, 1:00 p.m. and 8:30 a.m., respectively.

Stouffer Austin Hotel, San Saba Room, 9721 Arboretum Boulevard

Austin

Continuing Advisory Committee for Special Education

AGENDA:

Friday, June 9, 1995, 1:00 p.m.—Welcome and good news, approval of minutes of April 21-22, 1995 meeting, legislative update, discussion of contacts with State Board of Education (SBOE) members, review of hearing officer decisions, unmet needs and response to letters/requests. Saturday, June 10, 1995, 8:30 a.m.—Conference reports, accountability issues, update on critical issues paper, transition to post-secondary education, review of Office of Special Education, Programs (OSEP) leadership conference, work session: review of proposed survey and Continuing Advisory Committee (CAC) structuring/restructuring, set next meeting agenda, report on work session outcomes, assignment of thank you letters, approval of letters, meeting wrap-up, and adjourn.

Contact: Shirley Sanford, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9362.

Filed: May 26 1995, 3:46 p.m.

TRD-9506465

Monday, June 12, 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 state initiatives in educational technology planning, issues related to educator training and professional development, State Board of Education policy and planning initiatives, and a draft state education improvement plan.

Contact: Dan Arrigona, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: May 26 1995, 4:09 p.m.

TRD-9506468

Monday, June 12, 1995, 9:00 a.m.

Room 1-100, William B. Travis Building, 1701 North Congress Avenue

Austin

State Textbook Environmental Science Committee

AGENDA:

The State Textbook Environmental Science Committee will meet to discuss instructional materials submitted for consideration for adoption in the category of Environmental Science. After discussion is completed, the committee will vote on Environmental Science Instructional materials to be recommended for adoption to the State Board of Education and will compile a report detailing any errors that the committee recommends the board require publishers to correct in adopted materials. Environmental Science Committee members remain under no-contact rules until the close of the discussion and balloting meeting.

Contact: Debra Kile, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601.

Filed: May 26 1995, 9:28 a.m.

TRD-9506410

Advisory Commission on State Emergency Communications

Tuesday, June 6, 1995, 9:00 a.m.

Hobby Building, Room 100, 333 Guadalupe Street

Austin

Emergency Meeting

Administration Committee Meeting

AGENDA:

Call to order and recognize guests; hear public comment; hear reports, discuss and take committee/commission action, as necessary on: ACSEC financial report; agency public education activities, including 9-1-1 for Kids Project; regulatory and legislative issues; consideration of comments and adoption of Rule 252.3, Administrative Budget Document for Councils of Governments; service fee rates and balances; committee membership; November 29, 1994 and February 28, 1995, meeting minutes.

Reason for emergency: To consider such items that fall within legislative and program intent.

Contact: Jim Goerke, 333 Guadalupe, Suite 2-212, Austin, Texas 78701-3942, (512) 305-6911.

Filed: May 30, 1995, 8:50 a.m.

TRD-9506487

Tuesday, June 6, 1995, 10:30 a.m.

Hobby Building, Room 100, 333 Guadalupe Street

Austin

Emergency Meeting

Poison Control Implementation Committee Meeting

AGENDA:

Call to order and recognize guests; hear public comment; hear reports, discuss and take committee/commission action, as necessary on: Poison Control Program financial report; production of public education video; poison centers grant contracts; Poison Control Coordinating Committee report; telecommunication system implementation; Poison Control Coordinating Committee review per Senate Bill 383; committee membership; February 28, 1995 committee meeting minutes; and adjourn.

Reason for emergency: To consider such items that fall within legislative and program intent.

Contact: Jim Goerke, 333 Guadalupe, Suite 2-212, Austin, Texas 78701-3942, (512) 305-6911.

Filed: May 30, 1995, 8:50 a.m.

TRD-9506486

Tuesday, June 6, 1995, 1:00 p.m.

Hobby Building, Room 100, 333 Guadalupe Street

Austin

Emergency Meeting

Call Box Task Force Meeting

AGENDA:

Call to order and recognize guests; hear public comment; hear reports, discuss and take committee/commission action, as necessary on: Emergency Call Box Test Program; and adjourn.

Reason for emergency: To consider such items that fall within legislative and program intent.

Contact: Jim Goerke, 333 Guadalupe, Suite 2-212, Austin, Texas 78701-3942, (512) 305-6911.

Filed: May 30, 1995, 9:55 a.m.

TRD-9506498

Tuesday, June 6, 1995, 2:00 p.m.

Hobby Building, Room 100, 333 Guadalupe Street

Austin

Emergency Meeting

Planning and Implementation Committee Meeting

AGENDA:

Call to order and recognize guests; hear public comment; hear reports, discuss and take committee/commission action, as necessary on: regulatory and legislative issues; PS 9111 for public universities; service fee uses; proposed Rule 251.7, Guidelines for

Implementing Integrated Services; committee membership; February 28, 1995 committee meeting minutes; and adjourn.

Reason for emergency: To consider such items that fall within legislative and program intent.

Contact: Jim Goerke, 333 Guadalupe, Suite 2-212, Austin, Texas 78701-3942, (512) 305-6911.

Filed: May 30, 1995, 9:55 a.m.

TRD-9506497

Tuesday, June 6, 1995, 3:00 p.m.

Hobby Building, Room 100, 333 Guadalupe Street

Austin

Emergency Meeting

Addressing Committee Meeting

AGENDA:

Call to order and recognize guests; hear public comment; hear reports, discuss and take committee/commission action, as necessary on: Proposed Rule 251.3, Guidelines for Addressing Funds; committee membership; February 28, 1995 meeting minutes; and adjourn.

Reason for emergency: To consider such items that fall within legislative and program intent.

Contact: Jim Goerke, 333 Guadalupe, Suite 2-212, Austin, Texas 78701-3942, (512) 305-6911.

Filed: May 30, 1995, 9:55 a.m.

TRD-9506500

Tuesday, June 6, 1995, 4:00 p.m.

Hobby Building, Room 100, 333 Guadalupe Street

Austin

Emergency Meeting

Audit Committee Meeting

AGENDA:

Call to order and recognize guests; hear public comment; hear reports, discuss and take committee/commission action, as necessary on: progress report on conduct of internal audit; and adjourn.

Reason for emergency: To consider such items that fall within legislative and program intent.

Contact: Jim Goerke, 333 Guadalupe, Suite 2-212, Austin, Texas 78701-3942, (512) 305-6911.

Filed: May 30, 1995, 9:55 a.m.

TRD-9506499

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State Employee Charitable Campaign

Tuesday, June 6, 1995, 10:30 a.m.

2201 19th Street

Lubbock

Local Employee Committee-Lubbock

AGENDA:

Review 1995 application for: Caring for Children Foundation

NOTE: This meeting was previously scheduled for Friday, May 25, 1995, a quorum was not present and therefore the meeting was rescheduled.

Contact: Glenn Cochran, 2201 19th Street, Lubbock, Texas 79401, (806) 747-2711 or (806) 747-2716.

Filed: May 26 1995, 4:22 p.m.

TRD-9506472

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Employees Retirement System of Texas

Tuesday, June 6, 1995, 9:00 a.m.

ERS Auditorium-ERS Building, 18th and Brazos

Austin

ERS Board of Trustees

AGENDA:

Approval of minutes; appeals of contested cases; final adoption of amendments to trustee rules 34 TAC §81.5 and §81.7, relating to Eligibility and Enrollment of Surviving Dependents; consideration of proposed change in internal auditing charter; executive director's report; consideration of finding pursuant to §574.001, Texas Government Code, for ERS Trustees to hold other non-elected state offices; executive session; next trustee meeting date; and adjournment

Contact: William S. Nail, 18th and Brazos, Austin, Texas 78701, (512) 867-3336.

Filed: May 26 1995, 8:38 a.m.

TRD-9506395

Tuesday, June 6, 1995, 1:30 p.m. (Rescheduled from June 6, 1995, 9:00 a.m.)

ERS Auditorium-ERS Building, 18th and Brazos

Austin

ERS Board of Trustees

AGENDA:

Approval of minutes; appeals of contested cases; final adoption of amendments to trustee rules 34 TAC §81.5 and §81.7, relating to Eligibility and Enrollment of Surviving Dependents; consideration of proposed

change in internal auditing charter; executive director's report; consideration of finding pursuant to §574.001, Texas Government Code, for ERS Trustees to hold other non-elected state offices; executive session; next trustee meeting date; and adjournment

Contact: William S. Nail, 18th and Brazos, Austin, Texas 78701, (512) 867-3336.

Filed: May 26 1995, 9:50 a.m.

TRD-9506426

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Texas Employment Commission

Tuesday, June 6, 1995, 9:00 a.m.

Room 644, TEC Building, 101 East 15th Street

Austin

AGENDA:

Prior meeting notes; staff reports; internal procedures of commission appeals; consideration and action on tax liability cases and higher level appeals in unemployment compensation cases listed on Commission Docket 23; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: May 26 1995, 3:37 p.m.

TRD-9506464

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Texas Funeral Service Commission

Wednesday, June 7, 1995, 1:00 p.m.

Howard Johnson North Plaza, Conference Room, 7800 North IH-35

Austin

Commission Meeting

AGENDA:

According to the agenda summary, the Commission will call the meeting to order; offer an invocation; welcome visitors; approve minutes of March 15, 1995 meeting; receive public comment; executive session under the Texas Government Code, §551.074, executive director employment status; open session possible adopt Roberts Rules of Order; action on executive session discussion; discuss rule 203.13(a)(8); discuss licensee education; deputy administrators report; licensee interview results; recognition of Commissioner Villasenor; introduction of new employees; discuss and select next interview and meeting dates; adjourn.

Contact: Marc Allen Connelly, 8100 Cameron Road #550, Austin, Texas 78754-3896, (512) 834-9992.

Filed: May 26 1995, 2:58 p.m.

TRD-9506463

General Land Office

Tuesday, June 6, 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; opening and consideration of bids received for the June 6, 1995 special oil and gas lease sale; pooling applications, Brookeland (Austin Chalk 8800) Field, Angelina County; Big Cowboy (Lobo) Field, Webb County; Flour Bluff, East Field, Nueces County; Brookeland (Austin Chalk 8800) Field, Newton County; Giddings (Austin Chalk-3) Field, Fayette County; Keystone (San Andres) and (Holt) Field, Winkler County; Carthage (Travis Peak-Barber) Field, Panola County; Wildcat Field, Terrell County; Giddings (Austin Chalk-3) Field, Brazos and Burleson counties; Dixieland (Atoka) Field, Reeves County; Good Faith Claimant application, Angelina County; direct land sale, Lynn County; excess acreage application, Randall County; Coastal public lands, commercial easement applications, Matagorda Bay, Calhoun County; commercial lease renewals, Sabine Pass, Jefferson County; Sabine Pass Channel, Jefferson County; Neches River, Jefferson County; one lease application, Neches River, Jefferson County; structure (cabin) permit terminations, Laguna Madre, Kennedy County, and Espiritu Santo Bay, Calhoun County; preliminary presentation of draft compliance program, Chapter 33, Texas Natural Resources Code; executive session-pending and proposed litigation.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: May 26, 1995, 3:46 p.m.

TRD-9506467

Texas Department of Human Services

Thursday, June 8, 1995, 10:00 a.m.

701 West 51st Street, Sixth Floor, Commissioner's Conference Room

Austin

Client Self-Support Services Advisory Council

AGENDA:

I. Call to order. II. Approval of minutes of April 13, 1995, meeting. III. Chairman's comments. IV. Deputy commissioner comments. V. Legislative update. VI. Discussion on status of council. VII. New business. A. Action items: Budgeting lump sum payments in the AFDC-related medical programs. B. Information items: National School Lunch Program, School Breakfast Program and Special Milk Program-Technical Amendments, and request for proposals for commercial distribution of USDA commodities for food distribution programs and TEFAP. VIII. Next meeting/adjournment.

Contact: Toni Lemm, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-4147.

Filed: May 25, 1995, 1:14 p.m.

TRD-9506353

Texas Department of Insurance

Monday, June 12, 1995, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0158.E

Appeal of Aetna Insurance Company from a decision of the Texas Workers' Compensation Insurance Facility (continued from April 24, 1995).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: May 30, 1995, 8:51 a.m.

TRD-9506489

Wednesday, June 14, 1995, 10:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0620

Public hearing to consider whether disciplinary action should be taken against Charles A. Harcrow, Corpus Christi, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License and a Group II (Life Insurance over \$5,000 and Accident and Health) 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 30, 1995, 8:58 a.m.

TRD-9506490

Wednesday, June 14, 1995, 1:00 p.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0510.C

Public hearing to consider whether disciplinary action should be taken against Michael Randolph Gatewood, Carrollton, Texas, who holds an Insurance Adjuster'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 30, 1995, 8:58 a.m.

TRD-9506491

Thursday, June 15, 1995, 1:00 p.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0512.C

Public hearing to consider the application of Kenneth C. Brumfield, New Braunfels, Texas, for an Insurance Adjuster's License to be issued by the Texas Department of Insurance (continued from May 10, 1995).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: May 30, 1995, 8:50 a.m.

TRD-9506488

Texas Commission on Law Enforcement Officer Standards and Education

Monday, June 5, 1995, 1:30 p.m.

Room E1.026 Capitol Extension

Austin

Revised Agenda

AGENDA:

Work Session Meeting

Agenda item submitted as:

Discussion of draft of new rules and/or amendments to existing rules-\$211.85, Proficiency Certificates; \$211.31, Memorandum of Understanding on Continuity of Care; \$211.19, Public Information

Is revised to read as follows:

Discussion of draft of proposed new rules and/or amendments to existing rules-\$211.85, Proficiency Certificates;

§211.31, Memorandum of Understanding on Continuity of Care; §211.19, Public Information

Contact: Vera Kocian, 1033 LaPosada, Suite 175, Austin, Texas 78752, (512) 450-0188.

Filed: May 26, 1995, 2:56 p.m.

TRD-9506461

Tuesday, June 6, 1995, 9:30 a.m.

Room E1.026 Capitol Extension

Austin

Revised Agenda

AGENDA:

Quarterly Meeting

Agenda item submitted as:

Discussion of and action on draft of new rules and/or amendments to existing rules—§211.85, Proficiency Certificates; §211.31, Memorandum of Understanding on Continuity of Care; §211.19, Public Information

Is revised to read as follows:

Discussion of and action on draft of proposed new rules and/or amendments to existing rules—§211.85, Proficiency Certificates; §211.31, Memorandum of Understanding on Continuity of Care; §211.19, Public Information

Contact: Vera Kocian, 1033 LaPosada, Suite 175, Austin, Texas 78752, (512) 450-0188.

Filed: May 26, 1995, 2:56 p.m.

TRD-9506462

Board of Law Examiners

Thursday, June 8, 1995, 8:30 a.m.

Suite 500, Tom C. Clark, 205 West 14th Street

Austin

Revised Agenda

Hearings Panel

AGENDA:

The hearings panel will hold public hearings and conduct deliberations on character and fitness of the following applicants and/or declarants: Laura MacDonald; Anthony Rainge; Jose Perez; Isela Sanchez; William Twyman; Jeffrey Mullins (Character and fitness deliberations may be conducted in executive session, pursuant to §82.003(a), Texas Government Code).

Contact: Rachael Martin, P.O. Box 13486, Austin, Texas 78711-3486, (512) 463-1621.

Filed: May 26, 1995, 8:27 a.m.

TRD-9506393

Friday-Sunday, June 9-11, 1995, 8:30 a.m.

Suite 500, Tom C. Clark, 205 West 14th Street

Austin

AGENDA:

The board will call to order/determine quorum/consider requests for excused absences; consider approval of minutes, financial reports, and investment reports; consider FY96 budget recommendation; consider recommendations to Supreme Court regarding rule amendments, bar exam subject revision, and related matters; consider special requests for rule waivers; hear and act on various reports from staff, board members, and Supreme Court Liaison; review lawful practice policy; review MRB specifications report; consider ABA Standards for Bar Examiners; meet with legal counsel (in executive session pursuant to §2(e), Open Meetings Act) to discuss pending litigation; consider details concerning upcoming exam administration; review exam questions (in executive session pursuant to §82.003(b), Texas Government Code); conduct formal reviews (these reviews are not actually a part of the public meeting of the board, as each review is conducted individually by each board member and a failing examinee, with no quorum of the board present during each such review); hear communications from the public; hold public hearings and conduct deliberations on character and fitness (deliberations may be conducted in executive session pursuant to §82.003(c), Texas Government Code); adjourn.

Contact: Rachael Martin, P.O. Box 13486, Austin, Texas 78711-3486, (512) 463-1621.

Filed: May 26, 1995, 8:27 a.m.

TRD-9506394

Texas Department of Licensing and Regulation

Wednesday, June 14, 1995, 9:30 a.m.

E.O. Thompson Building, 920 Colorado, Fourth Floor

Austin

Texas Commission of Licensing and Regulation

AGENDA:

The commission will hold a regular meeting according to the following outline: I. Call to order; II. Roll call and certification of quorum; III. Election of commission chair; IV. Contested cases; V. Agreed orders; VI. Appointments of members to Property Tax Consultants Advisory Council; VII. Rules submissions and policy adoptions; VIII.

Legislative update; IX. Staff reports; X. Operating budget; XI. Executive session; XII. Open session/public comments; XIII. Discussion of date, time and location of next commission meeting; and XIV. Adjournment.

Contact: Phyllis Wilson, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701, (512) 463-3173.

Filed: May 25, 1995, 10:46 a.m.

TRD-9506349

Texas Natural Resource Conservation Commission

Thursday, June 15, 1995, 10:00 a.m.

12118 North IH-35, Park 35 Complex, Building E, Room 201-S

Austin

Revised Agenda

Petroleum Storage Tank Advisory Committee

AGENDA:

Call to order. Approval of previous meeting minutes.

Listen to report from TNRCC on PST reimbursable cost survey.

Discuss PST legislation status.

Discuss items tabled from previous meetings.

Develop recommendations pertaining to the above topics.

Schedule future meetings.

Contact: Dwight C. Russell, 7801 North Lamar Boulevard, Suite D-77, Austin, Texas 78752, (512) 452-8834.

Filed: May 30, 1995, 8:17 a.m.

TRD-9506483

Wednesday, June 28, 1995, 3:00 p.m.

Vernon City Hall, City Commission Room, 1725 Wilbarger Street

Vernon

AGENDA:

On an application by the City of Vernon, Proposed Registration Number MSW40059, to operate a Type V municipal solid waste transfer station. The existing site contains approximately 11.0 acres of land and will receive an average of 125 tons of municipal solid waste per day. The facility is located approximately 1.4 miles north of the intersection of FM Highway 925 and U.S. Highway 287 on the west side of an unnamed county road, near the city of Vernon in Wilbarger County, Texas.

Contact: Charles Stavley or Ann Scudday, P.O. Box 13087, Austin, Texas 78711, (512) 239-6688.

Filed: May 25, 1995, 10:26 a.m.

TRD-9506347

Thursday, June 29, 1995, 2:00 p.m.

Littlefield City Council Chambers, 525 Phelps Avenue

Littlefield

AGENDA:

On an application by the City of Littlefield, Proposed Registration Number MSW40060, to operate a Type V municipal solid waste transfer station. The existing site contains approximately 3.44 acres of land and will receive an average of 125 tones of municipal solid waste per week. The facility is located at the corner of East Sixth Street and North Badger Avenue in the City of Littlefield, Lamb County, Texas.

Contact: Charles Stavley or Ann Scudday, P.O. Box 13087, Austin, Texas 78711, (512) 239-6688.

Filed: May 25, 1995, 10:37 a.m.

TRD-9506348

Thursday, July 6, 1995, 9:00 a.m.

Building C-Room 508E, 12124 Park 35 Circle

Austin

Office of Hearings Examiners

AGENDA:

Notice of public hearing on assessment of administrative penalties and requiring certain actions of Tregators, Inc., TNRCC Docket Number 95-0725-MSW-E.

Contact: Cecile Hanna, Mail Code 102, P.O. Box 13087, Austin, Texas 78711, (512) 239-4100.

Filed: May 25, 1995, 10:26 a.m.

TRD-9506485

Wednesday, August 23, 1995, 9:30 a.m.

Room 201S of Building E, 12118 North Interstate 35, TNRCC Park 35 Office Complex

Austin

Revised Agenda

AGENDA:

Lakeway Municipal Utility District of Travis County; TNRCC Docket Number 95-0406-DIS; application for renewal of the authority to adopt and impose a standby fee on undeveloped property in the District. The application is filed and the hearing will be held under the authority of §50.056 of the Texas Water Code, 30 Texas Administrative Code, §§293.141-293.152 and under

the procedural rules of the Commission. The nature and purpose of standby fees is to distribute a fair portion of the cost burden for operation and maintenance of the District facilities and for financing capital costs of the District facilities to owners of property who have not constructed improvements but have water and/or wastewater facilities or capacity available. Any revenues collected from the standby fees shall be used to pay operation and maintenance expenses. The amount of the standby fee requested is \$36 per year per lot for available water service and \$72 per year per lot for available wastewater service.

Contact: Water Utilities District Administration, Mail Code 152, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6161.

Filed: May 26, 1995, 1:13 p.m.

TRD-9506444

Polygraph Examiners Board

Thursday, June 8, 1995, 10:00 a.m.

DPS Aircraft Conference Room, 6100 Guadalupe, CLE Building

Austin

AGENDA:

June 8, 1995, 10:00 a.m.—Open meeting; election of officers; consideration of applications for licensure; appearance of Jody MacIvor-Wall; close meeting to administer licensing examination; 6:00 p.m.—open meeting; approval of April 13, 1995 meeting minutes; adoption of rule 391.3(17); discussion and possible action on October 1995 meeting dates; discussion and possible action on 1996 licensing survey; agency update.

Contact: Bryan M. Perot, P.O. Box 4087, Austin, Texas 78773, (512) 465-2058.

Filed: May 26, 1995, 2:36 p.m.

TRD-9506454

Texas Department of Protective and Regulatory Services

Wednesday, June 7, 1995, 10:00 a.m.

701 West 51st Street, Fifth Floor, West Tower, Conference Room 560W

Austin

Adult Protective Services Advisory Committee

AGENDA:

Report from White House Conference on Aging; report from strategic directions advisory committee; update on new rules for

investigations in TxMHMR facilities; review of proposed rules for Community MHMR center investigations; legislative/budget update; next steps in strategic forecasting project; status of client "bill of rights"; status of quality assurance process in facility investigations.

Contact: Lynda Acosta, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3209.

Filed: May 26, 1995, 4:09 p.m.

TRD-9506469

Public Utility Commission of Texas

Wednesday, June 7, 1995, 9:00 a.m. (Rescheduled from Tuesday, May 30, 1995, 9:00 a.m.)

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A rescheduled prehearing conference will be held on the above date and time in Docket Number 14197-complaint of Marc Singer against Pedernales Electric Cooperative, Inc.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 26, 1995, 9:55 a.m.

TRD-9506428

Monday, June 12, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A hearing on the merits has been scheduled in Docket Number 11014—Application of Pedernales Electric Cooperative, Inc. to amend Certificate of Convenience and Necessity for proposed transmission line within Hays County.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 25, 1995, 10:08 a.m.

TRD-9506346

Tuesday, June 20, 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 13951: application of Midwest Electric Co-operative, Inc. for a Certificate of Convenience and Necessity to construct a transmission line in Scurry County, Texas.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 26, 1995, 11:49 a.m.

TRD-9506442

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Railroad Commission on Texas

Friday, May 26, 1995, 1:00 p.m.

1701 North Congress Avenue, 12th Floor, Willa Mae Palmer Conference Room

Austin

Emergency Meeting

AGENDA:

To consider and act upon recommendations for termination of a commission employee. The commission may meet in executive session as permitted by the Open Meetings Act.

Reason for Emergency: After the posting deadline, commission staff received information relating to alleged misconduct by an employee that requires immediate consideration and possible action by the commission prior to the next regular scheduled meeting.

Contact: Brenda Loudermilk, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7149.

Filed: May 25, 1995, 3:52 p.m.

TRD-9506380

Tuesday, June 6, 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 Information Resource Manager's report on information resource planning documents.

The Commission will consider and act on the Information Resource Manager's report on the administration, budget, procedures, equipment acquisitions, contracts, work schedules and quarterly updates associated with the Department of Energy-RRC Area of Review (AOR) Data Management Enhancements Grant status review.

Contact: Mel Mireles, P.O. Box 12967, Austin, Texas 78701, (512) 463-7249.

Filed: May 26, 1995, 10:42 a.m.

TRD-9506432

Tuesday, June 6, 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 Director's report on division administration, budget, procedures, equipment acquisitions and personnel matters.

Contact: Bob Kmetz, P.O. Box 12967, Austin, Texas 78701, (512) 463-7251.

Filed: May 26, 1995, 10:43 a.m.

TRD-9506434

Tuesday, June 6, 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.

Contact: Roger Dillon, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7257.

Filed: May 26, 1995, 10:45 a.m.

TRD-9506435

Tuesday, June 6, 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.O. Box 12967, Austin, Texas 78711, (512) 463-6961.

Filed: May 26, 1995, 10:45 a.m.

TRD-9506436

Tuesday, June 6, 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

executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline and/or dismissal of personnel.

Contact: Mark Bogan, P.O. Box 12967, Austin, Texas 78711-2697, (512) 463-6981.

Filed: May 26, 1995, 10:46 a.m.

TRD-9506437

Tuesday, June 6, 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 Director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Box 12967, Austin, Texas 78701, (512) 463-6710.

Filed: May 26, 1995, 10:47 a.m.

TRD-9506438

Tuesday, June 6, 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 at the time specified on the agenda. The Railroad Commission of Texas may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received.

The Commission may meet in executive session on any items listed above as authorized by the Open Meetings Act.

Contact: Carole J. Vogel, P.O. Box 12967, Austin, Texas 78711, (512) 463-7033.

Filed: May 26, 1995, 10:58 a.m.

TRD-9506439

◆ ◆ ◆
Texas State Board of Social Worker Examiners

Friday, June 9, 1995, 1:00 p.m.

Best Western Hotel, Palm West Room, 6779 West Expressway 83

Harlingen

Revised Agenda

Complaint/Compliance Committee

AGENDA:

The committee will meet to discuss and possibly act on order relating to JM.

Contact: Michael Doughty, 1100 West 49th Street, Austin, Texas 78756, (512) 719-3521. 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 25, 1995, 4:13 p.m.

TRD-9506385

Saturday, June 10, 1995, 9:00 a.m.

Best Western Hotel, Palm West Room, 6779 West Expressway 83

Harlingen

Revised Agenda

AGENDA:

The board will discuss and possibly act on order relating to JM.

Contact: Michael Doughty, 1100 West 49th Street, Austin, Texas 78756, (512) 719-3521. 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 25, 1995, 4:12 p.m.

TRD-9506384

Stephen F. Austin State University

Thursday, June 1, 1995, 10:00 a.m.

1936 North Street, Room 307, Austin Building

Nacogdoches

Board of Regents Telephone Meeting

AGENDA:

I. Financial affairs

A. Proposed bond sale HEAF funds

B. Proposed bond sale auxiliary bonds

Contact: Dan Angel, P.O. Box 6078, Nacogdoches, Texas 75962-6078, (409) 468-2201.

Filed: May 25, 1995, 3:55 p.m.

TRD-9506383

Texas Southern University

Thursday, June 1, 1995, 7:00 p.m.

2424 Locke Lane

Houston

Special Board Meeting

AGENDA:

Personnel matters.

Contact: Janet Lightfoot, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: May 26, 1995, 9:55 a.m.

TRD-9506427

The University of Texas Health Center at Tyler

Thursday, June 1, 1995, Noon.

Highway 271 and Highway 155, Room 116

Tyler

Animal Research Committee

AGENDA:

Approval of minutes

Chairman report

Veterinarian report

Old business

New business

Adjournment

Contact: Cindy Pessink, P.O. Box 2003, Tyler, Texas 75710, (903) 877-7594.

Filed: May 25, 1995, 3:22 p.m.

TRD-9506377

University of Houston System

Friday, June 2, 1995, 8:00 a.m.

Shamrock Room, Conrad Hilton College Building, 4800 Calhoun, University of Houston

Houston

Board of Regents

AGENDA:

To discuss and/or approve the following: executive session: informational reports from employees, and appointment, evaluation, or dismissal of personnel; and organizational review report-UH System.

Contact: Peggy Cervenka, 1600 Smith, Suite 3400, Houston, Texas 77002, (713) 754-7440.

Filed: May 26, 1995, 11:49 a.m.

TRD-9506441

University Interscholastic League

Wednesday, May 31, 1995, 9:00 a.m.

Wyndham Hotel, IH-35 at Ben White

Austin

State Executive Committee

AGENDA:

AA. Coach ejected from two contests, school district personnel Bobby Boyd, Lake Travis High School. Hearing to assess penalty required by §1208(h).

BB. Final appeal of automatic penalty for being ejected from a contest, Buddy Barlett, Newton High School.

CC. Montgomery High School allowing an ineligible student to participate in violation of §440(d), compliance with state law.

DD. Abuse of official by a fan of Lubbock Coronado High School in violation of the athletic code.

EE. Case transferred from Music Region XIV Executive Committee requesting a penalty grater than private reprimand for school district personnel, Edalio Salinas, Corpus Christi King High School for violation of music regulations.

FF. Alleged violation of §1202(i), Coach or Adult Supervisor, White Oak High School.

GG. Post-district practice softball game in violation of §1280(d)(1), Houston Bellaire High School.

HH. Appeal of automatic penalty for coaches ejected from contests as required by §1208(h).

1. Coach Lori Alexander, Malakoff; Cross Roads

2. Coach Jim Kazanski, Henrietta

3. Coach Shane Wilson, Hallsville

4. Coach Steve Walsingham, Lake Dallas

5. Coach Robert Garea, Crystal City

6. Coach Mike Gencarellis, LaPorte

Contact: C. Ray Daniel, 3001 Lake Austin Boulevard, Austin, Texas 78701, (512) 471-5883.

Filed: May 26, 1995, 2:36 p.m.

TRD-9506453

Texas Board of Veterinary Medical Examiners

Thursday-Friday, June 8-9, 1995, 8:30 a.m.

Fourth Floor Conference Room, 1946 South IH-35

Austin

Board

AGENDA:

The board will be considering negotiated

settlements in disciplinary cases. The board will also take action concerning a proposal for decision in a contested disciplinary case. The board will consider the following rules:

Proposed new rules:

573.23-Board Certified Specialists

571.61-Inactive License

Amendments to existing rules:

571.05-Certification of Score-(National Board Exam)

571.18-Provisional Licensure

573.65-Definitions

573.67-Temporary Suspension of License

575.05-Conduct and Decorum

575.09-Docketing and Numbering of Causes, and Service

575.15-Fee Schedule

Rules for adoption:

573.10-Direct Supervision of Lay Personnel

575.15-Fee Schedule. Depending on legislative action, this rule may be considered for emergency adoption, in order that the correct fees are charged for exams administered prior to the next board meeting.

The board will also consider the April exam results, review the budget/appropriations; approve cancelled licenses; appoint the September and December Examination committees and other items reflected under general business. The board will go into executive session to discuss pending litigation and responsibilities of the executive director.

Persons requiring reasonable accommodations are requested to contact Judy Smith, 1946 South IH-35, #306, Austin, Texas 78704, (512) 447-1183 or TDD 1-800-735-2989 within 72 hours of the meeting to make appropriate arrangements.

Contact: Ron Allen, 1946 South IH-35, #306, Austin, Texas 78704, (512) 447-1183.

Filed: May 26, 1995, 11:36 a.m.

TRD-9506440

Texas Workers' Compensation Commission

Thursday, June 1, 1995, 9:00 a.m.

4000 South IH-35, Room 910-911, Southfield Building

Austin

Public Meeting

AGENDA:

1. Call to order

2. Approval of minutes for the public hearing of May 3, 1995 and public meeting of May 4, 1995

3. Discussion and possible action on proposal of Rule 134.601

4. Discussion and possible action on proposal of repeal: Rule 134.600

5. Discussion and possible action on proposal of Rule 166.8

6. Discussion and possible action on withdrawal of current proposal: Rule 166.8

7. Discussion and possible action on proposal of Rules: 124.6, 124.7, 126.5, 126.6, 129.5, 129.6, 130.1-130.5, 130.7-130.9, 141.3, 141.6, 142.11, 142.16, 143.5, 144.15, 147.4

8. Discussion and possible action on proposal of repeals: Rule 124.6, 124.7, 126.5, 126.6, 129.5, 130.1-130.5, 130.7, 130.8, 141.3, 141.6, 142.11, 142.16, 143.5, 144.15, 147.4

9. Executive session

10. Action on matters considered in executive session

11. General reports, discussion and possible action on issues relating to commission activities

12. Commissioners subcommittee reports and possible discussion, decisions and action on related rules

13. Confirmation of future public meetings and hearings

14. Discussion and possible action on future agenda items

15. Adjournment

Contact: Todd K. Brown, 4000 South IH-35, Austin, Texas 78704, (512) 440-5690.

Filed: May 25, 1995, 3:09 p.m.

TRD-9506373

Texas Workers' Compensation Insurance Facility

Thursday, June 22, 1995, 11:00 a.m.

DoubleTree Guest Suites Hotel, 303 West 15th Street

Austin

Annual Meeting

AGENDA:

Approval of minutes of the annual meeting held June 20, 1994. Approval of minutes of the special member company meeting held October 12, 1994. Annual report of the Chairman of the Governing Committee. Annual report of the executive director of the Texas Workers' Compensation Insurance Facility. Consideration and possible ap-

proval of amended bylaws of the Texas Workers' Compensation Insurance Facility. Consideration and possible approval of amended rules governing the Employers Rejected Risk Fund. Consideration and possible approval of amended rules and regulations governing the Small Premium Policy Plan.

Contact: Peter E. Potemkin, 8303 MoPac Expressway North, Suite 310, Austin, Texas 78759, (512) 345-1222.

Filed: May 30, 1995, 9:38 a.m.

TRD-9506493

Regional Meetings

Meetings Filed May 25, 1995

The Bandera County Appraisal District Board of Directors met at 1116 Main Street, Bandera, June 1, 1995, at 3:00 p.m. Information may be obtained from P. H. Coates, IV, P.O. Box 1119, Bandera, Texas 78003, (210) 796-3039, Fax: (210) 796-3672. TRD-9506362.

The East Texas Council of Governments JTPA Board of Directors met at 1306 Houston Street, Kilgore, June 1, 1995, at 11:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9506375.

The Heart of Texas Region MHMR Center Board of Trustees met at 110 South 12th Street, Waco, May 31, 1995, at 11:45 a.m. Information may be obtained from Helen Jasso, P.O. Box 890, Waco, Texas 76703, (817) 752-3451, Ext. 290. TRD-9506374.

The Kendall Appraisal District Board of Directors (Special Meeting) met at 121 South Main Street, Boerne, June 1, 1995, at 5:30 p.m. Information may be obtained from Mick Mikulenska or Helen Tamayo, P.O. Box 788, Boerne, Texas 78006, (210) 249-8012, Fax: (210) 249-3975. TRD-9506359.

The Kendall Appraisal District Appraisal Review Board will meet at 121 South Main Street, Boerne, June 8, 1995, at 9:00 a.m. Information may be obtained from Mick Mikulenska or Tammy Johnson, P.O. Box 788, Boerne, Texas 78006, (210) 249-8012, Fax: (210) 249-3975. TRD-9506360.

The Kendall Appraisal District Appraisal Review Board will meet at 121 South Main Street, Boerne, June 13, 1995, at 9:00 a.m. Information may be obtained from Mick Mikulenska or Tammy Johnson, P.O. Box 788, Boerne, Texas 78006, (210) 249-8012, Fax: (210) 249-3975. TRD-9506361.

The Lampasas County Appraisal District Appraisal Review Board met at 109 East Fifth Street, Lampasas, June 1, 1995, at

8:30 a.m. Information may be obtained from Tommy L. Watson, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058. TRD-9506350.

The North Central Texas Council of Governments (NCTCOG) Transportation Department will meet at 616 Six Flags Drive, Third Floor, Arlington, June 13, 1995, at 6:00 p.m. Information may be obtained from Michael Morris, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 695-9240. TRD-9506386.

The North Central Texas Council of Governments (NCTCOG) Transportation Department Regional Transportation Council will meet at Carrollton City Hall, 1945 Jackson Road, Carrollton, June 26, 1995, at 9:30 a. m. Information may be obtained from Michael Morris, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 695-9240. TRD-9506387.

The North Central Texas Council of Governments (NCTCOG) Transportation Department Regional Transportation Council will meet at the Dallas County Commissioners' Court, 411 Elm Street, Dallas, June 26, 1995, at 4:00 p.m. Information may be obtained from Michael Morris, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 695-9240. TRD-9506388.

The North Central Texas Council of Governments (NCTCOG) Transportation Department Regional Transportation Council will meet at Fort Worth City Hall, 1000 Throckmorton, Fort Worth, June 27, 1995, at 4:00 p. m. Information may be obtained from Michael Morris, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 695-9240. TRD-9506389.

The San Jacinto River Authority Board of Directors met at 2301 North Millbend Drive, Woodlands, May 31, 1995, at 12:30 p.m. Information may be obtained from James R. Adams, P.O. Box 329, Conroe, Texas 77305, (409) 588-1111. TRD-9506376.

The Tarrant Appraisal District Tarrant Appraisal Review Board will meet at 2329 Gravel Road, Fort Worth, June 12-15, 19-23, and 26-30, 1995, at 8:00 a.m. Information may be obtained from Linda G. Smith, 2329 Gravel Road, Fort Worth, Texas 76118-6984, (817) 284-8884. TRD-9506358.

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Meetings Filed May 26, 1995

The Aqua Water Supply Corporation Board of Directors will meet at 305 Eskew, Bastrop, June 5, 1995, at 7:30 p.m. Information may be obtained from Adlinie Rathman, P.O. Drawer P, Bastrop, Texas 78602, (512) 303-3943. TRD-9506447.

The Dallas Area Rapid Transit Mayors' Task Force met at the Richardson Civic Center/City Hall-Richardson Room, 411 West Arapaho, Richardson, May 31, 1995, at 7:30 a.m. Information may be obtained from Vanessa A. Knight, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3371. TRD-9506443.

The Dallas Area Rapid Transit Mayors' Task Force met at the Richardson Civic Center/City Hall-Richardson Room, 411 West Arapaho, Richardson, May 31, 1995, at 7:30 a.m. Information may be obtained from Vanessa A. Knight, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3371. TRD-9506449.

The Dallas Central Appraisal District Appraisal Review Board will meet at 2949 North Stemmons Freeway, Second Floor Community Room, Dallas, June 2, 1995, at 11:30 a.m. Information may be obtained from Rick Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9506430.

The East Texas Council of Governments Executive Committee met at 3800 Stone Road, Kilgore, June 1, 1995, at 1:30 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9506445.

The Harris County Appraisal District Appraisal Review Board will meet at 2800 North Loop West, Eighth Floor, Houston, June 2, 1995, at 8:00 a.m. Information may be obtained from Susan Jordan, 2800 North Loop West, Houston, Texas 77092, (713) 957-5222. TRD-9506408.

The Lower Neches Valley Authority Water Resources and Saltwater Barrier Committee met at 7850 Eastex Freeway, Beaumont, June 1, 1995, at 2:00 p.m. Information may be obtained from A. T. Hebert, Jr., P.O. Drawer 3464, Beaumont, Texas 77704, (409) 892-4011. TRD-9506409.

The Rusk County Appraisal District Appraisal Review Board will meet at 107 North Van Buren, Henderson, June 2, 1995, at 10:00 a.m. Information may be obtained from Melvin R. Cooper, P.O. Box 7, Henderson, Texas 75653-0007, (903) 657-3578. TRD-9506412.

The Southeast Texas Regional Planning Commission Executive Committee (Special Called Meeting) will meet at 220 North Fifth, City of Orange Council Chambers, June 14, 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-9506446.

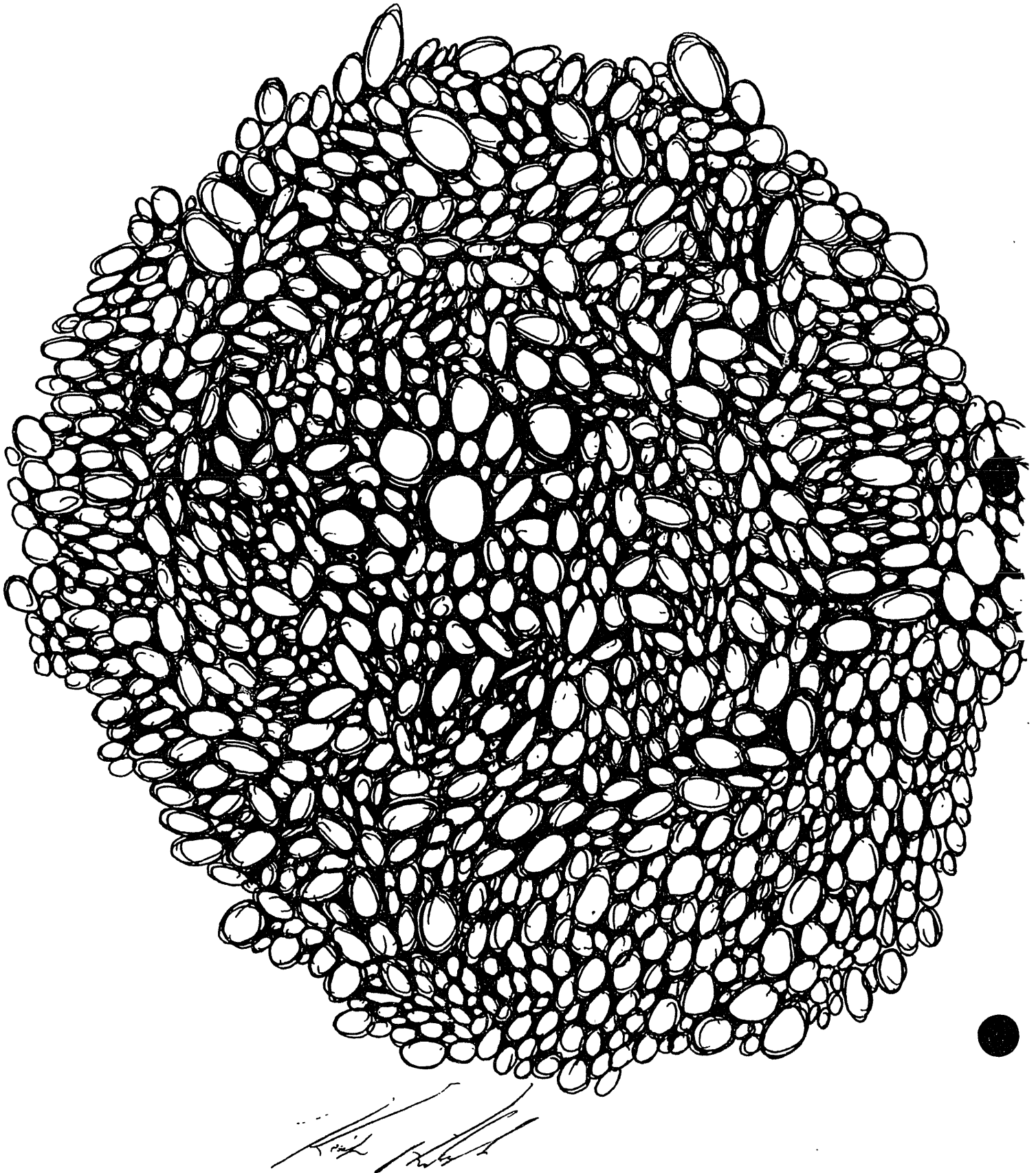
The Stephens County Rural WSC Board (Regular Monthly Meeting) met at 301 West Elm Street, Breckenridge, June 1, 1995, at 7:30 p.m. Information may be obtained from Mary Barton, P.O. Box 1621, Breckenridge, Texas 76424, (817) 559-6180. TRD-9506466.

The Upshur County Appraisal District Appraisal Review Board will meet at Warren and Trinity Street, Gilmer, June 5, 1995, at 9:00 a.m. Information may be obtained from Louise Stracener, P.O. Box 280, Gilmer, Texas 75644-0280, (903) 843-3041. TRD-9506452.

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Meetings Filed May 30, 1995

The Middle Rio Grande Development Council Private Industry Council Executive Committee will meet at the Hyatt-Regency Hotel, 123 Losoya Street, San Antonio, June 5, 1995, at 1:30 p.m. Information may be obtained from Leodoro Martinez, Jr., P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533, Fax: (210) 876-9415. TRD-9506492.

Name: Keith Richardson
Grade: 11
School: Boling High School, Boling 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)	05/29/95-06/04/95	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 22, 1995.

TRD-9506340 Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner

Filed: May 25, 1995

Texas Department of Health Consultant Contract Award

The Texas Department of Health (department) has awarded a consulting contract under the provisions of the Government Code, Chapter 2254. The proposal was published in the April 21, 1995, issue of the *Texas Register* (20 TexReg 3058).

The contractor will conduct a social market research study which will include individual interviews, focus groups and a knowledge survey. The contractor will study the target population of low-literate, low-to-moderate income, Mexican-American parents of preschool age children. The research results will be utilized to develop "5 A Day" Program materials for the target population. The "5 A Day" Program is a national initiative to increase per capita consumption of fruits and vegetables from 2.5 to 5 servings daily by the year 2000.

The contract was awarded to NuStats Inc., 4544 South Lamar Boulevard, Building 200, Austin, Texas, 78745. The project team consists of Carlos Arce, Johanna Zmud, Joanne Urena and Eduardo Galvan. The total value of the award is \$28,434. The term of the contract will begin May 19, 1995 and conclude on September 30, 1995. A final

report will be submitted to the department on September 30, 1995.

For more information, please contact Claire Heiser, Bureau of Nutrition Services, Texas Department of Health, 1100 West 49th Street, Austin, Texas, (512) 458-7785.

Issued in Austin, Texas, on May 25, 1995.

TRD-9506365 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: May 25, 1995

Notice of Rescission of Order

Notice is hereby given that the Bureau of Radiation Control, Texas Department of Health, rescinded the following order: Order of Revocation issued February 24, 1995, to Jeffrey A. Facey, D.D.S., 8191 Southwest Freeway, Suite 110, Houston, Texas, 77083, holder of Certificate of Registration Number R14332.

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 25, 1995.

TRD-9506364 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: May 25, 1995

Public Comments on Block Grant Funding

Under the authority of the Omnibus Budget Reconciliation Act of 1981, the Texas Department of Health (TDH) is making application for funds to continue the Title V Maternal and Child Health Services (MCHS) Block Grant during federal fiscal year (FFY) 1996.

Public hearings were held in eight of TDH's public health regions, and public comments received from these hearings have been summarized. This summary is available for public review and comment by any person (including any federal, state, local, or other public agency) and may be viewed at TDH and the following regional offices:

Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261; Public Health Region 1, 1109 Kemper, Lubbock, Texas 79403, (806) 744-3577; Public Health Regions 2 and 3, 2561 Matlock Road, Arlington, Texas 76015, (817) 460-3032; Public Health Regions 4 and 5 North, 1517 West Front Street, Tyler, Texas 75702, (903) 595-3585; Public Health Regions 6 and 5 South, 10500 Forum Place, Suite 200, Houston, Texas 77036-8599, (713) 995-1112; Public Health Region 7, 2408 South 37th Street, Temple, Texas 76504-7168, (817) 778-6744; Public Health Region 8, 1015 Jackson Keller Road #222, San Antonio, Texas 78213, (210) 342-3300; Public Health Regions 9 and 10, 6070 Gateway East, Suite 401, El Paso, Texas 79905-2060; (915) 774-6200; and Public Health Region 11, 601 West Sesame Drive, Harlingen, Texas 78550, (210) 423-0130.

In addition, the summary may be viewed at the following local health departments:

Angelina County and Cities Health District, 202 South Bynum, Lufkin, Texas 75901, (409) 632-1372; Corpus Christi-Nueces County Public Health District, 1702 Horne Road, Corpus Christi, Texas 78416, (512) 851-7200; Grayson County Health Department, 515 North Walnut, Sherman, Texas 75090, (903) 893-0131; Harris County Health Department, 223 West Loop South, Houston, Texas 77027, (713) 439-6106; Laredo (City of) Health Department, 2600 Cedar Street, Laredo, Texas 78040, (210) 723-2051; San Angelo-Tom Green County Health Department, 2 City Hall Plaza, San Angelo, Texas 76903, (915) 657-4214; San Antonio Metropolitan Health District, 332 West Commerce Street, San Antonio, Texas 78285, (210) 299-8780; Texarkana-Bowie County Family Health Center, 902 West 12th Street, Texarkana, Texas 75501, (903) 798-3255; Victoria County Health Department, 107 West River Street, Victoria, Texas 77902, (512) 578-6281; and Wichita Falls-Wichita County Public Health District, 1700 Third Street, Wichita Falls, Texas 76301, (817) 761-7800.

Written comments regarding the proposed FY 1996-2000 Title V Futures Project Plan may be submitted through July 21, 1995, to Patti J. Patterson, M. D., Chief, Bureau of Women and Children, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199.

Issued in Austin, Texas, on May 25, 1995.

TRD-9508363
Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: May 25, 1995

Texas Natural Resource Conservation Commission

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); and 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, concerning the carbon monoxide (CO) attainment demonstration for El Paso as conducted under the Federal Clean Air Act (FCAA), §179B.

Section 179B of the FCAA permits the TNRCC to perform computer modeling that demonstrates that El Paso could attain the national ambient air quality standard for CO, but for emissions emanating from outside the United States. The proposed SIP amendment is primarily a report on modeling procedures. This amendment contains no new rules or rule changes.

A public hearing on the proposal will be held on June 27, 1995 at 6:00 p.m. at the City of El Paso Council Chambers, 2 Civic Center Plaza, 2nd Floor, El Paso. 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 June 30, 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 95106-SIP-AI. For further information contact Beecher Cameron at (512) 239-1495.

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 May 24, 1995.

TRD-8508324
Lydia Gonzalez-Gromatzy
Acting Director, Legal Services Division
Texas Natural Resource Conservation
Commission

Filed: May 24, 1995

Nortex Regional Planning Commission Request for Proposal

The Nortex Regional Planning Commission is requesting proposals for an audit of all grants and programs of the Commission. This proposal will serve as a basis for a three-year period beginning October 1, 1994 through Sep-

tember 30, 1995 and the subsequent two fiscal years ending in 1996 and 1997. This request is filed under the provisions of Texas Government Code, Subchapter B, §2254.

The audit must be conducted under the guidelines of generally accepted auditing standards and other guidelines as highlighted in the Commission's request for proposals. The proposals will be reviewed by the Commission and a contract will be awarded on the basis of the firm's experience, firm knowledge of the work to be performed, and the proposed audit cost by year. Small, female-owned, and minority-owned firms are encouraged to submit.

Requests for proposal packages may be obtained by contacting Joyce Reynolds, Director of Finance, Nortex Regional Planning Commission, P.O. Box 5144, Wichita Falls, Texas 76307-5144, (817) 322-5281. A bidder's conference is scheduled for June 29, 1995 at the offices of Nortex Regional Planning Commission to answer any and all questions. All proposals must be received no later than 4:30 p.m., Central Standard Time, on July 25, 1995. Proposals received after the specified date and time will not be considered.

Issued in Austin, Texas on May 18, 1995.

TRD-9506209 Dennis Wilde
Executive Director
Nortex Regional Planning Commission

Filed: May 22, 1995

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Public Utility Commission of Texas

Notice of Application to Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on May 9, 1995, to amend a certificate of convenience and necessity pursuant to the Public Utility Regulatory Act of 1995, §§1.101, 3.051(b), 3.251, 3.253, and 3.254, Senate Bill 319, 74th Legislature Regular Session 1995. A summary of the application follows.

Docket Title and Number: Application of Alenco Communications, Inc. to Amend Certificate of Convenience and Necessity Within Webb, Lasalle, And Duval Counties, Docket Number 14210 before the Public Utility Commission of Texas.

The Application: In Docket Number 14210, Alenco Communications, Inc. seeks approval of its proposed amendment in order to reflect the creation of the Modeana and Delores exchange areas.

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 July 31, 1995.

Issued in Austin, Texas, on May 24, 1995.

TRD-9506328 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: May 24, 1995

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Notice of Intent to File Pursuant to Public Utility Commission Substantive Rules 23.27

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 23.27 for approval of customer-specific PLEXAR-Custom Service for Crowley ISD, Crowley, Texas.

Docket Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for Crowley ISD pursuant to Public Utility Commission Substantive Rule 23.27. Docket Number 14246.

The Application. Southwestern Bell Telephone Company is requesting approval of a 10-station addition to the existing PLEXAR-Custom service for Crowley ISD. The geographic service market for this specific service is the Crowley, Texas area.

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 24, 1995.

TRD-9506329 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: May 24, 1995

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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 23.27 for approval of customer-specific PLEXAR-Custom Service for Mercy Regional Medical Center, Laredo, Texas.

Docket Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for Mercy Regional Medical Center pursuant to Public Utility Commission Substantive Rule 23.27. Docket Number 14253.

The Application. Southwestern Bell Telephone Company is requesting approval of an optional feature addition to the existing PLEXAR-Custom service for Mercy Regional Medical Center. The geographic service market for this specific service is the Laredo, Texas area.

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 24, 1995.

TRD-9506330 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: May 24, 1995

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Notice of Joint Filing for Extended Area Service

On April 6, 1995, Texas Alltel, Inc., (Texas Alltel) filed with the Public Utility Commission of Texas a joint petition and agreement for the provision of optional, one-way, flat-rate, Extended Area Calling Service (EAS) from the Acton, Cresson, and Godley Exchanges to the Fort Worth Metropolitan Exchanges served by Southwestern Bell Telephone Company (SWB).

This project is entitled: Joint Petition and Agreement of Texas Alltel, Inc. , for Extended Area Calling Service

(EAS) from the Acton, Cresson, and Godley Exchanges to the Fort Worth Metropolitan Exchanges of Southwestern Bell Telephone Company, Project Number 12817.

If the joint petition and agreement for EAS is approved by the commission, customers residing in the Acton, Cresson, and Godley Exchanges who elect to subscribe to EAS will pay a monthly EAS rate additive, including basic local exchange service rates, as follows:

<u>Class of Service</u>	<u>Monthly Rate (EAS Additive plus Basic Local Rate)</u>		
	<u>Acton</u>	<u>Cresson</u>	<u>Godley</u>
Residential One-Party	\$ 23.50	\$ 23.50	\$ 23.50
Residential Key	\$ 32.13	\$ 28.98	\$ 32.13
Business One-Party	\$ 38.10	\$ 33.60	\$ 38.10
Business Key	\$ 46.80	\$ 41.25	\$ 46.80
Business PBX	\$ 46.80	\$ 41.25	\$ 46.80
Business Semi Public	\$ 38.10	\$ 33.60	\$ 38.10

New customers placing orders for EAS at the same time they order basic local exchange service will not be billed the proposed \$10 EAS connection charge for both residential and business customers, although standard service connection charges will apply.

It will not be necessary for Texas Alltel customers to change their telephone numbers to subscribe to the new optional EAS service. Customers who do not wish to subscribe to this optional service will not have any change in their basic local charges but will continue to pay toll charges for calls to the Fort Worth Metropolitan Area. All calls from the Southwestern Bell Telephone Company Fort Worth Metropolitan exchanges to the Acton, Cresson, and Godley Exchanges will still be considered toll calls.

Persons who wish to intervene or otherwise participate in this project should notify the commission as soon as possible, but in any event, not later than August 1, 1995. A request to intervene, participate, or for further information should be mailed to the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas, 78757. Further information may also be obtained by calling the Public Utility Commission Consumer Affairs Of-

file, at (512) 458-0357 or (512) 458-0221 (TTY-Teletypewriter for the deaf).

Issued in Austin, Texas, on May 25, 1995.

TRD-9508372

John M. Rarlow
Secretary of the Commission
Public Utility Commission of Texas

Filed: May 25, 1995

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Texas Rehabilitation Commission
Request for Proposal

Texas Planning Council for Developmental Disabilities announces the availability of funds to be awarded on behalf of the Texas Planning Council for Developmental Disabilities by the Texas Rehabilitation Commission.

The purpose of this Request for Proposal (RFP) is to solicit proposals for a project that will coordinate and support the development of at least four local transportation coordination models in the state and the development of a statewide consolidated planning process for public and client transportation funding and service delivery. The models will be developed in four area types: urban, small

rural, large rural and border. The expected outcome is to have methods for successful coordination that can be replicated and modified for use throughout the state.

The Council anticipates that the grantee will provide technical assistance and support to at least four sub-grantee planning teams in local communities, selected through a competitive process, who will develop ways to coordinate transportation services. Sub-grantees will be expected to develop working models of a coordinated local transportation system

Applicants must demonstrate the ability to provide technical assistance and support to four local transportation coordination models in the state and the development of a statewide consolidated planning process for public and client transportation funding and service delivery.

The applicant will demonstrate knowledge of best practices in the coordination of transportation in the four area types described and identify which components might be replicated in other areas of Texas.

One project will be funded for up to five years. Continuation funding for years two through five will be contingent upon annual review of performance. The initial budget period is October 1, 1995, to May 31, 1996.

Estimated funding not to exceed \$225,000 for the first year and an estimate of \$150,000 in years two through five of the project for a total of \$600,000.

Nonfederal match of 25% is requested for the first year. A project located in counties designated as federal poverty areas requires a minimum of 10% matching resources for the first year. Increasing nonfederal match will be required in years two through five

For the application packet containing the full request for proposal, application forms and instructions, please submit a written or fax request to: Lester Sanders, Grants Management Director, Texas Planning Council for Developmental Disabilities, 4900 North Lamar Boulevard, Austin, Texas 78751-2399, (512) 483-4084, (512) 483-4097 FAX

Deadline: Proposals will be accepted at the Texas Planning Council Office, 4900 North Lamar Boulevard, Office #4141, 4th Floor, Austin, Texas until 4:00 p.m. on July 14, 1995. No fax copies of proposals will be accepted. Copies of application kit may not be faxed to applicants.

Issued in Austin, Texas, on May 24, 1995.

TRD-9506402

Charles W Schlessor
General Counsel
Texas Rehabilitation Commission

Filed: May 26, 1995

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Texas Department of Transportation
Public Hearing

The Texas Department of Transportation ("TxDOT") will hold a public meeting starting at 7:00 p.m. on Thursday, June 8, 1995, at the newly completed Transguide Operations Center located within the IH10/NW Loop 410 Interchange in San Antonio. This meeting will provide information to the public concerning the proposed FY 1996-1998 Transportation Improvement Program ("TIP") for counties outside the San Antonio/Bexar County Metropolitan Planning Area. Affected counties are Atascosa, Bandera, Comal, Frio, Guadalupe, Kendall, Kerr, McMullen, Medina, Uvalde, and Wilson. Title 23 United States Code, §135, as amended by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), requires the State to develop a TIP as a condition to securing federal funds for transportation projects under either Title 23 or the Federal Transit Act (formerly the Urban Mass Transportation Act). Under §135, TxDOT's selection of such projects is made in cooperation and consultation with affected local officials, with opportunities/provided for the public and interested persons to comment. Any interested party may attend the meeting, and may in the interim inspect a file copy of the proposed TIP at TxDOT's San Antonio District Office, 4615 Northwest Loop 410, or at one of the TxDOT Area Offices for the noted counties. Persons wishing to review the proposed TIP may contact Judy Friesenhahn, P.E., at the District Office address or by telephone at (210) 615-5814 or fax (210) 615-6295. Ms. Friesenhahn is also available to furnish additional information regarding this notice.

Issued in Austin, Texas, on May 25, 1995.

TRD-9506339

Robert E Shaddock
General Counsel
Texas Department of Transportation

Filed: May 25, 1995

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32 Friday, April 28	Monday, April 24	Tuesday, April 25
33 Tuesday, May 2	Wednesday, April 26	Thursday, April 27
34 Friday, May 5	Monday, May 1	Tuesday, May 2
35 Tuesday, May 9	Wednesday, May 3	Thursday, May 4
36 Friday, May 12	Monday, May 8	Tuesday, May 9
37 Tuesday, May 16	Wednesday, May 10	Thursday, May 11
38 Friday, May 19	Monday, May 15	Tuesday, May 16
39 Tuesday, May 23	Wednesday, May 17	Thursday, May 18
40 Friday, May 26	Monday, May 22	Tuesday, May 23
41 Tuesday, May 30	Wednesday, May 24	Thursday, May 25
42 Friday, June 2	*Friday, May 26	Tuesday, May 30
43 Tuesday, June 6	Wednesday, May 31	Thursday, June 1
44 Friday, June 9	Monday, June 5	Tuesday, June 6
45 Tuesday, June 13	Wednesday, June 7	Thursday, June 8
46 Friday, June 16	Monday, June 12	Tuesday, June 13
47 Tuesday, June 20	Wednesday, June 14	Thursday, June 15
48 Friday, June 23	Monday, June 19	Tuesday, June 20
49 Tuesday, June 27	Wednesday, June 21	Thursday, June 22
50 Friday, June 30	Monday, June 26	Tuesday, June 27
51 Tuesday, July 4	Wednesday, June 28	Thursday, June 29
Friday, July 7	NO ISSUE PUBLISHED	
52 Tuesday, July 11	Wednesday, July 5	Thursday, July 6
Friday, July 14	Second Quarterly Index	
53 Tuesday, July 18	Wednesday, July 12	Thursday, July 13
54 Friday, July 21	Monday, July 17	Tuesday, July 18
55 Tuesday, July 25	Wednesday, July 19	Thursday, July 20
56 Friday, July 28	Monday, July 24	Tuesday, July 25
57 Tuesday, August 1	Wednesday, July 26	Thursday, July 27
58 Friday, August 4	Monday, July 31	Tuesday, August 1
59 Tuesday, August 8	Wednesday, August 2	Thursday, August 3
60 Friday, August 11	Monday, August 7	Tuesday, August 8
61 Tuesday, August 15	Wednesday, August 9	Thursday, August 10
62 Friday, August 18	Monday, August 14	Tuesday, August 15
63 Tuesday, August 22	Wednesday, August 16	Thursday, August 17
64 Friday, August 25	Monday, August 21	Tuesday, August 22
65 Tuesday, August 29	Wednesday, August 23	Thursday, August 24
66 Friday, September 1	Monday, August 28	Tuesday, August 29
67 Tuesday, September 5	Wednesday, August 30	Thursday, August 31
68 Friday, September 8	*Friday, September 1	Tuesday, September 5
69 Tuesday, September 12	Wednesday, September 6	Thursday, September 7
70 Friday, September 15	Monday, September 11	Tuesday, September 12