

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Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.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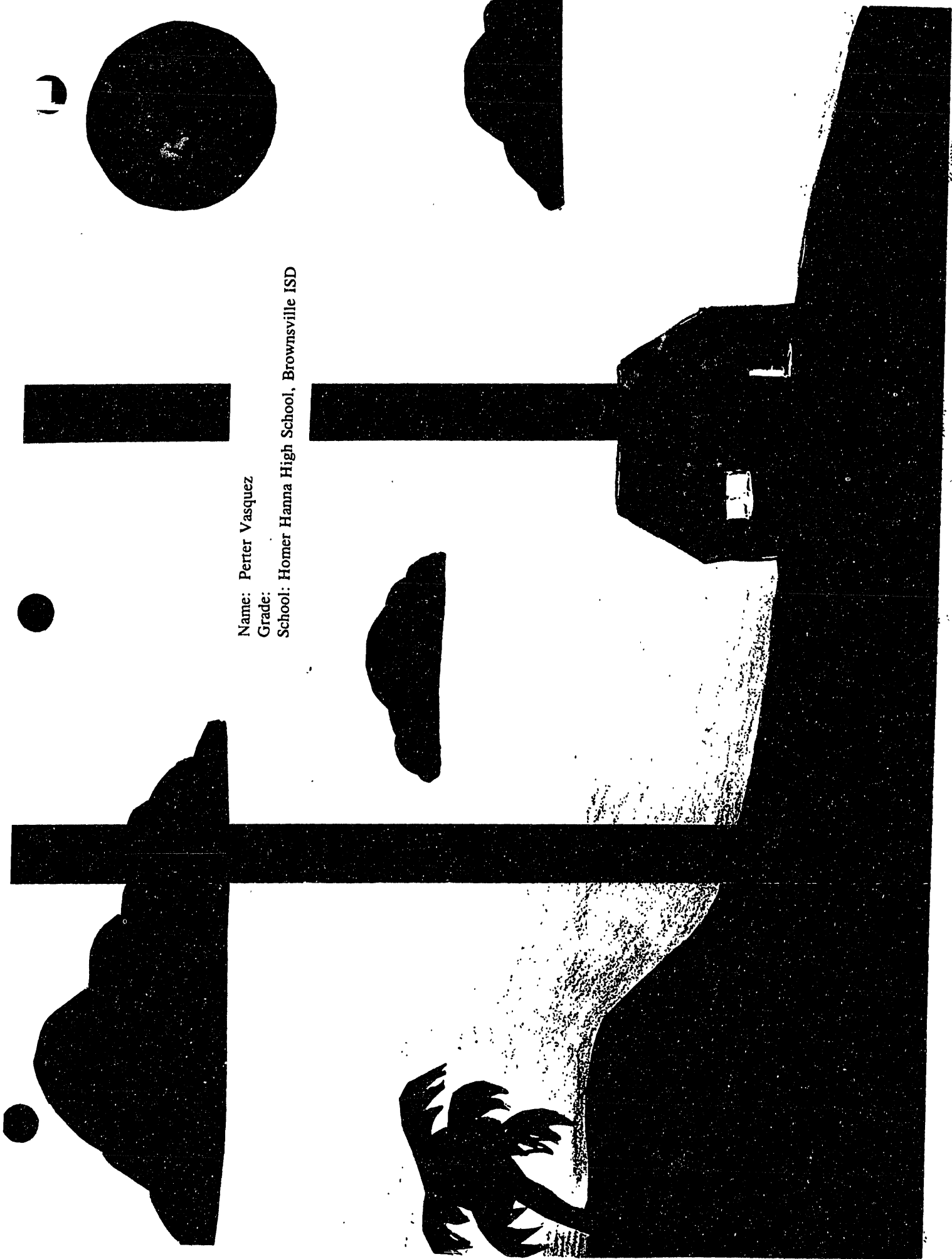
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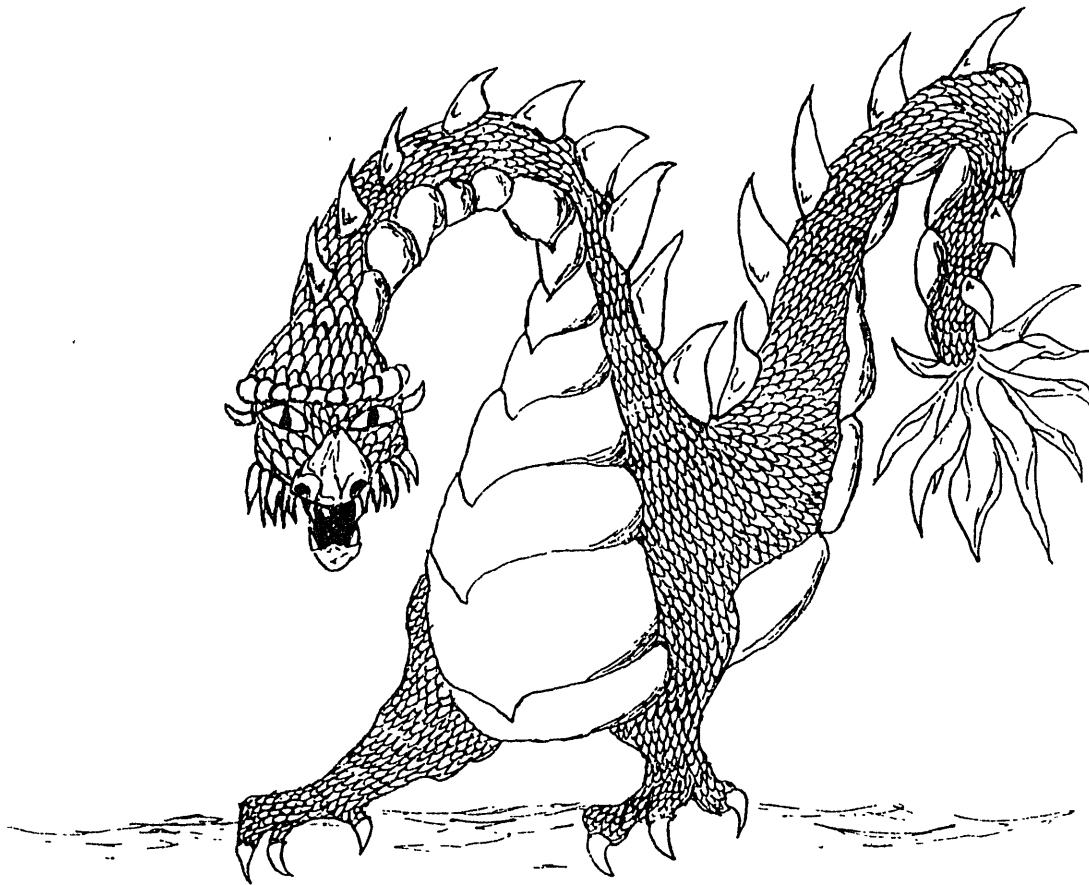




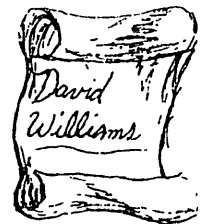
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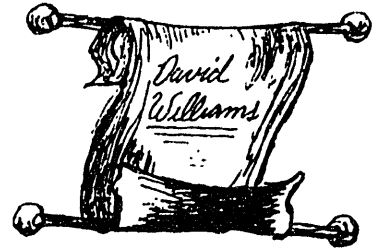
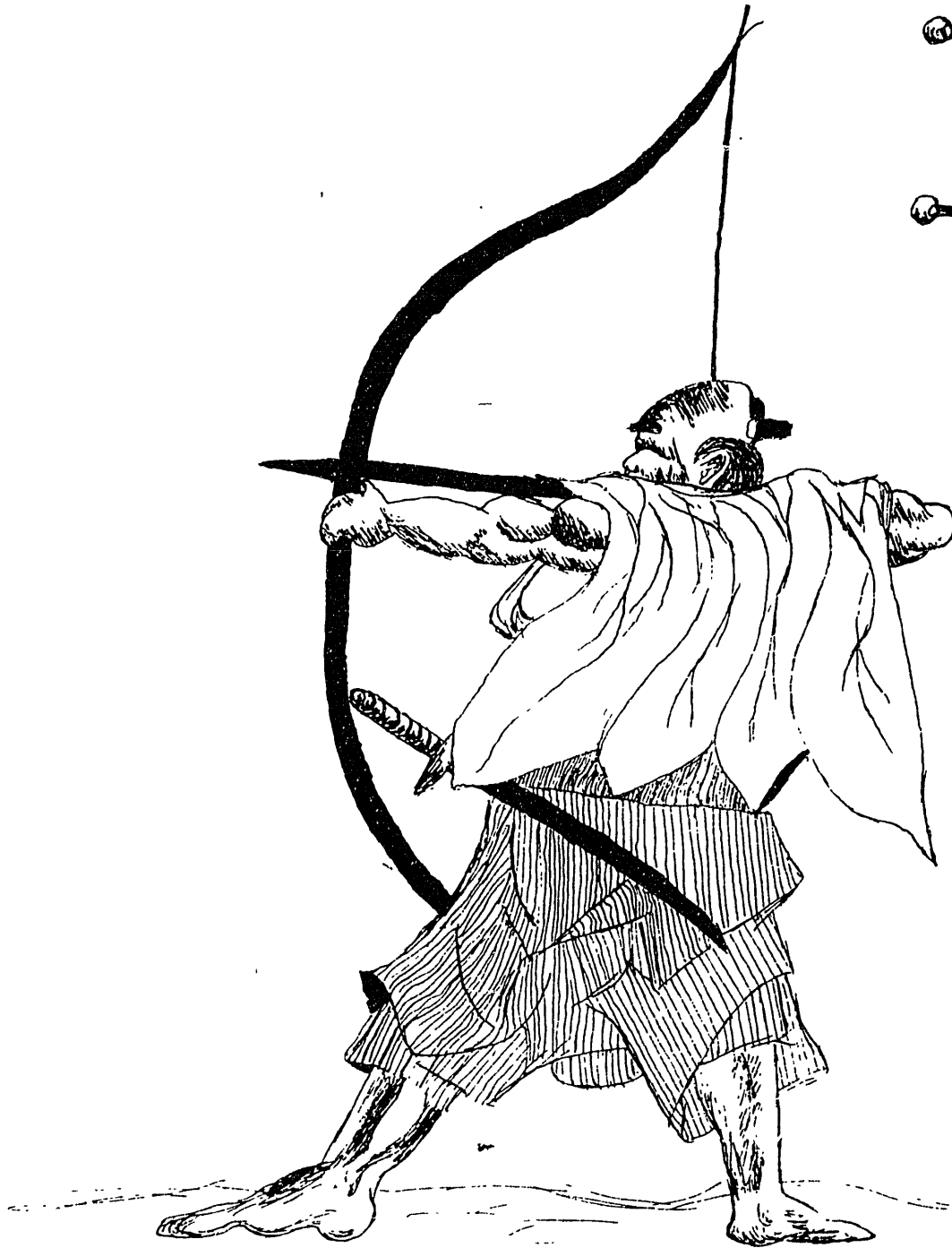
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Name: David Williams  
Grade: 8  
School: Buffalo Jr. High School, Buffalo ISD



# THE GOVERNOR

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

## Appointments Made June 14, 1995

On June 8, 1995, Frederick L. Henneke of Hunt was appointed to the Lower Colorado River Authority Board of Directors as an at-large member for a term to expire February 1, 1999. The correct expiration date for Mr. Henneke's term is February 1, 2001.

To be a member of the Governing Committee of the Workers' Compensation Insurance Facility for a term to expire February 1, 1999: J. M. (Mike) Lowrey, 203 Teakwood, Lake Jackson, Texas 77566-3215. Mr. Lowrey will be replacing James R. Hardeman of Grapevine whose term expired.

To be a member of the Governing Committee of the Workers' Compensation Insurance Facility for a term to expire February 1, 2001: The Honorable Gwen Shea, 609 Campana Court, Irving, Texas 75061. Constable Shea will be replacing Kate Tomlin of Houston who resigned.

To be a member of the Home and Community Support Services Advisory Council for a term to expire January 31, 1997: Helen J. Dichoso, 22 Muirfield Way, Sugar Land, Texas 77479. Mrs. Dichoso will be replacing Leticia A. Goodrich of Amarillo whose term expired.

To be a member of the Board of Directors of the Trinity River Authority of Texas for a term to expire March 15, 2001: Patricia A. Clapp, 9418 Trailhill, Dallas, Texas 75238. Mrs. Clapp will be replacing William D. Elliott of Dallas whose term expired.

To be a member of the Board of Directors of the Trinity River Authority of Texas for a term to expire March 15, 1999: James W. Porter, 4420 McFarlin Road, Dallas, Texas 75205. Mr. Porter will be filling the unexpired term of William H. McGee of Dallas who was not confirmed by the Senate.

To be a member of the Automobile Theft Prevention Authority for a term to expire February 1, 1997: Deputy Chief W. Troy McClain, 18880 Marsh Lane, Dallas, Texas 75287. Deputy Chief McClain will be filling the unexpired term of Victor Rodriguez of Brownsville who resigned.

To be a member of the Automobile Theft Prevention Authority for a term to expire February 1, 1999: Chief James J. Scheopner, 1638 Throckmorton, Harlingen, Texas 78550. Chief Scheopner will be replacing Mart C. Hanna of Houston whose term expired.

To be a member of the Automobile Theft Prevention Authority for a term to expire February 1, 2001: Robert L. Springer, 35 West Isle Place, The Woodlands, Texas 77381. Mr. Springer is being reappointed.

To be a member of the Automobile Theft Prevention Authority for a term to expire February 1, 2001: Patricia Jung Williams, 5 Crown Road, Weatherford, Texas 76087. Mrs. Williams will be replacing Dale R. Green of Fort Worth whose term expired.

To be a member of the Automobile Theft Prevention Authority for a term to expire February 1, 1999: Charles Wirth, 5103 Doe Valley Lane, Austin, Texas 78759. Mr. Wirth is being reappointed.

Issued in Austin, Texas, on June 15, 1995.

TRD-9507316

George W. Bush  
Governor of Texas





Name: David Williams  
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# TEXAS ETHICS COMMISSION

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

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

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## Advisory Opinion Requests

**AOR-299.** Whether an officeholder subject to the Penal Code, §36.08(f) may accept a waiver of membership fees in a private organization.

**AOR-300.** Whether an officeholder may use a state or a campaign plane for personal purposes as long as appropriate reimbursement is made for the personal use.

**AOR-301.** The Ethics Commission has been asked whether a specific-purpose political committee formed to support a particular candidate must report the use of the candidate's personal equipment as a political contribution to the committee.

**AOR-302.** The Ethics Commission has been asked to consider whether a judge may use government resources to perform a marriage service if the judge retains the fee for the services.

**AOR-303.** The Texas Ethics Commission has been asked to consider whether a private partnership may hire members of the legislature to provide educational seminars and services to individuals and business entities.

Issued in Austin, Texas, on June 15, 1995.

TRD-9507385

Lucia Dodson  
Executive Assistant  
Texas Ethics Commission





Name: Chris Glick  
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School: Buffalo Jr. High School, Buffalo ISD

*Chris Glick*

# EMERGENCY RULES

An agency may adopt a new or amended section or repeal an existing section on an emergency basis if it determines that such action is necessary for the public health, safety, or welfare of this state. The section may become effective immediately upon filing with the *Texas Register*, or on a stated date less than 20 days after filing and remaining in effect no more than 120 days. The emergency action is renewable once for no more than 60 additional days.

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

## TITLE 30. ENVIRONMENTAL QUALITY

### Part I. Texas Natural Resource Conservation Commission

#### Chapter 114. Control of Air Pollution From Motor Vehicles

The Texas Natural Resource Conservation Commission (TNRCC) adopts on an emergency basis the repeal of §§114.3, 114.6, and 114.7, concerning Inspection Requirements, Hardship Eligibility Criteria, and Inspection and Maintenance Fees and new §114.3, concerning Inspection Requirements.

The emergency adoption is in response to Senate Bill 178 passed by the 74th Texas Legislature, 1995, and signed into law by Governor George W. Bush. This legislation gives implementation responsibility for an interim Inspection and Maintenance program to the Texas Department of Public Safety (DPS) and directs the TNRCC to adopt emergency rules to repeal conflicting requirements as soon as possible.

The new §114.3 requires motorists to comply with air pollution emission control requirements included in the annual vehicle safety inspection program. The new section also requires that the rules and regulations adopted by DPS must be completely and properly performed prior to the issuance of a vehicle inspection certificate.

The current §114.6 established the hardship eligibility criteria. The DPS will now promulgate such standards. The current §114.7 set fees for inspections and fees associated with conducting tests. The DPS will now promulgate such standards.

#### • 30 TAC §§114.3, 114.6, 114.7

The repeals are adopted on an emergency basis 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.

#### §114.3. Inspection Requirements.

#### §114.6. Hardship Eligibility Criteria.

#### §114.7. Inspection and Maintenance Fees.

Issued in Austin, Texas, on June 12, 1995.

TRD-9507243      Lydia Gonzalez-Gromatzky  
Acting Director, Legal  
Services Division  
Texas Natural Resource  
Conservation  
Commission

Effective date: June 14, 1995

Expiration date: October 12, 1995

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

#### • 30 TAC §114.3

The new section is adopted on an emergency basis under the Texas Health and Safety

Code, Texas Clean Air Act (TCAA), §382.017, which provides the Texas Natural Resource Conservation Commission (TNRCC) with the authority to adopt rules consistent with the policy and purposes of the TCAA

#### §114.3. Inspection Requirements

(a) No person may operate any motor vehicle which does not comply with air pollution emission control related requirements included in the annual vehicle safety inspection requirements administered by the Texas Department of Public Safety (DPS) as evidenced by a currently valid inspection certificate affixed to the vehicle windshield

(b) No person may issue or allow the issuance of a vehicle inspection certificate, as authorized by DPS, unless all air pollution emission control related requirements of the annual vehicle safety inspection are completely and properly performed in accordance with the rules and regulations adopted by DPS. Prior to taking any enforcement action regarding this provision, the TNRCC shall consult with DPS

Issued in Austin, Texas, on June 12, 1995.

TRD-9507248      Lydia Gonzalez-Gromatzky  
Acting Director, Legal  
Services Division  
Texas Natural Resource  
Conservation  
Commission

Effective date: June 14, 1995

Expiration date: October 12, 1995

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



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MICHELLE.F

# 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 10. COMMUNITY DEVELOPMENT

### Part V. Texas Department of Commerce

#### Chapter 186. Smart Jobs Fund Program

##### Subchapter A. General Provi- sions

###### • 10 TAC §§186.101-186.104, 186.106

The Texas Department of Commerce proposes amendments to §§186.101-186.104 and new §186.106 implementing the Smart Jobs Fund Program authorized by the Texas Government Code, Chapter 481, Subchapter J. The rules are proposed under the Texas Government Code, Chapter 481 and the Administrative Procedure Act, Chapter 2001, Subchapter B, Rulemaking.

Section 186.101, concerning Authority, adds a reference to the Texas Government Code, Chapter 2001, Subchapter B, Rulemaking

Section 186.102, concerning Purpose, is being amended to clarify that the Smart Jobs Fund was established as a business incentive program

Section 186.103, concerning Policy Board Monitoring, changes the monitoring of the program from a regular basis to a quarterly basis in order to be more specific about how often the Policy Board will monitor the program

Section 186.104, concerning Definitions, adds definitions for "emerging occupation" and "manufacturing occupation" since the new §186.106 and §186.302 references these occupations. It also adds definitions for "skills" and "Smart Job" which were previously not defined and deletes the definitions for "labor market information" because it is not required in administering the program and "literacy skills" or "basic skills" because the definition is incorporated into the definition for "job-related basic skills" Changes are being made to the definitions for "benefits", "competencies", "completed application", "contract", "existing job", "job-related basic skills", "job-related occupations skills", "matching costs", "new job", "reimbursable costs", "subcon-

tract", and "total project cost" in order to clarify those definitions

Section 186.106, concerning Modifications, is being added to specify that a wage modification may be made by the executive director for small businesses and businesses with manufacturing and emerging occupations to reduce the 10% wage increase requirement for existing jobs to 5.0% within the limitations specified in §481.155(c) of the Smart Jobs Fund Act. This change is being proposed in order to clarify which businesses are eligible for a wage modification and what the modification is

Richard Hall, director of the Smart Jobs Fund, has determined that for the first five-year period the rules are in effect the fiscal implication as a result of enforcing or administering the rules is reduced costs for businesses that receive a modification. Costs to administer the Smart Jobs Fund are limited by statute to no more than 5.0% of the Fund.

There are no anticipated cost increases or decreases to local government as a result of enforcing or administering the rules. There are no anticipated cost reductions to state government as a result of enforcing or administering the rules. The rules are not anticipated to create either a loss or an increase in revenue to state or local government

Mr. Hall also has determined that there will be a public benefit for each of the first five years that the rules are in effect. The anticipated public benefit is that the rules are being made clearer and simpler and that more businesses will be able to access the program and will receive a cost benefit because of the wage modification for existing jobs specified in §186.106. The cost to persons complying with the other rule amendments will be no different than the costs under the existing rules.

Written comments on the proposed rules should be submitted to Renee Mauzy, Assistant General Counsel, Texas Department of Commerce, 1700 Congress Avenue, Box 12728, Austin, Texas 78701-2728 within 30 days of publication of the proposed rules.

The amendments are proposed under the authority of Texas Government Code, Subchapter J, §481.153, which requires the Texas Department of Commerce Policy Board to adopt rules to implement the Smart Jobs Fund Program; and the Administrative Procedure Act, Chapter 2001, Subchapter B,

Rulemaking, Texas Government Code, which prescribes the standards for agency rulemaking

Texas Government Code, Chapter 481, Subchapter J, is affected by this proposal

*§186.101. Authority.* Pursuant to the authority granted by the Texas Government Code, Subchapter J, §481.151 et seq, and the Administrative Procedure [and Texas Register] Act, Texas Government Code, Chapter 2001, Subchapter B, Rulemaking, [Texas Civil Statutes, Article 6252-13a, as amended,] the Texas Department of Commerce prescribes the following rules implementing the Smart Jobs Fund [program established by the 73rd Legislature]

*§186.102. Purpose.* The Smart Jobs Fund [program] is established as a business incentive program and to enhance employment opportunities for Texans by fostering the development of jobs that include wages, benefits, opportunity for advancement, and job security in accordance with the program. It is also established to meet the needs of existing and new businesses in this state by assisting them in improving the overall education and skill levels of their workforces

*§186.103. Policy Board Monitoring.* The Policy Board shall monitor the goals and results of the program on a quarterly [regular] basis.

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

Benefits-Perquisites paid by an employer to an employee, either voluntarily or by collective bargaining agreement, in addition to the employee's wages. [Benefits may include items such as vacation pay, holiday pay, sick leave, health insurance coverage, workers' compensation coverage, retirement or pension plans, life insurance, or other reasonable benefits.]

**Competencies**—The level of skills that the employer determines to be necessary for the participant to successfully perform a specific job. This includes the employer's measures of the participant's expected learning gains or skill mastery [of the job-related occupational skills or job-related basic skills] for which they are being trained. Such competencies may be specified by the employer, by industry associations, or by inclusion in courses approved by the Texas Higher Education Coordinating Board, and be consistent with ISO 9000 certification standards, or other credible sources acceptable to the employer as evidenced by their inclusion in the application. The employer's measures shall be consistent with specifications in its business plan as essential to the business' competitiveness.

**Completed Application**—A document submitted by an applicant on the forms provided by the Department that provides the information specified in §186.302 in sufficient detail as determined by [to permit] the department to write a contract for a grant awarded under this chapter.

**Contract**—The written legally binding obligation [agreement] between the department and each employer that receives a grant [participating in] a project that is signed after a project has been approved and a grant awarded, and which details the rights and responsibilities of each of the parties to that agreement].

**Emerging occupation**—An occupation that arises through forces related to technological changes in the workplace, and that requires at least two months of customized education or training before a person trained in another field can be reasonably expected to perform the duties of the occupation.

**Existing job**—A position for which there has been [is] an incumbent employee or a job opening for more than six months prior to the date the project is scheduled to begin.

**In-kind contribution**—A noncash contribution of goods and/or services provided by an employer as all or part of the employer's matching share of a grant or project.

**Job-related basic skills**—The knowledge and abilities necessary to communicate and to function effectively in the workplace. [Basic academic skills such as the knowledge and abilities identified by the federal Department of Labor Secretary's Commission on Achieving Necessary Skills, known as the "SCANS Skills."] These skills must [are to] be integrated as part of the job-related [vocational ( ) occupational( )] skills training curricula and must be consistent with the requirements of the employer's business plan. Such skills may include reading, writing, mathematics, English as a Second Language, and Spanish as a Second Language if these skills are necessary for the job in which the

participant will be employed at the end of the project consistent with the employer's certification.

**Job-related occupational skills [or job-related vocational skills]**—The knowledge and abilities the employer specifies as necessary for a specific job, and may include workplace skills such as the productive use of resources, interpersonal communication, information, systems, and technology [for which a participant is being trained and in which the participant will be employed at the end of the project consistent with the employer's certification]. These skills specifications shall be consistent with the requirements of the employer's business plan.

[Labor market information—Economic, occupational, geographic and demographic characteristics of the labor market that encompasses population and labor force composition, industry and occupational trends and outlook, job opportunities, hiring and training practices, skills requirements and trends, wages, labor force estimates, career ladders, and occupational supply and demand.]

[Literacy skills or basic skills—The knowledge and abilities necessary to communication in the workplace. Such skills may include reading, writing, mathematics, language comprehension, and English as a Second Language commonly assumed to have been learned in the public schools through the middle school level. Such skills may also include Spanish as a Second Language necessary for the job in which the participant will be employed at the end of the project consistent with the employer's certification. Literacy skills are considered part of job-related basic skills or SCANS skills.]

**Manufacturing occupation**—An occupation in an industry that is involved in the manufacture of products using mechanical power and machinery.

**Matching costs**—The dollar value of the private contributions from the employer required under the Smart Jobs Fund [Program], whether they be dollar contributions or in-kind contributions. [Calculation of the required matching amount is as follows:

[(A) Total dollar amount of the grant divided by the required percent of matching cost equals the total project cost. The total project cost minus the total dollar amount of the grant equals the matching cost requirement.

[(B) An example follows:

[(i) \$50,000 total grant amount/.50 (50% match requirement) = \$100,000 total project cost.

[(ii) \$100,000 total project cost-\$50,000 total grant amount = \$50,000 matching requirement]

**New job**—A position which did not exist in this state in the employer's business [in this state] and [a position] which had no incumbent employee for more than six months prior to the date the project is scheduled to begin. This may include an [existing] employee in an existing job who is being retrained for a new job with new skill requirements [position].

**Provider**—A person or entity that provides employment-related training. The term includes employers, employer associations, labor organizations, community-based organizations, training consultants, public and private schools, community colleges, senior colleges, universities, technical colleges, and other higher education entities as defined in the Education Code, §61.003, and proprietary schools as defined in the [Texas] Education Code, §32.11.

**Reimbursable costs**—Those expenses in a training project that are reimbursed by a grant from the fund. Costs related to direct training [costs] and administrative costs for a project are reimbursable costs.

**Skills—Aptitudes or abilities** that are necessary to execute or perform a job, including the ability to use one's knowledge effectively and readily. Skills also include "job-related basic skills" and "job-related occupational skills" as previously defined.

**Smart Job—A job** that is a family wage job and requires, as a condition of employment, high-level thinking, reasoning, and technical skills.

**Subcontract**—A written agreement between an applicant and a provider [of training] or administrative entity [services] that is signed before a project has been approved and a grant awarded which [and that] details the rights and responsibilities of each party to the agreement. This can include the designation of a provider or administrative entity as a fiscal agent.

**Total project cost**—The sum of costs related to [the] direct training[related costs] plus administrative costs funded by a grant awarded under this chapter [plus the employer's required matching contribution. It is calculated as follows:

[(A) Total dollar amount of the grant divided by the required percent of matching cost equals the total project cost.

[(B) An example follows: \$50,000 total grant amount/.50 (50% match requirement) = \$100,000 total project cost].

*§186.106. Modifications. For purposes of modifying the requirements of §481.155, the executive director may give priority to employers that are securing training for existing jobs if they are a small business or are securing training for manufacturing or emerging occupations. Such a modification*



would reduce the wage increase called for in §481.155(c) from 10% to 5.0% over the wage in effect on the day before the date on which the project is scheduled to begin for that job. To qualify for this modification, the employer must certify that it is required to reduce or eliminate the employer's work force because of reductions in overall employment within an industry or a substantial change in the skills required to continue the employer's business because of technological changes or other factors. Grant amounts awarded for such modifications may not, in any fiscal year, exceed 10% of the total dollar amount of the grants awarded under the program in that year.

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

Issued in Austin, Texas, on June 16, 1995.

TRD-9507362 Brenda F. Amett  
Executive Director  
Texas Department of  
Commerce

Earliest possible date of adoption: July 24, 1995

For further information, please call: (512) 936-0178

## Subchapter B. Methodologies for Determining Certain Variables

### • 10 TAC §186.201

The Texas Department of Commerce proposes an amendment to §186.201, implementing the Smart Jobs Fund Program authorized by the Texas Government Code, Chapter 481, Subchapter J. The amendment is proposed under the Texas Government Code, Chapter 481 and the Administrative Procedure Act, Chapter 2001, Subchapter B, Rulemaking.

Section 186.201, concerning State Average Weekly Wage; Regional Variances, is being amended to delete the reference to the Texas Employment Commission and to refer instead to the Texas Workforce Commission as a result of the legislation passed in the 74th Legislative Session which abolishes the Texas Employment Commission and establishes the Texas Workforce Commission. A nonsubstantive grammatical change is also made.

Richard Hall, director of the Smart Jobs Fund Program, has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule. Costs to administer the Smart Jobs Fund are limited by statute to no more than 5.0% of the Fund.

There are no anticipated cost increases or decreases to local government as a result of enforcing or administering the rule. There are no anticipated cost reductions to state government as a result of enforcing or adminis-

tering the rule. The rule is not anticipated to create either a loss or an increase in revenue to state or local government.

Mr. Hall also has determined that there will be a public benefit for each of the first five years that the rule is in effect. The anticipated public benefit is that the rule is being made clearer and simpler. The cost to persons complying with the rule will be no different than the costs under the existing rules.

Written comments on the proposed amendment should be submitted to Renee Mauzy, Assistant General Counsel, 1700 Congress Avenue, Box 12728, Austin, Texas 78701-2728 within 30 days of publication of the proposed rule

The amendment is proposed under the authority of Texas Government Code, Subchapter J, §481.153, which requires the Texas Department of Commerce to adopt rules implementing the Smart Jobs Fund Program; and the Administrative Procedure Act, Chapter 2001, Subchapter B, Rulemaking, Texas Government Code, which prescribes the standards for agency rulemaking

Texas Government Code, Chapter 481, Subchapter J, is affected by this proposal.

### §186.201. State Average Weekly Wage; Regional Variances.

(a) Between September 1 and October 1 of each year, the department shall contact the Texas Workforce [Employment] Commission to determine the state average weekly wage as of September 1 of that year. This information will be published as part of the application packet.

(b) The department shall determine the regional variances of the state average weekly wage. The executive director may adjust the variance on a showing of good cause in accordance with the purposes of the program. In doing so, the executive director may use information compiled by the United States Department of Labor, the Texas Workforce [Employment] Commission, the State Occupational Information Coordinating Committee, the department, and any other credible source acceptable to the executive director.

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

Issued in Austin, Texas, on June 16, 1995.

TRD-9507423 Brenda F. Amett  
Executive Director  
Texas Department of  
Commerce

Earliest possible date of adoption: July 24, 1995

For further information, please call: (512) 936-0178

## Subchapter C. Application for Grants

### • 10 TAC §§186.301, 186.302, 186.304-186.308

The Texas Department of Commerce proposes amendments to §§186.301, 186.302, and 186.304-186.308 implementing the Smart Jobs Fund Program authorized by the Texas Government Code, Chapter 481, Subchapter J. The rules are proposed under the Texas Government Code, Chapter 481 and the Administrative Procedure Act, Chapter 2001, Subchapter B, Rulemaking

Section 186.301, concerning Eligibility, is being amended so that only businesses that have been in operation for at least one year, are financially sound and have fulfilled state tax obligations are eligible. The Smart Jobs Fund Act states that this program is job-driven and this will help ensure that businesses which are awarded a grant will be able to provide full-time employment to the trainees at the end of the training project. This section is also being amended to limit the amount that large businesses may receive per trainee and limit the grant amount that a business may receive during a biennium in order to ensure statewide distribution of businesses receiving grants and availability of funds throughout the fiscal year.

Section 186.302, concerning Application Requirements, is being amended to clarify §481.155 of the Smart Jobs Fund Act which enables businesses to secure training for emerging occupations and other occupations, especially manufacturing, within the limitations specified in this section. This section is also being amended to clarify that employee leasing firms are eligible to participate in an application, but are not eligible for a grant; to clarify that line item breakdown of costs needs to be included in the project budget, and number of hours each participant spends in training needs to be included in the business and training plan in order to ensure accountability of expenditures; to enable businesses to specify up to four project periods for trainee and wage verification purposes related to the 90-day retention period; to include the geographic location of jobs in the business and training plan to ensure statewide distribution of grant awards; to include job descriptions in the business and training plan in order to assist in the classification of the occupation; to clarify the wage information that is needed for existing jobs; to clarify that the line item breakdown of costs will become part of the contract if a grant is awarded; to limit the grant amount for instructor and trainee travel and per diem in order to promote the prudent use of training resources; to clarify that administrative costs are limited to 10% of the costs related to direct training as stated in the Smart Jobs Fund Act; to delete the references to job analysis, task analysis, job development, childcare and public transportation under costs related to direct training since the majority of businesses are not requesting grant monies for these items and there is already a category for other such reasonable costs related to direct training; to include emerging and manufacturing occupations in the eco-

conomic data that a business might provide since the new §186.106 references these occupations; to clarify how the matching cost is determined; to clarify that the executive director has 30 business days to act on the application after an application is complete; and other nonsubstantive grammatical changes.

Section 186.304, concerning Application Packet; Review, is being amended to delete reference to proprietary information since it is already stated that the application will not contain unreasonable demands for information and the deletion that the application and packet will be readable and understandable since this is assured through the annual review by the executive director and customer input

Section 186.305, concerning Funding, Contracts, is amended to rename the section "Funding; Grants" and to enable the executive director to award grants based on a quarterly allocations of funds in order to ensure the availability of funds throughout the fiscal year

Section 186.306, concerning Funding Priorities, is amended to include a scoring mechanism to ensure consistent evaluation of applications for funding based only on program objectives and priorities outlined in the Smart Jobs Fund Act and General Provisions and to incorporate language required by Senate Bill 1180 passed by the 74th Legislative Session.

Section 186.307, concerning Provider Eligibility, deletes the word "program" after Smart Jobs Fund as it is not necessary.

Section 186.308, concerning Contracts, is amended to rename the section "Contracts and Contract Amendments", to outline an amendment process, to simplify the contract process and attrition rate, to clarify the retention and verification of trainees and the reimbursement of the 25% of the grant amount that is withheld by the department for 90 days after the training is complete.

Richard Hall, director of the Smart Jobs Fund Program, has determined that for the first five-year period the sections are in effect the fiscal implication as a result of enforcing or administering the rules is that businesses are eligible to apply to secure training for manufacturing and emerging occupations. Costs to administer the Smart Jobs Fund are limited by statute to no more than 5.0% of the Fund.

There are no anticipated cost increases or decreases to local government as a result of enforcing or administering the rules. There are no anticipated cost reductions to state government as a result of enforcing or administering the rules. The rules are not anticipated to create either a loss or an increase in revenue to state or local government.

Mr Hall also has determined that there will be a public benefit for each of the first five years that the rules are in effect. The anticipated public benefit is that the rules are being made clearer and simpler. The cost to persons complying with the rules will be no different than the costs under the existing rules.

Written comments on the proposed rules should be submitted to Renee Mauzy, Assis-

tant General Counsel, 1700 Congress Avenue, Box 12728, Austin, Texas 78701-2728 within 30 days of publication of the proposed rules.

The amendments are proposed under the authority of Texas Government Code, Subchapter J, §481.153, which requires the Policy Board of the Texas Department of Commerce to promulgate rules implementing the Smart Jobs Fund Program; and the Administrative Procedure Act, Chapter 2001, Subchapter B, Rulemaking which prescribes the standards for agency rulemaking.

Texas Government Code, Chapter 481, Subchapter J is affected by this proposal.

*§186.301. Eligibility.* The department shall evaluate applications submitted by one or more employers or by one or more employer organizations, labor organizations, community-based organizations or providers acting in partnership with one or more employers. Only businesses that have been in operation for at least one year are eligible to receive a grant. No business with 100 or more employees or more than \$1 million in annual gross receipts may receive more than the requested Legislative Budget Board efficiency measure of \$1,454 per job for the 1996-1997 biennium. No grant may be awarded for more than 2.5% of the total funds appropriated for the biennium. All businesses must demonstrate financial soundness and fulfillment of state tax obligations before they can receive a grant from the department.

*§186.302. Application Requirements.*

(a) One or more employers; one or more employers acting in partnership with an employer organization, labor organization, or community-based organization; or one or more employers acting in partnership with a consortium composed of one or more providers [The following] may submit an application for a grant under the Smart Jobs Fund [Program]:

(1) [One or more employers] To secure training for demand occupations in a particular industry; or

(2) To secure training for emerging occupations within an industry that promotes jobs in high technology areas where technological changes or other factors contribute to substantial changes in the skills required to continue the employer's business [One or more employers acting in partnership with an employer organization, labor organization, or community-based organization to secure training for demand occupations in a particular industry]; or

(3) To secure training for occupations in an industry, especially in manufacturing, where the employer is re-

quired to reduce or eliminate its work force because of reductions in overall employment, in cases where the Smart Jobs Fund project would directly contribute to the retention of those positions for which training was provided [One or more employers acting in partnership with one or more providers to secure training for demand occupations in a particular industry].

(b) Employee leasing firms, including firms contracting for temporary employees, are not eligible for a grant [or to participate in grant applications]. Employees obtained from agreements with such firms are not eligible to participate as trainees unless the employer complies with the applicable certification requirements of this chapter.

(c) Grant applications must be filed in a form approved by the department and must include a complete business and training plan and a project budget with a line item breakdown of costs.

(d) Business and Training Plan. Grant funds awarded hereunder shall pay for job-related occupational skills training and job-related basic skills training that enhance the employer's ability to carry out its business plan. An approved business and training plan will become part of any contract [or subcontract] for grant funds awarded. The business and training plan will specify [a] project start dates [date] and [a] project end dates [date]. Up to four project periods may be specified by the employer. Each business and training plan must contain the information required by the Smart Jobs Fund [Program], §481.156(b). Each business and training plan shall also:

(1) (No change.)

(2) describe the [job-related occupational] skills training curricula for each project, including the number of hours each participant will spend in classroom training, on-the-job training, and/or other employer-designed training components, [course] to be funded by the grant[, including how the course will integrate job-related basic skills training and the length of time each curriculum will require];

(3) describe the [job-related occupational skills and job-related basic] skills and the competencies the employer expects the participant to achieve upon completion of training;

(4) (No change.)

(5) specify the projected cost per person [enrolled,] trained[, hired, and retained in employment. This is] based on dividing the total Smart Jobs Fund grant amount by the number of trainees;

(6) specify the geographic location, number and kind of jobs with job

descriptions [related to the project training that are available at the start of the project, and] that will be available at the end of the project[;] and the wages to be paid [to trainees] on [successful] completion of the project. For existing jobs, also state the wage on the date the project is scheduled to begin [beginning and ending wages]; and

(7) (No change.)

(e) (No change.)

(f) Budget. Each application shall include a budget with line item breakdown of costs consistent with the requirements of the Smart Jobs Fund [Program] and these rules. The budget shall include three parts:

(1) specification of costs related to direct training[-related costs].

(2) specification of administrative costs.

(3) specification of matching contributions. An approved budget with line item breakdown of costs will become part of any contract [or subcontract] for grant funds awarded hereunder

(A) Costs related to direct training[-related costs] may include tuition, fees; books and classroom materials; instructor wages and salaries and reasonable benefits if the instructor is not an employee of a public education institution if grant funds are paying tuition and fees; instructor and trainee travel and per diem [and trainee travel] outside the employer's specified region of the state (limited to 10% of the total costs related to direct training) [as approved by the executive director] with per diem expenses not to exceed the State of Texas [in-state] allowable rates; reasonable equipment lease or rental costs during the term of the project; reasonable costs of pre- and post-training participant assessment, including recruiting and identifying trainees; costs of purchasing approved curricula specified in the applicant's business and training plan if there is [they are] not already a course offering at a convenient public education institution for which the grant is paying tuition and fees; costs of [job analysis, task analysis,] curriculum design[, and job development as defined by the department]; wages, salaries, and reasonable benefits of instructional aides and trainees' counselors if such personnel are not employees of a public education institution if grant funds are paying tuition and fees, and other such [other] reasonable costs related to direct training[-related costs]. [as may be appropriate as determined by the executive director. Such costs may include reasonable childcare expenses (except for existing employees who participate in training during normal working hours) in cases approved by the executive director and the costs associated with sup-

porting dependent care expenses of trainees undergoing training in an approved curricula with a term of six months to two years. These costs may include reasonable childcare expenses and trainees' public transportation expenses (excluding taxi cab fares) related to training. In considering whether to include reasonable childcare and transportation expenses, the executive director will consider the ability of the employer to provide matching funds to be used for such expenses and the accessibility of other public and private funds to be used for such expenses. Continued payments of such expenses is contingent on the employer's satisfaction with the participant's progress during training.]

(B) Reimbursement for costs related to direct training[-related costs] will not include the lease, rental, purchase, or construction of facilities, the purchase of capital equipment, salaries, wages, or benefits paid to personnel assigned to manage or report on the project or the contract agreement

(C) Administrative costs may include the lease or rental of facilities except [excepting] those facilities belonging to public education institutions where the curriculum specified in the business and training plan will be provided and for which the grant is paying tuition and fees, salaries, wages, and reasonable benefits paid to personnel assigned to manage or report on the project or the contract agreement; and other such [other] reasonable expenses not included in costs related to direct training[-related costs] as are necessary to the successful completion of the project. Administrative costs are limited to 10% of costs related to direct training incurred by the training project(s).

(D) Employers with fewer than 50 employees receiving a grant must provide a matching amount of private funds in an amount at least equal to 10% of the total project cost. Projects that provide significant economic benefits to an entire region of the state may have all matching requirements waived at the discretion of the executive director. Such projects must provide information describing the region to which benefits will accrue and projected economic information which may include other relevant macroeconomic and microeconomic data that shows positive effects on the region's average weekly wage, tax base, employment rates, family income, purchasing power, expenditures on unemployment insurance, Aid to Families with Dependent Children, Medicaid, and other public assistance, and the availability of job openings in demand, emerging, or manufacturing occupations. Employers may

meet matching requirements by providing in-kind contributions. Documentation for in-kind contributions which are submitted as part of the employer's match must specify the dollar value of facilities, equipment, personnel, and consumable supplies contributed to the project. New equipment will be valued at cost. Existing equipment and facilities will be valued on a pro rata basis for the time used for training consistent with the United States Internal Revenue Service depreciation schedules for such assets based on data provided by the employer. Personnel contributions will be valued on a pro rata basis for the time spent on the project. In-kind contributions may not include the value of facilities, equipment, or personnel existing in public education institutions where such resources already are available to the employer as part of the institution's course offerings and for which the grant is paying tuition and fees. In-kind contributions may match either costs related to direct training[-related costs] or administrative costs. The sum of costs related to direct training and administrative costs [such contributions] will be used to determine the total matching costs required for any grant awarded.

(E) (No change.)

(g) Application process and timeline

(1) Any eligible entity desiring to request funds from the Smart Jobs Fund [Program] shall submit an [a completed] application for funding.

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

(4) Within 30 business days after an application is complete, [of receiving a completed application, the Department will complete all further negotiations and] the executive director will act on the application. In acting on the application, the executive director may approve the application and award a grant; approve the application pending the award of the grant; disapprove the application; or request the applicant to modify all or part of the application.

#### §186 304. Application Packet, Review

(a) (No change.)

(b) Not more than annually, the executive director shall review and evaluate the application packet to ensure that:

(1) (No change.)

(2) the application form is no longer than is necessary to adequately describe the applicant, the participating employers, and the training project to the department; and

(3) the application form does not contain unreasonable demands for information[, especially proprietary information,] that inhibit an applicant from participating in the program]; and

(4) both the packet and the application form are readable and understandable].

*§186.305 Funding, Grants [Contracts].*

(a) The executive director shall attempt to award a grant for all approved projects, subject to the availability of funds. To ensure availability of funds throughout the fiscal year, the executive director may award grants based on a quarterly allocation of funds. In deciding which projects to fund, the executive director shall be guided by the funding priorities set forth in §186.306 of this title (relating to Funding Priorities)

(b) (No change)

*§186.306 Funding Priorities.*

(a) Only program objectives and priorities outlined in the Smart Jobs Fund Act and General Provisions will be considered in evaluating applications for funding, including:

(1) At least 60% of the money spent under the program shall be used for projects that assist existing employers.

(2) Fifty percent of the money spent under the program shall be used for projects that assist employers with less than 100 employees or less than \$1 million in annual gross receipts.

(3) Twenty percent of the money spent under the program shall be used for projects that assist minority employers.

(b) The department will develop a scoring mechanism that gives priority to funding applications based on the following criteria:

(1) business status, including small and/or minority businesses, existing businesses, and businesses located in an Enterprise Zone;

(2) one or more employers acting in partnership with a consortium composed of one or more providers;

(3) statewide distribution of businesses receiving grants under the program and first-time grantees;

(4) quality of the business and training plan and the impact of the project, including the total dollars invested by the businesses, the international impact, and involvement in defense conversion activities;

(5) the role and status of the training provider(s), including public education and Texas-based providers;

(6) the quality of the jobs, including occupations in technological areas, wage levels, benefits, and whether the trainees are Texas residents, including residents formerly sentenced to the institutional division of the state jail division of the Texas Department of Criminal Justice.

(1) At least 20% of the money spent on projects for existing employers shall be for new jobs.

(2) Projects which involve small businesses in partnerships or consortiums shall be encouraged in order to meet the goals of the Legislature.

(3) The executive director shall attempt to insure that employers in all regions of the state are eligible and aware of the program.

(4) The executive director shall attempt to insure that projects which have international impact receive priority treatment.]

*§186.307. Provider Eligibility.* Providers shall be required to demonstrate to the department with certification that they have been in business for at least one year and that during that one year period they have met the definition of "existing employer" as set forth in the definitions to the Smart Jobs Fund [program]. Employers new to Texas may provide training to their own employees with grant funds.

*§186.308. Contracts and Contract Amendments.*

(a) The department shall enter into a contract with [for an approved application with the grant applicant, and] each employer or employer designee participating in the project. Contract amendments must be requested in writing at least 30 days prior to the proposed changes and must be executed before changes are implemented. Acceptance of the requested amendment is within the discretion of the executive director of the department. Amendments will not be made during the final quarter of the training project. [Each trainee may be required to enter into an agreement with the employer to remain in the job for which they were trained for 90 days after the completion of the training. The] Contracts and contract amendments will be executed by the authorized employer's representative and the department executive director or executive director designee. [Two original contracts will be sent to the employer(s) for signature. An original of the executed contract signed by the executive director will be sent to the

employer(s) within five days of receipt of the signed contract from the employer(s) by the department. The date of execution by the executive director is the effective date of the contract.]

(b) Within 30 calendar [20] days after the expiration of the 90-day retention [training] period for each project, the employer [applicant] shall submit to the department for verification the employment records for each trainee and other such [other] data as the department may require to verify training and employment.

(c) If all trainees specified in each [the] project have been retained in employment 90 days subsequent to that project end date [the date of termination of the contract], the amount of the grant award withheld shall be remitted to the employer(s). [For each trainee who is not retained in employment for that 90-day period, an amount withheld shall be reduced by the amount of the training costs for that trainee that is derived from grant money, and any balance shall be remitted to the employer. If there is a negative balance, the employer is liable for the amount for the negative balance and shall remit that amount to the department not later than the 30th day after the date of correspondence on which the grant applicant or employer(s) is notified of the negative balance by the department.] Notwithstanding any other provision of these rules, [there may be] an attrition rate of 15% is allowed based on the total number of jobs as outlined in the contract. [for trainees established for the period during the training and for the 90-day period after the training is complete. The attrition rate will be established based on the criteria of each submitted proposal. During the training period there will be a cap on the attrition rate of 12%. During the 90-day period after the training is complete there will be a cap on the attrition rate of 3.0%.] The executive director may approve different numerical caps for small training programs in order to allow reasonable attrition [in the small programs]. Attrition is verified 90 days after the end of the contract or 90 days after the end of each project as defined in the contract. For attrition beyond the level specified in the contract, the grant amount will be reduced for each trainee who is not retained in employment at the end of the 90-day retention period by the amount of the training costs for that trainee. If there is a negative balance, the employer is liable for the amount of the negative balance and shall remit that amount to the department not later than the 30th day after the date of correspondence on which the employer is notified of the negative balance by the department.

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

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

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Brenda F Amett  
Executive Director  
Texas Department of  
Commerce

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For further information, please call: (512) 936-0178

## TITLE 22. EXAMINING BOARDS

### Part VIII. Texas Appraiser Licensing and Certification Board

#### Chapter 153. Provisions of the Texas Appraiser Licensing and Certification Act

- 22 TAC §§153.1, 153.7, 153.13,  
153.15-153.17, 153.25, 153. 27

The Texas Appraiser Licensing and Certification Board proposes amendments to §153.1, relating to definitions; §153.7, relating to categories of appraiser certification; §153.13, relating to educational requirements; §153.15, relating to experience required for certification or licensing; §153.17, relating to renewal of certification, license or trainee approval and continuing education; §153.25, relating to temporary certification and licensure, and §153.27, relating to certification and licensure by reciprocity. The Board also proposes new §153.16, relating to a provisional license.

The proposed amendment to §153.1 will conform the definitions in the rules to those of Texas Appraiser Licensing and Certification Act, Texas Civil Statutes, Article 6572a.2, §3, as amended by Senate Bill 634, 74th Legislature, Regular Session, 1995. The amendments also include the definition of provisional license, as created as follows. Proposed amendment to §153.7 notes the categories of state licensed real estate appraiser and appraiser trainee. It also establishes the new category of a provisional license as per the new Act, §9A, as amended by Senate Bill 634. The Act, §9A provides for an alternate method of licensing and §153.7 clarifies what licensees licensed under §9A will be called. Proposed amendment to §153.13 provides for the provisional license applicant to meet all of the same requirements as the state licensed real estate appraiser except the experience requirement, as per the Act, §9A, as amended by Senate Bill 634. They further provide that correspondence courses are acceptable under certain circumstances as provided in the Appraiser Qualifications Board (aqb) of the Appraisal Foundation educational criteria for qualifying education, and disallows "in-house" training from being acceptable qualifying education. Proposed amendment to §153.15 provides for a random sampling to verify experience claimed for certification or licensure, as per

the Act, §9(f), (g), and (h), as amended by Senate Bill 634. New proposed §153.16 concerns the provisional license, as per the new Act, §9A, as amended by Senate Bill 634. Proposed amendment to §153.17 allows correspondence courses to be acceptable for appraiser continuing education (ACE) under the AQB criteria for continuing education, and disallows "in-house" training from being acceptable for ACE. Proposed amendment to §153.25 removes the requirement that a person registered with the Board as a temporary non-resident appraiser may only appraise in federally related transactions, as per the Act, §15(c), as amended by Senate Bill 634. Proposed amendment to §153.27 changes the language concerning reciprocity with states having "substantially equivalent" requirements to those "that have not been disapproved by the Appraisal Subcommittee" as per the Act, §15(d), as amended by Senate Bill 634.

Renil C. Liner, commissioner, has determined that for the first five-year period the sections are in effect there will be an additional cost to state government as a result of enforcing and administering the proposed amendments of \$55,800 the first year and \$48,500 for each of the remaining years.

Mr Liner also has determined that of each year of the first five years the sections are in effect the public benefit anticipated as a result of these sections is having qualified certified and licensed appraisers who can appraise real estate in both "federally related transactions" and "non-federally related transactions" and who are regulated by the Board in all their appraisal services. Additionally, the provisional license provision allows another avenue for those who wish to enter the appraiser profession and may provide additional appraisers in rural areas. The Board also seeks to advise consumers that the new category of license does not have the experience qualifications that other licensees are required to have and that their provisional licenses are subject to automatic termination after 60 months. The Board seek to harmonize the state Act and federal laws (referred to in the State Act, §2, Purpose), under which it was created, by designating those individuals who obtain their license under the Act, §9A, as provisional. No fiscal implications are involved for local government. There will be no effect on small businesses as a result of enforcing the sections. There will be no local employment impact.

Comments may be submitted to Renil C. Liner, Commissioner, Texas Appraiser Licensing and Certification Board, P O Box 12188, Austin, Texas 78711-2188.

A public hearing on the proposed rules has been scheduled in conjunction with the Board's regular meeting at 9.00 a.m., Friday, August 4, 1995, in Conference Room 235, 1101 Camino La Costa, Austin, Texas 78752.

The amendments and new section are proposed under the Texas Appraiser Licensing and Certification Act, Texas Civil Statutes, Article 6573a 2, §5, which provides the Texas Appraiser Licensing and Certification Board with authority to adopt rules for the licensing and certification of real estate appraisers. The sections of the Act discussed provide further authority.

The Texas Appraiser Licensing and Certification Act, Texas Civil Statutes, Article 6573a.2, §§3, 9, 9A, 14, and 15, are affected by the proposed sections.

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

**Appraisal**—The act or process of estimating value or an estimate of value [A written statement used in connection with a federally related transaction that is independently and impartially prepared by a licensed or certified appraiser that states an opinion of the defined value of an adequately described property as of a specific date that is supported by the presentation and analysis of relevant market information].

**Complete appraisal**—An appraisal performed without invoking the departure provision.

**Departure provision**—A limited departure from a requirement of the Uniform Standards of Professional Appraisal Practice that is: classified as a specific guideline rather than a binding requirement, and permitted only if the result of the departure is not confusing or misleading and the specific guideline from which the appraiser departs is reported.

**Evaluation**—An estimate of value that is not more than a limited appraisal, may be presented in a format that is less than a self-contained report, is prepared by a certified or licensed real estate appraiser or other lawfully authorized real estate professional, and includes an estimate of a property's market value, a certification and limiting conditions, and an analysis or the supporting information used in forming the estimate of value.

**Limited appraisal**—An appraisal in which the departure provision is invoked.

**Provisional license**—A license issued under the Texas Appraiser Licensing and Certification Act, §9A and §153.16 of this title (relating to Provisional License), to individuals who have met the educational and examination requirements for licensing but who have not met the experience requirements.

**Self-contained report**—A report that includes sufficient information to indicate that the appraiser has complied with the requirements of Standards 1 and 2 of the Uniform Standards of Professional Appraisal Practice and that describes all data necessary for the user of the appraisal to follow the conclusions of the appraisal without referring to additional materials.

*§153.7. Categories of Appraiser Certification and Licensing.*

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

(c) The category of state licensed real estate appraiser is created by the Act. To be eligible for licensure as a state licensed real estate appraiser an applicant must meet the requirements for a state license set by these sections and the Act.

(d) There is hereby created the category of provisional licensed real estate appraiser. To be eligible for a provisional license, an applicant must meet the requirements as specified in the Act, §9A, and by §153.16 of this title (relating to Provisional License).

(e) The category of appraiser trainee is created by the Act. To be eligible for approval as an appraiser trainee, an applicant must meet the requirements for an appraiser trainee set by these sections and the Act.

*§153.13. Educational Requirements.*

(a)-(e) (No change.)

(f) Applicants for a real estate appraiser license or a provisional license must have successfully completed 75 classroom hours in courses approved by the board, including at least 30 classroom hours of in fundamental real estate appraisal courses and 15 classroom hours of coverage of the Uniform Standards of Professional Appraisal Practice.

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

(j) Correspondence courses may be acceptable in the following conditions:

(1) the course must have been presented by an accredited college or university which offers correspondence programs in other disciplines;

(2) an individual has successfully completed a written examination administered to positively identified examinees at a location and by an official approved by the college or university;

(3) the content and length of the course must meet the requirements for real estate appraisal related courses established by this chapter and by the Appraiser Qualifications Board of the Appraisal Foundation; and

(4) a correspondence course also may be acceptable provided the course has received the American Council on Education's Program on Non-collegiate Sponsored Instructions (PONS) approval for college credit.

(k) "In-house" education and training is not acceptable for meeting the educational requirements for certification or licensure.

*§153.15. Experience Required for Certification or Licensure.*

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

(e) Experience claimed by an applicant must be submitted on forms promulgated by the board.

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

(3) If a consumer complaint or peer complaint is brought against the applicant alleging fraud, incompetency, or malpractice and the board finds the complaint is reasonable or if the board determines other just cause exists for requiring further information, the board may obtain the additional information or documentation requested by:

(A) (No change.)

(B) engaging in other investigative research determined to be appropriate by the board.

(4) The board shall require verification of acceptable experience of no more than 5.0% of the applications selected by random sampling. The sampling shall be applied when a minimum of 20 approved applications are received. The verification may be obtained by:

(A) requiring the applicant to complete a form, prescribed by the board, that includes detailed listings of appraisal experience showing, for each appraisal claimed by the applicant, the city or county where the appraisal was performed, the type and description of the building or property appraised, the approaches to value utilized in the appraisal, the actual number of hours expended on the appraisal, and other information determined to be appropriate by the board;

(B) engaging in other investigative research determined to be appropriate by the board; and

(C) allowing a minimum of 60 days after the date of selection for the applicant to prepare any records.

(5) Failure to comply with a request for verification of experience is a violation of these rules and may result in denial of certification or licensure, and any disciplinary action up to and including revocation.

*§153.16. Provisional License.*

(a) An applicant for appraiser trainee classification who can demonstrate to the board that the applicant has, after completing the appropriate educational re-

quirements for a state licensed real estate appraiser under §153.13 of this title (relating to Educational Requirements), failed to secure sponsorship from at least two certified appraisers to obtain the 2,000 hours of acceptable experience required for licensing, the applicant may apply to the board to take the examination under the Act, §10.

(b) An applicant under this section must file an application for a provisional license using forms prescribed by the board and pay the same fees as required for a state licensed real estate appraiser under §153.5 of this title (relating to Fees).

(c) An applicant under this section who passes the state licensed real estate appraiser examination required under the Act, §10 and who meets all other requirements for licensing, except for the actual real estate appraisal experience requirement, shall be provisionally licensed by the board.

(d) An applicant receiving a provisional license under subsection (c) of this section must complete the actual real estate appraisal experience requirement not later than the 60th month after the date the license was issued. Failure to complete the appropriate real estate appraisal experience requirement by that date or failure to report completion of a portion of the person's real estate appraisal experience requirement each renewal period constitutes grounds for the automatic revocation of the provisional license.

*§153.17. Renewal of Certification, License or Trainee Approval; Continuing Education.*

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

(e) As a condition for renewing a certification or license after December 31, 1994, or two years after the federal implementation of Title XI, Financial Institutions Reform, Recovery and Enforcement Act (FIRREA), whichever is later, an appraiser must successfully complete the equivalent of at least 20 classroom hours of appraiser continuing education (ACE) courses approved by the board, during the two-year period preceding the expiration of the certification or license. The board shall base its review and approval of appraiser continuing education courses upon the then current appraiser qualification criteria of the Appraiser Qualifications Board (AQB).

(1) (No change.)

(2) The following types of educational offerings may be accepted for meeting the ACE requirements:

(A)-(E) (No change.)

(F) correspondence courses may be acceptable for meeting ACE requirements in the following conditions:



(i) the course must have been presented by an accredited college or university which offers correspondence programs in other disciplines;

(ii) an individual has successfully completed a written examination administered to positively identified examinees at a location and by an official approved by the college or university;

(iii) the content and length of the course must meet the requirements for appraiser continuing education established by this chapter and must be devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the AQB for continuing education; and

(iv) a correspondence course also may be acceptable provided the course has received the American Council on Education's Program on Non-collegiate Sponsored Instructions (PONS) approval for college credit;

(G) "In-house" education and training are not acceptable for meeting the appraiser continuing education (ACE) requirements.

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

(f)-(h) (No change.)

*§153.25. Temporary Certification and Licensure.*

(a) A person licensed or certified as an appraiser by another state, commonwealth, or territory may register with the board so as to qualify to appraise real property in this state without holding a license or certification issued under the Act if:

(1) the state, commonwealth or territory licensing and certification program under which the person holds a license or certification has not been disapproved by the Appraisal Subcommittee; and

(2) [the real property being appraised is part of a federally related transaction; and]

[(3)] the appraiser's business in this state is of a temporary nature not to exceed 60 days.

(b) (No change.)

*§153.27. Certification and Licensure by Reciprocity.*

(a) A person who is licensed or certified as an appraiser under the laws of a state having [substantially equivalent] licensure or certification requirements that have not been disapproved by the Appraisal Subcommittee [as those of this state] may

apply for a license or certification under the Act by completing and submitting to the board the application for licensure or certification and paying to the board the fee, both of which are required by the state of the person's present certification. An applicant for certification or licensure by reciprocity also must complete and submit a Supplement to Application for Appraiser Certification or Licensing by Reciprocity (TALCB Form 10 0) or its successor.

(b) (No change.)

(c) An application may not be accepted from [for] a person from a state that refuses to offer reciprocal treatment to residents of this state who are certified or licensed real estate appraisers.

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

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

Issued in Austin, Texas, on June 14, 1995.

TRD-9507256

Renil C. Linder  
Commissioner  
Texas Appraiser Licensing  
and Certification Board

Proposed date of adoption: September 1, 1995

For further information, please call: (512) 465-3950

◆ ◆ ◆  
**TITLE 25. HEALTH SERVICES**

**Part I. Texas Department of Health**

**Chapter 5. Grants and Contracts**

The Texas Department of Health (department) proposes repeal of §5.51 and new §5.51 concerning the Poison Control Coordinating Committee (committee) in Texas. The change is necessary to implement Texas Civil Statutes, Article 6252-33 relating to state agency advisory committees, which requires the department and the State Advisory Commission on Emergency Communications to jointly adopt rules regarding the committee. New §5.51 defines the committee's purposes, composition, meeting procedures, reporting responsibilities, and reimbursement of members' expenses.

Dennis Perrotta, Ph.D. of the Bureau of Epidemiology has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications to state or local government as a result of enforcing the rule.

Dr. Perrotta 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 better informa-

tion and advice provided to the department, the Texas Board of Health, and the Advisory Commission of State Emergency Communications on the issues relating to the operation of poison control centers in Texas. The role of the committee is specifically outlined in the new section. 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. There will be no effect on local employment.

Written comments may be submitted to Dr. Dennis Perrotta, Bureau of Epidemiology, 1100 West 49th Street, Austin, Texas 78756 (512) 458-7268. Comments on the proposed repeal and new section will be accepted for 30 days following publication in the *Texas Register*.

**Contracts for Regional Poison Control Centers**

• **25 TAC §5.51**

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

The repeal is proposed under Health and Safety Code, §777.008 which provides for the creation of the Poison Control Coordinating Committee; and Health and Safety Code, §11.016, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

The repeal affects Health and Safety Code, Chapter 777.

*§5.51. General Program Information.*

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

Issued in Austin, Texas, on June 9, 1995.

TRD-9507051

Susan K. Steeg  
General Counsel  
Texas Department of  
Health

Earliest possible date of adoption: July 24, 1995

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

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The new section is proposed under the Health and Safety Code, §777.008, which provides for the creation of the Poison Control Coordinating Committee; and Health and Safety Code, §11.016, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

The new section affects Health and Safety Code, Chapter 777.

§551 General Program Information

(a) Authority Health and Safety Code, Chapter 777, provides the Texas Department of Health (department) and the Advisory Commission on State Emergency Communications (commission) with the authority to establish a program to award grants to fund a network of regional poison control centers.

(b) The committee. An advisory committee shall be appointed under and governed by this section.

(1) The name of the committee shall be the Poison Control Coordinating Committee (committee).

(2) The committee is established under the Health and Safety Code, §11.016, which allows the Texas Board of Health (board) to establish advisory committees.

(c) Applicable law. The committee is subject to Texas Civil Statutes, Article 6252-33 relating to state agency advisory committees

(d) Purpose The purpose of the committee is to provide advice to the board and the commission in the area of poison control and the operation of the Texas Poison Control Network in accordance with the poison control provisions of the Health and Safety Code, Chapters 771 and 777. The advice and recommendations of the committee regarding such matters shall be provided to the department and commission in writing, in the following fashion

(1) In accordance with departmental organization, advice and recommendations to the department shall be referred to the board through the Health and Clinical Services Committee, or any similar committee officially established for such purposes by the Texas Board of Health.

(2) In accordance with commission organization, advice and recommendations to the commission through the commission's poison control committee, or any similar committee officially established for such purposes by the commission.

(e) Tasks

(1) The committee shall advise the board and commission concerning rules relating to poison control

(2) The committee shall carry out any other tasks given to the committee by the board or the commission.

(f) Objectives. The objectives of the program described in this section are to

(1) promote public safety and injury prevention through well coordinated poison control activities within the state of Texas;

(2) provide information and educational programs for communities and health care professionals;

(3) provide poison prevention education;

(4) provide technical assistance to state agencies requesting toxicology assistance; and

(5) provide consultation services concerning medical toxicology.

(g) Review and duration. By November 1, 1999, the board and commission will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(h) Composition. The committee shall be composed of eight members as follows:

(1) one member each representing each of the six regional poison control centers described in Health and Safety Code, §777.008(b)(1)-(6), and

(2) one member each from the department and commission, appointed by the executive director of each agency.

(i) Terms of office. The term of office of each member shall be six years.

(1) Members shall be appointed for staggered terms so that the terms of a substantially equivalent number of members will expire January 1 of each odd-numbered year.

(2) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.

(j) Officers. The committee shall elect a presiding officer and an assistant presiding officer at its first meeting after August 31st of each year.

(1) Each officer shall serve until the next regular election of officers.

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the board and commission. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will serve until a successor is elected to complete the unexpired portion of the term of the office of presiding officer.

(4) A vacancy which occurs in the offices of presiding officer or assistant presiding officer may be filled at the next committee meeting.

(5) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer.

(6) The committee may refer to its officers by other terms, such as chairperson and vice-chairperson.

(k) Reimbursement for expenses. In accordance with the requirements set forth in Texas Civil Statutes, Article 6252-33, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business.

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.

(l) Definitions of terms and abbreviations. The following words, terms, and abbreviations, when used in this chapter have the following meanings, unless the context clearly indicates otherwise.

(1) AAPCC—American Association of Poison Control Centers.

(2) PCAP—Poison Control Answering Point; also referred to as Designated Regional Poison Control Center for the State of Texas.

(3) PSAP—Public Safety Answering Point.

(4) State Fiscal Year—A period of time which begins September 1 of a given year and ends August 31 of the following year.

(5) UG&CMS—Uniform Grant and Contract Management Standards, consisting of a set of rules set forth in 1 Texas Administrative Code, Chapter 5, Subchapter A, promulgated pursuant to the Uniform Grant and Contract Management Act, Government Code, §783.



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

Issued in Austin, Texas, on June 14, 1995.

TRD-9507244

Susan K Steeg  
General Counsel  
Texas Department of  
Health

Earliest possible date of adoption: July 24, 1995

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

## Chapter 221. Meat Safety Assurance

### Meat and Poultry Inspection

#### • 25 TAC §221.12

The Texas Department of Health (department) proposes an amendment to §221.12, concerning meat and poultry inspection. Specifically, this proposed amendment covers fees charged for meat and poultry inspection under the Texas Meat and Poultry Inspection Act.

The proposed amendment will enable the department to increase fees collected for overtime and special services required by the Texas Meat and Poultry Inspection Act, Health and Safety Code, Chapter 433, §433.009. A fee for such services was previously established, and is currently being collected to recover certain costs of inspection as required by §433.009. The amendment will also change the name of §221.12 from Meat Inspection to Meat and Poultry Inspection.

Lee C. Jan, D.V.M., Director, Meat Safety Assurance Division, has determined that for the first five-year period the section is in effect there will be minimal fiscal implications for state government as a result of enforcing or administering the section as proposed. There will be no fiscal implications to local government.

Dr. Jan also has determined that for each year of the first five years the section is in effect, the public benefit anticipated will be continued assurance of consumer safety by enforcing current United States Department of Agriculture regulations. The cost to small businesses and individuals who are required to comply with the section as proposed will be any fee increase amount as set out in §221.12(d). There will be no impact to local employment.

Comments may be submitted to Lee C. Jan, D.V.M., Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, or call (512) 458-7443. Comments will be accepted for 30 days following publication of this proposal.

The amendment is proposed under the Health and Safety Code, Chapter 433, §433.008, which provides the commissioner with the authority to adopt rules for the efficient execution of the Texas Meat and Poultry Inspection Act; and §12.001, which provides

the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner.

This action affects Health and Safety Code, Chapter 433.

#### §221.12. Meat and Poultry Inspection.

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

(d) Special fees for inspection services.

(1) Scope and purpose. Fees shall be charged by the department for certain specified inspection services provided on a holiday, on an overtime basis, and/or which are voluntary inspection services.

(2) Overtime and holiday rate. The overtime and holiday rate for inspection services provided pursuant to Health and Safety Code, Chapter 433, §433.009 shall be \$21 per hour, per program employee.

(3) Voluntary rate. The voluntary rate for services provided pursuant to Health and Safety Code, Chapter 433, §433.009 shall be \$21 per hour, per program employee.

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

Issued in Austin, Texas on June 15, 1995.

TRD-9507282

Susan K. Steeg  
General Counsel  
Texas Department of  
Health

Earliest possible date of adoption: July 24, 1995

For further information, please call: (512) 458-7500

## TITLE 30. ENVIRONMENTAL QUALITY

### Part I. Texas Natural Resource Conservation Commission

#### Chapter 335. Industrial Solid Waste and Municipal Hazardous Waste

##### Subchapter A. Industrial Solid Waste and Municipal Hazardous Waste in General

#### • 30 TAC §335.2

The Texas Natural Resource Conservation Commission (TNRCC) proposes an amendment to §335.2, concerning Permit Required, of the Industrial Solid Waste and Municipal Hazardous Waste rules to reference new pro-

posed rules affecting the composting of industrial materials.

TNRCC is proposing new rules addressing the composting of various feedstocks including materials derived from industrial sources. The new rules are being proposed in a new chapter, 30 Texas Administrative Code (TAC), Chapter 332. The purpose of the new rules is to promote the composting and beneficial reuse of organic materials which have traditionally been landfilled and incinerated. The rules are necessary to establish a composting program that will meet the statutory goals of Senate Bill 1051, 73rd Legislature, to remove certain compostable materials from the waste stream and provide for their beneficial reuse. In addition, Senate Bill 1340, the Texas Omnibus Recycling Law of 1991, established a state recycling goal of 40%, and includes composting as an acceptable form of recycling. The commission believes the proposed new rules will provide a single, coordinated regulatory position on the beneficial reuse and/or recycling of organic materials, while protecting public health and the environment from improper organic management.

The commission understands that some industrial facilities send their waste off-site for disposal while others manage their waste on-site, either through impoundment, processing, land application, or by some other means. Those non-hazardous compostable materials defined in proposed 30 TAC Chapter 332 that are produced at an industrial facility and sent off-site to a compost facility are subject to the requirements of proposed Chapter 332. However, those industrial facilities that manage the non-hazardous compostable materials on-site in compliance with 30 TAC Chapter 335 will be exempt from the requirements of proposed Chapter 332. The commission believes that allowing for this exemption will avoid creating an undue regulatory burden on industrial facilities while promoting the reuse of organic materials.

The amendment proposed for §335.2(a) is intended as a companion rule change to the new proposed Chapter 332 rules. The amendment references the proposed Chapter 332 in order to ensure that materials sent off-site for composting are regulated pursuant to proposed Chapter 332 while materials composted on-site are governed by Chapter 335. The proposed rule also amends references to the Texas Water Commission (TWC) to the Texas Natural Resource Conservation Commission in §335.2(a).

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five years the section is in effect there will be fiscal implications as a result of enforcement and administration of this section. There are no significant costs anticipated for state government. Some cost savings are anticipated to result from adoption of this section due to the general reduction of permitting requirements for compost facilities. The number of affected facilities is anticipated to increase, however, in response to this proposed rule and related incentives for reduction of municipal solid waste land disposal. The increased requirements for agency oversight of compost facilities will mit-

igate the reductions in permits. No net significant fiscal implications for state government are anticipated to result.

Many of the facilities subject to this rule will be owned or operated by local governments. The effects on local governments will be equivalent to the effects anticipated for any operator subject to this proposed rule. Operators exempt from permit requirements will realize potential cost savings by avoiding the costs associated with preparation and processing a Type V permit application. Diversion of compostable waste materials will generally reduce the costs of waste disposal for generators and transportation and operating costs of disposal facilities. Operators will realize a direct benefit from the cost savings in disposal fee assessments equal to \$1.25 per ton of waste diverted from disposal to composting.

The costs incurred by operators required to obtain a permit will vary on a case-by-case and site-specific basis. It is anticipated, however, that the costs of completion of a permit application for a typical installation of five acres in size could approach \$250,000. These costs do not include the costs of construction and routine operation. Additional permit requirements for mixed municipal solid waste composting facilities include provisions for source-separated recycling and household hazardous waste collection. These may be incurred by either the permit holder or the local government which is served by the compost operation. It is estimated that recycling programs will cost between \$1.00 and \$2.00 per household and that household hazardous waste collection will cost up to \$100,000 in one-time facility costs in addition to annual operating costs of \$30,000-\$150,000. These are estimates which will vary on a case-by-case basis and do not include actual costs of disposal. Permitted mixed-waste facilities will also incur the required costs of end product analysis and the development of analytical protocols. These costs are estimated to be between \$3,500-\$6,000 in one-time costs and an average of \$.47 per cubic yard of end product on a recurring basis.

Facilities which qualify for registration under the proposed rule will realize costs savings related to the application for a permit of an average of \$200,000 for a typical site of five acres. Routine analytical costs will be reduced by approximately \$25 per cubic yard of end product. Facilities which are required to provide notification under this rule and those which are exempt from specific requirements under this chapter are not anticipated to incur any of the costs associated with application or end product analysis. The effects of this section on small business will be similar to those for larger concerns and will vary with the size of the affected compost facility and the specific status and associated requirements imposed under this rule.

Mr. Minick also has determined that for the first five years this section is in effect, the public benefit anticipated as a result of enforcement of and compliance with the section will be improved management and control of the potential environmental effects of composting operations; more efficient utilization of existing municipal solid waste disposal

capacity, increased beneficial reuse of organic natural resource materials, more cost-effective regulation of municipal solid wastes; and reduced regulatory burdens and compliance costs for both public and private compost facility operators. The anticipated economic costs to persons required to comply with the section as proposed are similar to those for other affected parties. Persons exempt from permit requirements will avoid potential costs of permit application and individual waste generators will generally benefit from the diversion of waste from landfills and the reduced operating costs of disposal facilities if these cost savings are passed on to ratepayers.

A public hearing on this proposal will be held at the TNRCC Complex, Building E, Room 254-S, 12118 North I-H 35, Austin, Texas on July 21, 1995, at 10.00 a.m.

Written comments not presented at the hearing may be submitted to the TNRCC by 5.00 p.m., 30 days from the date of publication of this proposal in the *Texas Register*. Please mail written comment to Bettie Mabry Bell, Texas Natural Resource Conservation Commission, MC-201, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6087, and reference Rule Log Number 95092-332-WS. For further information, contact Clark Talkington, Waste Policy and Regulations Division at (512) 239-6731.

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.

The amendment is proposed under the Texas Water Code, §§5.103, 5.105 and 26.011, which provides the commission with authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. The section is also promulgated under the Texas Health and Safety Code, Texas Solid Waste Disposal Act, §361.017 and §361.024, which provides the commission the authority to regulate industrial solid wastes and hazardous municipal wastes and to adopt and promulgate rules consistent with the general intent and purposes of the Act.

The amendment affects the Health and Safety Code, Chapters 361

#### §335.2 Permit Required

(a) Except with regard to storage, processing, or disposal to which subsections (c)-(h) of this section apply, and as provided in §335.45(b) of this title (relating to Effect on Existing Facilities), and in accordance with the requirements of §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), and as provided in §332.4 of this title (relating to General Requirements), no person may cause, suffer, allow, or permit any activity of storage, processing, or disposal of any industrial solid waste or municipal hazardous waste unless such activity is authorized by a per-

mit, amended permit, or other authorization from the Texas Natural Resource Conservation Commission [Texas Water Commission] or its predecessor agencies, the Texas Department of Health, or other valid authorization from a Texas state agency. No person may commence physical construction of a new hazardous waste management facility without first having submitted Part A and Part B of the permit application and received a finally effective permit.

(b)-(k) (No change.)

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

Issued in Austin, Texas, on June 13, 1995

TRD-9607196

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

Earliest possible date of adoption July 24, 1995

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

## TITLE 43. TRANSPORTATION

### Part I. Texas Department of Transportation

#### Chapter 1. Management

#### Substance Abuse Program

#### • 43 TAC §§1.100-1.111

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

The Texas Department of Transportation proposes the repeal of §§1.100-1.111, concerning the department's substance abuse program.

The sections are proposed for repeal to provide ease of access to all rules relating to employment practices. Repeal of these sections is necessary because the subject matter of these sections falls within Chapter 4, Employment Practices. The subject matter will be reenacted in an amended form in new §§4.30-4.40, concerning the department's substance abuse program, which are being contemporaneously proposed for adoption.

Cathy J. Williams, Director of the Human Resources Division, 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.

Ms. Williams has certified that there will be no significant impact on local economies or over-

all employment as a result of enforcing or administering the proposed repeals.

Ms. Williams 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 understandable and better administered substance abuse program. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed repeals. A public hearing will be held at 9:00 a.m. on Tuesday, July 18, 1995, in the First Floor Hearing Room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member where possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc., for proper reference. Any suggestions or request for alternative language or other revisions in the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise Lundgren, Director of Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588 at least two work days prior to the hearing so that appropriate arrangements can be made.

Written comments on the proposed repeals may be submitted to Cathy J. Williams, Director, Human Resources Division, Texas Department of Transportation, DeWitt C. Greer Building, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of written comments will be 5:00 p.m. on July 24, 1995.

The repeals are proposed 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.

No statutes or rules is affected by the repeals.

*1.100. Purpose.*

*1.101. Definitions.*

*1.102. Policy.*

*1.103. Applicability.*

*1.104. Test Categories and Requirements.*

*1.105. Test Procedures.*

*1.106. Personnel Actions.*

*1.107. Counseling and Rehabilitation Treatment.*

*1.108. Retesting.*

*1.109. Challenge.*

*1.110. Confidentiality.*

*1.111. Records and Retention.*

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

Issued in Austin, Texas, on June 15, 1995.

TRD-9507318

Robert E. Shaddock  
General Counsel  
Texas Department of  
Transportation

Earliest possible date of adoption: July 24, 1995

For further information, please call: (512) 463-8630

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**Chapter 4. Employment Practices**

**Subchapter D. Substance Abuse Program**

• **43 TAC §§4.30-4.40**

The Texas Department of Transportation proposes new §§4.30-4.40, concerning the department's substance abuse program.

These sections are proposed to comply with: 49 Code of Federal Regulations (CFR), Part 382, which requires that the commission develop alcohol and controlled substance testing in compliance with the procedures set forth in 49 CFR, Part 40 in order to help prevent accidents and injuries resulting from the misuse of alcohol or controlled substances by employees who drive commercial motor vehicles for the department; and 49

CFR, Parts 16 and 95 which require that the commission develop alcohol testing for commercial vessel personnel, concerning programs for chemical drug and alcohol testing. The new sections are also necessary to provide for pre-employment drug testing and post-accident alcohol and drug testing for employees in safety sensitive positions.

Adoption of these sections is necessary to replace, in an amended form, the provisions of §§1.100-1.111, concerning the department's substance abuse Program. Sections 1.100-1.111 are being contemporaneously proposed for repeal because the subject matter of these sections fall within Chapter 4, Employment Practices.

Section 4.30 describes the purpose of the policy and procedures of the substance abuse program.

Section 4.31 defines terms used in the text of the proposed sections.

Section 4.32 prohibits employees from: consuming an alcoholic beverage; possessing an open container of an alcoholic beverage; possessing dangerous drugs with the intent to distribute, dispense, transport, sell, or manufacture in the workplace; and possessing dangerous drugs with the intent to illegally distribute, dispense, transport, sell, or manufacture outside the workplace. This section prohibits the department from hiring a final applicant who has been convicted of felony charges related to selling, distributing, transporting or manufacturing dangerous drugs or possessing with the intent to sell, distribute, transport or manufacture dangerous drugs and who is still on probation or parole for that conviction. Supervisors are prohibited from allowing an employee who is under the influence from reporting to work or performing official duties. This section describes the disciplinary actions, including mandatory referral to the Employee Assistance Program (EAP), and termination from the department of an employee who consumes an alcoholic beverage, possesses an open container of an alcoholic beverage or is suspected of working under the influence, and the opportunity for the employee to offer an explanation. This section provides that the department will terminate an employee from employment if the department discovers that the employee has been convicted of felony charges and is on parole or has received a probated sentence related to the sale, distribution transportation, or manufacture of dangerous drugs or possession with the intent to sell, distribute, transport, or manufacture dangerous drugs prior to employment with the department. An employee will be terminated from the department if the employee voluntarily admits to selling, distributing, transporting, or manufacturing dangerous drugs inside or outside the work place. This section requires an employee to report an arrest, charge, indictment or conviction for selling, distributing, transporting, or manufacturing dangerous drugs inside or outside the workplace, within three working days after its occurrence, and provides for suspension for three days without pay if an employee fails to report the arrest, charge, or indictment. Employees are required to contact the General Counsel Office if suspicious behavior is observed in the

workplace. This section describes the mandatory referral process and treatment options for employees.

Section 4.33 requires employees who drive for the department to be subject to the requirements of §4.32 as well as this section. It also provides that the department will not offer an applicant a position if driving is an essential function of the job if the employee has received a Driving Under the Influence (DUI)/Driving While Intoxicated (DWI) within the last three years, from the date of application, unless the applicant participates in the EAP. The department will not allow an applicant to drive for the department if the applicant has received a DUI/DWI within the last three years, from the date of application, and driving is a marginal job function unless the applicant participates in the EAP. This section requires that district engineers and division directors be responsible for maintaining a list of all employees who are authorized to drive for the department, and provides a procedure for checking an employee's driving record. Employees are required to report license suspensions to the department or be terminated and they are prohibited from driving for the department with a judge's work permit. This section requires an employee to notify his or her supervisor and to be mandatorily referred to the EAP if he or she receives a DUI/DWI, and describes the conditions under which an employee may return to work. This section provides that if an employee receives two DUIs/DWIs within a five year period, the employee will be terminated from the department. DUIs/DWIs received prior to September 1, 1994 will not count towards termination.

Section 4.34 requires that commercial drivers be subject to all the requirements of §4.32(a). It also describes the department's policy of prohibiting commercial drivers from: possessing alcohol; driving within four hours after consuming alcohol; using alcohol for eight hours after an accident or until he or she undergoes a post-accident alcohol test; refusing a required drug or alcohol test; and having a positive drug test result. An applicant for a position as a commercial driver is required to pass a pre-employment drug test. This section prohibits a supervisor from allowing an employee who possesses alcohol from driving. This section also provides for drug testing of applicants for commercial driver positions, establishes a procedure for post-accident testing and guidelines to determine reasonable cause testing, and provides for the supervisor to submit a written report within 24 hours of suspecting substance abuse. It establishes a procedure for administering a test following a determination of reasonable suspicion, conducting an alcohol test for an employee who is suspected of alcohol use, and conducting random alcohol and drug testing. This section provides for the removal, reassignment, or transfer of an employee from driving a commercial motor vehicle if the employee fails an alcohol or drug test; describes the conditions under which an employee may return to work; allows mandatory referral to the EAP of an employee who violates these policies; and provides for disqualification of an applicant who has failed a pre-employment test.

Section 4.35 prohibits crewmembers from performing or attempting to perform any duties within four hours of consuming alcohol, working under the influence of alcohol or drugs, and consuming alcohol while on duty. It also describes the procedures for alcohol and drug testing of crewmembers, establishes disciplinary actions for policy violations, and describes the mandatory referral process.

Section 4.36 identifies certain activities which are considered safety sensitive and, if performed by an employee, will subject him or her to drug and alcohol testing. It requires employees in safety sensitive positions to comply with the requirements of §§4.32, 4.33, and 4.34, and requires applicants for and employees in safety sensitive positions to be subject to pre-employment and post-accident testing.

Section 4.37 describes the procedures for the collection of urine specimens and designation of a collection site, and for verification of a positive test result. It establishes procedures for conducting alcohol testing, provides an employee with an opportunity to appeal a drug test result, and provides for notification of test results to employees and applicants, if requested.

Section 4.38 requires medical or personal information contained in testing program records to be treated as strictly confidential, except in certain proceedings and when requested by the employee or the department. It also provides for disciplinary action for willful disclosure or release of confidential information.

Section 4.39 describes the procedure to appeal actions taken under the proposed sections.

Section 4.40 describes the department's records retention procedures concerning substance abuse program records.

Cathy J. Williams, director, Human Resources Division, has determined that there will be fiscal implications as a result of enforcing or administering these sections. The effect on state government for the first five-year period these sections are in effect will be an estimated additional cost of \$128,000 for 1995 and \$247,000 for each subsequent year through 1999. There will be no effect on local governments as a result of enforcing or administering these new sections.

Ms. Williams has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed new sections.

Ms. Williams also has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of implementing the new sections will be to provide a safe working environment for the department's employees; enhance measures for protecting the safety of those members of the public who use the state highway system; and assure that the department fully complies with applicable federal and state laws and regulations concerning the use of alcohol or drugs in the workplace.

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

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed new sections. A public hearing will be held at 9:00 a.m. on Tuesday, July 18, 1995, in the First Floor Hearing Room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member where possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc., for proper reference. Any suggestions or request for alternative language or other revisions in the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise Lundgren, Director of Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588 at least two work days prior to the hearing so that appropriate arrangements can be made.

Written comments on the proposed new sections may be submitted to Cathy J. Williams, Director, Human Resources Division, Texas Department of Transportation, DeWitt C. Greer Building, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of written comments will be 5:00 p.m. on July 24, 1995.

The new sections are proposed 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.

No statutes or rules are affected by the new sections.

*§4.30. Purpose.* The sections under this subchapter set forth the Texas Transportation Commission's policy and procedures

for its implementation, evidencing the department's commitment to achieving an alcohol and drug-free workplace, which protects the health and safety of its most valuable resource, its employees, as well as the health and safety of the public. In addition, these sections are intended to demonstrate the department's commitment to rehabilitating and restoring employees whose performance may be impaired by alcohol or drug abuse. These sections also meet the outline policies and procedures required by 41 United States Code, §§701-707, Title 46 CFR, Part 16, Title 49 CFR, Part 382, and Title 28 TAC, §169.2.

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

**Aftercare**—Usually, the second phase in treatment for alcohol, inhalant, and/or drug dependency, which follows intensive inpatient treatment or intensive outpatient treatment, and which may consist of weekly counseling sessions, the frequency and duration of which is designated by the treatment center's staff physician.

**Air blank**—A reading by an evidential breath testing device (EBT) of ambient air containing no alcohol; in EBTs using gas chromatography technology, a reading of the device's internal standard.

**Alcohol**—The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

**Alcohol concentration**—The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test.

**Alcohol test**—A scientifically recognized chemical test which establishes an individual's blood alcohol level.

**Alcoholic beverage**—A beverage which contains alcohol.

**Breath alcohol technician (BAT)**—An individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device (EBT).

**Chain of custody**—Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen, utilizing an approved department chain of custody form from time of collection to receipt by the laboratory, and upon receipt of the laboratory, an appropriate laboratory chain of custody form to account for the sample or sample aliquots within the laboratory.

**Chain of custody form**—A form which, at a minimum, includes an entry documenting date and purpose each time a specimen or aliquot is handled or transferred and identifying every individual in the chain of custody.

**Collection container**—A container into which the employee urinates to provide the urine sample used for a drug test.

**Collection site**—A place designated by the department where individuals present themselves for the purpose of providing a specimen of the urine to be analyzed for the presence of drugs.

**Collection site person**—A specifically trained person who instructs and assists individuals at a collection site and who receives and makes an initial examination of the urine specimen provided by those individuals.

**Commercial driver**—An employee who operates a commercial motor vehicle on a routine, intermittent, or occasional basis for the department.

**Commercial motor vehicle**—A motor vehicle or combination of motor vehicles used to transport passengers or property if the motor vehicle:

(A) has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;

(B) has a gross vehicle weight rating of 26,001 or more pounds;

(C) is designed to transport 16 or more passengers, including the commercial driver; or

(D) is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR, Part 172, Subpart F).

**Conviction**—A conviction, probated sentence, or case under appeal.

**Crewmember**—An individual who is:

(A) on board a vessel acting under the authority of a license, certificate of registry, or merchant mariner's document whether or not the individual is a member of the vessel's crew;

(B) engaged or employed on board a vessel owned in the United States that is required by law or regulation to engage, employ, or be operated by an individual holding a license, certificate of registry, or merchant mariner's document;

(C) occupies a position, or performs the duties and functions of a position, required by the vessel's Certificate of Inspection;

(D) performs the duties and functions of patrolmen or watchmen; or

(E) is specifically assigned the duties or warning, mustering or controlling the movement of passengers during emergencies.

**Dangerous Drug**—A narcotic drug, controlled substance, and marijuana as defined in the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 United States Code, §802.

**Department**—The Texas Department of Transportation.

**DHHS guidelines**—Mandatory Guidelines for Federal Drug Testing Programs of the U.S. Department of Health and Human Services (53 FedReg 11970; April 11, 1988).

**Directly Involved**—Involved in a serious accident or a serious marine accident on a department ferry, in which the involved employee's order, action, or failure to act is determined to be, or cannot be ruled out as, a causative factor in the events leading to or causing that accident.

**Director**—The chief administrative officer of the Human Resources Division.

**District**—One of 25 geographical areas, managed by a district engineer, in which the department conducts its primary work activities.

**District engineer**—The chief administrative officer in charge of a district of the department.

**Division**—An organizational unit in the department's Austin headquarters.

**Division director**—The chief administrative officer of a division or special office of the department.

**Drive for the department**—Driving a vehicle or operating motor-driven equipment, including but not limited to rollers, tractors, graders, ferries, and aircraft for the department, notwithstanding ownership of the vehicle or equipment and the frequency of driving or operating duties. This includes an employee's personal vehicle when driven during the course and scope of employment.

**Drug test**—A scientifically recognized chemical test administered in accordance with DHHS guidelines and which analyzes an individual's urine for evidence of marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines. This test consists of two parts, an initial test and a confirmatory test, respectively conducted with portions of the same original specimen.

**Employee**—A person employed by the department in a full-time, part-time, temporary, project, or seasonal position.

**Employee Assistance Program (EAP)**—A program designed to assist employees and their family members in dealing with emotional and personal problems, including alcohol, inhalant, and drug abuse, affecting or potentially affecting the employee's work performance and safety.

**EAP counselors**—Licensed physicians (Medical Doctors or Doctors of Osteopathy), or licensed or certified psychologists (Texas State Board of Examiners of Psychologists or other regulating board), social workers (National Association of Social Workers or other regulating board), employee assistance professionals (Employee Assistance Professionals Association, Inc. or other regulating board), or addiction counselors (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or other regulating board) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and drug-related disorders

**Evidential breath testing device (EBT)**—A device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's "Conforming Products List of Evidential Breath Measurement Devices" (CPL).

**Final applicant**—A person who is given a conditional offer of initial employment, or a department employee who is conditionally approved for a transfer or promotion.

**Highly dangerous chemical or material**—A chemical or material which has the potential to cause serious bodily harm to the traveling public and other employees if handled improperly.

**Human Resources division**—An organizational unit in the department's Austin headquarters which oversees human resource functions for the department.

**Impaired performance**—The inability to perform assigned duties or to perform those duties in a safe and effective manner.

**Inappropriate use of an inhalant**—The use of an inhalant in a manner other than that for which it was intended and which causes intoxication.

**Incident**—An action or situation that raises a reasonable suspicion of drug or alcohol misuse.

**Inhalant**—A breathable chemical that produces mind-altering vapors, including but not limited to volatile solvents, aerosols, nitrites, and anesthetics.

**Investigation**—The collection and analysis of information.

**Laboratory**—A laboratory certified to meet the standards of the DHHS guidelines.

**Mandatory referral**—A referral to the EAP which requires an employee to report to the EAP and successfully complete treatment or be terminated from employment with the department.

**Medical Review Officer (MRO)**—A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the department's program who has knowledge of substance abuse disorders, and appropriate medical training to interpret and evaluate an individual's confirmed positive test result

together with his or her medical history and any other relevant biomedical information.

**Operation of a vessel**—To navigate, steer, direct, manage, or sail a vessel, or to control, monitor, or maintain the vessel's main or auxiliary equipment or systems, including determining the vessel's position, piloting, directing the vessel along a desired trackline, keeping account of the vessel's progress through the water, ordering or executing changes in course, rudder position or speed, and maintaining a lookout; controlling, operating, monitoring, maintaining, or testing the vessel's propulsion and steering systems, electric power generators, bilge, ballast, fire, and cargo pumps, deck machinery including winches, windlasses, and lifting equipment, lifesaving equipment and appliances, firefighting systems and equipment, and navigation and communication equipment; and mooring, anchoring, and line handling, loading or discharging of cargo or fuel, assembling or disassembling of tows, and maintaining the vessel's stability or watertight integrity

**Perform on a routine basis**—An activity which is an essential function of a position or an activity which must be performed in order to perform an essential function and which is performed as a normal part of an employee's job duties.

**Possession of alcohol or dangerous drugs**—Having alcohol or dangerous drugs in an area under an employee's effective control

**Program**—The department's substance abuse program

**Receive a DUI/DWI**—A conviction, probated sentence or appeal of a conviction or probated sentence for driving a commercial or non-commercial vehicle while under the influence of alcohol or drugs or while intoxicated (DUI/DWI), while on-duty or off-duty.

**Safety sensitive position**—A full-time, part-time, temporary, project, or seasonal position which requires the performance of regularly assigned, routinely performed activities which if performed with inattentiveness, errors in judgement, diminished coordination, dexterity, or composure could clearly result in mistakes that could present a real and imminent threat to the personal health and safety of other employees or the public, and which are performed with such independence that it cannot be reasonably assumed that those mistakes could be prevented by a supervisor or another employee, including activities having one or more of the following characteristics: a direct, immediate relationship to safety and intimately related to the prevention of harm to the traveling public or other employees; fraught with extraordinary peril such that a single alcohol or drug-related lapse by an employee could have irreversible and calamitous consequences; and performed in an extraordinarily hazardous setting such that careless performance

carries with it the attendant risk of catastrophic consequences

**Serious accident**—Any accident which results in one or more deaths, or an injury to an employee, passenger, or other person which requires treatment beyond first-aid and which renders the employee unfit to perform routine duties, damage to a vehicle which causes it to be inoperable, or receipt of a citation under state or local law for a moving traffic violation arising from the accident.

**Serious marine accident**—Any reportable marine accident which results in one or more deaths; an injury to an employee, passenger, or other person which requires professional medical treatment beyond first aid and which renders the employee unfit to perform routine duties; damage to property in excess of \$100,000; actual or constructive total loss of any ferry subject to Coast Guard inspection under 46 United States Code, §3301, or not subject to Coast Guard inspection if of 100 gross tons or more; a discharge of oil of 10,000 gallons or more into navigable waters of the United States, or a discharge of a reportable quantity of a hazardous substance into navigable waters or the environment of the United States.

**Special office**—A specialized organizational unit of the department which is headquartered in Austin.

**Specimen bottle**—A bottle, after being labeled and sealed, used to transmit a urine sample to the laboratory.

**Statement of Notification (Form 1835)**—A department form signed by employees which acknowledges their awareness of the DUI/DWI policy.

**Substance Control Officer**—An employee appointed by a district engineer or a division director to administer the Substance Abuse Program for his or her district, division, or special office.

**Successful completion of treatment**—Completion of a treatment program, the composition and length of which is to be prescribed by the EAP counselor or the treatment program's staff physician.

**Treatment**—Medical and/or psychological treatment for alcohol, inhalant, and/or drug dependency, which may consist of intensive inpatient treatment followed by aftercare, intensive outpatient treatment followed by aftercare, or educational and/or counseling sessions.

**United States Department of Transportation (DOT)**—The cabinet level department of the United States government administering regulations requiring alcohol or drug testing (14 CFR, Parts 61, 63, 65, 121, and 135; 49 CFR, Parts 199, 219, 382, 653, and 654), in accordance with 49 CFR, Part 40.

**Use of alcohol or a dangerous drug**—The consumption of a beverage, mixture, or preparation, including a medication, containing alcohol or the taking of a dangerous drug (whether orally, by inhalation,



or by injection), or being under the influence of alcohol or a dangerous drug.

Workplace-All department offices, construction sites, temporary laboratory sites, maintenance sites, ferries, and any other location where an employee is performing assigned duties.

§4.32. All Department Employees.

(a) Prohibited conduct.

(1) The consumption of an alcoholic beverage, the possession of an open container of an alcoholic beverage, the inappropriate use of an inhalant, and the illegal use or possession of a dangerous drug is prohibited in the workplace or while on duty.

(2) An employee is prohibited from reporting to work or performing official duties while under the influence of alcohol, inhalants, or illegally used drugs or, if performance is impaired, while under the influence of lawfully prescribed or over-the-counter substances. The legitimate use of drugs is not prohibited if performance is not impaired.

(3) The distribution, dispensation, transportation, sale, or manufacture of dangerous drugs or the possession with the intent to distribute, dispense, transport, sell, or manufacture dangerous drugs is prohibited in the workplace or while on duty. This prohibition includes any violation of state and federal controlled substances acts. Each employee must notify his or her supervisor of a conviction on charges of criminal drug statute violations occurring in the workplace, no later than three days after such conviction. Pursuant to the Drug Free Workplace Act 1988, 41 United States Code, §§701-707, the department will in turn notify the appropriate federal agency of such conviction within ten days of receipt of the notice.

(4) The illegal sale, distribution, transportation, or manufacture of dangerous drugs or the possession with the intent to sell, distribute, transport, or manufacture dangerous drugs by any employee outside of the workplace is prohibited.

(A) A final applicant who has been convicted of felony charges related to the sale, distribution, transportation, or manufacture of dangerous drugs or the possession with the intent to sell, distribute, transport, or manufacture dangerous drugs and who is still on probation or parole for that conviction will not be hired by the department.

(B) Department employees have an obligation to project a positive image at all times to other employees and the public in order to uphold the public's trust in the department.

(5) No supervisor having actual knowledge that an employee possesses or is using dangerous drugs, possesses an open container of an alcoholic beverage or is consuming an alcoholic beverage while performing official duties for the department may allow the employee to continue to perform official duties.

(6) An employee who violates the policies and prohibitions of this section will be subject to consistently applied discipline, up to and including termination from the department. In addition to or in lieu of disciplinary action, an employee will be mandatorily referred to the EAP and required to successfully complete treatment, as described in subsection (c) of this section.

(7) The department provides an employee assistance program and encourages employees to voluntarily use the services of the employee assistance program or treatment program to deal with alcohol, inhalant, or drug abuse before it affects job performance. Successful completion of such programs may mitigate the need for discipline.

(8) Each employee, as a condition of employment, must comply with this section and must signify his or her acknowledgement by signing a form prescribed by the department.

(b) Disciplinary Actions.

(1) Consumption of an alcoholic beverage, the possession of an open container of an alcoholic beverage, drug possession or use, or the inappropriate use of an inhalant. If an employee is directly observed possessing an open container of an alcoholic beverage or consuming an alcoholic beverage, possessing or taking a dangerous drug whether orally or by inhalation or injection, or inappropriately using an inhalant in the workplace, the following procedure shall be followed.

(A) The employee will be given an opportunity to offer a reasonable explanation for the observed circumstances and behaviors. At the same time, the supervisor or substance control officer will immediately provide the employee with a letter which:

(i) summarizes the observed circumstances and behavior;

(ii) notifies the employee that the consumption of alcohol, the possession or use of dangerous drugs, or the inappropriate use of an inhalant in the workplace subjects the employee to termination from the department;

(iii) advises the employee that he or she is being given an opportunity to offer a reasonable explanation; and

(iv) advises the employee of the disciplinary action to be taken if he or she refuses to explain his or her actions or if his or her response indicates that he or she violated the policies and prohibitions of subsection (a) of this section or is insufficient or not acceptable.

(B) If the employee refuses to explain his or her actions or if the employee's response indicates that he or she has violated the policies and prohibitions of subsection (a) of this section or is insufficient or not acceptable, then the supervisor or the substance control officer will mandatorily refer the employee to the EAP and require him or her to successfully complete treatment, pursuant to subsection (c) of this section. Additional disciplinary actions may also be taken. In addition, the employee will be removed from his or her normal job duties and required to take vacation leave, compensatory leave or leave without pay if the employee has exhausted his or her accrued leave, until 24 hours have passed.

(2) Working under the influence. If an employee is suspected of working under the influence of alcohol, dangerous drugs, or inappropriately used inhalants due to a reasonable, articulable belief by a supervisor or substance control officer which is based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, body odors, or performance of the employee, then the procedures described in subsection (b)(1) of this section will be followed. If the employee denies working under the influence of alcohol, dangerous drugs or inappropriately used inhalants, and the evidence is not conclusive, the supervisor or substance control officer will take no further action, but will advise the employee that if it is subsequently discovered that he or she is working under the influence of alcohol, dangerous drugs or inappropriately used inhalants, he or she will be terminated from the department.

(3) Impaired performance due to lawful use of drugs. The legitimate use of drugs is not prohibited if performance is not impaired. When due to the use of lawfully prescribed or over-the-counter substances, the employee is unable to perform his or her assigned duties or perform any duty in a safe manner, the employee will be subject to temporary reassignment of duties or be required to take sick leave, vacation leave, compensatory leave or leave without pay if the employee has exhausted his or her accrued leave.

(4) Voluntary admission of an alcohol, inhalant, or drug problem. An employee who voluntarily admits having a problem with alcohol, inhalant, or drug abuse will be mandatorily referred by his or

her supervisor or substance control officer to the EAP and required to successfully complete treatment as described in subsection (c) of this section. Disciplinary action will not be taken against an employee who voluntarily admits having a problem with alcohol, inhalant, or drug abuse, provided, that in the case of a commercial driver, crewmember or an employee in a safety sensitive position, the admission occurs prior to a determination that the employee should be tested pursuant to §§4. 34, 4.35 or 4.36 of this title (relating to Commercial Drivers, Crewmembers, and Safety Sensitive Employees). The mandatorily referred employee must successfully complete treatment and provide a letter from the EAP staff or the treatment program's staff physician certifying successful completion to the substance control officer.

(5) Conviction of criminal drug statute violations in the workplace. Employees are prohibited from violating criminal drug statutes in the workplace. As soon as the department becomes aware of a criminal drug statute violation occurring in the workplace, the following procedure shall be followed within 30 days. If an employee fails to report a criminal drug statute violation occurring in the workplace within three working days, he or she will be suspended for three days without pay.

(A) Employees who are convicted of criminal drug statute violations in the workplace which pertain to the sale, distribution, transportation, or manufacture of dangerous drugs or the possession with the intent to sell, distribute, transport, or manufacture dangerous drugs shall be terminated from the department.

(B) Employees who are convicted of criminal drug statute violations in the workplace which involve possession with the intent to use a dangerous drug shall be mandatorily referred by the employee's supervisor or the substance control officer to the EAP and required to successfully complete treatment, as described in subsection (c) of this section.

(6) Sale, distribution, transportation, or manufacture of dangerous drugs inside and/or outside the workplace. The illegal sale, distribution, transportation, manufacture or possession with intent to sell, distribute, transport or manufacture dangerous drugs by any employee inside or outside of the workplace is prohibited.

(A) If a final applicant for a department position has been convicted of felony charges related to the selling, distributing, transporting, or manufacturing of dangerous drugs and he or she is on probation or parole for that conviction, he or she

will not be hired by the department. If an applicant is hired by the department, and it is later discovered that the employee had been convicted prior to employment with the department of selling, distributing, transporting, or manufacturing dangerous drugs, he or she will be immediately terminated from the department.

(B) If an employee is arrested, charged, indicted or convicted for selling, distributing, transporting, or manufacturing dangerous drugs inside or outside the workplace, he or she shall report the arrest, charge, indictment, or conviction to his or her supervisor or substance control officer within three working days after its occurrence. Failure to report the arrest, charge or indictment will subject the employee to suspension for three days without pay.

(C) If an employee is convicted of selling, distributing, transporting, or manufacturing dangerous drugs inside or outside the workplace, he or she will be terminated from the department.

(D) If an employee voluntarily admits to selling, distributing, transporting, or manufacturing dangerous drugs inside or outside the workplace, he or she will be terminated from the department.

(E) If an employee is reasonably suspected of selling, distributing, transporting, or manufacturing dangerous drugs inside and/or outside the workplace, due to direct observation of such acts in the workplace or by reason of the indictment, arrest, or charge of selling, distributing, transporting, or manufacturing dangerous drugs inside or outside the workplace the following procedure shall be followed.

(i) The employee's supervisor will place the employee on immediate suspension with pay (administrative leave), pending appropriate investigation and confirmation by the department. If such acts are confirmed by the substance control officer, the employee is subject to immediate termination from the department.

(ii) The employee shall immediately be provided with a letter which:

(I) summarizes the facts upon which such action is taken;

(II) notifies the employee that selling, distributing, transporting, or manufacturing dangerous drugs inside or outside the workplace subjects the employee to termination from the department;

(III) advises the employee that he or she will have a specified period of time in which to provide a reasonable explanation to his or her supervisor or substance control officer; and

(IV) advises the employee that if his or her response indicates that he or she violated the policies and prohibitions of this title or if it is insufficient or not acceptable or if an investigation by law enforcement, the department, or other authorities confirms the suspicion, the employee will be terminated from the department.

(iii) The employee shall be terminated from the department if:

(I) the employee fails to respond within the specified period or to provide an acceptable explanation; or

(II) investigation by law enforcement or other authorities confirms the suspicion that the employee was selling, distributing, transporting, or manufacturing dangerous drugs.

(iv) If the investigation reveals that the employee was using dangerous drugs inside the workplace and not selling, distributing, transporting or manufacturing dangerous drugs inside and/or outside the workplace, the employee will be mandatorily referred by his or her supervisor or substance control officer to the EAP and required to successfully complete treatment, as described in subsection (c) of this section.

(v) If the investigation reveals that the employee was using dangerous drugs outside the workplace and not selling, distributing, transporting or manufacturing dangerous drugs inside and/or outside the workplace, the employee will be given the opportunity to successfully complete treatment.

(vi) When suspicious behavior is observed in the workplace, the substance control officer shall contact the Office of the General Counsel or the Human Resources Division at the earliest possible time before turning the matter over to law enforcement authorities.

(7) Suspicious substance found. If a substance which appears to be a dangerous drug is found within an area under the effective control of an employee, actions contained in subsection (b)(6) of this section shall be followed.

(8) Recurrence of Substance Abuse. Upon the need to mandatorily refer an employee for the third time to the EAP or treatment under the department's sub-



stance abuse program, including mandatory referrals made under §4.34, §4.35, and §4.36 of this title (relating to Commercial Drivers, Crewmembers, and Safety Sensitive Employees), the employee will not be referred but will be terminated from the department.

(9) Failure to successfully complete treatment. Employees who are mandatorily referred to the EAP and who are required to successfully complete treatment, as described in subsection (c) of this section, shall be subject to termination from the department if they fail to report to the EAP or fail to successfully complete treatment. Successful completion of treatment must be certified, in writing, to the employee's substance control officer.

(c) Mandatory Referral and Treatment.

(1) Mandatory Referral. Except for policy violations which involve the sale or distribution of dangerous drugs, refusing a required alcohol or drug test, or a third occurrence of substance abuse, an employee who voluntarily admits to or is otherwise established to have an alcohol, inhalant or drug abuse problem shall be mandatorily referred to the EAP for assessment and referral to treatment. The employee's supervisor or substance control officer will meet with the employee to make the mandatory referral. During this meeting:

(A) the supervisor or substance control officer will contact the EAP;

(B) the supervisor or substance control officer will tell the EAP counselor that a mandatory referral is being made, the type of employee, the employee's name, the reason for the mandatory referral and any other background information requested by the counselor; and

(C) the supervisor or substance control officer will have the employee talk to the EAP counselor, in private, to make an appointment.

(2) Treatment. The department will pay for the cost of EAP counseling sessions which includes an initial assessment. An EAP counselor shall evaluate a referred employee to determine the extent of the dependence upon alcohol, inhalants, or drugs and as may be appropriate will refer the employee to treatment which will include one or more of the following.

(A) Intensive inpatient treatment program. Employees participating in an inpatient rehabilitation treatment program will not be able to work while enrolled in the program. After completing the initial phase of treatment, he or she will be

conditionally reinstated contingent on the employee's willingness to follow through with the aftercare plan as prescribed by the treatment center's staff physician and successful completion of treatment.

(B) Outpatient treatment program. This program provides individual counseling, group therapy, and educational services for varying lengths of time, normally up to ten weeks and also includes an aftercare program. Employees participating in an outpatient program will normally be able to continue to work while participating in the program. In such cases, the employee will be conditionally reinstated, based on completion of the initial phase of the program and willingness to follow through with the aftercare treatment and successful completion of treatment.

(C) Counseling program. This program provides education and/or counseling sessions. The EAP staff, in consultation with the counseling program staff, will prescribe the content, frequency, and duration, as appropriate, and may include group or individual education and/or counseling sessions.

(3) Certification of successful treatment. After successfully completing treatment, as described in subsection (c)(2) of this section, completion must be certified, in writing, to the employee's substance control officer.

(d) Confidentiality. The department will hold all information related to policy violations and disciplinary action in strict confidence consistent with the provisions of applicable law.

(e) Education. The department will conduct an alcohol and drug-free awareness program which will provide all employees and supervisors with initial and ongoing periodic training regarding the department's policy, the personnel actions that will be taken for violations of the policy, the specifics of the program, the dangers of alcohol, inhalant, and drug abuse in the workplace, and the available employee assistance and treatment programs.

#### *§4.33. Employees Who Drive For The Department.*

(a) Employees who are authorized to drive for the department are subject to §4.32 of this title (relating to All Department Employees), as well as the requirements of this section.

(b) The department will not offer a position to a final applicant when driving for the department is an essential function of the job, as listed on the job vacancy notice, if the applicant has received a DUI/DWI within the three year period im-

mediately preceding the date of application, unless he or she complies with the procedures described in subsection (d) of this section. The department may hire a final applicant for a position where driving is a marginal function, as listed on the job vacancy notice, but will not allow the applicant to drive for the department, if he or she has received a DUI/DWI within the last three years, from the date of application, unless the applicant complies with the procedures described in subsection (d) of this section.

(c) District engineers and division directors will maintain a current list of all employees who are authorized to drive for the department. Each district engineer and division director will be responsible for checking each listed employee's driving record at least once every twelve months, and employees who drive for the department who are subject to this policy will be required to sign Form 1835, Statement of Notification.

(d) License Suspension. If an employee has his or her license suspended, the employee is required to report the suspension within one work day to his or her supervisor. If an employee does not report the license suspension and it is subsequently discovered by the department, the employee will be terminated.

(e) Work Permits. An employee must have a valid Texas driver's license to drive for the department. A judge's work permit is unacceptable. Employees without a valid Texas driver's license will be removed from all driving duties and re-assigned. The department will assign non-driving duties, if available, at his or her current work location. If unavailable, the department will offer the employee the option of transferring to another work location. If the employee refuses a transfer, he or she will be required to take all available vacation and/or compensatory time. Once this is exhausted, the employee will be required to take leave without pay until he or she is able to resume driving duties.

(f) Receiving a DUI/DWI. If an employee receives a DUI/DWI, the following procedures shall be followed.

(1) The employee shall notify his or her supervisor of a conviction within three workdays after receiving the conviction. If an employee does not report the conviction, and it is subsequently discovered by the department, the employee will be suspended for three days without pay.

(2) The employee will be immediately provided with a letter which summarizes the following actions to be taken.

(A) The department will immediately remove the employee from driv-

ing until he or she obtains a fitness-for-duty letter or a letter from the Employee Assistance Program (EAP) counselor, as provided in subsection (f)(2) (C) and (D) of this section. If the employee is able to work while in treatment, the department will assign non-driving duties, if available, at his or her current work location. If unavailable, the department will offer the employee the option of transferring to another work location. If the employee refuses a transfer, he or she will be required to take all available vacation and/or compensatory time. Once this is exhausted, the employee will be required to take leave without pay until he or she is able to provide a fitness-for-duty letter as provided in subparagraph (C) and (D) of this paragraph.

(B) The department will mandatorily refer the employee to the EAP and require successful completion of treatment, as described in subsection (f) of this section. The department will terminate employees who do not report to the EAP or fail to successfully complete treatment.

(C) The employee will be referred by the EAP counselor to a medical doctor or other licensed practitioner for a fitness-for-duty letter. In order for the employee to be reinstated to driving duties, the fitness-for-duty letter must state that the employee is able to safely drive for the department.

(D) If the employee is not referred for treatment beyond referral to the EAP and if the EAP counselor is unable to locate a doctor or licensed practitioner who is covered by the employee's health insurance, then the EAP counselor will provide a letter to the employee's substance control officer stating that the employee does not have an alcohol or drug addiction problem at this time.

(E) The employee must have a valid Texas driver's license before being reinstated to driving for the department. A judge's work permit is unacceptable.

(3) The employee who receives the letter, as described in subsection (f) (2), informing him or her of these actions must acknowledge receipt by signing at the bottom.

(4) An employee who receives two DUIs/DWIs within a five year period beginning on or after September 1, 1995, during his or her employment with the department, will be terminated from the department. If the conviction is appealed and overturned, the employee will be reinstated. A DUI/DWI received prior to September 1, 1995 will not count towards termination from the department.

#### §4.34 Commercial Drivers.

(a) An employee who is a commercial driver is subject to all of §4.32 and §4.33 of this title (relating to All Department Employees and Employees Who Drive for the Department), as well as the requirements of this section.

(b) Prohibitions. In addition to the prohibitions in §4.32 and §4.33 of this title (relating to All Department Employees and Employees Who Drive for the Department), a commercial driver is prohibited from:

(1) reporting to work within four hours of consuming alcohol;

(2) reporting to work or remaining at work while under the influence of alcohol or dangerous drugs;

(3) consuming or possessing alcohol while on duty or while driving a commercial motor vehicle;

(4) using alcohol within eight hours following an accident or prior to undergoing a post-accident alcohol test, whichever comes first,

(5) having a positive drug test result or an alcohol test result of .04 or higher, and

(6) refusing to submit to a required alcohol or drug test.

(c) Testing. An employee will be notified, in writing, that he or she is subject to drug and alcohol testing, prior to requiring him or her to submit to an alcohol or drug test.

(1) Pre-employment testing.

(A) The department shall not engage, employ or otherwise give a commitment of employment to a final applicant for a position as a commercial driver unless that person passes a drug test and has an alcohol test result below 0.04, if required by the Federal Highway Administration. A current employee, who is not subject to drug or alcohol testing, who is a final applicant for a commercial driver position and who fails a drug test or who has an alcohol test result of .04 or higher will be mandatorily referred to the EAP and required to successfully complete treatment, as described in §4.32(c) of this title (relating to All Department Employees).

(B) The department will notify a final applicant of the results of a pre-employment drug test if the applicant requests such results within 60 calendar days of being notified of the disposition of the employment application. The department will also inform the applicant which drugs were verified as positive.

(2) Post-accident Testing. A commercial driver who is directly involved in a serious accident, or in any accident in which the events and circumstances give rise to a reasonable suspicion that the employee is under the influence of alcohol or dangerous drugs at the time of the occurrence, in accordance with paragraph (3) of this subsection, is subject to post-accident alcohol and drug testing.

(A) If a commercial driver does not remain readily available for such testing, the substance control officer may record that the employee refused to submit to testing.

(B) Nothing in this section will be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit an employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

(C) No commercial driver required to take a post-accident alcohol test may use alcohol for eight hours following the accident or until he or she undergoes a post-accident test, whichever occurs first.

(D) If an alcohol test is not administered within two hours following the accident, the substance control officer will prepare and maintain a record stating the reasons the test was not promptly administered.

(E) If an alcohol test is not administered within eight hours following the accident, the substance control officer will cease attempts to administer an alcohol test and will prepare and maintain the same record.

(F) If a drug test is not administered within 32 hours following the accident, the substance control officer will cease attempts to administer a drug test, and prepare and maintain a record stating the reasons the test was not promptly administered.

(G) The results of a breath or blood test for the use of alcohol or a urine test for the use of dangerous drugs, conducted by federal, state, or local officials having independent authority for the test, will be considered to meet the requirements of this section, provided such tests conform to applicable federal, state or local requirements, and that the department obtains the results of the tests.

(3) Reasonable cause testing. A commercial driver who is reasonably suspected of using alcohol or dangerous drugs in the workplace or of performing official duties while under the influence of alcohol or dangerous drugs will be required to undergo an alcohol and/or drug test.

(A) The decision to test must be based on a reasonable and articulable belief by a supervisor, who has been trained in the detection of alcohol and dangerous drug use, that the commercial driver has used alcohol or dangerous drugs based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, body odors, or performance indicators of probable use of the commercial driver. The observations of physical, behavioral, or performance indicators of probable use may include indications of the chronic and withdrawal effects of dangerous drugs.

(B) When a supervisor reasonably suspects a commercial driver of using alcohol or dangerous drugs in the workplace or of performing official duties while under the influence of alcohol or dangerous drugs, he or she shall contact the substance control officer immediately. A written report of his or her observations shall be submitted within 24 hours, in a form prescribed by the Director.

(C) When there is reasonable suspicion to believe that a commercial driver is under the influence of alcohol or drugs, and it is reasonable to conclude that the commercial driver may be impaired to the extent that his or her continued performance of such duties, pending a decision to test pursuant to this subsection, will constitute a real and present danger to personal safety or property, the commercial driver will be removed from driving, and, if appropriate, reassigned or placed on administrative leave.

(D) The substance control officer will make an immediate inquiry into the circumstances and will confer or counsel with the employee, as may be appropriate. Based on the supervisor's report and the officer's independent analysis and the approval of the district engineer or division director, the officer will document, in a form prescribed by the Director, whether testing is justified.

(E) If an alcohol test is not administered within two hours following an incident, the substance control officer will prepare and maintain on file a record stating the reasons the alcohol test was not promptly administered.

(F) If an alcohol test is not administered within eight hours following an incident, the department will cease attempts to administer an alcohol test and will prepare and maintain the same record.

(G) If a drug test is not administered within 32 hours following an incident, the department will cease attempts to administer a drug test, and prepare and maintain a record stating the reasons the test was not promptly administered.

(H) Even if a reasonable cause test is not administered, no commercial driver will drive or operate motorized equipment, inspect, service or condition any vehicle, or supervise, assist with or load or unload a motor vehicle, until:

(i) an alcohol test is administered and the driver's alcohol concentration measures less than 0.02, or

(ii) 24 hours have elapsed following the determination that there is reasonable suspicion to believe that the driver has violated the prohibitions concerning the use of alcohol.

(4) Random testing. All commercial drivers are subject to random alcohol and drug testing.

(A) A commercial driver subject to random testing for dangerous drugs and alcohol will be selected for testing on a random basis in a manner to ensure that each commercial driver has a substantially equal chance of selection on a scientifically valid basis. The testing frequency and selection process will be such that a commercial driver's chance of selection continues to exist throughout his or her employment in a commercial driver position.

(B) The Human Resources Division will ensure that commercial drivers are tested on a random basis at an annual rate of not less than 25% for alcohol testing and not less than 50% for drug testing of those respective employee categories in each payroll unit or equivalent work unit. The frequency of testing will also be at random, but will be sufficient to assure that the number of random tests conducted annually will be equal to 25% or 50%, respectively, of the number of commercial drivers.

(C) Random selection of commercial drivers may be accomplished by periodically selecting one or more sections and testing all commercial drivers, provided each section remains equally subject to selection.

(d) Disciplinary Action. In addition to being subject to disciplinary actions described in §4.32 and §4.33 of this title (relating to All Department Employees and Employees Who Drive for the Department), a commercial driver who violates subsection (b) of this section will be subject to the procedures described below.

(1) The supervisor or substance control officer will immediately remove a commercial driver from performing the duties listed in subsection (c)(3)(H) of this section until he or she meets all of the criteria listed in subsection (d)(3) of this section.

(2) The employee's supervisor will assign duties other than those described in subsection (c)(3)(H) of this section to the employee, if available, at his or her current work location. If unavailable, the employee's supervisor will offer him or her the option of transferring to another work location. If the employee refuses the transfer, he or she will be required to take all available vacation or compensatory time. Once this is exhausted, the supervisor will require the employee to take leave without pay until he or she is able to provide a fitness-for-duty letter as provided in subparagraph (C) of this paragraph.

(3) In addition, a commercial driver will complete the following requirements.

(A) The supervisor or the substance control officer will mandatorily refer the commercial driver to the Employee Assistance Program (EAP) and the driver will be required to successfully complete treatment, as described in §4.32(c) of this title (relating to All Department Employee), which may include aftercare for a length of time to be specified by the treatment program's staff physician. The treatment program must be approved by the Texas Department of Mental Health and Mental Retardation or by the Texas Commission on Alcohol and Drug Abuse.

(B) The commercial driver will undergo a return-to-duty alcohol test prior to resuming driving duties with a result indicating an alcohol concentration below 0.02 if the conduct involved alcohol or a drug test with a verified negative result if the conduct involved a dangerous drug.

(C) The commercial driver will provide a fitness-for-duty letter. The EAP counselor will refer the employee to a medical doctor or other licensed practitioner for a fitness-for-duty letter once he or she has completed the initial phase of treatment. In order for the employee to be reinstated to driving duties, the fitness-for-duty letter must state that the employee is able to

safely operate a commercial motor vehicle for the department.

(D) If the employee is not referred for any type of treatment beyond referral to the EAP and if the EAP counselor is unable to locate a doctor or licensed practitioner who is covered by the employee's health insurance, then the EAP counselor will provide a letter to the employee's substance control officer stating that the employee does not have an alcohol or drug addiction problem at this time.

(E) The commercial driver will undergo follow-up testing for alcohol or dangerous drugs for a period of up to 60 months and which consists of at least six tests in the first 12 months following the employee's return-to-duty. The number and frequency of follow-up testing shall be as directed by the EAP staff following the employee's return-to-duty. The EAP may determine that return-to-duty and follow-up testing for both alcohol and dangerous drugs is necessary for the employee. The EAP may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if it determines that such testing is no longer necessary.

(F) The department will terminate the commercial driver from employment unless he or she complies with all the requirements of subsection (d)(3) of this section.

(4) A commercial driver who has an alcohol test result of .02-.04 will be removed from official duties and required to take vacation leave, compensatory leave or leave without pay, if the employee has exhausted his or her accrued leave, until 24 hours have passed.

(e) Refusal to consent to testing. The department will terminate a commercial driver from employment if he or she:

(1) refuses to consent to an alcohol or drug test,

(2) fails to arrive at the testing site at the assigned time;

(3) fails to cooperate with the collection site person; or

(4) refuses to sign the certification on the Breath Alcohol Testing form.

(f) Mandatory Referral and Treatment.

(1) Mandatory Referral. Mandatory referrals will be made pursuant to §4.32(c) of this title (relating to All Department Employees). In the case of a commercial driver, the supervisor or substance control officer will send a copy of the em-

ployee's job description, including a list of all driving duties to the EAP. The EAP will coordinate with the doctor or licensed practitioner who will provide the fitness-for-duty letter and ensure that he or she is aware of the reasons the letter is required.

(2) Treatment. Treatment is described in §4.32(c) of this title (relating to All Department Employees).

(g) Confidentiality. All information related to the alcohol and drug testing of individuals will be held in strict confidence consistent with the provisions of applicable law.

(h) Education. All commercial drivers and supervisors of commercial drivers will receive yearly training on the effects and consequences of alcohol and drug use on personal health, safety, and the work environment and the manifestations and behavioral changes that may indicate alcohol or drug use or abuse.

#### §4.35. Crewmembers.

(a) An employee who is a crewmember is subject to §4.32(a) and §4.33 of this title (relating to All Department Employees and Employees Who Drive for the Department) as well as the requirements of this section.

(b) Prohibitions. The prohibitions in §4.32(b), §4.33, and §4.34(b) of this title (relating to All Department Employees, Employees Who Drive for the Department, and Commercial Drivers) apply to a crewmember.

(c) Testing. An employee will be notified, in writing, that he or she is subject to drug and alcohol testing, prior to requiring him or her to submit to an alcohol or drug test.

(1) Pre-employment testing. Pre-employment testing for a crewmember will be conducted pursuant to §4.34(c)(1) of this title (relating to Commercial Drivers), except that only a drug test will be administered.

(2) Post-accident testing. An alcohol test and a drug test will be administered to a crewmember who is directly involved in a serious marine accident will be tested pursuant to §4.34(c)(2) (relating to Commercial Drivers) of this title.

(3) Reasonable Cause testing. Testing will be conducted pursuant to §4.34(c)(3) of this title (relating to Commercial Drivers).

(4) Random testing. All crewmembers are only subject to random testing for dangerous drugs, as described in §4.34(c)(4) of this title (relating to Commercial Drivers). Random selection of crewmembers may be accomplished by pe-

riodically selecting one or more shifts and testing all crewmembers, provided each shift remains equally subject to selection.

(d) Disciplinary Action. In addition to being subject to disciplinary actions described in §4.32 and §4.33 of this title (relating to All Department Employees and Employees Who Drive for the Department), a crewmember who violates §4.34(b)(1)-(5) of this title (relating to Commercial Drivers) will be subject to the procedures described in §4.34(d) of this title (relating to Commercial Drivers).

(1) The substance control officer shall report the positive test result, in writing, to the nearest Coast Guard Officer in Charge, Marine Inspection (OCMI) and shall have the supervisor remove the individual from duties which directly affect the safe operation of the vessel as soon as practicable. The supervisor or substance control officer will immediately remove a crewmember from crewmember duties until he or she meets all of the criteria listed in §4.34(c)(3) of this title (relating to Commercial Drivers);

(2) the employee's supervisor will assign non-crewmember duties to the employee, if available, at his or her current work location. If unavailable, the employee's supervisor will offer him or her the option of transferring to another work location. If the employee refuses the transfer, he or she will be required to take all available vacation or compensatory time. Once this is exhausted, the supervisor will require the employee to take leave without pay until he or she is able to provide a fitness-for-duty letter as provided in §4.34(d)(3)(D) of this title (relating to Commercial Drivers); and

(3) the employee will be required to be assessed and found by the medical review officer to be drug-free and to pose a sufficiently low risk for subsequent illegal drug use to justify his or her return to work.

(e) Refusal to consent to testing. A crewmember will be terminated if he or she engages in any of the behaviors described in §4.34(e) of this title (relating to Commercial Drivers).

(f) Mandatory Referral and Treatment.

(1) Mandatory Referral. Mandatory referrals will be made pursuant to §4.32(c) of this title (relating to All Department Employees). In the case of a crewmember, the supervisor or substance control officer will send a copy of the employee's job description, including a list of all marine duties, to the EAP. The EAP will coordinate with the doctor or licensed practitioner who will provide the fitness-for-duty letter and ensure that he or she is aware of the reasons the letter is required.

(2) Treatment. Treatment is described in §4.32(c) of this title (relating to All Department Employees).

(g) Confidentiality. All information related to the alcohol and drug testing of individuals will be held in strict confidence consistent with the provisions of applicable law.

(h) Education. Training shall be conducted for crewmembers and their supervisors on a yearly basis. The training shall be at least 60 minutes in length and shall address the effects and consequences of drug and alcohol use on personal health, safety and the work environment; and the manifestations and behavioral cues that may indicate drug and alcohol use and abuse.

#### §4.36. Safety Sensitive Employees.

(a) Applicability. A position is considered safety sensitive for the purposes of this subsection if the employee holding the position performs one or more of the following activities or job functions.

(1) The employee drives in an unusual fashion along the roadway in traffic in a manner inconsistent with normal traffic patterns on a routine basis. This includes driving slowly along the roadway or right of way, frequently pulling in and out of traffic, making frequent turns and stops, and getting in and out of a vehicle near traffic. Vehicle operation in this unusual manner in high speed traffic produces a high risk of causing immediate, catastrophic consequences. Examples of activities that fit this description include:

(A) inspecting roadways and bridges for repairs;

(B) inspecting barricades, traffic control devices, and traffic control setups;

(C) inspecting major maintenance projects such as bridge/roadway repairs or sign and striping operations;

(D) assisting stranded motorists;

(E) inspecting materials and work being performed at construction sites when unusual driving is required;

(F) inspecting vegetation growing along roadways;

(G) inspecting utility placements on roadways and rights of way;

(H) inspecting driveway placements;

(I) inspecting restorations of state rights of way;

(J) supervising the installation of signals;

(K) supervising sign installation;

(L) monitoring ramp meters;

(M) inspecting barrier fences;

(N) inspecting for damaged signs; or

(O) inspecting draw bridges.

(2) The employee performs activities on highways or rights of way, in or around traffic on a routine basis such as:

(A) repairing signals;

(B) installing signals;

(C) flagging traffic and assisting with traffic control;

(D) installing reflective pavement markings;

(E) repairing roadway surfaces and bridges;

(F) doing water blasting;

(G) setting up and taking down signs and barricades;

(H) picking up litter on the right of way;

(I) removing encroachments from state rights of way;

(J) cleaning road signs;

(K) replacing signs;

(L) repairing sign illumination; or

(M) clearing debris from roadways and rights of way.

(3) The employee maintains, stores, safeguards or uses dangerous chemicals/materials around other employees and/or the traveling public on a routine basis. Examples of activities that fit this description include:

(A) performing lab tests which require the use of materials which are flammable, toxic or corrosive;

(B) inspecting materials which are flammable, toxic or corrosive;

(C) operating photoprocessing equipment used in a laboratory to process film;

(D) silkscreening signs; and

(E) welding.

(4) The employee operates any of the following in and around traffic or around one or more other employees on a routine basis:

(A) large/heavy equipment such as hole diggers, rotary brooms, front end loaders, asphalt distributors and heaters, water tanks, sanders, aerial buckets, snow plows, asphalt pots, pony blades, epoxy machines, gravel trucks, ladder trucks, stripers/stripping machines, cable lift hysters, spreaders, rollers, cranes, sweepers, paint machines, bulldozers, dump trucks, spreader boxes, chip spreaders, rotomillers, backhoes, drilling augers, pneumatic rollers, maintainers, wing plows, bucket trucks, drag lines, snoopers, boom trucks, mechanical rig runners, and maze meters (depending on the height, weight, and type of materials being moved and the working environment, forklift operations may also be included); and

(B) trucks and automobiles that are operated in support of road crews or that are driven in an unusual fashion as described in paragraph (1) of this subsection (examples of trucks may include large trucks with trailers, service, litter, fuel, paint, supply, sign, and herbicide trucks).

(5) The employee operates aircraft and swing bridges on a routine basis. The operation of aircraft and/or swing bridges carries with it a high risk of potential harm such that a single drug or alcohol related lapse could have immediate, irremediable, and calamitous consequences to employees, passengers, and/or the traveling public.

(6) The employee conducts or assists with underwater bridge inspections on a routine basis. The performance of this

activity carries with it a high risk of potential harm such that a single alcohol or drug related lapse could have immediate, irremediable, and calamitous consequences to other employees.

(b) An employee in a safety sensitive position is subject to §4.32(a), §4.33, and §4.34(a) of this title (relating to All Department Employees, Employees Who Drive for the Department, and Commercial Drivers) as well as the requirements of this section.

(c) Prohibitions. An employee in a safety sensitive position is subject to the prohibitions in subsections §4.32(b), §4.33, and §4.34(b) of this title (relating to All Department Employees, Employees Who Drive for the Department, and Commercial Drivers)

(d) Testing. An employee will be notified, in writing, that he or she is subject to drug and alcohol testing, prior to requiring him or her to submit to an alcohol or drug test.

(1) Pre-employment testing. Pre-employment testing shall be conducted pursuant to §4.34(c)(1) of this title (relating to Commercial Drivers).

(2) Post-accident testing. An employee in a safety sensitive position will only be tested if he or she is directly involved in a serious accident.

(e) Disciplinary Action. In addition to being subject to disciplinary actions described in §4.32 and §4.33 of this title (relating to All Department Employees and Employees Who Drive for the Department), employees in safety sensitive positions who violate subsection §4.34(c)(1)-(5) of this title (relating to Commercial Drivers) will be subject to the procedures described in §4.34(d) of this title (relating to Commercial Drivers). The only exception is that the employee's supervisor will assign non-safety sensitive duties to the employee, if available, at his or her current work location.

(f) Refusal to consent to testing. A safety sensitive employee will be terminated if he or she engages in any of the behaviors described in §4.34(e) of this title (relating to Commercial Drivers).

(g) Mandatory Referral and Treatment.

(1) Mandatory Referral. Mandatory referrals will be made pursuant to §4.32(c) of this title (relating to All Department Employees). In the case of an employee in a safety sensitive position, the supervisor or substance control officer will send a copy of the employee's job description, including a list of all safety sensitive duties, to the EAP. The EAP will coordinate with the doctor or licensed practitioner

who will provide the fitness-for-duty letter and ensure that he or she is aware of the reasons the letter is required

(2) Treatment. Treatment is described in §4.32(c) of this title (relating to All Department Employees).

(h) Confidentiality. All information related to the alcohol and drug testing of individuals will be held in strict confidence consistent with the provisions of applicable law.

(i) Education. Training shall be conducted for employees in safety sensitive positions and their supervisors on a yearly basis. The training requirements are described in §4.34(h) of this title (relating to Commercial Drivers).

#### §4.37. Test Procedures.

(a) Drug and alcohol testing. An individual who is required to undergo an alcohol or drug test, will be requested to sign a consent form and to report to a collection site, or in the case of an alcohol breath test to report to a test site to be designated by the department. All alcohol and drug tests will be conducted at department's expense with the exception of the retest as discussed in subsection (c) of this section.

(b) Drug test administration. Collection site personnel will administer drug tests according to Department of Health and Human Services (DHHS) guidelines and alcohol blood tests according to Coast Guard guidelines. DHHS guidelines are summarized as follows.

(1) Specimen collection procedure.

(A) A chain of custody for each specimen to be chemically tested will be established and maintained from the time of specimen collection through the testing of the specimen.

(i) If a specimen is not immediately prepared for shipment, it will be safeguarded during temporary storage.

(ii) Every effort will be made to minimize the number of persons handling specimens.

(B) Specimen collection and shipping will be conducted as follows.

(i) Procedures for collecting urine specimens will allow individual privacy unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided.

(ii) To deter the dilution of specimens at the collection site, toilet bluing agents will be placed in toilet tanks wherever possible, so the reservoir of water

in the toilet bowl always remains blue. There will be no other source of water (e.g., no shower or sink) in the enclosure where urination occurs.

(iii) When an individual arrives at the collection site, the collection site person will request the individual to present photo identification. If the individual's identity cannot be established, the collection site person will not proceed with the collection. If the employee requests, the collection site person will show his or her identification to the employee

(iv) The collection site person will ask the individual to remove any unnecessary outer garments such as a coat or jacket that might conceal items or substances that could be used to tamper with or adulterate the individual's urine specimen. The collection site person will ensure that all personal belongings such as a purse or briefcase remain with the outer garments. The individual may retain his or her wallet. If the employee requests a receipt for any personal belongings, the collection site person will provide it.

(v) The individual will be instructed to wash and dry his or her hands prior to urination.

(vi) After washing hands, the individual will remain in the presence of the collection site person and will not have access to any water fountain, faucet, soap dispenser, cleaning agent or any other materials which could be used to adulterate the specimen

(vii) The individual may provide his or her specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy.

(viii) The individual shall urinate into a collection container or a specimen bottle capable of holding at least 60 milliliters.

(ix) If the individual is unable to provide an adequate quantity of urine, the collection site person will instruct the individual to drink not more than 24 ounces of fluids and, after a period of up to two hours, again attempt to provide a complete sample using a fresh collection container. The original insufficient specimen will be discarded. If the employee is still unable to provide an adequate specimen, the insufficient specimen will be discarded, testing discontinued, and the department so notified. The medical review officer will refer the individual for a medical evaluation to develop pertinent information concerning whether the individual's inability to provide a specimen is genuine or constitutes a refusal to test. In the case of a post-accident test or test for reasonable cause, the employee will remain at the collection site and continue to consume reasonable quantities

of fluids until the specimen has been provided or until the expiration of a period up to eight hours from the beginning of the collection procedure.

(x) Both the individual being tested and the collection site person shall keep the specimen in view at all times after the specimen is given, prior to the specimen being sealed and labeled. The specimen shall be sealed with a tamperproof seal over the bottle cap and down the sides of the bottle, and labeled in the presence of the employee.

(xi) The collection site person shall place an identification label securely on the bottle which contains the date, the individual's specimen number, and any other identifying information provided or required by the department. If separate from the label, the tamperproof seal shall also be applied. The individual being tested shall be present during these procedures.

(xii) The individual shall initial the identification label on the specimen bottle to certify that it is the specimen collected from that individual.

(xiii) The individual shall be asked to read and sign a statement on the drug testing custody and control form certifying that the specimen identified as having been collected from that individual is in fact the specimen he or she provided

(xiv) The collection site person will note any unusual behavior or appearance in the permanent record book.

(xv) Whenever there is reason to believe that a particular individual may alter or substitute the specimen to be provided, a second specimen will be obtained as soon as possible under the direct observation of a same gender collection site person.

(xvi) A designated collection site may be any suitable location where a specimen can be collected under conditions set forth in this subchapter, including a properly equipped mobile facility. A designated collection site will have an enclosure where private urination can occur, a toilet for completion of urination (unless a single-use collector is used with sufficient capacity to contain the void), and a suitable clean surface for writing. The site must also have a source of water for washing hands, which, if practicable, should be external to the enclosure where urination occurs.

(xvii) If a collection site facility is dedicated solely to urine collection, the department will secure it at all times. If a facility cannot be dedicated solely to drug testing, the department will secure the portion of the facility used for testing during drug testing.

(xviii) Specimens will be shipped by an expeditious means to the laboratory.

(2) Laboratory analysis procedure.

(A) Each specimen will be analyzed in accordance with DHHS guidelines which requires testing for the following substances:

- (i) marijuana,
- (ii) cocaine;
- (iii) opiates;
- (iv) phencyclidine (PCP);
- (v) amphetamines.

(B) DHHS guidelines presently specify the following confirmatory test cutoff levels.  
Figure 1: 43 TAC §4.37(b)(2)(B)

(C) The initial test will use an immunoassay screen which meets the requirements of the Food and Drug Administration for commercial distribution.

(D) All specimens identified as positive on the initial test will be confirmed by a confirmatory test using gas chromatography/mass spectrometry (GC/MS) techniques.

(E) A specimen which indicates the presence of a dangerous drug at a level equal to or exceeding the levels established in DHHS guidelines is reported to the medical review officer as positive.

(F) Quality assurance and quality control designed, implemented, and reviewed to monitor the conduct of each step of the process of testing for drugs will be in accordance with DHHS guidelines.

(3) Reporting and reviewing of drug test results.

(A) The laboratory will report all test results as required within an average of five days after receipt of a specimen by the laboratory.

(B) The laboratory will report as negative all specimens which are negative on the initial test or negative on the confirmatory test. Only specimens confirmed positive are reported positive to the medical review officer for a specific drug or drug metabolite.

(C) The medical review officer will review and interpret all test results prior to the transmission of results to the department. In carrying out this responsibility, the medical review officer will examine alternate medical explanations for any positive test result. This action could include conducting a medical interview with the individual, review of the individual's medical history, or review of any other relevant biomedical factors. The medical review officer will review all medical records made available by the tested individual when a confirmed positive test could have resulted from legally prescribed medication.

(D) Prior to making a final decision to verify a positive test result, the medical review officer will contact the individual directly, on a confidential basis, to discuss the test result with him or her.

(i) If, after making all reasonable efforts and documenting them, the medical review officer is unable to reach the individual directly, the medical review officer will contact the substance control officer who will direct the individual to contact the medical review officer as soon as possible or within 24 hours. If this becomes necessary, the requirement that the employee contact the medical review officer is held in confidence. If after making all reasonable efforts, the substance control officer is unable to contact the employee, the substance control officer will notify the medical review officer that he or she was unable to make contact with the employee. The substance control officer will continue to try and contact the employee until otherwise notified by the medical review officer.

(ii) The medical review officer may verify a test as positive without having communicated directly with the employee about the test if the employee expressly declines the opportunity to discuss the test or the substance control officer has successfully made and documented a contact with the employee and instructed the employee to contact the medical review officer and more than five days have passed since the date the employee was successfully contacted by the substance control officer

(iii) If more than five days have passed since the verified positive test, the employee may present to the medical review officer information documenting that serious illness, injury, or other circumstances unavoidably prevented the employee from timely contacting the medical review officer. The medical review officer, on the basis of such information, may reopen the verification, allowing the employee to present information concerning a legitimate explanation for the confirmed positive test. If the medical review officer concludes that there is a legitimate explanation, the medical review officer will declare the test to be negative.



(E) If the medical review officer determines there is a legitimate medical explanation for the positive test result, he or she shall report the test result to the department as negative.

(F) In the case of an individual holding a license, certificate of registry or merchant mariners document, the department shall report the positive drug test result in writing to the nearest Coast Guard Officer in Charge, Marine Inspection (OCMI) pursuant to 46 CFR, §16.201, Application.

(c) Retesting. A final applicant or covered employee may appeal the results of a positive drug test by following the procedures listed below.

(1) Final applicants or covered employees must request, in writing, that the split specimen be provided to another DHHS certified laboratory for retesting.

(2) The applicant or employee must make the request, in writing, to the medical review officer within 72 hours after notification of a confirmed positive test result. The same medical review officer will be used to interpret the results of the retest. All the costs related to the retest are at the expense of the final applicant or employee.

(3) In the event that the result of the retest is negative, indicating that the positive result of the first test was erroneous, the department will reimburse the final applicant or employee for the cost of the retest.

(4) If more than five days have passed since the initial verified positive test, the employee may present to the medical review officer information documenting that serious illness, injury, or other circumstances unavoidably prevented the employee from contacting the medical review officer in a timely manner. The medical review officer, on the basis of such information may reopen the verification, allowing the employee to present information concerning a legitimate explanation for the confirmed positive test.

(5) If the medical review officer concludes that there is a legitimate explanation, the medical review officer will declare the test to be negative.

(d) Alcohol test administration. Alcohol tests may be conducted on either blood or breath specimens. A blood or breath alcohol test level of .04% or above is considered to be a positive test result for alcohol.

(1) Breath testing procedure. The breath alcohol technician (BAT) will administer breath alcohol tests according to Federal Highway Administration (FHWA) guidelines, as follows.

(A) The BAT will complete a breath alcohol testing form for the initial breath test and for the confirmatory breath test.

(B) The BAT will conduct a breath alcohol test as follows.

(i) A BAT will administer the tests, except that a BAT qualified supervisor of the employee may not conduct the breath alcohol test.

(ii) The BAT will conduct the alcohol testing in a location that affords visual and aural privacy, sufficient to prevent unauthorized persons from seeing or hearing test results.

(iii) The BAT will require the employee to provide positive identification (through use of a photo I.D. card or identification by a department representative). If the employee requests identification, the BAT will provide it to the employee.

(iv) The BAT will explain the testing procedure to the employee.

(v) The BAT and the employee will complete Part I of the Breath Alcohol Testing Form (as prescribed by the U.S. Department of Transportation) prior to the breath test which includes the employee signing the certification. Refusal by the employee to sign this certification will be regarded as a refusal to take the test.

(vi) The BAT will open an individually sealed mouth piece in view of the employee and attach it to the Evidential Breath Testing Device (EBT) for both the initial and confirmation tests.

(vii) The BAT will use a log book in conjunction with any EBT used for screening tests that does not meet the requirements of the National Highway Traffic Safety Administration's (NHTSA) Conformating Products List (CPL).

(viii) The BAT will instruct the employee to blow forcefully into the mouthpiece for at least six seconds or until the EBT indicates that an adequate amount of breath has been obtained.

(ix) If an adequate amount of breath is not obtained, the BAT will again instruct the employee to attempt to provide an adequate amount of breath. If the employee refuses to make the attempt, the BAT will immediately inform the substance control officer.

(x) If the employee attempts and fails to provide an adequate amount of breath, the BAT will so note in the "Remarks" section of the breath alcohol testing form and immediately inform the substance control officer.

(xi) If the result of the initial test is a breath alcohol concentration of less than 0.02, the BAT and employee

will complete the form. No further testing is authorized.

(xii) If the result of the initial test is an alcohol concentration of 0.02 or greater, the BAT will conduct a confirmation test within 20 minutes of the completion of the screening test. The BAT will instruct the employee not to eat, drink, put any object or substance in his or her mouth, and, to the extent possible, not belch. The BAT will explain to the employee the reason for this requirement (to prevent any accumulation of mouth alcohol leading to an artificially high reading) and the fact that it is for the employee's benefit. The BAT will also explain that the test will be conducted at the end of the waiting period, even if the employee has disregarded the instruction. The results of the confirmatory test are final.

(xiii) If a BAT other than the one who conducted the screening test is conducting the confirmation test, the new BAT will initiate a new Breath Alcohol Testing form.

(xiv) If the employee attempts and fails to provide an adequate amount of breath, the substance control officer will direct the employee to obtain, at their own expense, as soon as practical, an evaluation from a licensed physician to determine whether a medical condition could have precluded the employee from providing an adequate amount of breath. If such a medical condition exists, the employee's failure to provide an adequate amount of breath shall not be deemed a refusal to take a test.

(xv) If the licensed physician is unable to make a determination whether or not an employee has a medical condition that precluded them from providing an adequate amount of breath, the employee's failure to provide an adequate amount of breath will be regarded as a refusal to take a test.

(xvi) A mobile collection facility may be used if it meets the requirements of this item (ii) of this subparagraph. In unusual circumstances (e.g., when it is essential to conduct a test outdoors at the scene of an accident), a test may be conducted at a location that does not fully meet these requirements but the BAT will provide visual and aural privacy to the greatest extent practicable.

(xvii) No unauthorized persons will be permitted access to the testing location.

(xviii) All EBTs will use a quality assurance plan approved by the National Highway Traffic Safety Administration (NHTSA) to ensure the accurate calibration of an EBT in accordance with FHWA guidelines.



(C) A breath alcohol test will be invalid under the following circumstances:

(i) the Breath Alcohol Technician (BAT) does not observe the minimum 15-minute waiting period prior to the confirmation test;

(ii) the BAT does not perform an air blank of the EBT before a confirmation test, or an air blank does not result in a reading of 0.00 prior to or after the administration of the test;

(iii) the BAT does not sign the Breath Testing Alcohol form;

(iv) the BAT fails to note on the remarks section of the Breath Alcohol Testing form that the employee has failed or refused to sign the form following the recording or printing on or attachment to the form of the test result; or

(v) an EBT fails to print a confirmation test result.

(2) Report and review of alcohol test results. The BAT will transmit all results of the initial and confirmation tests to the substance control officer in a confidential manner.

#### §4.38. Confidentiality.

(a) All information relating to a final applicant's or covered employee's alcohol or drug test including other medical or personal information contained in testing program records shall be treated as strictly confidential; provided however, that, unless otherwise confidential as a matter of law, such information may be disclosed when:

(1) a proceeding is initiated by the final applicant or employee and the information is relevant to the claim or defense in such proceeding;

(2) required by applicable law;

(3) requested in writing by the employee;

(4) requested by a person bearing the written consent of the final applicant or employee; or

(5) required by an office or employee of the department who has a need for the information in the performance of official duties.

(b) An employee who willfully discloses or releases information in violation of this section will be subject to disciplinary action up to and including immediate termination from the department.

§4.39. Appeals. An employee who is directly affected by a department action under the substance abuse program may challenge that action through the department's employee complaints and appeals process. An action challenged under this section is deemed to be adverse for purposes of granting the employee a hearing on appeal.

§4.40. Records and Retention. The substance control officer will be responsible for retaining all confidential records relating to the substance abuse program which include training, testing, disciplinary actions, treatment, appeals, and litigation. All documentation which contains information related to an employee's positive test result, such as documentation of disciplinary actions, should be maintained in a locked file separate and apart from that employee's standard personnel file. All records of individuals who pass a test will be retained for at least one year. Records of individuals who do not pass a test will be retained for at least five years. These records include all records related to each individual; i.e., training, testing, disciplinary action including termination from the department, documentation of post-accident and reasonable cause determinations, consent forms, treatment, appeals, and litigation.

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

Issued in Austin, Texas, on June 15, 1995.

TRD-9507319

Robert E. Shaddock  
General Counsel  
Texas Department of  
Transportation

Earliest possible date of adoption: July 24, 1995

For further information, please call: (512) 463-8630

## Chapter 17. Vehicles Titles and Registration

### Motor Vehicle Registration

#### • 43 TAC §17.22

The Texas Department of Transportation proposes an amendment to §17.22, concerning motor vehicle registration. The amendment is necessary due to the passage of Senate Bill 178, Acts of the 74th Legislature, which was signed by the governor on May 1, 1995.

Senate Bill 178 eliminated the need for a vehicle emissions certificate or evidence of residency as a prerequisite to motor vehicle registration. The amendment removes references to §17.80, concerning vehicle emission verification system, which is being simultaneously proposed for repeal. Senate Bill 178 removed the department's authority to implement a vehicle emission verification system as previously required by the Health and Safety Code, Chapter 382; the Texas Uniform Act Regulating Traffic on Highways, Texas Civil Statutes, Article 6701d, §142; and Texas Civil Statutes, Articles 6675a-2 and 6675a-3.

Jerry L. Dike, Director of the Vehicle Titles and Registration Division, has determined that there will be fiscal implications as a result of enforcing or administering the section. The effect on state government for the first five-year period the section will be in effect will be an estimated savings of \$168,000 per year

for 1996-2000. There will be no effect on local governments as a result of enforcing or administering this section.

Mr. Dike has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed amendment.

Mr. Dike also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of implementing the amendment will be compliance with Senate Bill 178

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

Written comments on the proposed amendment may be submitted to Jerry L. Dike, Director of the Vehicle Titles and Registration Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of written comments will be 5:00 p.m. on July 24, 1995.

The amendment is proposed 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; and Texas Civil Statutes, Articles 6675a-1 et seq, which authorize the department to promulgate rules necessary to carry out the provision of laws governing the issuance of motor vehicle registration.

Texas Civil Statutes, Articles 6675a-1 et seq is affected by the proposed amendment.

#### §17.22. Motor Vehicle Registration.

(a) (No change.)

(b) Initial application for vehicle registration.

(1) (No change.)

(2) The application must be accompanied by the following documents:

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

(D) evidence of financial responsibility as required by Texas Civil Statutes, Article 6675a-2a, unless otherwise exempted by law; and

(E) [a valid vehicle emissions certificate or evidence of residency as specified in §17.80(c) of this title (relating to Vehicle Emissions Verification System); and

(F)] any other documents or fees required by law.

(3) (No change.)

(c) (No change.)

(d) Vehicle registration renewal.

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

(3) The license plate renewal notice must be returned by the vehicle owner to the appropriate county tax assessor-collector or his deputy, either in person or by mail, and shall be accompanied by the following documents and fees:

(A) (No change.)

(B) any local fees or other fees as may be prescribed by law and collected in conjunction with registration renewal; and

(C) evidence of financial responsibility as required by Texas Civil Statutes, Article 6675a-2a, unless otherwise exempted by law . [; and

[(D) a valid vehicle emissions certificate or evidence of residency as specified in §17.80(c) of this title (relating to Vehicle Emissions Verification System).]

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

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

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

Issued in Austin, Texas, on June 16, 1995.

TRD-9507397 Robert E. Shaddock  
General Counsel  
Texas Department of  
Transportation

Earliest possible date of adoption: July 24, 1995

For further information, please call: (512) 463-8630



## Vehicle Emissions Verification System

### • 43 TAC §17.80

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

The Texas Department of Transportation proposes the repeal of §17.80, concerning vehicle emissions verification system. The section is no longer necessary due to the passage of Senate Bill 178, Acts of the 74th Legislature, which was signed by the governor on May 1, 1995.

Senate Bill 178 eliminated the need for a vehicle emissions certificate or evidence of residency as a prerequisite to motor vehicle registration. Senate Bill 178 removed the requirement that the department implement a vehicle emission verification system as previously required by the Health and Safety Code, Chapter 382; the Texas Uniform Act Regulating Traffic on Highways, Texas Civil Statutes, Article 6701d, §142; and Texas Civil Statutes, Articles 6675a-2 and 6675a-3.

Jerry L. Dike, Director of the Vehicle Titles and Registration Division, has determined that there will be fiscal implications as a result of enforcing or administering the repeal. The effect on state government for the first five-year period the repeal will be in effect will be an estimated savings of \$168,000 per year for 1996-2000. There will be no effect on local governments as a result of enforcing or administering this section.

Mr. Dike has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed repeal.

Mr. Dike 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 implementing the repeal will be compliance with Senate Bill 178.

Written comments on the proposed repeal may be submitted to Jerry L. Dike, Director of the Vehicle Titles and Registration Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of written comments will be 5:00 p.m. on July 24, 1995.

The repeal is proposed 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; and Texas Civil Statutes, Articles 6675a-1 et seq, which authorize the department to promulgate rules necessary to carry out the provision of laws governing the issuance of motor vehicle registration.

Texas Civil Statutes, Articles 6675a-1 et seq, is affected by the proposed repeal.

### §17.80. Vehicle Emissions Verification System.

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

Issued in Austin, Texas, on June 16, 1995.

TRD-9507396 Robert E. Shaddock  
General Counsel  
Texas Department of  
Transportation

Earliest possible date of adoption: July 24, 1995

For further information, please call: (512) 463-8630



# 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 19. EDUCATION

### Part I. Texas Higher Education Coordinating Board

#### Chapter 7. Texas State Postsecondary Review Program

#### Subchapter C. State Review Standards and Procedures

##### • 19 TAC §7.42

The Texas Higher Education Coordinating Board has withdrawn the emergency effectiveness of amendment to §7.42, concerning the Texas State Postsecondary Review Program. The text of the emergency amendment appeared in the June 9, 1995, issue of the *Texas Register* (20 TexReg 4171). The effective date of this withdrawal is June 14, 1995.

Issued in Austin, Texas, on June 12, 1995.

TRD-9507240

James McWhorter  
Assistant Commissioner for  
Administration  
Texas Higher Education  
Coordinating Board

Effective date: June 14, 1995

For further information, please call: (512) 483-6160

### Part II. Texas Education Agency

#### Chapter 75. Curriculum

#### Subchapter G. Other Provisions

##### • 19 TAC §75.175

The Texas Education Agency has withdrawn from consideration for permanent adoption a

proposed new §75.175, which appeared in the April 18, 1995, issue of the *Texas Register* (20 TexReg 2767). The effective date of this withdrawal is June 14, 1995.

Issued in Austin, Texas, on June 14, 1995.

TRD-9507257

Crisis Cloudt  
Executive Associate  
Commissioner, Policy  
Planning and  
Information  
Management  
Texas Education Agency

Effective date: June 14, 1995

For further information, please call: (512) 463-9701

## TITLE 22. EXAMINING BOARDS

### Part IX. Texas State Board of Medical Examiners

#### Chapter 177. Certification of Nonprofit Health Corporations

##### • 22 TAC §177.1

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed repeal of §177.1, submitted by the Texas State Board of Medical Examiners has been automatically withdrawn, effective June 14, 1995. The repeal as proposed appeared in the December 13, 1994, issue of the *Texas Register* (19 TexReg 9826).

TRD-9507239

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed new §177.1, submitted by the Texas State Board of Medical Examiners has been

automatically withdrawn, effective June 14, 1995. The new section as proposed appeared in the December 13, 1994, issue of the *Texas Register* (19 TexReg 9828).

TRD-9507238

## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 289. Radiation Control

#### Texas Regulation for Control of Radiation

##### • 25 TAC §289.130

The Texas Department of Health has withdrawn from consideration for permanent adoption proposed new §289.130, which appeared in the December 27, 1994, issue of the *Texas Register* (19 TexReg 10300). The effective date of this withdrawal is June 7, 1995.

Issued in Austin, Texas, on June 7, 1995.

TRD-9506908

Susan K Steeg  
General Counsel  
Texas Department of  
Health

Effective date: June 7, 1995

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



Chad  
Mizelle

Name: Chad Mizelle  
Grade: 8  
School: Buffalo Jr. High School, Buffalo ISD

# 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 22. EXAMINING BOARDS

### Part XIX. Polygraph Examiner Board

#### Chapter 391. Polygraph Examiner Internship

##### • 22 TAC §391.3

The Polygraph Examiners Board adopts an amendment to §391.3, concerning the internship training schedule, without changes to the proposed text as published in the May 12, 1995, issue of the *Texas Register* (20 TexReg 3548).

The amendment is adopted so that the polygraph industry will be more closely regulated in areas that the Board determines to be critical.

This section will function by insuring that only qualified polygraph examiners will attain licensure.

No comments were received regarding adoption of the amendment.

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 15, 1995.

TRD-9507384

Bryan M Perot  
Executive Director  
Polygraph Examiners  
Board

Effective date: July 7, 1995

Proposal publication date: May 12, 1995

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

## TITLE 31. NATURAL RE- SOURCES AND CON- SERVATION

### Part X. Texas Water Development Board

#### Chapter 363. Financial Assistance Programs

##### Subchapter B. State Water Pollution Control Revolving Fund

The Texas Water Development Board (board) adopts the repeal of §363.203, concerning Eligibility Determination; amendment to §363.241, concerning Release of Funds for Building; and new §363.510, concerning Required Sewer Connections, without changes to the proposed text as published in the May 12, 1995, issue of the *Texas Register* (20 TexReg 3562)

Amendment to §363.241 will require that an applicant for State Water Pollution Control Revolving Fund (SRF) funding must submit a project that is consistent with plans, if any, developed under the Clean Water Act, §§205(j), 208, 303(e), 319, or 320, which apply to the project receiving the financial assistance. The existing rules require that the applicant be designated a waste treatment management agency under the Clean Water Act rather than just having plans consistent with the Act. This requirement was more restrictive than the Clean Water Act requirements and unnecessarily limited the use of the SRF. The amendment eliminates this restriction, instead allowing the Board to finance projects consistent with programs for water quality management planning, nonpoint source pollution, and estuaries as developed under the Clean Water Act. The proposed repeal of §363.203 will delete the requirement that an applicant have submitted documentation for designation as a waste treatment management agency to be eligible for funding. The effect of this, combined with amendment to §363.241, will be to shift consideration of a project's consistency with the State water quality planning from the time of commitment to the time of release of funds.

New §363.510 will require that any applicant receiving financial assistance from the board under the Economically Distressed Areas Program for construction of wastewater service shall exercise the authority granted to the applicant pursuant to Texas Water Code, §17.934, by requiring any property owners that are to be served by the applicant's wastewater system improvement to connect to such service.

No comments were received regarding adoption of the sections.

#### Introductory Provisions

##### • 31 TAC §363.203

The repeal is adopted under the Texas Water Code, §§6.101, 15.065, and 16.342, which requires the board to adopt rules that are necessary to carry out the program provided by Water Code, Subchapter K, Chapter 17 and to adopt rules for the SRF.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 16, 1995.

TRD-9507337

Craig D. Pedersen  
Executive Administrator  
Texas Water Development  
Board

Effective date: July 7, 1995

Proposal publication date: May 12, 1995

For further information, please call: (512) 463-7981

#### Closing and Construction Phase

##### • 31 TAC §363.241

The amendment is adopted under the Texas Water Code, §§6.101, 15.065, and 16.342, which requires the board to adopt rules that are necessary to carry out the program provided by Water Code, Subchapter K, Chapter 17 and to adopt rules for the SRF.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 16, 1995

TRD-9507338

Craig D. Pedersen  
Executive Administrator  
Texas Water Development  
Board

Effective date: July 7, 1995

Proposal publication date: May 12, 1995

For further information, please call: (512)  
463-7981

◆ ◆ ◆  
Subchapter E. Economically  
Distressed Areas Program  
Economically Distressed Areas

• 31 TAC §363.510

The new section is adopted under the Texas Water Code, §§6.101, 15.065, and 16.342, which requires the board to adopt rules that are necessary to carry out the program provided by Water Code, Subchapter K, Chapter 17 and to adopt rules for the SRF.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 16, 1995

TRD-9507339

Craig D. Pedersen  
Executive Administrator  
Texas Water Development  
Board

Effective date: July 7, 1995

Proposal publication date: May 12, 1995

For further information, please call: (512)  
463-7981

◆ ◆ ◆  
Chapter 375. State Water  
Pollution Control Revolving  
Fund

The Texas Water Development Board (board) adopts the repeal of §375.11, concerning Eligibility Determination; and amendments to §375.72, concerning Loan Closing and §375.74, concerning Release of Funds, without changes to the proposed text as published in the May 12, 1995, issue of the *Texas Register* (20 TexReg 3563).

Amendment to §375.74 will require that before funds are released for building purposes, a recipient of a State Water Pollution Control Revolving Fund (SRF) loan must submit documentation that the project is consistent with plans, if any, developed under the Clean Water Act, §§205(j), 208, 303(e), 319, or 320, which apply to the project receiving financial assistance. The existing rule requires the applicant be designated a waste treatment management agency under the Clean Water Act, rather than just having plans consistent with the appropriate provisions of such act. This requirement was more restrictive than the

Clean Water Act, and unnecessarily limited the use of the SRF. The amendment to §375.74 eliminates this restriction, instead allowing the Board to finance projects consistent with programs for water quality development under the Clean Water Act. Current §375.72 requires loan recipients to provide proof of designated management agency status before loan closing. The amendment proposed to §375.74 provide all needed assurances to comply with the Clean Water Act at the most appropriate time-release of funds for building purposes. Therefore, amendment to §375.72 will remove all requirements for providing evidence regarding designated waste management agency status at the loan closing stage. The proposed repeal of §375.11 will delete the requirement that an applicant be a designated waste management agency to be eligible for funding. The effect of this, combined with amendments to §375.72 and §375.74 will be to shift the requirement that a project be consistent with the state water quality planning from the time of commitment to the time of release of funds.

No comments were received regarding adoption of the sections

Program Requirements

• 31 TAC §375.11

The repeal is adopted under the authority of Texas Water Code, §6.101 and §15.605, which requires the board to adopt rules necessary to carry out the powers and duties of the board provided by Texas Water Code, and adopt rules for the State Water Pollution Control Revolving Fund.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 16, 1995.

TRD-9507341

Craig D. Pedersen  
Executive Administrator  
Texas Water Development  
Board

Effective date: July 7, 1995

Proposal publication date: May 12, 1995

For further information, please call: (512)  
463-7981

◆ ◆ ◆  
Prerequisites to Release of  
Funds

• 31 TAC §375.72, §375.74

The amendments are adopted under the authority of Texas Water Code, §6.101 and §15.605, which requires the board to adopt rules necessary to carry out the powers and duties of the board provided by Texas Water Code, and adopt rules for the State Water Pollution Control Revolving Fund.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority

Issued in Austin, Texas, on June 16, 1995.

TRD-9507340

Craig D. Pedersen  
Executive Administrator  
Texas Water Development  
Board

Effective date: July 7, 1995

Proposal publication date: May 12, 1995

For further information, please call: (512)  
463-7981

◆ ◆ ◆  
TITLE 37. PUBLIC  
SAFETY AND CORREC-  
TIONS

Part III. Texas Youth  
Commission

Chapter 91. Discipline and  
Control

Due Process Hearings Proce-  
dures

• 37 TAC §91.31, §91.33

The Texas Youth Commission (TYC) adopts amendments to §91.31 and §91.33, concerning Level I hearing procedure and Level II hearing procedure, without changes to the proposed text as published in the May 16, 1995, issue of the *Texas Register* (20 TexReg 3632).

The justification for amending the sections is to provide more efficient due process hearings procedures.

The amendment to §91.31 will add that the Level I hearing procedure is appropriate due process for a TYC youth's placement for protective custody for treatment to the intensive resocialization unit at Giddings State School, or to the TYC aggression intervention and management unit at Corsicana Residential Treatment Center in Corsicana. Amendments also allow a youth to be excluded from his Level I hearing if the youth's presence causes undue disruption or delay. The amendment to §91.33 will add that the Level II hearing procedure is in some cases the appropriate due process for a TYC youth's placement at the TYC aggression intervention and management unit at the Corsicana Residential Treatment Center in Corsicana.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed amendments implement the Human Resource Code, §61.034.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 16, 1995.

TRD-9507420

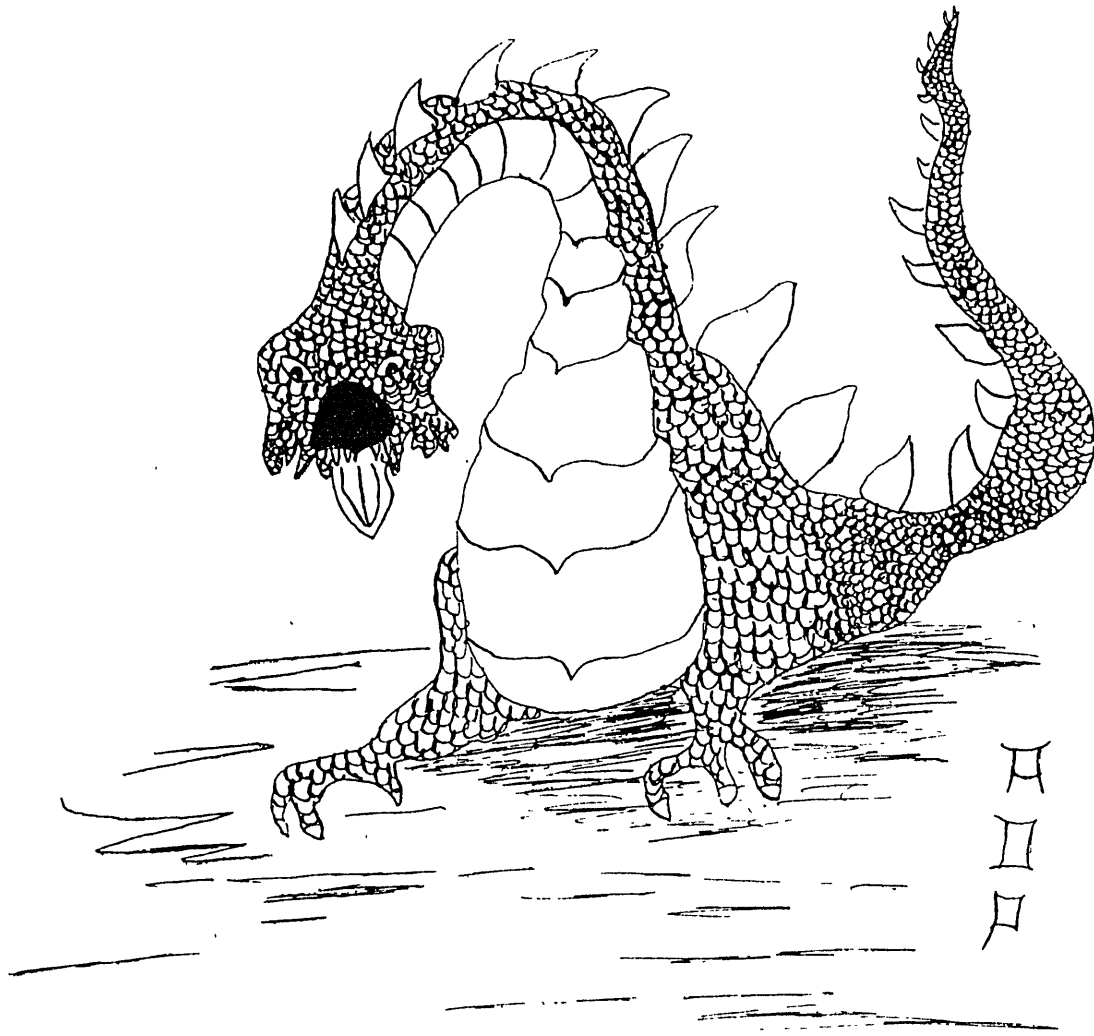
Steve Robinson  
Executive Director  
Texas Youth Commission

Effective date: July 7, 1995

Proposal publication date: May 16, 1995

For further information, please call: (512)  
483-5244

◆ ◆ ◆



Name: Amber Petree  
Grade: 8  
School: Buffalo Jr. High School, Buffalo ISD

Amber Petree



# ● TABLES AND GRAPHICS

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Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

Figure 1: 43 TAC 4.37(b)(2)(B)

DRUG	CONFIRMATORY TEST LEVEL (ng/ml)
Marijuana metabolite <sup>1</sup>	15
Cocaine metabolite <sup>2</sup>	150
Opiate metabolite <sup>3</sup>	300
Phencyclidine	25
Amphetamines (including methamphetamines)	500

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<sup>1</sup>Delta-9-tetrahydrocannabinol-9-carboxylic acid

<sup>2</sup>Benzoylcegonine

<sup>3</sup>25 ng/ml if immunoassay specific for free morphine

Figure 1: 43 TAC 4.37(b)(2)(B)

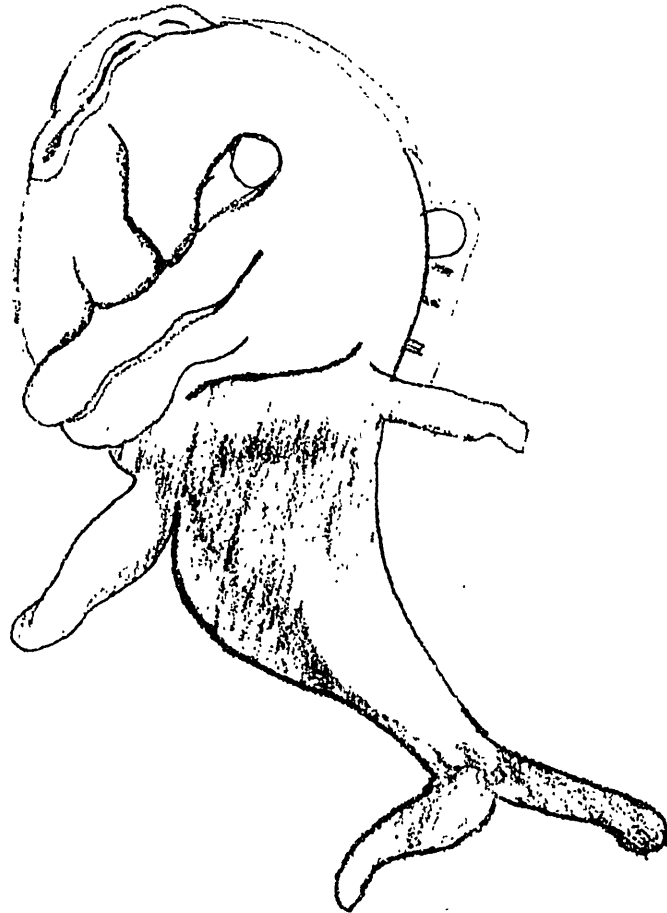
DRUG	CONFIRMATORY TEST LEVEL (ng/ml)
Marijuana metabolite <sup>1</sup>	15
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Amphetamines (including methamphetamines)	500

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<sup>1</sup>Delta-9-tetrahydrocannabinol-9-carboxylic acid

<sup>2</sup>Benzoyllecgonine

<sup>3</sup>25 ng/ml if immunoassay specific for free morphine



Dolphin

Kelly Johnson  
grade 11  
Tom Bean High School  
Tom Bean, Tx.

# 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 State Board of Public Accountancy

Thursday, June 29, 1995, 9:00 a.m.

333 Guadalupe, Tower III, Suite 900

Austin

Board Meeting

AGENDA:

Report of the board's committees including the consideration of complaints investigated by the committee members; consideration of proposed agreed consent orders and proposals for decision including James R. Ray with accompanying motions and Robert Garza with accompanying motion; consideration of adoption of proposed revisions to board rules 521.1 (License Fees) and 523.32 (Requiring Ethics Course).

Contact: J. Randel (Jerry) Hill, 333 Guadalupe, Tower III, Room 900, Austin, Texas 78701-3900, (512) 505-5542.

Filed: June 15, 1995, 3:01 p.m.

TRD-9507315

## Texas Department of Agriculture

Monday, June 26, 1995, 9:30 a.m.

Texas Department of Agriculture, 1700 North Congress Avenue, Room 924A

Austin

Agriculture Resources Protection Authority  
AGENDA:

I. Review and approval of minutes

II. Reports and responses to Authority questions on the following:

A. Impacts of the 1995 Legislature, on Texas Department of Agriculture; in particular, changes in Agriculture Resources Protection Authority and changes in pesticide programs.

B. Status and funding, both state and federal, of integrated pest management programs: agricultural and structural.

C. Prior notification rules.

D. Texas Department of Agriculture's proposed rulemaking that would "sunset" all Texas Department of Agriculture's rules.

E. Enforcement statistics for fiscal year 1995 to date.

F. Texas Department of Agriculture's role in residue sampling for United States Department of Agriculture for other states

G. Status of federal worker protection standards and comparison to Texas farmworker right-to-known requirements.

H. Boll weevil eradication program in the Lower Rio Grande Valley and its impact on outbreak of secondary pests

III Discussion and action on Agriculture Resources Protection Authority Attorney General Opinion Request

IV. Set date for next meeting

Contact: Donnie Dippel, P.O. Box 12847, Ausun, Texas 78711, (512) 463-1093

Filed: June 16, 1995, 2:05 p.m.

TRD-9507383

Monday, June 26, 1995, 7:30 p.m.

Board Room, Snyder Chamber of Commerce

Snyder

Scurry County Cotton Producers Board

AGENDA:

Discussion and action. Minutes from previous meeting, financial statements, budget for 1995-1996 year

Action. Election of new officers

Discussion: Boll weevil eradication, other business

Adjourn

Contact: Jon Derouen, P O Drawer 840, Snyder, Texas 79550, (915) 573-3558

Filed: June 16, 1995, 10 21 a m

TRD-9507355

Tuesday, June 27, 1995, 8:30 a.m.

900 Arroyo, TBWEF San Angelo Office

San Angelo

Texas Boll Weevil Eradication Foundation

AGENDA:

Call to order

Opening remarks and introductions

Discussion and action: Approval of minutes; financial report; payment of director's expenses; referenda; assessments; organic rules; committee appointments; APHIS report; extension report; TDA report; NCC report; chairman report; ex-director's report; next meeting time and place.

Discussion: Other business

Adjourn

Contact: Frank Myers, P.O. Box 5089, Abilene, Texas 79608-5089, 1-800-687-1212, or (915) 672-2800.

Filed: June 19, 1995, 8:36 a.m.

TRD-9507435

Friday, June 30, 1995, 1:00 p.m.

Hyatt Regency Hotel-Riverwalk, 123 Losoya Street

San Antonio

Texas Peanut Producers Board

AGENDA:

Call to order

Discussion: Drying technology proposal, Oklahoma-Texas cooperative promotion project

Discussion and action: Spanish peanuts

Adjourn

Contact: Mary Webb, P.O. Box 398, Gorman, Texas 76454, (817) 734-2853.

Filed: June 16, 1995, 10:22 a.m.

TRD-9507342

Thursday, July 27, 1995, 10:00 a.m.

Texas Department of Agriculture, 1700 North Congress Avenue, Room 928B

Austin

Office of Hearings

AGENDA:

Administrative hearing to review alleged violation of 4 Texas Administrative Code §6.4, by Rogers Troppy.

Contact: Barbara Deane, P.O. Box 12847, Austin, Texas 78711, (512) 463-7448.

Filed: June 16, 1995, 2:29 p.m.

TRD-9507392

Thursday, August 3, 1995, 10:00 a.m.

Texas Department of Agriculture, 1700 North Congress Avenue, Room 928B

Austin

Office of Hearings

AGENDA:

Administrative hearing to review alleged violation of 4 Texas Administrative Code §6.4, by Ramiro Ramirez.

Contact: Barbara Deane, P.O. Box 12847, Austin, Texas 78711, (512) 463-7448.

Filed: June 16, 1995, 2:29 p.m.

TRD-9507393

◆ ◆ ◆  
**Texas Animal Health Commission**

Wednesday, June 28, 1995, 9:00 a.m.

200 South Alamo, Hilton Palacio Del Rio

San Antonio

Audit Subcommittee

AGENDA:

I. Approval of minutes from the meeting of April 19, 1995.

II. Discussion of Area 6 (Lampasas) management control review.

III. Discussion of Area 3 (Fort Worth) management control review.

IV. Update of audit plan completion.

V. Discussion of fiscal year 1996 audit plan preparation and other matters affecting internal audit.

VI. Public comment.

VII. Adjournment.

This meeting will be held at the Hilton Palacio Del Rio, 200 South Alamo Street, San Antonio, Texas 78205, (210) 222-1400.

Contact: Melissa Nitsche, P.O. Box 12966, Austin, Texas 78711-2966, (512) 719-0714.

Filed: June 16, 1995, 2:17 p.m.

TRD-9507388

Wednesday, June 28, 1995, 10:15 a.m.

200 South Alamo, Hilton Palacio Del Rio

San Antonio

Finance Subcommittee

AGENDA:

I. Approval of minutes from the meeting of April 19, 1995.

II. Discussion and possible action on the third quarter budget.

III. Discussion and possible action on the year-to-date savings update.

IV. Discussion and possible action on the 1996-1997 financial outlook, and summary of actions of the 74th Legislature.

V. Public comment.

VI. Adjournment.

This meeting will be held at the Hilton Palacio Del Rio, 200 South Alamo Street, San Antonio, Texas 78205, (210) 222-1400.

Contact: Melissa Nitsche, P.O. Box 12966, Austin, Texas 78711-2966, (512) 719-0714.

Filed: June 16, 1995, 2:17 p.m.

TRD-9507389

Wednesday, June 28, 1995, 2:00 p.m.

200 South Alamo, Hilton Palacio Del Rio

San Antonio

Public Forum

AGENDA:

I. Welcome

II. Discussion of TB and brucellosis and the impact on trading opportunities between Texas and Mexico

III. Public comment

IV. Adjournment

This meeting will be held at the Hilton Palacio Del Rio, 200 South Alamo Street, San Antonio, Texas 78205, (210) 222-1400.

Notice: Persons with disabilities attending this meeting who may need auxiliary aids or services such as interpreters, readers, large print or Braille, are requested to contact Melissa Nitsche at (512) 719-0714 two working days prior to the meeting so appropriate arrangements can be made.

Contact: Melissa Nitsche, P.O. Box 12966, Austin, Texas 78711-2966, (512) 719-0714.

Filed: June 16, 1995, 2:17 p.m.

TRD-9507390

Thursday, June 29, 1995, 9:00 a.m.

200 South Alamo, Hilton Palacio Del Rio

San Antonio

Commission Meeting

AGENDA:

Approval of minutes from the previous commission meeting of April 20, 1995; report of the executive director and approval of actions for the period April 20, 1995 through June 28, 1995; presentation of awards to employees; legislative summary; consideration for proposing amendments to: Fever ticks (§41.1), swine (§55.4), and cattle brucellosis (§§35.1, 35.2, 35.4, 35.6, 35.7, and 47.1); consideration for adopting amendments to: Interstate movement requirements (§51.5), pseudorabies (§55.5), and tuberculosis in cervidae (§§43.20-43.23); consideration of and possible action on proposal for decision by State Office of Administrative Hearings: in the matter of the appeal of a decision of the Texas Animal Health Commission by W. L. Churchwell, Jr., Number 554-05-0564; reports and possible action on recommendations from the Audit Subcommittee, and Finance Subcommittee; public comment; set date for next commission meeting; and adjournment.

This meeting will be held at the Hilton Palacio Del Rio, 200 South Alamo Street, San Antonio, Texas 78205, (210) 222-1400.

Notice: Persons with disabilities attending this meeting who may need auxiliary aids or services such as interpreters, readers, large print or Braille, are requested to contact Melissa Nitsche at (512) 719-0714 two working days prior to the meeting so appropriate arrangements can be made.

Contact: Melissa Nitsche, P.O. Box 12966, Austin, Texas 78711-2966, (512) 719-0714.

Filed: June 16, 1995, 2:17 p.m.

TRD-9507391

### Conservatorship Board

Tuesday, June 27, 1995, 1:30 p.m.

710 Brazos, Perry Brooks Building

Austin

AGENDA:

Call to order; reallocation; and adjourn.

Contact: Otis E. Williams, 710 Brazos, Austin, Texas 78701, (512) 867-8720.

Filed: June 15, 1995, 11:48 a.m.

TRD-9507299

### Texas Office for Prevention of Developmental Disabilities

Thursday, June 22, 1995, 10:00 a.m.

401 West 15th Street, Thompson Auditorium, TMA Building

Austin

Bicycle Helmet Coalition

AGENDA:

Call to order/introductions

Discussion of Senate Bill 337

What next?

Strategy for 75th Legislature

Meeting schedule

Adjournment

Contact: Jerry Ann Robinson, 4900 North Lamar Boulevard, Austin, Texas 78756, (512) 483-5042.

Filed: June 15, 1995, 1:42 p.m.

TRD-9507305

### Texas Education Agency

Friday, June 30, 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 is scheduled to take action on recommending a state education improvement plan to the commissioner of education and the State Board of Education. The panel will review the plan, and discuss issues related to school-to-work transition and enhancing parent and community involvement in education.

Contact: Dan Arrigona, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: June 16, 1995, 1:18 p.m.

TRD-9507377

### Texas Employment Commission

Tuesday, June 27, 1995, 9:00 a.m.

Room 644, TEC Building, 101 East 15th Street

Austin

AGENDA:

Prior meeting notes; presentation of revised internal audit charter for adoption; consideration and possible approval of bid for modifications to elevator at the Dallas agency-owned building; consideration and possible approval of bid for interior renovations at the Brownwood agency-owned building; staff reports; internal procedures of commission appeals; consideration and action on higher level appeals in unemployment compensation cases listed on Commission Docket 26; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

TRD-9507425

### Texas Commission on Fire Protection

Saturday-Sunday, June 24-25, 1995, 9:00 a.m.

12675 North Research Boulevard

Austin

Volunteer Fire Fighter Advisory Committee

AGENDA:

Call to order. Discussion and approval of previous minutes. New matter from members and the public Election of officers. Discussion and possible action on: 37 TAC Chapter 471; 37 TAC Chapter 473; 37 TAC Chapter 476; 37 TAC Chapter 478; 37 TAC Chapter 479; 37 TAC Chapter 483; suggestions for increasing communication with volunteer fire fighters about the commission volunteer certification program; instruction from the commission to consult with Texas Engineering Extension Services. Report on new legislation pertaining to volunteer fire fighters and departments seeking voluntary regulation. Discussion and possible action on future meeting dates, times, and agenda items.

Contact: Carol Menchu, 12675 North Research Boulevard, Austin, Texas 78759, (512) 918-7100.

Filed: June 15, 1995, 4:48 p.m.

TRD-9507331

### Texas Food and Fibers Commission

Wednesday, July 12, 1995, 9:00 a.m.

The Radisson Hotel, 1893 West Mockingbird

Dallas

Industry Advisory Committee

AGENDA:

To draft project and funding recommendations for fiscal years 1996 and 1997

Contact: Jean VandeLune, 17360 Coit Road, Dallas, Texas 75252, (214) 231-0852.

Filed: June 16, 1995, 9:06 a.m.

TRD-9507334

### Texas Department of Health

Friday, June 23, 1995, 8:30 a.m.

Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Board of Health, Board Briefing

AGENDA:

The board will be briefed by the commissioner on current activities of the Texas Department of Health.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, contact Richard Butler at (512) 458-6410 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: June 15, 1995, 3:41 p.m.

TRD-9507321

Friday, June 23, 1995, 10:00 a.m.

Room M-739, Texas Department of Health,  
1100 West 49th Street

Austin

Texas Board of Health

AGENDA:

The board will meet to discuss approval of the minutes of the May 26, 1995 meeting; and discuss and possibly act on: commissioner's report; proposed rules (HIV Medication Program; and limitation of benefits in the Chronically Ill and Disabled Children's Services Program); final adoption of rules (vital statistics rules concerning heirloom birth certificates, filing adoptions of foreign born children, and qualifying to obtain a certified copy of a vital record; and medical radiologic technologist rules concerning certification); withdrawal of rules concerning licensing general and special hospitals under Health and Safety Code, Chapter 241; Strategic Management Committee report (update on the cardiopulmonary resuscitation project); Human Resources Committee report; Regulatory Committee report; executive session regarding duties of the Commissioner of Health; announcements and comments not requiring board action; and meeting date for July, 1995.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. 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: June 15, 1995, 3:41 p.m.

TRD-9507320

◆ ◆ ◆  
**Texas Department of Housing and Community Affairs**

Monday, June 26, 1995, 9:00 a.m.

1100 North Congress Avenue, Room E1.028, Capitol Extension

Austin

Finance Committee Meeting

AGENDA:

The Finance Committee of the Board of the Texas Department of Housing and Community Affairs will meet to consider and possibly act on the following: Selection of underwriting teams for Single Family 1985 Bond refunding/restructuring; selection of underwriting teams for 1995 New Money Single Family Bond issue; and adjourn.

Supporting materials and staff recommendations on these agenda items are available for

review at Texas Department of Housing and Community Affairs, 811 Barton Springs Road, Austin, Texas 78704, or copies may be obtained on specific items by calling (512) 475-2124 (copies are subject to open records request copying charge per page).

Individuals who require auxiliary aids or services for this meeting should contact Aurora Carvajal, ADA Responsible Employee, at (512) 475-3822 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Contact: Henry Flores, 811 Barton Springs Road, Suite 500, Austin, Texas 78704, (512) 475-3934.

Filed: June 16, 1995, 10:37 a.m.

TRD-9507349

◆ ◆ ◆  
**Texas Department of Human Services**

Thursday, June 29, 1995, 10:00 a.m.

J. J. Picker Research Center, The Commons Building, Room 1.130, 10100 Burnet Road

Austin

State Advisory Committee on Child Care Programs

AGENDA:

Welcome and introductions. Action item: Approval of minutes of April, 1995, meeting. Staff reports: Title IV-A At-Risk project update, budget update, state legislative update, and Advisory Committee travel policy changes. Adjourn.

Contact: Mary Beth O'Hanlon, P.O. Box 149030, Austin, Texas 78714-9030.

Filed: June 20, 1995, 9:51 a.m.

TRD-9507469

◆ ◆ ◆  
**Texas Incentive and Productivity Commission**

Friday, June 23, 1995, 10:00 a.m.

Clements Building, 15th and Lavaca, Fifth Floor, Conference Room #2

Austin

Revised Agenda

AGENDA:

Note that the correct day of meeting is Friday, not Thursday, June 23, 1995.

Adding to Agenda Item III, "Consideration of employee suggestions for approval"

Texas Natural Resource Conservation Commission

582-0202-Group suggestion

Adding Agenda Item V, "Consideration of application for 1995 productivity bonus for approval"

Texas Optometry Board

Texas State Board of Veterinary Medical Examiners

Note that the subsequent agenda items have been renumbered because of the addition of Item V.

Contact: M. Elaine Powell, P.O. Box 12482, Austin, Texas 78711, (512) 475-2393.

Filed: June 15, 1995, 10:09 a.m.

TRD-9507284

◆ ◆ ◆  
**Texas Department of Insurance**

Wednesday, June 28, 1995, 1:30 p.m.

333 Guadalupe Street, Room 100, Tower One

Austin

AGENDA:

Under Docket Number 2151, the Commissioner of Insurance will hold a public hearing concerning amendments to the Plan of Operation for Texas Automobile Insurance Plan Association pursuant to Article 21.81.

Contact: Sylvia Gutierrez, 333 Guadalupe, Austin, Texas 78701, (512) 463-6327.

Filed: June 20, 1995, 9:17 a.m.

TRD-9507468

Wednesday, July 5, 1995, 1:00 p.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0558.C

To consider whether disciplinary action should be taken against Randall Bruce Harris, San Antonio, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: June 20, 1995, 8:57 a.m.

TRD-9507467

Thursday, July 6, 1995, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin



AGENDA:  
454-95-0691.C

To consider whether disciplinary action should be taken against Daniel Clayton, Houston, Texas, who holds a Group II Stipulated Premium (Life only under \$7,500) 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: June 20, 1995, 8:57 a.m.

TRD-9507466

◆ ◆ ◆  
**Texas Department of Licensing and Regulation**

Wednesday, June 28, 1995, 9:00 a.m.

920 Colorado, E. O. Thompson Building, Fourth Floor

Austin

Inspections and Investigations: Boxing

AGENDA:

According to the complete agenda, the department will hold an administrative hearing to consider the application of James Martinez for a boxing license in accordance with the Statutes, Articles 8501-1 and 9100; 16 Texas Administrative Code (TAC), §61.27(d) and the Texas Government Code, Chapter 2001.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

Filed: June 19, 1995, 10:25 a.m.

TRD-9507450

◆ ◆ ◆  
**Texas State Board of Examiners of Marriage and Family Therapists**

Monday, June 26, 1995, 8:30 a.m.

Room S-402, The Exchange Building, 8407 Wall Street

Austin

Application Review Committee

AGENDA:

The committee will discuss and possibly act on pending applications; inactive status (Douglas McElroy; and Rochelle Middleman); post graduate experience (Larry Giese; and David Stine); and educational issues (Paul Johnson; and Jayne McCullough).

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657. For ADA assistance, contact

Richard Butler at (512) 458-6410 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: June 15, 1995, 4:21 p.m.

TRD-9507327

Monday, June 26, 1995, 10:00 a.m.

Room S-402, The Exchange Building, 8407 Wall Street

Austin

AGENDA:

The committee will discuss and possibly act on: minutes from the April 24, 1995 meeting; Application Review Committee report (action on pending applications of Giese, Johnson, McLeroy, McCullough, Middleman, Stines, and Walker); Continuing Education Committee report (discussion/action on proposed rule changes concerning continuing education); Rule Change Committee report (action on proposed rules concerning Title 22, Texas Administrative Code, Chapter 801); board order concerning BJH; lawsuit concerning CS, RPM, PG and JD; board chairman report and comments; executive director report; additional topics for next meeting; and setting of next meeting date.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657. For ADA assistance, contact Richard Butler at (512) 458-6410 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: June 15, 1995, 4:21 p.m.

TRD-9507326

◆ ◆ ◆  
**Texas State Board of Medical Examiners**

Monday-Wednesday, June 26-28, 1995, 9:30 a.m., 1:30 p.m., and 8:30 a. m., respectively.

1812 Centre Creek Drive, Suite 300

Austin

AGENDA:

The agenda includes executive session to discuss pending or contemplated litigation; executive session to review examination; approval of orders, minutes, committee appointments, 1996 board meeting schedule; proposals for decision on James Richard Watson, D.O.; Murthy Nannapaneni, M.D.; Fakhreddin Motlaugh, M.D.; Richard A. Honey, M.D.; and James Alan Alexander, M.D.; probation appearances; requests for termination of suspension; public hearing and consideration of adoption of proposed rule changes; discussion, recommendation, and possible action regarding certification of non-profit health organizations and in-

volvement in peer review and testifying as expert witness; election of officers; and executive director's report.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, Fax: (512) 834-4597.

Filed: June 16, 1995, 4:00 p.m.

TRD-9507422

Monday, June 26, 1995, 10:00 a.m.

1812 Centre Creek Drive, Suite 300

Austin

Joint Meeting of Reciprocity and Examination Committees

AGENDA:

Call to order

Discussion and possible action on:

1. The licensing of applicants in administrative medicine
2. Withdrawal of applications after decision of licensing committees
3. Request for rehearing of applicants after decision of licensing committees
4. Applicants with histories of substance abuse

Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code and Article 4495b, §2.07(b) and §2.09(o), Texas Civil Statutes.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, Fax: (512) 834-4597.

Filed: June 16, 1995, 4:00 p.m.

TRD-9507416

Monday, June 26, 1995, 10:00 a.m.

1812 Centre Creek Drive, Suite 300

Austin

Disciplinary Process Review Committee

AGENDA:

1. Call to order
2. May 1995 enforcement report
3. Discussion, recommendations, and possible action on rules related to fees for medical records.
4. Review and possible action on letter from Board staff to Texas Medical Liability Trust concerning reporting of claims related to Norplant and back plate/pedical screws.
5. Discussion regarding pathology work done by out-of-state physicians not licensed in Texas and related legislative update.
6. Executive session to review selected files, two-year old hearing cases, and cases dismissed by informal settlement conferences.

Executive session under authority of the Open Meetings Act, §551.071 of the Government Code, as related to Article 4495b, §§2.07(b), 4.05(d), 5.06(s) (1), and Attorney General Opinion 1974, Number H-484.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext 402, Fax: (512) 834-4597.

Filed: June 16, 1995, 4:00 p.m.

TRD-9507417

Monday-Tuesday, June 26-27, 1995, 2:30 p.m. and 8:30 a.m., respectively.

1812 Centre Creek Drive, Suite 300

Austin

Reciprocity Committee

AGENDA:

1 Call to order

2 Roll call

3. Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code and the Medical Practice Act, Article 4495b, Texas Civil Statutes, §2.07(b) and §2.09(o) to discuss pending or contemplated litigation

4 Review of licensure applicants referred to the Reciprocity Committee by the executive director for determinations of eligibility for licensure, 2:30 p.m. Laura Landley, M.D., Virginia Marilyn Moore, M.D., and Lawrence Robert Palmer, M.D.

5 Recess and reconvene on June 27, 8:30 a.m.

6 Review of licensure applicants referred to the Reciprocity Committee by the executive director for determinations of eligibility for licensure, 8:30 a.m.: Stuart Thomas Guttman, M.D., Eleanya Ogburn-Ogbonnaya, M.D., and Mark T. Byram, M.D.

7 Review of March 1995, SPEX statistics

8 Review of endorsement applicants to be considered for permanent licensure

9 Discussion and possible action regarding temporary licensure

10 Adjourn

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext 402, Fax: (512) 834-4597.

Filed: June 16, 1995, 4:00 p.m.

TRD-9507418

Monday, June 26, 1995, 2:30 p.m.

1812 Centre Creek Drive, Suite 300

Austin

Examination Committee

AGENDA:

1. Call to order

2. Roll call

3. Review of licensure applicants, 2:30 p.m.: Erica Moeller-Ruiz, M.D.; James Donald Davis, M.D.

4. Review of licensure applicants, 3:30 p.m.: Maria Melita Palasi, M.D.; Kamal Deka, M.D.; and Mario Jose Portocarrero, M.D.

5. review of letters of eligibility

6. Review of examination applicants complete for consideration of licensure

Executive session under authority of the Open Meetings Act, §551.071 of the Government Code, and Article 4495b, §2.07(b) and §2.09(o), Texas Civil Statutes, to review applicant files for licensure.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, Fax: (512) 834-4597.

Filed: June 16, 1995, 4:00 p.m.

TRD-9507419

Tuesday, June 27, 1995, 11:00 a.m.

1812 Centre Creek Drive, Suite 300

Austin

Standing Orders Committee

AGENDA:

1. Call to order

2. Roll call

3. Recommendation from Board of Acupuncture Examiners for approval of acupuncture licensure applicants.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, Fax: (512) 834-4597.

Filed: June 16, 1995, 4:00 p.m.

TRD-9507420

Tuesday, June 27, 1995, 1:00 p.m.

1812 Centre Creek Drive, Suite 300

Austin

Finance Committee

AGENDA:

1. Call to order

2. Roll call

3. Review financial statements

4 Adjourn

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, Fax: (512) 834-4597.

Filed: June 16, 1995, 4:00 p.m.

TRD-9507421

## Texas Natural Resource Conservation Commission

Wednesday, June 28, 1995, 9:30 a.m.

12118 North Interstate 35, Building E, Room 201S

Austin

AGENDA:

The commission will consider approving the following matters: Temporary variance; industrial waste discharge permit; industrial hazardous waste permit; district matters; water utility matters; on-site sewage; awards presentation; agency enforcement report; industrial hazardous waste enforcement; municipal waste discharge enforcement; agricultural enforcement; municipal solid waste enforcement; water well drillers enforcement; public water supply enforcement; petroleum storage tank enforcement; rules; resolution; motion for reconsideration; hearing examiners's items; executive session; in addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time. (Registration begins at 8:45 a.m. until 9:30 a.m.)

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: June 15, 1995, 11:48 a.m.

TRD-9507300

Thursday, July 20, 1995, 9:00 a.m.

City of Rockwall City Hall, Council Chambers, 205 West Rusk Street

Tyler

Office of Hearings Examiners

AGENDA:

For a hearing before a hearings examiner on an application by North Texas Municipal Water District for an amendment to Permit Number 12047-01 to authorize an increase in the discharge of treated domestic wastewater effluent from a volume not to exceed an average flow of 1,500,000 gallons per day to a volume not to exceed an average flow of 2,250,000 gallons per day. Additionally, the permit also authorizes a variance to the buffer zone requirements in accordance with 30 TAC Chapter 309.13(e)(1)(A). The proposed amendment will enforce more stringent effluent limitations as needed, in order to meet existing applicable rules and regulations. The Buffalo Creek Wastewater Treatment Facilities are on the west side of the Buffalo Creek and on the south side of FM Road 3097 approximately 1.5 miles northwest of the

and on the south side of FM Road 3097 approximately 1.5 miles northwest of the intersection of FM Roads 3097 and 549 in the City of Rockwall in Rockwall County, Texas. TNRCC Docket Number 95-0936-MWD.

Contact: Elizabeth Todd, Mail Code 102, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: June 15, 1995, 2:50 p.m.

TRD-9507313

Thursday, July 20, 1995, 9:00 a.m.

Tyler City Hall, Council Chambers, 212 North Bonner Avenue

Tyler

Office of Hearings Examiners

AGENDA:

For a hearing before a hearings examiner on an application by Kenneth D. Reynolds for an amendment to Permit Number 11737-01 to authorize an increase in the discharge of treated domestic wastewater effluent from a volume not to exceed an average flow of 10,000 gallons per day to a volume not to exceed an average flow of 12,000 gallons per day. The proposed amendment will enforce more stringent effluent limitations as needed, in order to meet existing applicable rules and regulations. The wastewater treatment facilities are adjacent to the north side of the State Highway 64, approximately 2.5 miles east of the intersection of Loop 323 and State Highway 64 in Smith County, Texas. TNRCC Docket Number 95-0915-MWD.

Contact: Kerry Sullivan, Mail Code 102, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100

Filed: June 15, 1995, 2:51 p.m.

TRD-9507314

Wednesday, August 23, 1995, 9:30 a.m.

Room 201S, Building E, 12118 North IH-35, TNRCC Park 35 Complex

Austin

AGENDA:

Travis County Water Control and Improvement District Number 17 (the District); TNRCC Docket Number 95-0949-DIS; application for amendment to the impact fees previously approved by the commission on March 18, 1992. The 1992 approved impact fee was levied against new connections to the district's water system and was \$2,779 per equivalent single family connection (ESFC) for properties not within the Steiner Ranch or Apache Shores/Comanche Trails defined areas. The district's application for amendment is requesting an impact fee of \$2,700 per ESFC for all areas except the existing Steiner Ranch defined area and

other defined areas for which voters have approved bonds for facilities included in the capital projects plan under which this fee is based. The district provides retail water service to many subdivisions around Lake Travis and Lake Austin near Mansfield Dam, including the Steiner Ranch defined area. An impact fee is a charge or assessment imposed by a district against new connections to the district's facilities. The purpose of the impact fee is to generate revenue to recover the costs of capital improvements and facility expansions made necessary by and attributable to serving new development in the district's area. The application for amendment is filed and the hearing will be held under the authority of Chapter 395 of the Local Government Code, 30 Texas Administrative Code, §§293.171-293.179, and under the procedural rules of the commission.

Contact: Gloria A. Vasquez, Mail Code 152, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6161.

Filed: June 15, 1995, 2:31 p.m.

TRD-9507311

### Texas State Board of Plumbing Examiners

Monday-Tuesday, June 26-27, 1995, at 9:00 a.m.

929 East 41st Street

Austin

Enforcement Committee

AGENDA:

9:00 a.m. (June 26-27, 1995)-Call to order and roll call, June 26, 1995-Consideration of minutes of April 12-13, 1995 Enforcement Committee meeting for adoption as recorded; June 26, 1995-Review of citation list and possible action, June 26, 1995-Informal Conferences. The committee will discuss the following cases with the individuals who have agreed to appear. Possible action by the committee on these cases. 9:45 a.m.-Case #95-0081; 11:00 a.m.-Case #95-0081; 1:30 p.m.-Case #95-0384; 3:00 p.m.-Case #94-0350; June 26-27, 1995-Cases for review: The following cases will be reviewed by and possibly acted upon by the committee as time allows before, between and after the scheduled Informal Conferences. #95-0172, #95-0057, #95-0254, #95-0081, #94-0387, #95-0008, #95-0006, #95-0014, #95-0123, #94-0440, #94-0371, #94-0439, #94-0441, #94-0438, #94-0405, #95-0007, #95-0033, #95-0273, #94-0386, #95-0011, #95-0283, #95-0157, #95-0175, #95-0216, #95-0234, #95-0253, #95-0252, #95-0257, #95-0256, #95-0213, #95-0282, #95-0298, #95-0347, #95-0350, #95-0358, #95-0294, #95-0371, #95-0286, #95-

0406, #95-0163, #95-0232, #94-0080, #94-0079, #95-0408, #95-0407, #95-0409, #95-0410, #95-0411. Discussion and possible proposal of Rules to the Board concerning a voluntary list of Medical Gas Certifiers and the responsibility of plumbing inspectors to inspect medical gas installations.

Contact: Robert L. Maxwell, 929 East 41st Street, Austin, Texas 78751, (512) 458-2145, Ext. 233.

Filed: June 16, 1995, 1:17 p.m.

TRD-9507373

### Texas Board of Private Investigators and Private Security Agencies

Tuesday, June 27, 1995, 8:30 a.m.

Capitol Marriot, Salon D, 701 East 11th Street

Austin

Board Meeting

AGENDA:

New business

I. Docket call.

II. Review of staff recommendation and board action on new licenses, suspension orders, reinstatement orders, revocations, denials, reprimands, requests for waivers, other proposals for decision, requests for rehearings, reconsiderations and related issues.

Old business

I. Approval of minutes of January 24, 1995 board meeting.

New business (continued)

III. Legislative update.

Executive session

I. While in executive session pursuant to Texas Government Code, §551.074, consider executive director's annual review.

New business (continued)

VII. Action as required in open session on executive director's annual review.

It should be noted that a lunch break will be taken at an appropriate time.

Contact: Clema D. Sanders, 313 East Anderson Lane, Suite 200, Austin, Texas 78752, (512) 463-5545.

Filed: June 19, 1995, 10:04 a.m.

TRD-9507447

Tuesday, June 27, 1995, 8:30 a.m.

Capitol Marriot, Salon D, 701 East 11th Street

Austin

Revised Agenda

Board Meeting

AGENDA:

New business

I. Docket call.

II. Review of staff recommendation and board action on new licenses, suspension orders, reinstatement orders, revocations, denials, reprimands, requests for waivers, other proposals for decision, requests for rehearing, reconsiderations and related issues.

Old business

I. Approval of minutes of January 24, 1995 board meeting.

New business (continued)

III. Legislative update.

Executive session

I. While in executive session pursuant to Texas Government Code, §551.074, consider executive director's annual review.

New business (continued)

IV. Action as required in open session on executive director's annual review.

It should be noted that a lunch break will be taken at an appropriate time.

Contact: Clema D. Sanders, 313 East Anderson Lane, Suite 200, Austin, Texas 78752, (512) 463-5545.

Filed: June 19, 1995, 11:26 a.m.

TRD-9507452

◆ ◆ ◆  
**Public Utility Commission of Texas**

Monday, June 26, 1995, 10:00 a.m. (Rescheduled from June 20, 1995, 9:00 a.m.)

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A hearing on the merits has been rescheduled in Docket Number 13520-petition of Lufkin-Conroe Telephone Exchange, Inc. for authority to recover lost revenues and costs of implementing expanded local calling service.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 15, 1995, 4:13 p.m.

TRD-9507322

**Railroad Commission of Texas**

Tuesday, June 27, 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) 463-6901.

Filed: June 16, 1995, 11:08 a.m.

TRD-9507354

Tuesday, June 27, 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 78711-2967, (512) 463-6981.

Filed: June 16, 1995, 11:09 a.m.

TRD-9507355

Tuesday, June 27, 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: June 16, 1995, 11:09 a.m.

TRD-9507356

Tuesday, June 27, 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: June 16, 1995, 11:09 a.m.

TRD-9507357

Tuesday, June 27, 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: June 16, 1995, 11:09 a.m.

TRD-9507358

Tuesday, June 27, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

The commission will consider and act on the agency budget, fiscal and administrative matters and the Administrative Services Division Director's report on division administration, budget, procedures and personnel matters including the Abilene District Office recommendation, the Alternative Fuels Conversion Center financial status report, the 1996-1997 operating budget, and the official naming of the Railroad Commission building in Kilgore, Texas.

Contact: Roger Dillon, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7257.

Filed: June 16, 1995, 11:09 a.m.

TRD-9507359

Tuesday, June 27, 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: June 16, 1995, 11:10 a.m.

TRD-9507360

Tuesday, June 27, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

Revised Agenda

**AGENDA:**

Appointment of representative to serve on the Galveston Bay Council.

Contact: Windle Taylor, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6803.

Filed: June 16, 1995, 1:19 p.m.

TRD-9507380

**Texas Real Estate Commission**

Monday, June 26, 1995, 9:30 a.m.

Conference Room 235, Second Floor, TREC Headquarters Office, 1101 Camino La Costa

Austin

**AGENDA:**

Call to order; introduction of new member; election of vice-chairperson; minutes of May 15, 1995 commission meeting; approval of resolutions honoring former members; staff reports for April and May 1995; appointments to committees and designation of ex officio member of the Texas Real Estate Research Advisory Committee; committee reports; discussion and possible action to establish procedure for placing items on meeting agendas and compensatory per diem for commission members; legislative update; discussion of proposed amendment to 22 TAC §535.13, concerning real estate license requirements to arrange for persons to occupy vacant residential property; discussion and possible action to adopt new 22

TAC §535.228, concerning standard inspection report form, and proposed amendments to 22 TAC §535.222, concerning standards of practice; discussion and possible action to adopt or withdraw proposed amendments to 22 TAC §535.164 concerning disclosure of agency; discussion and possible action to propose amendments to 22 TAC §535.61, concerning acceptance of courses, §535.66, concerning proprietary schools, §535.71, concerning mandatory continuing education, and to §535.101, concerning fees; discussion and possible action to approve distribution of newsletter on subscription basis; discussion and possible action to approve education providers, courses or instructors; executive session to discuss pending litigation pursuant to Texas Government Code, §551.071 and evaluation of administrator, duties and responsibilities of division directors and general counsel, and appointments to the Texas Real Estate Inspector Committee pursuant to Texas Government Code, §551.074; discussion and possible action to authorize payments from recovery funds, incentive bonus award for administrator, and plan of staff reorganization; discussion and possible action to appoint members of the Texas Real Estate Inspector Committee; consideration of complaint information concerning: Keller Williams-Clear Lake/NASA and Mark Bransford McCoin; Carol Jean Monroe; Marie Ann Bowser; Kyle England Gibbons; Clara Jean Machann; Michel E. Issa; Allen Douglas Adams; Thomas G. Thompson; entry of orders in contested cases; scheduling of future meetings.

For ADA assistance call Nancy Guevremont at (512) 465-3923 at least two days prior to the meeting.

Contact: Mark A. Moseley, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3900.

Filed: June 15, 1995, 2:24 p.m.

TRD-9507308

Monday, June 26, 1995, 9:30 a.m.

Conference Room 235, Second Floor, TREC Headquarter Office, 1101 Camino La Costa

Austin

Revised Agenda

**AGENDA:**

Executive session to discuss pending litigation pursuant to Texas Government Code, §551.071 and evaluation of administrator, duties and responsibilities of assistant administrator, division directors and general counsel, and appointments to the Texas Real Estate Inspector Committee pursuant to Texas Government Code, §551.074.

For ADA assistance, call Nancy Guevremont at (512) 465-3923 at least two days prior to the meeting.

Contact: Mark A. Moseley, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3900.

Filed: June 16, 1995, 3:23 p.m.

TRD-9507401

**State Securities Board**

Friday, July 7, 1995, 9:45 a.m.

State Treasury Building, 200 East Tenth Street, Room 227

Austin

Board

**AGENDA:**

(1) March 10, 1995 minutes. (2)(A) Published proposal to amend §109.13(k); (2)(B) New rule proposals to: (1) amend §113.5; (2) amend §123.1; (3) amend §113.2; (4) amend §113.4(g); (5) amend §115.3; (6) amend §115.4; (7) create new §106.1, concerning guidelines for the assessment of administrative fines; (8) amend §131.1; (9) create new Form 133.7, an application for registration of securities; (10) repeal Form 133.7; (11) create new Form 133.10, an investment company report of sales; (12) repeal Form 133.10; (13) create new Form 133.12, a renewal application; (14) repeal Form 133.12; (15) create new Form 133.13, an application for renewal permit; (16) repeal Form 133.13; and (17) create new Form 133.36, a request for multiple capacity status. (3) Report on the legislative session and the agency's budget. (4) Discussion of §139.16. (5) Discussion of possible venture capital project. (6) Consideration of updating formal declaration providing standards of conduct for board members, officers and employees of the agency. (7) Items for subsequent meetings. (8) Update on agency operations from commissioner and senior staff.

Contact: Denise Voigt Crawford, 200 East Tenth Street, Fifth Floor, Austin, Texas 78701, (512) 305-8300.

Filed: June 19, 1995, 9:04 a.m.

TRD-9507437

**Stephen F. Austin State University**

Friday, June 23, 1995, 8:30 a.m.

1936 North Street, Room 307 Austin Building

Nacogdoches

Board of Regents Finance Committee Meeting

**AGENDA:**

**I. Financial Affairs**

- A. Proposed bond sale HEAF funds
- B. Proposed bond sale auxiliary bonds

**Contact:** Dan Angel, P.O. Box 6078, SFA Station, Nacogdoches, Texas 75962-6078, (409) 468-2201.

**Filed:** June 19, 1995, 2:28 p.m.

TRD-9507456

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**Texas Guaranteed Student  
Loan Corporation**

**Friday, June 23, 1995, 9:30 a.m.**

13809 North Highway 183, Suite 301  
Austin

Board of Directors

**AGENDA:**

1. Call to order
2. Approval of minutes May 12, 1995 board meeting
3. Discussion and action regarding rescheduling of Budget/Finance/Audit Committee meeting to August 18 from August 4
4. President's report
  - Budget transfers year to date
  - Staffing
  - Employee Assistance Plan
  - Legislative report
  - Review second quarter board report
  - Executive summary of direct lending servicing bid proposal
5. Discussion and action on Bank One line of credit renewal
6. Report and action on Tower of the Hills (TOTH) building lease/purchase
7. Discussion and action on appointment of Neal Combs to TGSLC's Money Purchase Pension Plan Committee
8. Discussion and action on governance of Educational Assistance Services, Inc., Board of Directors, and officers
9. Discussion and action on increasing signing authority for senior vice presidents and vice presidents
10. Discussion and action on TGSLC's mission statement
11. Adjourn to executive session
  - Consultation with attorney on litigation issues
12. Resume regular session
13. Action on items arising from executive session

**14. Adjourn**

**Contact:** Pat Boulton, 13809 North Highway 183, Austin, Texas 78750, (512) 219-4550.

**Filed:** June 15, 1995, 2:50 p.m.

TRD-9507312

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**Texas State Technical College System**

**Friday, June 23, 1995, 10:00 a.m.**

Ramada Hotel-Market Center Regal Row Room, 1055 Regal Row

Dallas

Board of Regents

**AGENDA:**

The Board of Regents will discuss and act on the following minute orders:

Signature authorizations, easement for electrical power supply to Central Power and Light Company at TSTC Harlingen Work Force Center, authorization to seek funding to allow repairs to storm damaged facilities at Texas State Technical College Sweetwater, approval of TSTC System planning, reengineering and reduction in force, effective September 1, 1995, lease agreement between TSTC and Amarillo College for certain land and improvements, equipment, supplies and other personal property.

**Contact:** Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-4890.

**Filed:** June 16, 1995, 3:24 p.m.

TRD-9507403

**Friday, June 23, 1995, 10:30 a.m.**

Ramada Hotel-Market Center Regal Row Room, 1055 Regal Row

Dallas

Board of Regents Executive Session

**AGENDA:**

Following Item VII of the agenda and shown as Item VIII the Board of Regents will go into executive session in accordance with Chapter 551 of the Texas Government Code for the specific purpose provided in §551.071 and §551.075 and will discuss the following:

Blankenship v. TSTC Cause Number 94-3686-1

**Contact:** Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-4890.

**Filed:** June 16, 1995, 3.24 p.m.

TRD-9507404

**Friday, June 23, 1995, 1:00 p.m.**

Ramada Hotel-Market Center Regal Row Room, 1055 Regal Row

Dallas

Board of Regents Audit Committee

**AGENDA:**

The Board of Regents Audit Committee will discuss and act on the following agenda items:

Status of vacant position

Status of audit schedule

Audits completed

Internal audit continuing education activities

Amended audit plan for fiscal year 1995

Audit plan for 1996

**Contact:** Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-4890

**Filed:** June 16, 1995, 3:24 p.m.

TRD-9507405

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**Texas Woman's University,  
Board of Regents**

**Friday, June 23, 1995, 9:00 a.m.**

Mary Gibbs Jones, Room 928, TWU, Corner of M. D. Anderson and Bertner, Texas Woman's University

Houston

Finance and Audit Committee

**AGENDA:**

I. Consider approval of the minutes of the committee meeting of March 24, 1995

II Consider recommending approval of personnel additions and changes (Exhibit B)

III. Consider recommending acceptance of gifts and grants (Exhibit C).

IV. Consider recommending approval of contracts and agreements (Exhibit D).

V. Consider recommending approval of allocations of federal funds (Exhibit E).

VI. Consider recommending approval of renewal and extension of insurance (Exhibit F).

VII. Consider recommending approval of TWU employee and Regents ethics policies (Exhibit G).

VIII. Consider recommending approval of fiscal 1996 budget guidelines (Exhibit H).

IX. Consider recommending approval of the issuance of Board of Regents of Texas Woman's University Constitutional Appropriation Bonds, Series 1995, in the amount

of \$17 million and authorizing the Vice President for Fiscal Affairs to proceed with the preparation of all required documents.

X. Consider recommending approval of the issuance of Board of Regents of Texas Woman's University Combined Fee Revenue Bonds, Series 1995A in the amount of \$7 million and authorizing the Vice President for Fiscal Affairs to proceed with the preparation of all required documents.

XI. Consider recommending approval to raze Smith-Carroll and Bralley Halls.

XII. Receive the third quarter 1994-1995 internal audit report.

XIII. Report of the committee chair.

Contact: Carol D. Surles, P.O. Box 425587, Denton, Texas 76204-3587, (817) 898-3201.

Filed: June 15, 1995, 11:27 a.m.

TRD-9507294

Friday, June 23, 1995, 9:30 a.m.

Mary Gibbs Jones, Room 928, TWU, Corner of M. D. Anderson and Bertner, Texas Woman's University

Houston

Student Affairs Committee

AGENDA:

I. Consider approval of the minutes of the committee meeting of March 24, 1995.

II. Report on activities of the Office of Student Life.

III. Report of the committee chair.

Contact: Carol D. Surles, P.O. Box 425587, Denton, Texas 76204-3587, (817) 898-3201.

Filed: June 15, 1995, 11:27 a.m.

TRD-9507295

Friday, June 23, 1995, 10:00 a.m.

Mary Gibbs Jones, Room 928, TWU, Corner of M. D. Anderson and Bertner, Texas Woman's University

Houston

Academic Affairs Committee

AGENDA:

I. Consider approval of the minutes of the committee meeting of March 24, 1995

II. Consider recommending approval of a request to the Coordinating Board for a Doctor of Science in Nursing degree in Houston.

III. Consider recommending approval of the sexual harassment policy.

IV. Report on activities in the Office of Academic Affairs.

V. Report of the committee chair.

Contact: Carol D. Surles, P.O. Box 425587, Denton, Texas 76204-3587, (817) 898-3201.

Filed: June 15, 1995, 11:27 a.m.

TRD-9507296

Friday, June 23, 1995, 10:30 a.m.

Mary Gibbs Jones, Room 928, TWU, Corner of M. D. Anderson and Bertner, Texas Woman's University

Houston

Committee of Institutional Advancement

AGENDA:

I. Consider approval of the minutes of the committee meeting of March 24, 1995.

II. Report on alumnae relations, development, and public information activities of the Office of Institutional Advancement.

III. Report of the committee chair.

Contact: Carol D. Surles, P.O. Box 425587, Denton, Texas 76204-3587, (817) 898-3201.

Filed: June 15, 1995, 11:28 a.m.

TRD-9507297

Friday, June 23, 1995, 1:30 p.m.

Mary Gibbs Jones Building, Room 928, Corner of M. D. Anderson and Bertner, Texas Woman's University

Houston

Board of Regents

AGENDA:

Executive session: real estate; litigation, including Myers et al vs. Lipe, et al; and personnel matters under Texas Civil Statutes, Government Code, §§551.071, 551.072, and 551.074. Consider approval of the minutes of the Board of Regents meeting of March 24, 1995. Finance and Audit Committee items: Consider approval of personnel additions and changes; gifts and grants; contracts and agreements; allocations of federal funds; renewal and extension of insurance; TWU employees' and Regents' ethics policies; fiscal 1996 budget guidelines; issuance of Board of Regents of Texas Woman's University Constitutional Appropriation Bonds, Series 1995, in the amount of \$17 million and authorizing the Vice President for Fiscal Affairs to proceed with the preparation of all required documents; issuance of Board of Regents of Texas Woman's University Combined Fee Revenue Bonds, Series 1995A in the amount of \$7 million and authorizing the Vice President for Fiscal Affairs to proceed with the preparation of all required documents; approval to raze Smith-Carroll and Bralley Halls; report of the committee chair. Student Affairs Committee items: Report of the committee chair. Academic Affairs

Committee items: Consider approval of a request to the Coordinating Board for a Doctor of Science degree in Nursing in Houston; the sexual harassment policy; faculty for tenure, promotion, and emeritus status; report of the committee chair. Committee on institutional advancement items: Report of the committee chair. Consider approval of resolutions of appreciation for retiring Regents. Election of officers of the TWU Board of Regents. Report from the president

Contact: Carol D. Surles, P.O. Box 425587, Denton, Texas 76204-3587, (817) 898-3201

Filed: June 15, 1995, 11:29 a.m.

TRD-9507298

## Texas Department of Transportation

Tuesday, June 27, 1995, 9:00 a.m.

125 East 11th Street

Austin

Texas Transportation Commission

AGENDA:

Harris County delegation. Approve minutes. Settlement claim of Grady Management and Construction. Awards/recognitions/resolutions. Contract awards/rejections/defaults. Programs. Routine minute orders. District/division/special office reports. Transportation planning. Restoration, resurfacing and preventive maintenance guidelines. Delegate authority to award contracts of less than \$300,000. Rulemaking. 43 TAC Chapters 1, 3, 9, and 11. Executive session for legal counsel and land acquisition matters. Open comment period.

Contact: Diane Northam, 125 East 11th Street, Austin, Texas 78701, (512) 463-8630

Filed: June 16, 1995, 2:59 p.m.

TRD-9507394

## University of Houston System

Thursday, June 22, 1995, 8:00 p.m.

Shamrock Room, Conrad Hilton College Building, University of Houston, 4800 Calhoun

Houston

Board of Regents

AGENDA:

To discuss and/or approve the following. Minutes; executive session, open forum; personnel recommendations; memorial resolutions; revision of board policies and by-

laws; professorship appointments; faculty salary report; gift reports; School of Music Building; award of construction contract; change order to construction contract; project delivery procedures guide; renewal of Amigos Bibliographic contract; printing orders; contracts extensions; 2.5 million pound test system; various contracts; allocation of HEAF appropriation; fee changes, waivers and exemptions; tuition changes; various banking resolutions; external peer review; appointment of Nominating Committee; and consent docket.

Contact: Peggy Cervenka, 1600 Smith, Suite 3400, Houston, Texas 77002, (713) 754-7440.

Filed: June 16, 1995, 4:38 p.m.

TRD-9507432

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**University Interscholastic League**

Sunday, June 18, 1995, 8:30 p.m.

Wyndham Hotel, Ben White at IH-35

Austin

Standing Committee on Finance of the Legislative Council

AGENDA:

- A. Quorum call
- B. Adoption of meeting rules
- C. Adoption of agenda
- D. Building report
- E. Executive session
- F. Announcements
- G. Adjournment

Contact: Bonnie Northcutt, 23001 Lake Austin Boulevard, Austin, Texas 78713, (512) 471-5883.

Filed: June 15, 1995, 4:13 p.m.

TRD-9507323

Monday, June 19, 1995, 8:00 a.m.

Wyndham Hotel-Sweetwater

Austin

Legislative Council

AGENDA:

The Legislative Council of the University Interscholastic League will hold a business meeting.

Contact: Bonnie Northcutt, 23001 Lake Austin Boulevard, Austin, Texas 78713, (512) 471-5883.

Filed: June 15, 1995, 4:13 p.m.

TRD-9507324

Monday, June 19, 1995, 1:00 p.m.

Wyndham Hotel-Southpark A

Austin

Standing Committee on Academics of the Legislative Council

AGENDA:

- A. Quorum call
- B. Adoption of meeting rules
- C. Adoption of agenda
- AA. Speakers previously scheduled
- BB. Unscheduled speakers
- E. Staff proposals
- F. Written proposals previously unscheduled
- G. New business
- H. Announcements
- I. Adjournment

Contact: Bonnie Northcutt, 23001 Lake Austin Boulevard, Austin, Texas 78713, (512) 471-5883.

Filed: June 15, 1995, 4:40 p.m.

TRD-9507328

Monday-Wednesday, June 19-21, 1995, 1:00 p.m., 3:00 p.m., and 9:00 a. m., respectively.

Wyndham Hotel-Southpark D

Austin

Standing Committee on Policy of the Legislative Council

AGENDA:

- A. Quorum call
- B. Adoption of meeting rules
- C. Adoption of agenda
- AA. Scheduled speakers
- BB. Unscheduled speakers
- D. Written proposals
- E. Review of legislated changes
- F. Performance review recommendations
- G. Staff proposals
- H. New business
- I. Committee action on proposals and recommendations
- J. Awards
- K. Items referred from other committees
- L. Announcements
- M. Adjournment

Contact: Bonnie Northcutt, 23001 Lake Austin Boulevard, Austin, Texas 78713, (512) 471-5883.

Filed: June 16, 1995, 8:09 a.m.

TRD-9507333

Monday-Tuesday, June 19-20, 1995, 3:00 p.m. and 1:30 p.m., respectively.

Wyndham Hotel-Southpark D

Austin

Standing Committee on Athletics of the Legislative Council

AGENDA:

- A. Quorum call
- B. Adoption of meeting rules
- C. Adoption of agenda
- AA. Scheduled speakers
- BB. Unscheduled speakers
- CC. Written proposals
- D. UIL staff reports
- E. Consideration of proposals
- F. New business
- G. Announcements
- H. Adjournment

Contact: Bonnie Northcutt, 23001 Lake Austin Boulevard, Austin, Texas 78713, (512) 471-5883.

Filed: June 15, 1995, 4:40 p.m.

TRD-9507329

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**University of Texas Health Science Center at San Antonio**

Wednesday, June 28, 1995, 3:00 p.m.

7703 Floyd Curl Drive, Room 422A

San Antonio

Institutional Animal Care and Use Committee

AGENDA:

1. Approval of minutes
2. Protocols for review
3. Subcommittee reports
4. Other business

Contact: Molly Greene, 7703 Floyd Curl Drive, San Antonio, Texas 78284-7822, (210) 567-3717.

Filed: June 19, 1995, 4:21 p.m.

TRD-9507460

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**Regional Meetings**

Meetings Filed June 15, 1995

The Andrews Center Board of Trustees met at 2323 West Front Street, Board



Room, Tyler, June 22, 1995, at 3:00 p.m. Information may be obtained from Richard J. DeSanto, P.O. Box 4730, Tyler, Texas 75712, (903) 535-7338. TRD-9507330.

The Brazos Valley Development Council Regional Overall Economic Development Program (OEDP) will meet at 1706 East 29th Street, Bryan, June 28, 1995, at 11:00 a.m. Information may be obtained from Gary Basinger, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 775-4244. TRD-9507303.

The Burke Center Board of Trustees Mental Health Joint Conference Committee will meet at 4101 South Medford Drive, Lufkin, June 27, 1995, at 11:00 a.m. Information may be obtained from Sandra J. Vann, 4101 South Medford Drive, Lufkin, Texas 75901, (409) 639-1141. TRD-9507288.

The Burke Center Board of Trustees will meet at 4101 South Medford Drive, Lufkin, June 27, 1995, at 1:00 p.m. Information may be obtained from Sandra J. Vann, 4101 South Medford Drive, Lufkin, Texas 75901, (409) 639-1141. TRD-9507289.

The Cass County Appraisal District Board of Directors met at 502 North Main, Linden, June 20, 1995, at 7:00 p.m. Information may be obtained from Janelle Clements, P.O. Box 1150, Linden, Texas 75563, (903) 756-7545. TRD-9507309.

The Central Counties Center for MHMR Services Board of Trustees met at 100 East Avenue A, Killeen, June 22, 1995, at 7:00 p.m. Information may be obtained from Eldon Tietje, 304 South 22nd Street, Temple, Texas 76501, (817) 778-4841, Ext. 301. TRD-9507301.

The Dewitt County Appraisal District Appraisal Review Board will meet at 103 Bailey Street, Cuero, June 22, 26, and 29, 1995, at 9:00 a.m. Information may be obtained from Kay Rath, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753. TRD-9507285.

The Eastland County Appraisal District Appraisal Review Board will meet at 900 West Plummer, Eastland, June 29, 1995, at 10:00 a.m. Information may be obtained from Steve Thomas, P.O. Box 914, Eastland, Texas 76448, (817) 629-8597. TRD-9507302.

The Erath County Appraisal District Appraisal Review Board met at 1390 Harbin Drive, Stephenville, June 21-22, 1995, at 9:00 a.m. Information may be obtained from Mitzi Meekins, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-5434. TRD-9507304.

The Garza Central Appraisal District Board of Directors met at 124 East Main, Post, June 22, 1995, at 9:00 a.m. Information may be obtained from Billie Y. Wind-

ham, P.O. Drawer F, Post, Texas 79356, (806) 495-3518. TRD-9507310.

The Gray County Appraisal District Board of Directors met at 815 North Sumner, Pampa, June 22, 1995, at 7:30 a.m. Information may be obtained from Sherri Schaible, P.O. Box 836, Pampa, Texas 79066-0836, (806) 665-0791. TRD-9507332.

The Grayson Appraisal District Appraisal Review Board will meet at 205 North Travis, Sherman, July 10, 1995, at 8:15 a.m. Information may be obtained from Angie Keeton, 205 North Travis, Sherman, Texas 75090, (903) 893-9673. TRD-9507290.

The Grayson Appraisal District Appraisal Review Board will meet at 205 North Travis, Sherman, July 11, 1995, at 8:15 a.m. Information may be obtained from Angie Keeton, 205 North Travis, Sherman, Texas 75090, (903) 893-9673. TRD-9507291.

The Grayson Appraisal District Appraisal Review Board will meet at 205 North Travis, Sherman, July 12, 1995, at 8:15 a.m. Information may be obtained from Angie Keeton, 205 North Travis, Sherman, Texas 75090, (903) 893-9673. TRD-9507292.

The Grayson Appraisal District Appraisal Review Board will meet at 205 North Travis, Sherman, July 13, 1995, at 8:15 a.m. Information may be obtained from Angie Keeton, 205 North Travis, Sherman, Texas 75090, (903) 893-9673. TRD-9507293.

The Gulf Bend Center Board of Trustees met at 1502 East Airline, Victoria, June 22, 1995, at Noon. Information may be obtained from Agnes Moeller, 1502 East Airline, Victoria, Texas 77901, (512) 575-0611. TRD-9507307.

The Hays County Appraisal District Board of Directors met at 1253 Civic Center Loop, San Marcos, June 22, 1995, at 6:00 p.m. Information may be obtained from Lynnell Sedlar, 21001 North IH-35, Kyle, Texas 78640, (512) 268-2522. TRD-9507325.

### ◆ ◆ ◆ Meetings Filed June 16, 1995

The Atascosa County Appraisal District Appraisal Review Board met at Fourth and Avenue J, Poteet, June 20, 1995, at 8:00 a.m. Information may be obtained from Vernon A. Warren, P.O. Box 139, Poteet, Texas 78065, (210) 742-3591. TRD-9507352.

The Austin Travis County MHMR Center Finance and Control Committee met at 1430 Collier Street, Austin, June 20, 1995,

at Noon. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9507353.

The Austin-Travis County MHMR Center Executive Committee met at 1430 Collier Street, Executive Conference Room, Austin, June 22, 1995, at 4:00 p.m. Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78704, (512) 447-4141. TRD-9507427.

The Austin-Travis County MHMR Center Board of Trustees met at 1430 Collier Street, Board Room, Austin, June 22, 1995, at 5:00 p.m. Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78704, (512) 447-4141. TRD-9507426.

The Bastrop Central Appraisal District (Rescheduled from June 15, 1995, at 6:30 p.m.) Board of Directors met at 1200 Cedar Street, Bastrop, June 19, 1995, at 7:30 p.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, (512) 321-3925. TRD-9507343.

The Bastrop Central Appraisal District Appraisal Review Board will meet at 1200 Cedar Street, Bastrop, June 23, 1995, at 8:30 a.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, (512) 321-3925. TRD-9507429.

The Bosque Higher Education Authority, Inc. Board of Directors met at the Brazos Club of Waco, 510 North Valley Mills Drive, Waco, June 20, 1995, at Noon. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9507374.

The Brazos Higher Education Service Corporation, Inc. Board of Directors met at the Brazos Club of Waco, 510 North Valley Mills Drive, Waco, June 20, 1995, at 12:15 p.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9507375.

The Brazos River Authority Lake Management Committee will meet at 4400 Cobbs Drive, Waco, June 23, 1995, at 9:00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441. TRD-9507431.

The Brazos River Authority Special Board will meet at 4400 Cobbs Drive, Waco, June 23, 1995, at 10:00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441. TRD-9507430.

The Brazos Student Finance Corporation Executive Committee met at the Brazos Club of Waco, 510 North Valley Mills

Drive, Waco, June 20, 1995, at 11:30 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9507369.

**The Brazos Valley MHMR Authority** Board of Trustees met at 804 Texas Avenue, Bryan, June 22, 1995, at 1:00 p.m. Information may be obtained from Leon Bawcom, P.O. Box 4588, Bryan, Texas 77803, (409) 822-6467. TRD-9507379

**The Dallas Area Rapid Transit Bylaws Ad Hoc Committee** met in Conference Room "B", 1401 Pacific, Dallas, June 20, 1995, at 11:00 a.m. Information may be obtained from Vanessa A. Knight, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3371. TRD-9507370

**The Dallas Area Rapid Transit Area Chairs Committee** met in Conference Room "B", 1401 Pacific, Dallas, June 20, 1995, at 3:00 p.m. Information may be obtained from Vanessa A. Knight, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3371. TRD-9507371.

**The Deep East Texas Council of Governments Regional Economic Development Committee** met at the Nacogdoches County Exposition Center, 3805 Northwest Stallings Drive, Nacogdoches, June 22, 1995, at 10:00 a.m. Information may be obtained from Rusty Phillips, 274 East Lamar Street, Jasper, Texas 75951, (409) 384-5704. TRD-9507368.

**The Golden Crescent Private Industry Council Oversight Committee** met at 2401 Houston Highway, Victoria, June 19, 1995, at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9507398.

**The Golden Crescent Private Industry Council Executive Committee** met at 2401 Houston Highway, Victoria, June 21, 1995, at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9507399

**The Grayson Appraisal District Board of Directors** will meet at 205 North Travis, Sherman, June 28, 1995, at Noon. Information may be obtained from Angie Keeton, 205 North Travis, Sherman, Texas 75090, (903) 893-9673. TRD-9507378.

**The Heart of Texas Council of Governments Executive Committee** met at 300 Franklin Avenue, Waco, June 22, 1995, at 10:00 a.m. Information may be obtained from Donna Teat, 300 Franklin Avenue, Waco, Texas 76701, (817) 756-7822 TRD-9507345.

**The Hunt County Appraisal District Appraisal Review Board** will meet at 4801 King Street, Greenville, July 3-20, 1995, at

8:30 a.m. Information may be obtained from Shirley Gregory, P.O. Box 1339, Greenville, Texas 75403, (903) 454-3510. TRD-9507386.

**The Jack County Appraisal District Board of Directors** met at 210 North Church Street, Jacksboro, June 20, 1995, at 7:00 p.m. Information may be obtained from Gary L. Zeitler or Vicky L. Easter, P.O. Box 958, Jacksboro, Texas 76458, (817) 567-6301. TRD-9507376.

**The Johnson County Rural Water Supply Corporation Job Description Committee** met at the Corporation Office, 2849 Highway 171S, Cleburne, June 20, 1995, at 5:45 p.m. Information may be obtained from Peggy Johnson, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646 TRD-9507364.

**The Johnson County Rural Water Supply Corporation Board (Regular Meeting)** met at the Corporation Office, 2849 Highway 171S, Cleburne, June 20, 1995, at 6:00 p.m. Information may be obtained from Peggy Johnson, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9507363.

**The Kempner Water Supply Corporation Board of Directors** met at Highway 190, Kempner, June 22, 1995, at 6:30 p.m. Information may be obtained from Donald W. Guthrie, P.O. Box 103, Kempner, Texas 76539, (512) 932-3701. TRD-9507336

**The Leon County Central Appraisal District Appraisal Review Board** met at 103 North Commerce, Corner of Highway 7 and 75, Gresham Building, Leon County Central Appraisal District Office, Centerville, June 22, 1995, at 9:00 a.m. Information may be obtained from Jeff Beshears, P.O. Box 536, Centerville, Texas 75833, (903) 536-2252. TRD-9507433

**The Lower Colorado River Authority Community Resources and Development Committee** met at 3701 Lake Austin Boulevard, Hancock Building, Board Conference Room, Austin, June 20, 1995, at 3:00 p.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3287. TRD-9507415

**The Lower Colorado River Authority Audit Committee** met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, June 21, 1995, and reconvening, if necessary, June 22, 1995, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3287. TRD-9507412.

**The Lower Colorado River Authority Board of Directors** met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, June 21, 1995, and reconvening, if necessary, June 22, 1995, at 9:00 a.m. Information may be obtained from

Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3287. TRD-9507407.

**The Lower Colorado River Authority Community Resources and Development Committee** met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, June 21, 1995, and reconvening, if necessary, June 22, 1995, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3287 TRD-9507414.

**The Lower Colorado River Authority Conservation and Environmental Protection Committee** met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, June 21, 1995, and reconvening, if necessary, June 22, 1995, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3287 TRD-9507413.

**The Lower Colorado River Authority Energy Operations Committee** met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, June 21, 1995, and reconvening, if necessary, June 22, 1995, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3287. TRD-9507409

**The Lower Colorado River Authority Finance and Administration Committee** met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, June 21, 1995, and reconvening, if necessary, June 22, 1995, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3287. TRD-9507411

**The Lower Colorado River Authority Natural Resources Committee** met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, June 21, 1995, and reconvening, if necessary, June 22, 1995, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3287 TRD-9507410.

**The Lower Colorado River Authority Planning and Public Policy Committee** met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, June 21, 1995, and reconvening, if necessary, June 22, 1995, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3287. TRD-9507408.

**The Lower Colorado River Authority Board of Trustees for LCRA's Benefit Plans** met at 3701 Lake Austin Boulevard, Hancock Building, Conference Room H-303, Austin, June 22, 1995, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-4043 TRD-9507406.

**The Lubbock Regional MHMR Center Board of Trustees-Program Committee** met at 1602 Tenth Street, Board Room, Lubbock, June 21, 1995, at Noon. Information may be obtained from Gene Menefee, P.O. Box 2828, Lubbock, Texas 79408, (806) 766-0202. TRD-9507348

**The Mason County Appraisal District Board of Directors** met at 202 Westmoreland, Mason, June 21, 1995, at Noon. Information may be obtained from Deborah Geistweidt, P.O. Box 1119, Mason, Texas 76856, (915) 347-5989. TRD-9507346

**The Mason County Appraisal District Appraisal Review Board** met at 202 Westmoreland, Mason, June 22, 1995, at 9:00 a.m. Information may be obtained from Deborah Geistweidt, P.O. Box 1119, Mason, Texas 76856, (915) 347-5989. TRD-9507367.

**The Montague County Tax Appraisal District Appraisal Review Board** met at 312 Rusk Street, Montague, June 21, 1995, at 8:30 a.m. Information may be obtained from Wanda Russell, P.O. Box 121, Montague, Texas 76251, (817) 894-2081. TRD-9507400.

**The Texas Municipal Asset Pool Board of Directors** will meet at Riverway Bank, Five Riverway, Board Room, Second Floor, Houston, June 27, 1995, at 8:00 a.m. Information may be obtained from Debra J. Hall, P.O. Box 56572, Houston, Texas 77256, (713) 552-2618. TRD-9507344

**The Pecos Higher Education Authority, Inc. Board of Directors** met at the Brazos Club of Waco, 510 North Valley Mills Drive, Waco, June 20, 1995, at 11:45 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9507372

**The San Jacinto River Authority Board of Directors** met at Highway 105 West/Damsite Road, Conroe, June 21, 1995, at 12:30 p.m. Information may be obtained from James Adams, P.O. Box 329, Conroe, Texas 77305, (409) 588-1111. TRD-9507366.

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**Meetings Filed June 19, 1995**

**The Education Service Center, Region VIII Board of Directors** will meet at 2502 Ferguson Road, Hot Biscuit Restaurant, Mt. Pleasant, June 29, 1995, at 6:30 p.m. Information may be obtained from Scott Ferguson, P.O. Box 1894, Mt. Pleasant, Texas 75456-1894, (903) 572-8551. TRD-9507455.

**The Falls County Appraisal District Appraisal Review Board** will meet at the intersection of Highway 6 and 7, Falls County

Courthouse, First Floor, Marlin, June 27, 1995, at 9:00 a.m. Information may be obtained from Joyce Collier, P.O. Box 430, Marlin, Texas 76661, (817) 883-2543. TRD-9507445.

**The Gray County Appraisal District Appraisal Review Board** will meet at 815 North Sumner, Pampa, June 23, 1995, at 9:00 a.m. Information may be obtained from Sherri Schaible, P.O. Box 836, Pampa, Texas 79066-0836, (806) 665-0791. TRD-9507458.

**The Hockley County Appraisal District (Emergency Meeting) Board of Directors** met at 1103 Houston, Levelland, June 19, 1995, at 8:00 p.m. (Reason for emergency: Personnel.) Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654. TRD-9507459.

**The Jack County Appraisal District Appraisal Review Board** will meet at 210 North Church Street, Jacksboro, June 23, 1995, at 9:00 a.m. Information may be obtained from Gary L. Zeitler or Vicky L. Easter, P.O. Box 958, Jacksboro, Texas 76458, (817) 567-6301. TRD-9507461.

**The Lamb County Appraisal District Appraisal Review Board** will meet at 331 LFD Drive, Littlefield, July 12, 1995, at 8:00 a.m. Information may be obtained from Vaughn E. McKee, P.O. Box 950, Littlefield, Texas 79339-0950, (806) 385-6474. TRD-9507453.

**The Lamb County Appraisal District Board of Directors** will meet at 331 LFD Drive, Littlefield, July 13, 1995, at 6:00 p.m. Information may be obtained from Vaughn E. McKee, P.O. Box 950, Littlefield, Texas 79339-0950, (806) 385-6474. TRD-9507454.

**The Lampasas County Appraisal District Appraisal Review Board** met at 109 East Fifth Street, Lampasas, June 22, 1995, at 8:30 a.m. Information may be obtained from Tommy L. Watson, P.O. Box 175, Lampasas, Texas 76650, (512) 556-8058. TRD-9507451.

**The Lee County Appraisal District Board of Directors** will meet at 218 East Richmond Street, Giddings, June 28, 1995, at 9:00 a.m. Information may be obtained from Roy L. Holcomb, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618. TRD-9507442.

**The Lee County Appraisal District Appraisal Review Board** will meet at 218 East Richmond Street, Giddings, July 6, 1995, at 9:00 a.m. Information may be obtained from Delores Shaw, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618. TRD-9507448.

**The Liberty County Central Appraisal District Board of Directors** will meet at 315

Main Street, Liberty, June 28, 1995, at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575, (409) 336-5722. TRD-9507436.

**The Middle Rio Grande Development Council Budget Committee** will meet in the MRGDC Operations Conference Room, 209 North Getty, Uvalde, June 23, 1995, at 3:00 p.m. Information may be obtained from Leodoro Martinez, Jr., P. O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9507457.

**The Upshur County Appraisal District Appraisal Review Board** will meet at Warren and Trinity Streets, Gilmer, June 26, 1995, at 8:00 a.m. Information may be obtained from Louise Stracener, P.O. Box 280, Gilmer, Texas 75644-0280, (903) 843-3041. TRD-9507446.

**The Wood County Appraisal District Appraisal Review Board** will meet at 217 North Main, Quitman, June 26-30, 1995 at 9:00 a.m. Information may be obtained from W. Carson Wages or Lou Brooke, P.O. Box 518, Quitman, Texas 75783-0518, (903) 763-4891. TRD-9507444.

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**Meetings Filed June 20, 1995**

**The Bexar Appraisal District Board of Directors** will meet at 535 South Main, San Antonio, June 26, 1995, at 5:00 p.m. Information may be obtained from Beverly Houston, P.O. Box 830248, San Antonio, Texas 78283-0248, (210) 224-8511. TRD-9507465.

**The Hale County Appraisal Review Board Appraisal Review Board** will meet at 302 West Eighth, Plainview, July 6, 7, and 10, 1995, at 9:00 a.m. Information may be obtained from Linda Jaynes, P.O. Box 329, Plainview, Texas 79073, (806) 293-4226. TRD-9507462.

**The Johnson County Central Appraisal District Appraisal Review Board** will meet at 109 North Main, Suite 201, Room 202, Cleburne, June 28-30, 1995, at 9:00 a.m. Information may be obtained from Don Gilmore, 109 North Main, Cleburne, Texas 76031, (817) 645-3986. TRD-9507463.

**The Johnson County Central Appraisal District Appraisal Review Board** will meet at 109 North Main, Suite 201, Room 202, Cleburne, July 5-7, 1995, at 9:00 a.m. Information may be obtained from Don Gilmore, 109 North Main, Cleburne, Texas 76031, (817) 645-3986. TRD-9507464.

**The Sabine River Authority Executive Committee** will meet at Fredonia Hotel, 200 Fredonia Street, Nacogdoches, June 27, 1995, at 10:00 a.m. Information may be obtained from Sam F. Collins, P.O. Box

579, Orange, Texas 77630, (409) 746-3200.  
TRD-9507470.



# IN ADDITION

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The **Texas Register** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

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## Texas Department of Commerce

### Program Year 1994 Performance

#### Standards and 5.0% Incentive Grant System

As authorized by the Texas Labor Code, §301.051 and §301.052, and pursuant to state Job Training Partnership Act (JTPA) Rules 10 TAC §187.161, §187.162, §187.163, and §187.164, the Texas Department of Commerce (the Department) provides notice of the Program Year 1994 Performance Standards and 5.0% Incentive Grant System for Title IIA and IIC JTPA programs. As a general State policy, Program Year 1995 5.0% incentive funds will be used to award incentive grants to SDAs based on Program Year 1994 performance against DOL, Federally mandated, and State standards established for JTPA Title IIA and Title IIC programs.

To ensure the development of JTPA programs as performance-driven systems, the State's 5.0% incentive funds will be primarily awarded to Service Delivery Areas (SDAs) on the basis of their exceeding minimum performance levels of the following:

Department of Labor (DOL) performance standards:

- (1) Adult follow-up employment rate,

- (2) Adult follow-up weekly earnings,
- (3) Adult welfare follow-up employment rate,
- (4) Adult welfare follow-up weekly earnings,
- (5) Youth entered employment rate,
- (6) Youth employability enhancement rate;

Federally mandated standards:

- (1) Model Out-of-School Youth programs having a demonstrated record of success and serving more than the minimum required percentage of out-of-school youth,
- (2) Adult Employer-Assisted Benefits Rate; and

State performance standards:

- (1) Adult High Wage Placements, and
- (2) Serving Job Opportunities and Basic Skills Training (JOBS) participants.

The minimum performance levels are:

For DOL performance standards, the minimum performance level shall be the adjusted 50th percentile of national performance. SDAs with actual performance between the adjusted 50th percentile of national performance and the lower confidence interval inclusive shall be considered to have met but not exceeded the standard. (See Table 1).

Table 1

	Column A	Column B	Column C	Column D	Column E	Column F	Column G	Column H	Column I
	Actual (from MIS Performance Report)	Predicted (from MIS Performance Report)	Tolerance Range	Lower Confidence Interval (B minus C)	50th Percentile of National Performance minus National Standard	Adjusted 50th Percentile of National Performance (B plus E)	65th Percentile of National Performance minus National Standard	Adjusted 65th Percentile of National Performance (B plus G)	Status (See below)
Adult Follow-up Employment Rate			32		43		69		
Adult Follow-up Weekly Earnings			\$12		\$5.60		\$14.10		
Adult Welfare Follow-up Employment Rate			41		62		95		
Adult Welfare Follow-up Weekly Earnings			\$13		\$6.70		\$16.10		
Youth Entered Employment Rate			4.9		0.9		4.6		
Youth Employability Enhancement Rate			4.7		9.7		14.0		

If Column A is:

- greater than Column H then the SDA is EXCEEDING the standard at Tier II level.
- greater than Column F but less than or equal to Column H then the SDA is EXCEEDING the standard at Tier I level.
- greater than or equal to Column D and less than or equal to Column F then the SDA is MEETING the standard.
- less than Column D then the SDA is FAILING the standard.

For the Adult Employer-Assisted Benefits Rate, the minimum performance level is 57% adjusted to account for availability of health benefits in the area based on variations in area industry composition. (See Table 2).

TABLE 2

	ADULT EMPLOYER ASSISTED BENEFITS RATE (PERCENT OF PLACEMENTS)	ADULT HIGH WAGE PLACEMENTS (MINIMUM QUALIFYING WAGE)	JOBS PARTICIPANT RATE		
			AFDC (PERCENT OF TERMINEES)	JOBS TIER I (PERCENT OF TERMINEES)	JOBS TIER II (PERCENT OF TERMINEES)
SDA					
NORTH EAST TEXAS	57.4	\$9.22	21.5	10.1	15.1
CITY OF AUSTIN	57.1	\$10.75	15.6	6.2	9.3
BRAZOS VALLEY PIC	54.5	\$8.73	11.6	4.5	6.8
CONCHO VALLEY COG	54.7	\$8.64	16.8	6.0	9.1
DEEP EAST TEXAS COG	56.4	\$8.48	20.3	5.1	7.7
EAST TEXAS COG	57.2	\$9.47	22.9	9.1	13.6
CITY OF FORT WORTH	57.9	\$11.60	25.5	15.5	23.3
HEART OF TEXAS COG	56.3	\$9.02	20.1	7.1	10.7
CITY OF HOUSTON	56.5	\$11.60	23.6	10.2	15.3
HOUSTON-GALVESTON	57.6	\$11.60	23.5	8.4	12.6
MIDDLE RIO GRANDE	52.4	\$7.67	24.5	4.8	7.1
NORTH CENTRAL TEXAS	57.7	\$11.60	20.5	8.9	13.3
TEXAS PANHANDLE	54.4	\$9.58	21.0	4.7	7.0
PERMIAN BASIN	57.6	\$10.58	21.5	6.5	9.7
ALAMO	55.7	\$9.98	22.9	7.7	11.6
COLLIN COUNTY	57.8	\$11.60	21.5	11.2	16.8
SOUTH EAST TEXAS	57.5	\$11.19	22.7	9.8	14.7
SOUTH PLAINS	51.3	\$9.04	21.2	3.6	5.3
TARRANT COUNTY	58.7	\$11.60	22.3	10.4	15.6
LUBBOCK - GARZA	54.6	\$9.04	21.9	8.9	13.4
GOLDEN CRESCENT	55.3	\$9.23	22.2	6.2	9.2
TEXOMA	57.6	\$9.86	24.0	8.8	13.3
RURAL CAPITAL	56.6	\$10.75	13.4	3.2	4.8
SOUTH TEXAS PIC	54.4	\$7.65	17.1	3.0	4.4
WEST CENTRAL TEXAS	55.2	\$8.57	19.1	4.5	6.7
CENTRAL TEXAS COG	55.6	\$9.46	24.0	8.9	13.3
HIDALGO-WILLACY	53.1	\$7.66	27.2	7.9	11.9
RURAL COASTAL BEND	54.7	\$8.56	25.2	6.0	9.1
DALLAS COUNTY	58.4	\$11.60	24.6	11.9	17.8
NORTH TEXAS	56.1	\$8.93	20.7	6.1	9.2
CORPUS CHRISTI	55.8	\$8.56	26.8	7.2	10.8
CITY OF DALLAS	56.5	\$11.60	26.6	16.3	24.4
CAMERON COUNTY	54.1	\$7.66	21.2	6.7	10.0
HARRIS COUNTY	58.8	\$11.60	27.7	8.5	12.8
UPPER RIO GRANDE	56.9	\$9.07	19.9	6.0	8.9



For the Model Out-of-School Youth Incentive, incentive funds will be awarded for implementing model programs that achieve demonstrated success in terms of participant outcomes applying the Youth/Work strategy described herein. Seventy percent demonstrated success in the following outcomes must be verified through the CMS:

- (1) Entered Employment.
- (2) Returned to School.
- (3) Remained in School.
- (4) Completed Major Level of Education.
- (5) Entered Non-Title II Training-"Certificate" or Apprenticeship Program.

To be eligible for incentive funds an SDA must meet at least four of the following requirements, and the requirement to serve 51% out-of-school youth:

- (1) Each youth must participate in a work based activity, such as work experience, limited internship, job shadowing or mentoring with adult supervision in the work place.
- (2) Basic skills instruction must include some curriculum based on the DOL Secretary's Commission on Achieving Necessary Skills (SCANS) competencies or foundations.
- (3) Programs must allow for attainment of a high school diploma or GED by participants.
- (4) Occupational skills training must be provided.
- (5) Supportive services must be provided if need is verified by the Individual Service Strategy (ISS), and may be provided through an agreement with another agency.
- (6) Programs must attempt to instill a sense of community responsibility in youth.

An SDA's Model Out-of-School Youth program activities may be subject to verification by the Department. Positive terminations must be verified through the CMS. For that purpose, each participant in a Model Out-of-School Youth program must be identified by "MY" in the Participant Coding Sheet activity record Optional Field 1, either in the initial Title IIC (grant 16) Objective Assessment activity assignment or the first employment/training or services activity under Title IIC (grant 16) provided thereafter.

SDAs with programs to be considered for this incentive award with less than 15 terminations during Program Year 1994 must notify the Department. The Department will determine eligibility for the incentive award by considering the number of terminations from the Model Out-of-School Youth program in relation to the total number of out-of-school youth terminations.

SDAs meeting the criteria may submit an application for Model Out-of-School Youth incentive funds to the Department not later than July 14, 1995. An SDA's application will provide a brief program description, the total number of participants, the number of positive terminations, and detail which of the six criteria have been met.

For serving JOBS participants, the minimum qualifying performance levels are twice the incident of JOBS participants in the poverty population, and serving AFDC recipients at rates at least as high as their incidence in the eligible poverty population. The percentage of JOBS participants served shall be calculated as the number of terminees (adult and youth) who were JOBS participants expressed as a percentage of all terminees. (See Table 2).

For the Adult High Wage Placement Incentive, the minimum qualifying performance level is the Family Hourly Wage defined in the Smart Jobs Act, adjusted for regional variations. The placement must be for employment of at least 20 hours per week. (See Table 2).

#### Allocation of 5.0% Incentive Funds.

Ten percent of the 5.0% incentive funds will be set aside for the Adult High Wage Placement incentive. Maximum potential SDA shares of the remaining 5.0% incentive funds will be proportionate to the SDA share for Program Year 1994, of the State's Title IIA and Title IIC allocation. Funds not needed for performance against the Serving JOBS Participants Standard will be divided evenly between the Model Out-of-school Youth Standard and the Adult Employer-assisted Benefits Standard.

If the incentive awards total is less than the total amount allocated for incentives, the balance will be prorated by award share, as additional incentive grant funds, to those SDAs eligible for an incentive award. Total incentive awards will not exceed the total amount allocated for incentives (not less than 67% of the Title IIA and IIC 5.0% allocation). Not more than 25% of the total incentive funds distributed will be for State standards.

#### Eligibility/Special Restrictions.

If less than 65% of an SDA's Title IIA participants are hard-to-serve, as defined by DOL, the SDA will be ineligible for incentive grants based on performance during Program Year 1994.

If less than 65% of an SDA's Title IIC participants are hard-to-serve, as defined by DOL, the SDA will be ineligible for incentive grants based on performance during Program Year 1994.

If an SDA fails three or more of the six DOL performance Standards or fails both of the DOL youth standards it will be ineligible for incentive grants based on performance during that year.

#### Weighting.

For Program Year 1994, the following ten performance criteria are weighted/ranked equally at 10.0% each:

- \* Adult follow-up employment rate,
- \* Adult follow-up weekly earnings,
- \* Adult welfare follow-up employment rate,
- \* Adult welfare follow-up weekly earnings,
- \* Youth entered employment rate,
- \* Youth employability enhancement rate,
- \* Model out-of-school youth programs having a demonstrated record of success,
- \* Adult Employer-assisted Benefits rate,
- \* Adult High Wage Placements, and
- \* Serving JOBS participants at rates exceeding incidence in eligible population.

#### Distribution Mechanism.

For the DOL performance standards, serving JOBS participants standard, and model out-of-school youth standard, two funding tiers will be included in the Program Year 1994 policy, allowing SDAs the opportunity to increase their incentive award for higher performance levels.

For the DOL performance standards, serving JOBS participants standard, and model out-of-school youth standard, 85% and 15% of the 5.0% incentive funds will be allocated to Tiers I and II, respectively.

To qualify for funds in a given tier, the DOL performance standards must be exceeded by the following required performance levels.

Tier I. above the adjusted 50th percentile of national performance.

Tier II: above the adjusted 65th percentile of national performance.

The degree by which the serving JOBS participants standard must be exceeded to qualify for funds in a given tier are as follows:

Tier I serving JOBS participants at rates greater than twice their incidence in the eligible poverty population.

Tier II: serving JOBS participants at rates greater than three times their incidence in the eligible poverty population.

For the model out-of-school youth standard.

Tier I: the SDA must meet at least four of the six requirements, and serve at least 51% out-of-school youth.

Tier II, the SDA must meet five or more of the six requirements, and serve at least 51% out-of-school youth.

SDAs which exceed their adjusted Adult Employer-assisted Benefits rate will receive the full amount available to the SDA for this standard.

The funds set aside for performance on the State Adult High Wage Placement Standard will be divided among SDAs based on their proportionate share of all adult high wage placements

Issued in Austin, Texas, on June 16, 1995.

TRD-9507402 Brenda F. Arnett  
Executive Director  
Texas Department of Commerce

Filed: June 16, 1995

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**Texas Department of Criminal Justice**  
**Request for Proposal**

Pursuant to authority granted by Subchapter A, Chapter 495, Texas Government Code, hereinafter "the Act," the Texas Department of Criminal Justice (TDCJ) hereby requests all eligible interested parties to submit a Proposal for the operation and management of one, two, or three 520 bed secure correctional facilities housing minimum/medium custody inmates and located at the Cleveland facility, the Bridgeport facility and the Kyle facility. The purpose of the facilities is to provide the Institutional Division of the TDCJ with secure regionally based correctional facilities designed to successfully reintegrate inmates into society as provided in the Act.

Each proposing party must establish that it is capable of providing stand alone services (with minimal support required from TDCJ) at the proposed TDCJ facility which will, at a minimum, comply with federal constitutional standards and applicable court orders (including Ruiz); and receive and retain, as an individual facility, accreditation from the American Correctional Association (ACA). Where conflicts exist between the language of an applica-

ble court order and the ACA standards, the standard as determined by TDCJ will prevail. Additionally, each inmate at a facility should be engaged in substantially full-time work and/or educational programming.

Should an operating contract be negotiated with a successful proposer such operating contract will be effective on the date specified in the Notice to Proceed issued by TDCJ, and will be for a term of five years with an option for TDCJ to cancel after three years. Any such operating contract shall provide that it will terminate on the last day of any contract year prior to any contract year for which the Texas Legislature fails to appropriate funds for payments required by TDCJ under such operating contract.

A request for a copy of the request for proposal or questions relating to the request for proposal should be addressed to Bill Barry (409) 294-6451. Sealed Proposals will be received by the Texas Department of Criminal Justice until Noon, Monday, July 13, 1995. Such proposals must be typed or printed on standard (8 1/2" x 11") paper, pages numbered, a table of contents included in the required format and submitted to: William J. Barry, Site Planning and Special Projects Director, Texas Department of Criminal Justice, Engineering Directorate Headquarters, P.O. Box 99 (Spur 59 off Hwy 75N), Huntsville, Texas 77340, Attention: Correctional Facility Proposal.

The Texas Department of Criminal Justice reserves the right to reject any or all proposals or portions of proposals received in response to this request for proposal. Submission of proposal has the effect of waiving proprietary rights or confidentiality. TDCJ reserves the right to use for its benefit, ideas contained in the proposals submitted. TDCJ is not liable for any costs incurred by applicants or prospective applicants in the preparation, formulation or presentation of proposals.

Issued in Austin, Texas, on June 19, 1995.

TRD-9507105 Carl Reynolds  
General Counsel  
Texas Department of Criminal Justice

Filed: June 19, 1995

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**East Texas Council of Governments**  
**Request for Proposal**

Pursuant to Texas Civil Statutes, Article 2368A, the East Texas Council of Governments (ETCOG) is in the process of selecting a certified public accountant firm to perform a fiscal year audit of federal, state, and local grants and contracts administered by ETCOG for the period October 1, 1994-September 30, 1995.

The certified public accountant firm selected will be expected to meet the requirements set forth in Office of Management and Budget (OMB) Circular A-128, Audits of State and Local Governments (*Federal Register*/Volume 50, Number 87, May 6, 1985).

Those firms interested in receiving a Request for Proposal (RFP) package should contact Judy Durland, Director of Finance, East Texas Council of Governments, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. The deadline for requesting an RFP package is June 27, 1995.

The contract will be awarded based on the applicant's abilities, experience, and qualifications. Selection will be made by the ETCOG Executive Committee.

Issued in Kilgore, Texas, on June 12, 1995.

TRD-9507173

Glynn Knight  
Executive Director  
East Texas Council of Governments

Filed: June 13, 1995

## Texas Department of Health Requests for Proposals

**Project Goals.** The EMS Local Projects Grant program was established in 1990 for the purpose of improving Emergency Medical Services (EMS) throughout Texas by providing money and technical assistance to eligible organizations. This program is administered by the Bureau of Emergency Management (Bureau) of the Texas Department of Health (department). The program provides reimbursement for approved costs incurred for a specific project completed during a specified contract period October 1, 1995-August 31, 1996.

The department is accepting proposals for local EMS projects to increase the availability and quality of emergency prehospital health care. Applicable projects are those which, upon completion, can demonstrate a positive impact on the delivery of emergency prehospital health care in the area that it was administered. Types of projects that are acceptable for funding include EMS certification training, specialty training related to prehospital health management, EMS equipment, research topics related to the delivery of emergency prehospital health care, computers for data collection, public information and education programs, continuing education programs, ambulances, and system development programs.

**Performance Requirements.** Contracts will be developed between the department and successful applicants. The contract will be for eleven months and will detail items such as budget, reporting requirements, and any other specifics that might apply to the award. All registered, licensed, or certified organizations as determined by the Bureau (e.g. EMS providers, First Responder groups) must maintain the appropriate credentials throughout the specified contract period. The grant provides reimbursement for an approved project and associated costs incurred after the award is made and during the stated contract period only. Reimbursement may be withheld and a request for return of funds may occur if any of the stated requirements of this grant are not met. For EMS certification projects, proof of successful certification must be submitted within 45 days following the end of the contract period. In addition, it will be the responsibility of the grant recipient to maintain a record of all costs and activities related to the administration of the project. Projects must start on or after October 1, 1995 and be completed prior to August 31, 1996.

**Applicant Eligibility.** Proposals will be accepted from not-for-profit organizations directly or indirectly responsible for providing or impacting emergency prehospital health care (e.g., EMS providers, registered first responder organizations, EMS training programs, local governments, and other organizations impacting emergency prehospital health care). Registered First Responder organizations are those which have the proper Bureau First Responder paperwork, based on 25 Texas Administrative Code, §157.21 First Responder Organization Registry, on file and entered into the department network as active no later than October 1, 1995. Failure to comply with this requirement of the

grant constitutes grounds for revocation of any award made as part of the Local Projects program.

**Range of Financial Assistance/Matching Fund Requirements.** The average award from previous years was approximately \$5,150 with a range of \$450 to \$82,000. The maximum grant award for F.Y. 94-95 was \$25,000. The amount of available funding for this period will be up to \$1.3 million.

Matching funds may come from sources such as private donations, other state grants, federal grants, or private foundations. Matching funds will be required for the following: any individual equipment item with a useful life of more than one year and a cost greater than \$1,000 (including shipping costs) requires 50% matching funds, with the following exceptions: fax machines, cameras, video recorders/players, computers, and printers. These items require a 50% match if the individual cost exceeds \$500 and the useful life is greater than one year.

**Advanced Life Support Projects.** Any project that involves advanced life support (ALS) will require the signature of a medical director on the application page. ALS projects include, but are not limited to items such as the purchase of monitor/defibrillator/pacer units, automated external defibrillators, and ALS training.

**Initial Certification Courses/Continuing Education Courses.** Any project involving the hosting of an initial certification course or continuing education course will require documentation indicating the completion of a self study. If a self study has not been completed, include documentation indicating the status of self study preparation/completion.

**Types of Assistance.** The program only provides reimbursement for approved costs associated with the implementation of the approved project. Projects will be funded until the funds are exhausted or preset limits are reached. Examples of costs that are not applicable for funding include items such as salaries, fringe benefits, disposable supplies, and day to day operating expenses (e.g. fuel, insurance, loan payments, rent). In addition, land purchases or building funds do not qualify as an applicable project under this program.

In cases where a project is not completed or the full allocation of funding is not used, the department may redistribute funds at its discretion. The department reserves the right to fund a project at any level it feels appropriate, according to the availability of funds and justification for need as presented in the proposal. Any costs incurred prior to October 1, 1995 will not be eligible for reimbursement.

**Application Procedure.** Applicants must submit a proposal which includes the following information: a description of the organization and service area; a complete, specific description of the problem; a detailed explanation of what the proposed project is, how much it will cost, what the department's share of the project will be, and what the benefits will be following completion of the project; an itemized budget for the project; the willingness and ability of the organization to provide 50% matching funds on applicable items as specified in the section titled "Range of Financial Assistance"; and how the benefits or impact of the project will be measured and reported.

Proposals should be typed or computer generated on letter sized paper following the format listed above and not exceed five pages in length. Additionally, the applicant may submit five additional pages of supporting documen-

tation, e.g. letters of support, maps, etc. The fill in the blank application, included in the grant information packet, must be completed and returned with the unbound proposal. The original and two copies of the application and proposal should be submitted by mail to: Gene Weatherall, Chief, Bureau of Emergency Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, Attention: Local Projects Grant Program.

The application and proposal may be faxed to (512) 834-6736. Any application that is faxed will still require the original to be sent by mail to the address above. Once an application and proposal is received a confirmation notice will be sent within two weeks that will note receipt and, if necessary, request further information necessary to evaluate the proposal.

**Deadlines.** The deadline for submitting the proposal and application will be 5:00 p.m., Thursday, August 31, 1995. Only those applications that are received in the office or postmarked by this date and time will be reviewed, regardless of the circumstances. Applications may be mailed, hand delivered, or faxed. If delivered by hand the proposal must be taken to the Exchange Building, Second floor, Bureau of Emergency Management, 8407 Wall Street, Suite S220, Austin, Texas, no later than the specified deadline.

**Evaluation Process and Criteria.** Proposals will be reviewed and scored based on the information provided by the applicant. Evaluation criteria includes, but is not limited to, service area, type of organization, type of project, total cost of project, and the ability of the project to be completed in the required period of time. Consideration will be given in the following areas: the applicants previous contract experiences with this grant program; not-for-profit EMS provider or first responder; EMS agencies participating in their Regional Advisory Council; volunteer organizations; groups providing satellite training programs (training conducted at remote sites other than the main campus); services that are upgrading their capabilities; agencies in rural or frontier areas of the state that are implementing a new service or upgrading their service; organizations that have been funded less than three times through this program; and public education programs.

Proposals will be reviewed to ensure that all budget items requested are applicable and appropriate, matching funds are available, and implementation of the proposed project is possible. Each applicant will be given a cumulative score based on this assessment of their proposal. Tentative approval will be given by the Chief of the Bureau of Emergency Management and the Associate Commissioner, for Health Care Quality and Standards. Final approval will be given by the Commissioner of Health or his appointed agent. All projects not funded will remain active until the end of the funding cycle for consideration in the event funding becomes available.

**Public Education and Information Statement.** The department strongly supports public education programs such as CPR courses for local communities. Though not a prerequisite for this grant, the department encourages all applicants to offer or host such courses. For additional information contact the EMS Local Projects Grant Program, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6700 or log onto the EMS Electronic Bulletin Board at (512) 834-6638 and refer to the grants menu.

Issued in Austin, Texas on June 15, 1995.

TRD-9507281 Susan K. Steeg  
General Counsel  
Texas Department of Health

Filed: June 15, 1995

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**Purpose.** The Texas Department of Health (department) is requesting proposals (RFP) for the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) client service delivery in five geographic sectors of Harris County located in Public Health Region 6.

**Description.** The department is seeking contractors to expand client awareness of existing EPSDT health services and to stimulate EPSDT client use of preventative services so that young people in the EPSDT population can receive medical and dental care before health problems become chronic, and irreversible damage occurs. The department will use the competitive procurement process to select one contractor to provide client outreach, information, and support services in each of the five geographic sectors of Harris County, or for a combination of sectors.

**Eligible Applicants.** Eligible offerors include government entities, private nonprofit and for-profit agencies, partnerships, and sole proprietorships.

**Limitations.** Funding for selected proposals will depend upon available federal and/or state appropriations. The department reserves the right to reject any and all offers received in response to the RFP and to cancel the RFP if it is deemed in the best interest of the department.

**Term.** The tentative effective date for the contract(s) is September 1, 1995. Renewal of the competitively procured contract(s) usually occurs at the beginning of each state fiscal year (September 1). At its option, the department may negotiate the renewal or extension of any contract(s) on a noncompetitive basis for a total contract duration not to exceed 48 months.

**Deadlines.** All proposals to be considered for funding through this RFP must be received by 4:30 p.m. on July 24, 1995, at the Texas Department of Health, Public Health Region 6, EPSDT Program, 10500 Forum Place Drive, Houston, Texas 77036 (Attention: Jerry Collier). Proposals received after this deadline will not be accepted. Faxes will not be accepted.

**Evaluation and Selection.** A program evaluation selection committee designated by the department will rank and score the proposals. The evaluation for this RFP will be based upon the following criteria: offeror organization and staffing; offeror experience and expertise; service delivery management and administrative approach; and budget feasibility and cost.

**Contact person.** To obtain a complete copy of the RFP, please contact Jerry Collier, Texas Department of Health, Public Health Region 6, EPSDT Program, 10500 Forum Place Drive, Houston, Texas 77036, (713) 414-6337.

Issued in Austin, Texas, on June 16, 1995.

TRD-9507387 Susan K. Steeg  
General Counsel  
Texas Department of Health

Filed: June 16, 1995

## Texas Higher Education Coordinating Board

### Request for Proposals

The Texas Higher Education Coordinating Board and the Texas Education Agency are requesting proposals from nonprofit organizations, institutions of higher education, private companies, and individuals for the administration of the testing portion of the Texas Academic Skills Program (TASP) Test for students attending public postsecondary institutions of learning in the state.

The objective of the service is to administer, score and report the TASP Test at no cost to the state of Texas. The contractor will develop new test items in accordance with sound psychometric practice. The contractor will involve Texas educators in the development of all new test items. All items and writing prompts must be validated for the purpose for which they are designed and must be pilot tested prior to administration as operational items. The contractor will conduct on-going research to insure that test items, writing prompts, and administration procedures are free of bias. The contractor will administer and score the Stanford Achievement Test, Advanced 2, in lieu of the TASP Test for qualified deaf students and required by Texas Education Code, §5.3061. The contractor will conduct research into the feasibility of implementing a computer adaptive TASP Test at selected sites by the fall semester, 2000. The contractor will consult with the THECB and TEA staff to determine such specifications, psychometric issues, production, and comparisons as may be necessary for the continuance and development of the Texas Academic Skills Program. The contractor will develop and make available to institutions a "Pre-TASP Test"

Proposers should plan for a starting date no earlier than October 2, 1995 and ending no later than August 31, 2006. All activities performed under this RFP will be done at no cost to the state. The contractor will recoup expenses from examinee fees. Proposals will be selected on the ability of each proposer to carry out all requirements contained in the RFP. The THECB and TEA will base its selection on, among other things, the demonstrated competence and qualifications of the proposer and on the reasonableness of the proposed fee. The THECB and TEA reserve the right to select from the highest ranking proposals those that address all requirements in the RFP. The THECB and TEA are not obligated to execute a resulting contract, provide funds, or endorse any proposal that is submitted in response to this RFP. This RFP does not commit the THECB or TEA to pay any costs incurred before a contract is executed. The issuance of this RFP does not obligate the THECB or TEA to award a contract or pay any costs incurred in the preparation of a response. Proposals must be received in the Texas Education Agency's Document Control Center by 5:00 p.m. Friday, August 25, 1995, to be considered.

A copy of the complete RFP #701-95-033 may be obtained by writing the TASP Office at the Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711-2788, or by calling (512) 483-6330. Please refer to the RFP number in your request. For clarifying information about the RFP, contact Dr. Ronald G. Swanson, TASP Director, Texas Higher Education Coordinating Board, (512) 483-6330.

Issued in Austin, Texas, on June 15, 1995.

TRD-9507306

James McWhorter  
Assistant Commissioner for Administration  
Texas Higher Education Coordinating Board

Filed: June 15, 1995

## Texas Department of Housing and Community Affairs

### Public Notice--Community Food and Nutrition Program

The Texas Department of Housing and Community Affairs (TDHCA) announces the availability of funds under the Community Food and Nutrition Program (CFNP). TDHCA has received funds in the amount of \$349,539 from the United States Department of Health and Human Services (HHS) for federal fiscal year 1996. The Department will allocate funds through a statewide competitive Request For Proposal (RFP) process and the deadline for receipt of RFPs is July 31, 1995. CFNP is authorized by the Community Services Block Grant Act, §681A, Public Law 97-35, as amended.

TDHCA will utilize the CFNP for one or more of the legislatively mandated program purposes, which are to: coordinate existing private and public food assistance resources to better serve low-income communities; assist low-income communities to identify potential sponsors of child nutrition programs and initiate programs in unserved and under-served areas; and develop innovative approaches at the State and local levels to meet nutritional needs of low-income individuals and families.

TDHCA will award funds to local governments and private nonprofit organizations based on a statewide competitive request for proposal process. Applicants will be required to propose projects that address at least one of the legislatively designed purposes, that are statewide in scope and represent a comprehensive and coordinated effort to alleviate hunger within the State. Applicant will be encouraged to propose projects and activities that expand and enlarge upon other outreach activities, or that generate additional funds and resources from other sources.

TDHCA intends to continue to fund, through the most appropriate agency, the Texas Summer Food Services Program Outreach Project, Share Our Surplus Network, and Hunters for the Hungry in a manner similar to past operation. These projects will continue to exist and be available to low-income Texans through TDHCA CFNP grant funds. Additionally, TDHCA is interested in funding a pilot project, creating Community Gardens and Farmers Markets for the benefit of low-income and needy families and which can be replicated statewide.

To receive a CFNP RFP, write to: Community Services Section, Attention: Eddie Fariss, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, or call the Community Services Section at (512) 475-3950.

Issued in Austin, Texas, on June 14, 1995.

TRD-9507234

Henry Flores  
Executive Director  
Texas Department of Housing and  
Community Affairs

Filed: June 14, 1995

## Texas Department of Human Services Announcement of Availability of Funds

The Department of Human Services (DHS) Family Violence Unit announces the availability of funds to provide non-residential services to the victims of domestic violence. DHS has up to \$90,500 in funds for the provision of non-residential services to victims of domestic violence in Texas, pursuant to the Family Violence Prevention and Services Program, U.S. Department of Health and Human Services Program Announcement Number OCS 93-05.

Funds will be awarded on a competitive basis to the applicant(s) who can best demonstrate the ability to efficiently deliver services to the victims of domestic violence, as outlined in the announcement specifications. A maximum of \$20,000 will be awarded per individual grant award.

Applicant agencies must be private, non-profit 501(c)(3) organizations whose primary service is for victims of family violence, or who have an identifiable family violence victim program which has been in operation for a minimum of two years.

To obtain detailed specifications and background information regarding this announcement, contact Juan Antonio Flores, Family Violence Unit, Texas Department of Human Services, 9101 Burnet Road, Suite 216, Austin, Texas 78758, (512) 873-2400. Requests may be made via fax at (512) 873-2420.

Application Deadline: Proposals must be received no later than 4:00 p.m. Central Standard Time, July 30, 1995.

Issued in Austin, Texas, on June 16, 1995.

TRD-9507347 Nancy Murphy  
Section Manager, Media and Policy  
Services  
Texas Department of Human Services

Filed: June 16, 1995

## Texas Department of Insurance Company License

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application for a name change in Texas for Voyager Guaranty Insurance Company, a foreign fire and casualty company. The proposed new name is Triton Insurance Company. The home office is in St. Louis, Missouri.

Application for a name change in Texas for Principal Casualty Insurance Company, a foreign fire and casualty company. The proposed new name is Atlanta Specialty Insurance Company. The home office is in Des Moines, Iowa.

Application for a name change in Texas for SMA Life Assurance Company, a foreign life, accident and health company. The proposed new name is Allmerica Financial Life Insurance and Annuity Company. The home office is in Dover, Delaware.

Application for a name change in Texas for State Mutual Life Assurance Company of America, a foreign life, accident and health company. The proposed new name is First

Allmerica Financial Life Insurance Company. The home office is in Worcester, Massachusetts.

Application for incorporation in Texas for The Home Insurance Company of Texas, a domestic fire and casualty company. The home office is in Houston, Texas.

Application for a name reservation of a U.S. Branch in Texas for Austin Insurance Company, Ltd., an alien fire and casualty company. The home office is in Bedford, Texas.

Any objections must be filed within 20 days after this notice was filed with the Texas Department of Insurance, addressed to the attention of Cindy Thurman, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

Issued in Austin, Texas, on June 15, 1995.

TRD-9507286 Alicia M. Fectel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: June 15, 1995

## Notice of Public Hearing

The Commissioner of Insurance of the Texas Department of Insurance will consider the adoption of amendments to the Plan of Operation for Texas Automobile Insurance Plan Association, pursuant to Article 21.81. Docket Number 2151 is scheduled for 1:30 p.m. on June 28, 1995, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas.

The amendment to §3.A.3 deletes a statutory eligibility criterion in accordance with House Bill 1472. Amendments to §7 and §13.B.3 delete provisions that allowed an optional extended assignment period which conflict with new §17. Amended §12.B.6 establishes the "producer review panel" which will act as a hearings process for complaints against producers. Amended §16.K.4 eliminates an option which conflicts with new §17. New §17 provides for Take-Out Plans, and includes a prescribed form to make the offer of voluntary coverage.

For further information or to request a copy of the proposed amendments, please contact Angie Arizpe at (512) 463-6327 (reference number A-0695-10).

Issued in Austin, Texas, on June 19, 1995.

TRD-9507443 Alicia M. Fectel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: June 19, 1995

## Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of The Loomis Company, a foreign third party administrator. The home office is in Wyomissing, Pennsylvania.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

Issued in Austin, Texas, on June 15, 1995.

TRD-9507287 Alicia M Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: June 15, 1995

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**Texas Natural Resource Conservation  
Commission**

**Notices of Application for Permits to  
Appropriate Public Waters of the State  
of Texas**

The following notices of application for permits to appropriate Public Waters of the State of Texas were issued during the period of June 9-16, 1995.

MUENSTER WATER DISTRICT; for an extension of time to commence and complete construction of a dam and reservoir pursuant to Texas Water Code, §11.145 and TNRCC Rules 30 TAC §§295.1, et seq. Pursuant to 30 TAC §295.159, the Commission will also consider whether the applicant demonstrated sufficient due diligence and had justification for the delay of this project. Certificate Number 08-2323 was issued to Muenster Water District on July 22, 1983 and, based on Water Use Permit Number 3204, authorizes the construction and maintenance of a dam creating a 4,700 acre-foot capacity reservoir (Soil Conservation Service Site 19, Elm Fork Trinity River Watershed Project) on Brushy Elm Creek, tributary of Elm Fork Trinity River, tributary of the Trinity River, Trinity River Basin. The authorized dam and reservoir are in Cooke County, approximately 15 miles west of Gainesville, Texas. Water Use Permit Number 3204 also authorizes the diversion and use of not to exceed 500 acre-feet of water per annum from the reservoir for municipal purposes. The time priority of the owner's right is May 27, 1975. A special condition included in Certificate Number 08-2323 required that construction authorized by Certificate Number 08-2323 would commence by November 17, 1984 and be completed by November 17, 1985. The latest Commission Order, dated February 14, 1991, extended the dates to November 17, 1992 to commence construction and November 17, 1995 for completion. It should be noted that this application for an extension of time was received on March 16, 1995, more than two years after commencement of the project was to start.

LEGACY POINT, A Texas Joint Venture; Application Number 5527, for a permit pursuant to Texas Water Code, §11.121 and TNRCC Rules 30 TAC §§295.1, et seq for authorization to construct and maintain three reservoirs (referred to as Ponds A-C) with a total capacity of nine acre-feet on an unnamed tributary of the West Fork Trinity River, tributary of the Trinity River, Trinity River Basin. The dams are all small, low hazard structures, located approximately 14 miles west of Fort Worth in Tarrant County, Texas, and will be used for in-place recreation use.

GEORGE ALFRED SCHMIDT and wife, BARBARA FRANKLIN-SCHMIDT; Application Number 5528 for a permit pursuant to Texas Water Code, §11.121 and TNRCC Rules 30 TAC §§295.1, et seq to divert and use 98 acre-feet of water per annum from the Guadalupe River, Guadalupe River Basin. The requested appropriation is supported by a Subordination Agreement with the Guadalupe-Blanco River Authority. Diverted water will be

used to irrigate 50 acres of land in Kendall County, approximately 1.5 miles directly east of Comfort, Texas.

JOE L. BURTON; Application Number 5530 for a permit pursuant to Texas Water Code, §11.121, Texas Water Code, and TNRCC Rules 30 TAC §§295.1, et seq to divert and use 32 acre-feet of water per annum from the Wichita River, tributary of Red River, Red River Basin, to irrigate 13.3 acres of land located in Wichita County, approximately seven miles directly west of Wichita Falls, Texas.

These applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue the permits unless one or more persons file written protests and/or requests for hearing within 30 days of the date of newspaper publication of notice concerning the application(s).

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address, and daytime phone number; the application number or other recognizable reference to the application; the statement "I/we request an evidentiary public hearing"; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; and a description of the location of your property relative to the applicant's operations.

If one or more protests and/or requests for hearing are filed on an application, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where an evidentiary hearing may be held. If no protests or requests for hearing are filed, the Executive Director will approve the application 30 days after newspaper publication of the notice of application, or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Office of the Chief Clerk-Mail Code 105, no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing or questions concerning procedures should be submitted in writing to the Chief Clerk's Office, Park 35 TNRCC Complex, Building F, Room 4301, Texas Natural Resource Conservation Commission, or by mail to the following address: Office of the Chief Clerk-Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3300.

Issued in Austin, Texas, on June 16, 1995.

TRD-9507440 Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: June 19, 1995

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**Notice of Applications for Waste  
Disposal Permits**

Notices of applications for waste disposal permits issued during the period of June 9-16, 1995.

These applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 30 days after newspaper publication of this notice.



If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address, and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a public hearing"; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. In the event a hearing is held, the Office of Hearings Examiners will submit a recommendation to the Commission for final decision. If no protests or requests for hearing are filed, the Executive Director will sign the permit 30 days after newspaper publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, Chief Clerks Office-MC105, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number and type of application-new permit, amendment, or renewal.

**CITY OF AVERY;** the wastewater treatment facilities are on Mill Creek, approximately 1/2 mile northeast of the City of Avery in Red River County, Texas; renewal; 10733-02.

**BAYTANK (HOUSTON), INC.;** a bulk liquid storage and tank terminal; the plant site is on Port Road, adjacent to and south of the Bayport Ship Channel Turning Basin in the Bayport Industrial Complex, Harris County, Texas; amendment; 02547.

**BRYAN PARRISH;** the dairy is located on the east side of U.S. Highway 281 approximately three miles north of the intersection of U.S. Highway 281 and FM Road 2905 at Hamilton in Hamilton County, Texas; renewal; 03208.

**CITY OF CALDWELL;** the Caldwell Wastewater Treatment Facilities are on the west bank of Davidson Creek, approximately one mile southeast of the intersection of State Highways 21 and 36 in Burleson County, Texas; amendment; 10813-01.

**CHEMICAL SPECIALTIES, INC.;** the Mineral Research and Development Plant, which produces zinc chloride, zinc ammonium chloride and zinc carbonate chemicals; the plant site is at 302 Midway Road in the City of Freeport, Brazoria County, Texas; amendment; 01878.

**CITY OF DILLEY;** the wastewater treatment facilities are approximately one mile southwest of the intersection of Interstate Highway 35 and State Highway 85 in Frio County, Texas; renewal; 10404-02.

**GARY STEPHEN PERDUE** doing business as **JACKSON HILL MARINA;** the wastewater treatment facilities are

approximately 500 feet southwest of FM Road 2851, 1.3 miles northwest of the intersection of State Highway 147 and FM Road 2851, four miles southwest of the City of Broaddus in San Augustine County, Texas; amendment; 11111-01.

**CITY OF GOLIAD;** the wastewater treatment facilities are at 510 South Mt. Auburn Street in Goliad, Texas, approximately 3,000 feet southwest of the intersection of U.S. Highway 59 and U.S. Highway 183/Alt 77 in Goliad County, Texas; renewal; 10458-01.

**GULF COAST PORTLAND CEMENT COMPANY;** a facility to receive, store, grind, and ship petroleum coke (coke handling); the plant site is at 6203 Industrial Way, 0.5 miles north of Navigation Boulevard and 0.5 miles east of McFarland Street at the termination of Industrial Way in the City of Houston, Harris County, Texas; amendment; 01021.

**KNOLLE CATTLE COMPANY;** the dairy is on the south side of County Road 360 approximately 3.5 miles southeast of the intersection of State Highway 359 and County Road 360 in Jim Wells County, Texas; renewal; 03172.

**NALCO/EXXON ENERGY CHEMICALS, L.P.;** a oxyalkylation plant; the plant site is on County Road 229, approximately 1.25 miles east of the intersection of County Road 229 and FM Road 523 northeast of the City of Freeport, Brazoria County, Texas; renewal; 01806.

**SOUTH COAST TERMINALS, INC.;** the Manchester Facility, a bulk liquid storage facility; the plant site is at 9317 East Avenue S in the City of Houston, Harris County, Texas; renewal; 03133.

**TEXAS DEPARTMENT OF CRIMINAL JUSTICE EASTHAM UNIT;** a multi-use confined animal operation; The Eastham Unit is on the north side of FM Road 230 approximately 8.5 miles southwest of the intersection of FM Roads 230 and 2915 in Houston County, Texas; amendment; 02897.

**TEXAS DEPARTMENT OF CRIMINAL JUSTICE;** the swine and dog operation is on the northeast side of State Highway 36 approximately four miles southeast of the intersection of State Highway 36 and FM Road 521 at Brazoria in Brazoria County, Texas; renewal; 02993.

**U.S. DEPARTMENT OF THE ARMY,** Headquarters Fort Sam Houston; the wastewater treatment facility and disposal site (i.e. Camp Bullis Military Reservation) are approximately 1,000 feet east of Military Highway and 0.5 mile southeast of the Headquarters Building at Camp Bullis in Bexar County, Texas; amendment; 12080-01.

**WEST RUSK COUNTY CONSOLIDATED INDEPENDENT SCHOOL DISTRICT;** the Gaston Campus Wastewater Treatment Facilities; the wastewater treatment facilities are approximately 1,300 feet north of State Highway 64 in the northeast corner of Gaston Campus, on Highway 64 approximately 0.8 mile east of the City of Joinerville in Rusk County, Texas; renewal; 13495-01.

**BP CHEMICALS;** authorizes subsurface disposal of hazardous wastestreams generated by the facility during the manufacture of petrochemical products; the waste disposal wells are located on company property at the BP Chemicals, Inc. plant approximately 6.5 miles south of Bloomington, Calhoun County, Texas; amendment; 45-day notice.



Issued in Austin, Texas, on June 19, 1995.

TRD-9507439

Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: June 19, 1995

◆ ◆ ◆  
**Notice of Opportunity to Comment on  
Permitting Actions—For the Week  
Ending June 16, 1995**

The following applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue the permits unless one or more persons file written protests and/or requests for hearing within ten days of the date notice concerning the application(s) is published in the *Texas Register*.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address, and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a public hearing"; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. If no protests or requests for hearing are filed, the Executive Director will sign the permit ten days after publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing on this application should be submitted in writing to the Chief Clerk's Office (Mail Code 105), Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number and type of application—new permit, amendment, or renewal.

Approval of Lake Cities Municipal Utility Authority to Amend Water Certificate of Convenience and Necessity Number 10166 in Denton County, Texas (Application Number 30660-C, Darrell Nichols).

Approval of Lake Cities Municipal Utility Authority to Amend Sewer Certificate of Convenience and Necessity Number 20060 in Denton County, Texas (Application Number 30661-C, Darrell Nichols).

CITY OF OVERTON for a minor amendment to Permit Number 10242-01 in order to reduce the peak flow volume from 1680 gallons per minute (gpm) to 1250 gpm in the final permit phase. The permit currently authorizes a dis-

charge of treated domestic wastewater effluent at an interim volume not to exceed an average flow of 300,000 gallons per day and a final volume not to exceed an average flow of 600,000 gallons per day, which will remain the same. The wastewater treatment facilities are approximately 2,900 feet east of the intersection of Henderson Street and Linda Lane in Rusk County, Texas.

Approval of Sunset Canyon Water Company to Transfer Water CCN Number 10897 from Richland Realty Company, Inc. doing business as Long Creek Water Company; Amend Water CCN Number 12705; and Cancel Water CCN Number 10897 in Hood County, Texas (Application Number 30693-S, Guillermo Zevallos).

Approval of Elm Creek Water Supply Corporation to Transfer a Portion of Water CCN Number 10004 from City of Troy and Amend Water CCN Number 10031 in Bell County, Texas (Application Number 30840-T, Albert Holck).

Issued in Austin, Texas, on June 16, 1995.

TRD-9507441

Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: June 19, 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 of an application on June 12, 1995, to amend a Certificate of Convenience and Necessity pursuant to the Public Utility Regulatory Act of 1995, §§1.101(a), 2.201, 2.101(e), 2.252, 2.255, 3.252, and 3.254. A summary of the application follows.

Docket Title and Number: Application of Lower Colorado River Authority to Amend Certificated Service Area Boundaries within Bastrop County, Docket Number 14309 before the Public Utility Commission of Texas.

The Application: In Docket Number 14309, Lower Colorado River Authority requests approval of its application to revise current certificated service area boundaries with Bluebonnet Electric Cooperative, Inc. in Bastrop County.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Information Division at (512) 458-0388, or (512) 458-0221 for teletypewriter for the deaf within 15 days of this notice.

Issued in Austin, Texas, on June 15, 1995.

TRD-9507350

John M. Renrow  
Secretary to the Commission  
Public Utility Commission of Texas

Filed: June 16, 1995

**Notices of Intent to File Pursuant to  
Public Utility Commission Substantive  
Rule 23.27**

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Tyler Junior College, Tyler, Texas

**Tariff Title and Number.** Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for Tyler Junior College pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 14301.

**The Application.** Southwestern Bell Telephone Company is requesting approval of a new PLEXAR-Custom service for Tyler Junior College. The geographic service market for this specific service is the Tyler, 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 June 14, 1995

TRD-9507253      John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: June 14, 1995



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 American State Bank, Lubbock, Texas.

**Tariff Title and Number.** Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for American State Bank pursuant to Public Utility Commission Substantive Rule 23.27 Tariff Control Number 14302.

**The Application.** Southwestern Bell Telephone Company is requesting approval of a 24-station addition to the existing PLEXAR-Custom service for American State Bank. The geographic service market for this specific service is the Lubbock, 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 June 14, 1995

TRD-9507254      John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: June 14, 1995



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 Texas City ISD, Texas City, Texas.

**Tariff Title and Number.** Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for Texas City ISD pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 14303.

**The Application.** Southwestern Bell Telephone Company is requesting approval of a new PLEXAR-Custom service for Texas City ISD. The geographic service market for this specific service is the Texas City, 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 June 14, 1995

TRD-9507255      John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed June 14, 1995



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 Texas Tech RAHC, Lubbock, Texas.

**Tariff Title and Number.** Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for Texas Tech RAHC pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 14314.

**The Application.** Southwestern Bell Telephone Company is requesting approval of an optional feature addition to the existing PLEXAR-Custom service for Texas Tech RAHC. The geographic service market for this specific service is the Lubbock, 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 June 15, 1995.

TRD-9507351      John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: June 16, 1995



**Railroad Commission of Texas  
Notice of LP-Gas Advisory Committee  
Meeting**

The Railroad Commission of Texas will hold a meeting of the LP-Gas Advisory Committee on June 27, 1995, in the William B. Travis Building, Room 9-147, 1701 North Congress Avenue, Austin, Texas, from 9:00 a.m. to 2:30 p.m. to consider the following matters.

9:30 a.m.—Attend commissioners' open conference for the LP-Gas/Gas Utilities presentations (until approximately 10:00 a.m. in Room 1-111 on the first floor of the Travis Building).

10:00 a.m. to 10:30 a.m.—Convene in Room 9-147; call to order; opening remarks; review of meeting minutes; old business.

10:30 a.m. to 10:45 a.m.—Break.

10:45 a.m. to 11:45 a.m.—Discussion

Drafted Rules for Review:

1. Increase the size of a single LP-gas container from 30,000 gallons water capacity to 90,000 gallons and require bulkheads, internal valves, and ESVs. Refer to §9.186, page B-38; §9.185, Table 1, pages B-33 and 34; §9.20(a), page A-40; §9.21, page A-44.
2. Allow Railroad Commission stainless steel nameplates to identify older LP-gas containers manufactured by companies no longer in business where a replacement or duplicate nameplate cannot be issued. Refer to §9.160, page B-6.
3. Allow the use of a single tag or decal for all identification requirements (proposal submitted by J. R. Anderson, Modern Diversified Propane Services) Refer to §9.184(a)(17), page B-29; §9.771(b), page G-16; §9.952(b), page I-1; §9.231(b), page J-1.

Items Tabled from May 30 Meeting.

1. Eliminate the existing requalification seminars and implement a mandatory training program. Refer to §9.6 Table 1, Number 16, page A-26.
2. Revise the definition of automatic dispenser to allow automatic dispensers at private LP-gas refueling facilities. Refer to §9.2, p. A-4.
3. Increase the insurance coverage for motor vehicles (LP-gas transports and/or bobtails). Refer to §9.19 Table, page A-39.

Other Items:

1. Adoption consideration of National Fire Protection Association (NFPA) 54/58.
2. Discussion on requiring minimum storage for Category E dealers.
3. Phasing out nonspec units, communication with DOT and/or DPS.

11:45 a.m. to 1:00 p.m.—Lunch.

1:00 p.m. to 2:30 p.m.—Continuation of rulemaking discussion, if necessary; future projects; open discussion, establish date of next (quarterly) meeting.

2:30 p.m.—Approximate time of adjournment.

Issued in Austin, Texas, on June 16, 1995.

TRD-9507361 Mary Ross McDonald  
Assistant Director, Legal Division, Gas  
Utilities/LP-Gas Section  
Railroad Commission of Texas

Filed: June 16, 1995

## Texas Guaranteed Student Loan Corporation

### Request for Proposal

Description of Service. Provide legal services in support of the corporation's collection activities pursuant to the requirements of the Higher Education Act of 1965 ("HEA"), as amended, and its associated rules and regulations, as well as the Texas Education Code, Chapter 57.

Bid Submission. All bids will be accepted until 5.00 p.m., August 16, 1995.

Additional Information. Successful bidder(s) must be licensed to practice law in the State of Texas. To receive a full text of the Request for Proposal contact Justina Leung at (512) 219-4515 or email at justina.leung@tgsllc.org

Issued in Austin, Texas, on June 17, 1995.

TRD-9507434 Pat Boulton  
Administrative Assistant  
Texas Guaranteed Student Loan Corporation

Filed: June 17, 1995

## Texas Department of Transportation Request for Proposals

Notice of Invitation. The Texas Department of Transportation (TxDOT) intends to engage an architect/engineer, pursuant to Texas Government Code, Chapter 2254, Subchapter A, to provide the following services. The engineer selected must perform a minimum of 30% of the actual contract work to qualify for contract award.

Contract Number 08-545P8001—for the renovation and restoration of the exterior of the structure and remodeling of a basement area for a visitors center in the Jones County Courthouse in Anson, Texas.

Contract Number 08-545P8002—for the installation or repair (if feasible) of a copper roof to the courthouse bell tower so as to bring it back to its original design of the Shackelford County Courthouse in Albany, Texas.

Contract Number 08-545P8003—for the renovation and restoration of interior and exterior elements of the historic structure of the Magnolia Gas Station in Oldham County, Vega, Texas.

Contract Number 08-545P8004—for conducting an architectural/engineering feasibility study for restoration of the Harvey House Depot in Lubbock County, Slaton, Texas.

Deadline. A letter of interest notifying TxDOT of the provider's intent to submit a proposal shall be either hand-delivered or mailed to TxDOT Abilene District Office, 4250 North Clack, Abilene, Texas 79603-1141. Letters of interest will be received until 5:00 p.m. on Wednesday, July 5, 1995. The letter of interest must include the engineer's name, address, telephone number, name of engineer's contact person, and number of TxDOT contract. Upon receipt of the letter of interest a Request for Proposal packet will be issued.

Pre-proposal Meeting. A pre-proposal meeting will be held on Tuesday, July 11, 1995, at the TxDOT Abilene District Office, 4250 North Clack, Abilene, at 11:00 a.m. (TxDOT

will not accept a proposal from an engineer who has failed for any reason to attend the mandatory pre-proposal meeting.)

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Kristy Gardner at (915) 676-6811 at least two work days prior to the meeting so that appropriate arrangements can be made.

**Proposal Submittal Deadline.** Proposals for Contract Numbers 08-545P8001, 08-545P8002, 08-545P8003, and 08-545P8004 will be accepted until 5:00 p.m. on Tuesday, August 1, 1995 at the mentioned address.

**Agency Contact.** Requests for additional information regarding this notice of invitation should be addressed to David B. Casteel, P.E. at (915) 676-6810 or Fax: (915) 676-6902.

Issued in Austin, Texas, on June 15, 1995.

TRD-9507317      Robert E. Shaddock  
                         General Counsel  
                         Texas Department of Transportation

Filed: June 15, 1995

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**Introduction:** In accordance with Texas Civil Statutes, Articles 6663b and 6663c, the Texas Department of Transportation (TxDOT) is requesting proposals for improvements to intercity bus service within Texas. For purposes of this RFP, the term "firm" is defined to include all members of the intercity bus industry, communities, or corporate bodies. The improvements will be funded with grants of Federal Transit Administration funds which can provide up to 80% of the cost of capital projects. The remaining balance must be from local funds. No state appropriated funds will be available as match for the federal funds. Specific tasks to be completed are addressed in this RFP's description of service.

**Description of Service.** TxDOT has developed ideas in consultation with members of the intercity bus industry for the construction, rehabilitation, or purchase of multimodal terminals and to pay the incremental costs of modification of over the road coaches to board, secure, and transport the disabled.

Proposals for terminals must include open and equal access for all intercity bus carriers serving the community, and at least one of the following: passenger rail, urbanized, or rural public transit, or common carrier air passenger service. The community must currently have the type of passenger service proposed. TxDOT can provide up to 80% of the construction, rehabilitation, or purchase of multimodal terminals.

Proposals for over the road coaches are limited to the incremental costs of the mobility aid assistance modifications necessary to transport the mobility impaired. Suggested ideas are for mobility aid lifts, securement devices, and on board rest room accommodations. TxDOT can pay up to 80% of the modifications for mobility aids on rehabilitation, or will pay up to 100% of the costs of the mobility aid modifications as part of new purchases, not to exceed 20% of the total cost of the vehicle including modifications.

Budget. The funds to support the projects are to be drawn from the \$2,954, 546 "set aside" from the Federal nonurbanized public transportation funds to enhance intercity bus service within Texas.

**Proposal Submission and Requirements.** Firms responding to this RFP must submit to TxDOT five identical, bound, typed or typeset copies of the firm's proposal. All copies must be signed by a designated project manager of the firm. Facsimile submissions will not be accepted by TxDOT. Proposals must contain only the following information for evaluation purposes and must observe the specified page count limitations: A work plan which includes a budget and a detailed project outline. (May not exceed ten pages. Must be double-spaced and may be printed on both sides).

Proposals must arrive at 125 East 11th Street, Austin, Texas 78701-2483, (Public Transportation Division, Attention: Susan Hausmann) no later than 3:00 p.m. on August 18, 1995. Proposals or modifications or addenda to proposals received after 3:00 p.m. on August 18, 1995 will not be considered. Any proposal may be modified or withdrawn by written telegraphic notice received in the location designated above at any time prior to 3:00 p.m. on August 18, 1995. All proposals received, even those withdrawn from consideration, become the property of TxDOT.

**Evaluation Criteria. Multimodal Terminals:** Preference will be given to projects with higher local share percentages and an increased number of modal choices. Funds are proposed for construction only, to include rehabilitation of existing terminals. Rehabilitation may include modifications required to make terminals and transportation accessible to the disabled. No funds for current or future terminal operations would be available.

Projects must comply with all local, state, and federal laws and rules, including environmental procedures. Finished facility must be owned by the community or corporate body, including private bus companies providing scheduled service, submitting proposal. Land must be clear of liens and owned by community or corporate body prior to the beginning of any construction activity.

Proposals for multimodal terminals will be evaluated on the following merits:

1. Number of passengers served annually divided by the population of the community. Passenger count is origin and destination passengers. Through passengers are not to be counted. (10 points)
2. Number of different transportation modes using the terminal. (30 points)
3. Number of passenger amenities in completed terminal project. (52 points)
4. Percent of local share. (50 points)

**Mobility Aid Modifications.** Preference will be given to proposals for new vehicles with modifications to transport the mobility impaired. Modifications should be such that passengers requiring the use of mobility aids can safely enter and be secured. Modifications to existing vehicles should be done as part of a total rehabilitation to extend the life of the vehicle.

Proposals for mobility aid modifications will be evaluated on the following merits:

1. The cost (in thousands) for each accessible space created by the proposal project. (100 points)

2. New vehicles versus rehabilitated vehicles. (20 points)

3. Percentage of fleet to be converted. (17 points)

TxDOT reserves the right to contact a firm to obtain written clarification of information submitted or any other matter deemed appropriate for the evaluations. No negotiations, decisions, or actions shall be executed by the bidder, or firm, as a result of any discussions with any state employee. TxDOT will contact the designated project manager in the event clarification is required during the proposal evaluation process. TxDOT will consider only the addendums from firms which are in writing and signed by the designated project manager of the firm.

In evaluating proposals, TxDOT has the right to accept or reject all or any proposal, and award the proposal to best serve the intercity bus industry in Texas, and use any or all information contained in the proposal, without limitation.

Notification of Award. TxDOT will notify all firms submitting proposals in response to this RFP after the selec-

tion has been made. It is anticipated that the contract will be awarded on or about November 1, 1995. The relative standing or merits of unsuccessful projects will not be discussed.

Agency Contact. Questions concerning this request for proposals should be submitted in writing to TxDOT, Public Transportation Division, Attention: Susan Hausmann, 125 East 11th Street, Austin, Texas 78701-2483. Questions will not be accepted after June 30, 1995. A copy of all questions and answers will be sent to all firms receiving this RFP.

Issued in Austin, Texas, on June 16, 1995.

TRD-9507395

Robert E. Shaddock  
General Counsel  
Texas Department of Transportation

Filed: June 16, 1995

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## 1995 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1995 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on July 7, November 10, November 28, and December 29. An asterisk beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
1 Tuesday, January 3	Wednesday, December 28	Thursday, December 29
2 Friday, January 6	Monday, January 2	Tuesday, January 3
3 Tuesday, January 10	Wednesday, January 4	Thursday, January 5
4 Friday, January 13	Monday, January 9	Tuesday, January 10
5 Tuesday, January 17	Wednesday, January 11	Thursday, January 12
Friday, January 20	1993 ANNUAL INDEX	
6 Tuesday, January 24	Wednesday, January 18	Thursday, January 19
7 Friday, January 27	Monday, January 23	Tuesday, January 24
8 Tuesday, January 31	Wednesday, January 25	Thursday, January 26
9 Friday, February 3	Monday, January 30	Tuesday, January 31
10 Tuesday, February 7	Wednesday, February 1	Thursday, February 2
11 Friday, February 10	Monday, February 6	Tuesday, February 7
12 Tuesday, February 14	Wednesday, February 8	Thursday, February 9
13 Friday, February 17	Monday, February 13	Tuesday, February 14
14 Tuesday, February 21	Wednesday, February 15	Thursday, February 16
15 Friday, February 24	*Friday, February 17	Tuesday, February 21
16 Tuesday, February 28	Wednesday, February 22	Thursday, February 23
17 Friday, March 3	Monday, February 27	Tuesday, February 28
18 Tuesday, March 7	Wednesday, March 1	Thursday, March 2
19 Friday, March 10	Monday, March 6	Tuesday, March 7
20 Tuesday, March 14	Wednesday, March 8	Thursday, March 9
21 Friday, March 17	Monday, March 13	Tuesday, March 14
22 Tuesday, March 21	Wednesday, March 15	Thursday, March 16
23 Friday, March 24	Monday, March 20	Tuesday, March 21
24 Tuesday, March 28	Wednesday, March 22	Thursday, March 23
25 Friday, March 31	Monday, March 27	Tuesday, March 28
26 Tuesday, April 4	Wednesday, March 29	Thursday, March 30
27 Friday, April 7	Monday, April 3	Tuesday, April 4
28 Tuesday, April 11	Wednesday, April 5	Thursday, April 6
Friday, April 14	FIRST QUARTERLY INDEX	
29 Tuesday, April 18	Wednesday, April 12	Thursday, April 13
30 Friday, April 21	Monday, April 17	Tuesday, April 18
31 Tuesday, April 25	Wednesday, April 19	Thursday, April 20