

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Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.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 20 (1995) is cited as follows: 20 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 "20 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 20 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.

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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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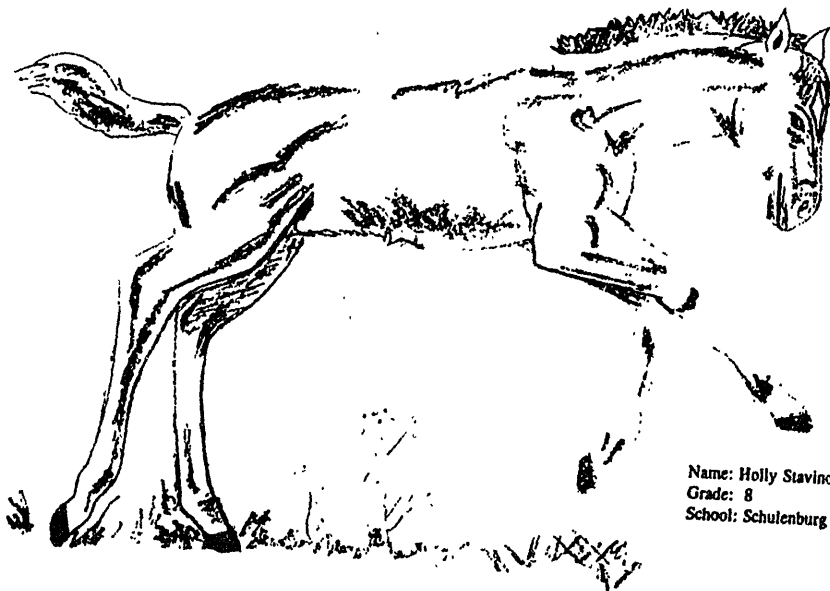
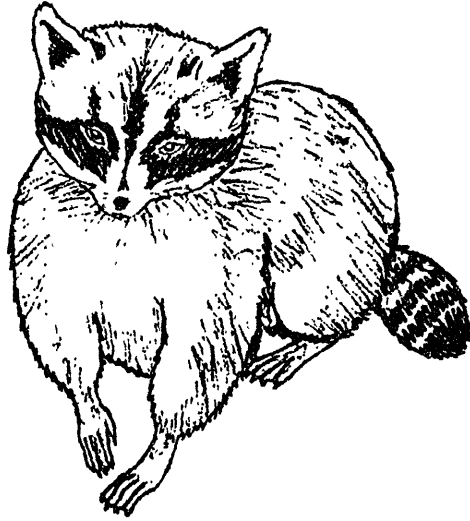
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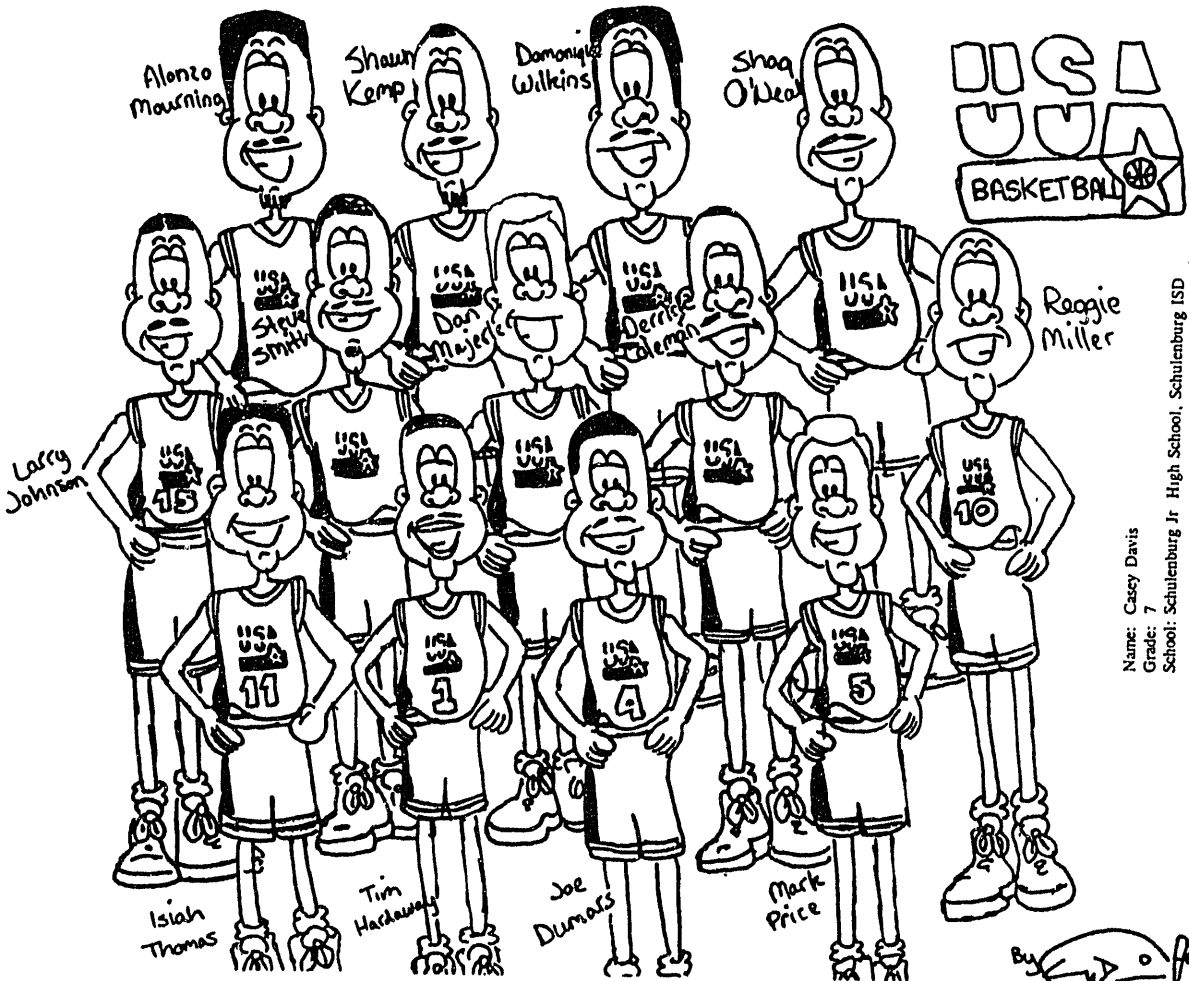
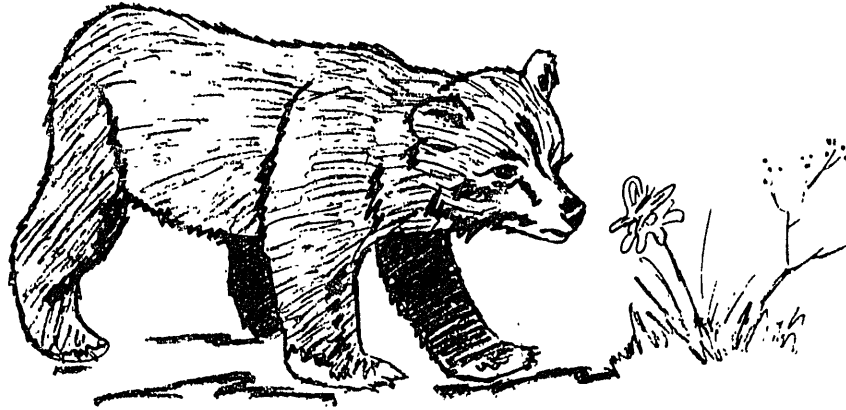
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Grade: 8
School: Schulenburg Jr. High School, Schulenburg ISD

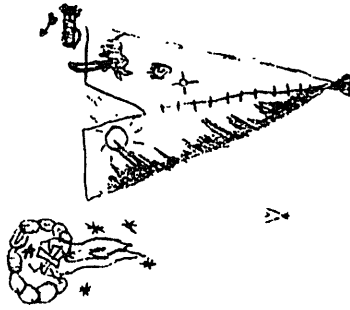
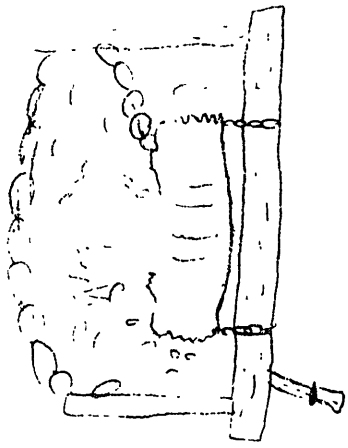


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Grade: 8
School: Schulenburg Jr. High School, Schulenburg ISD

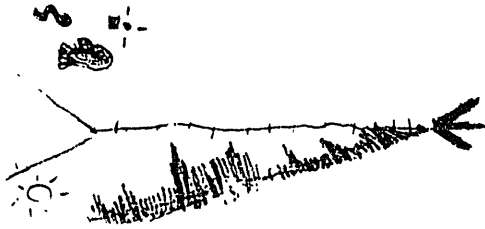
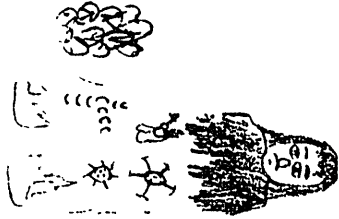
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Grade: 8
School: Schulenburg Jr. High School, Schulenburg ISD



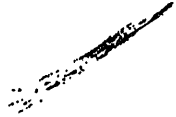
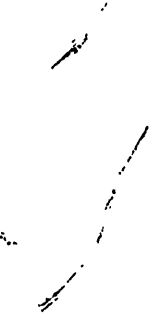
Name: Casey Davis
Grade: 7
School: Schulenburg Jr High School, Schulenburg ISD



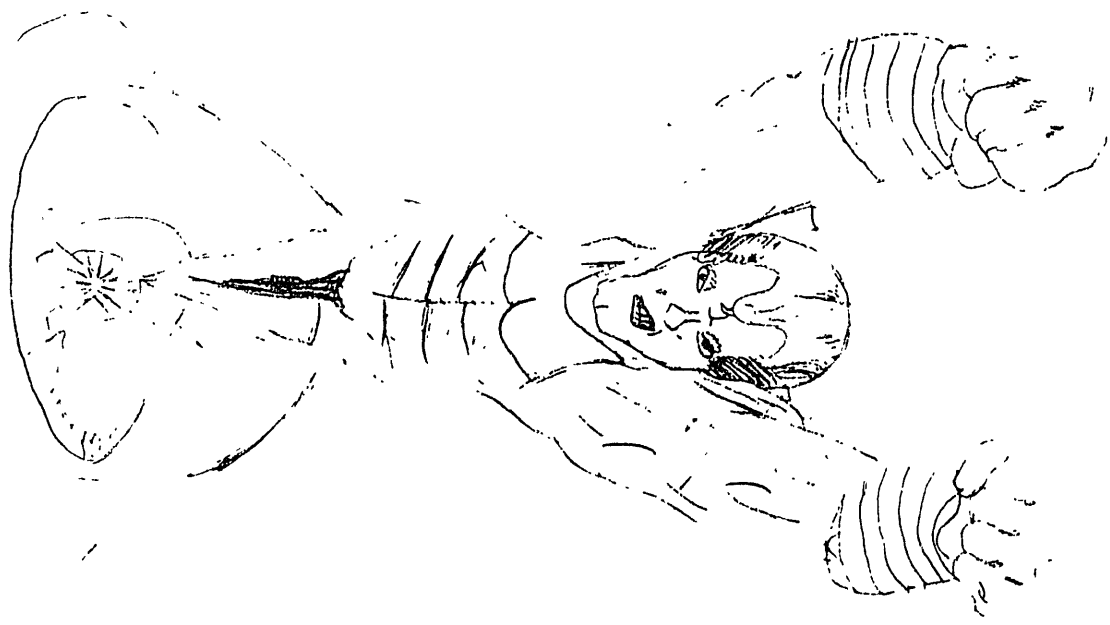
Name: Josh Huipers
Grade: 7
School: Schulenburg Jr High School, Schulenburg ISD



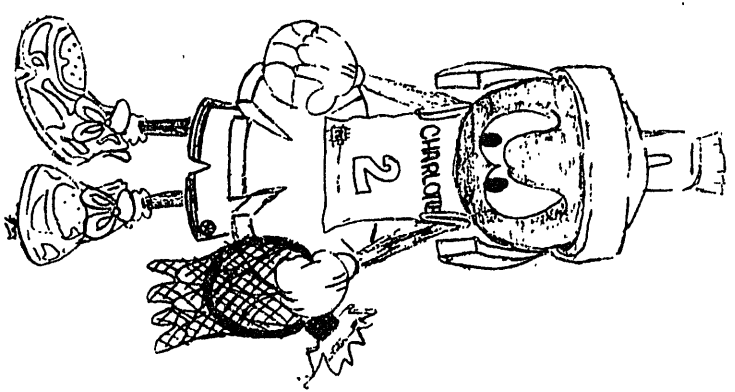
Name: Josh Huipers
Grade: 7
School: Schulenburg Jr High School, Schulenburg ISD



Name: Josh Huipers
Grade: 7
School: Schulenburg Jr. High School, Schulenburg ISD

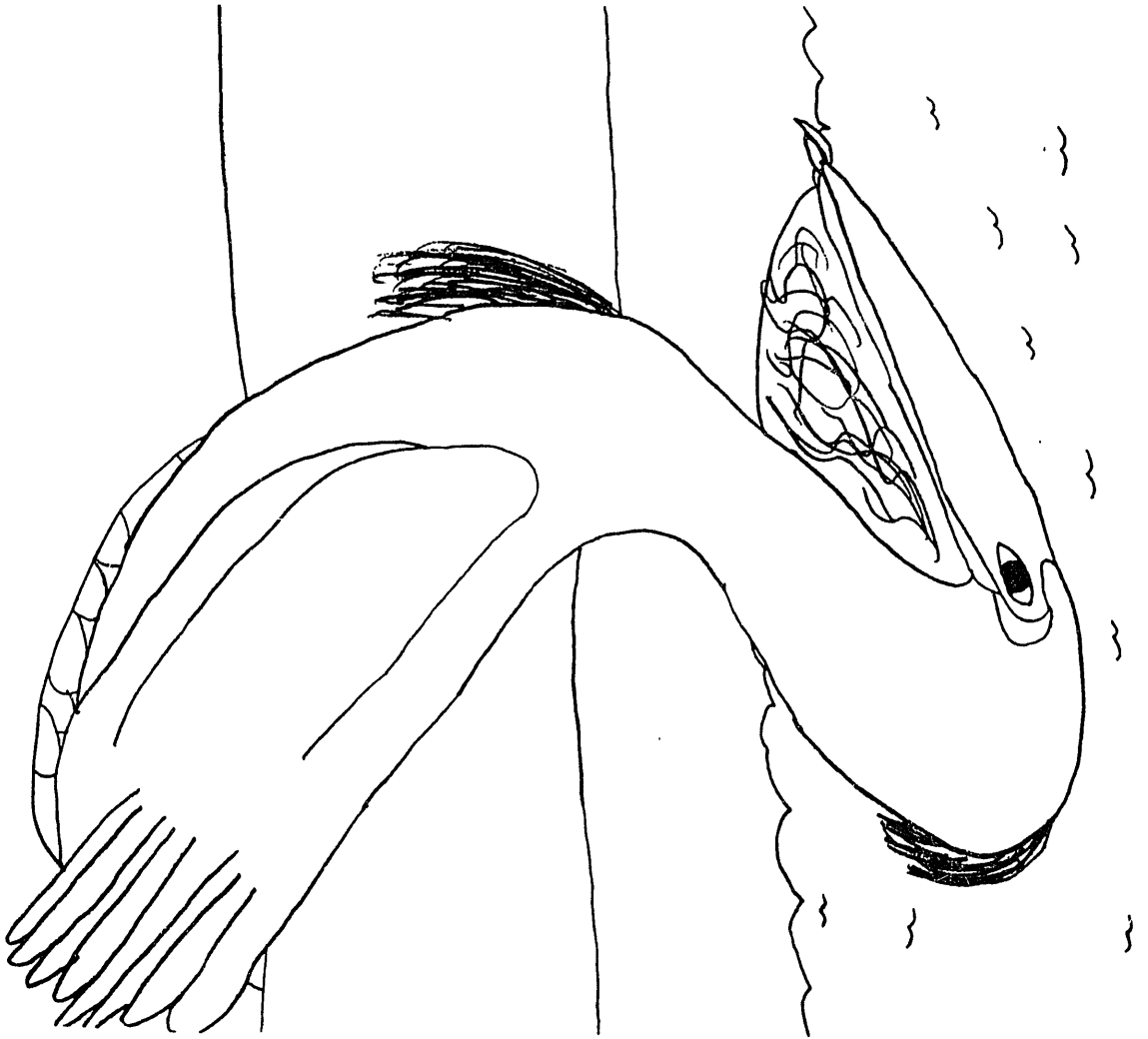


Name: Casey Davis
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School: Schulenburg Jr. High School, Schulenburg ISD

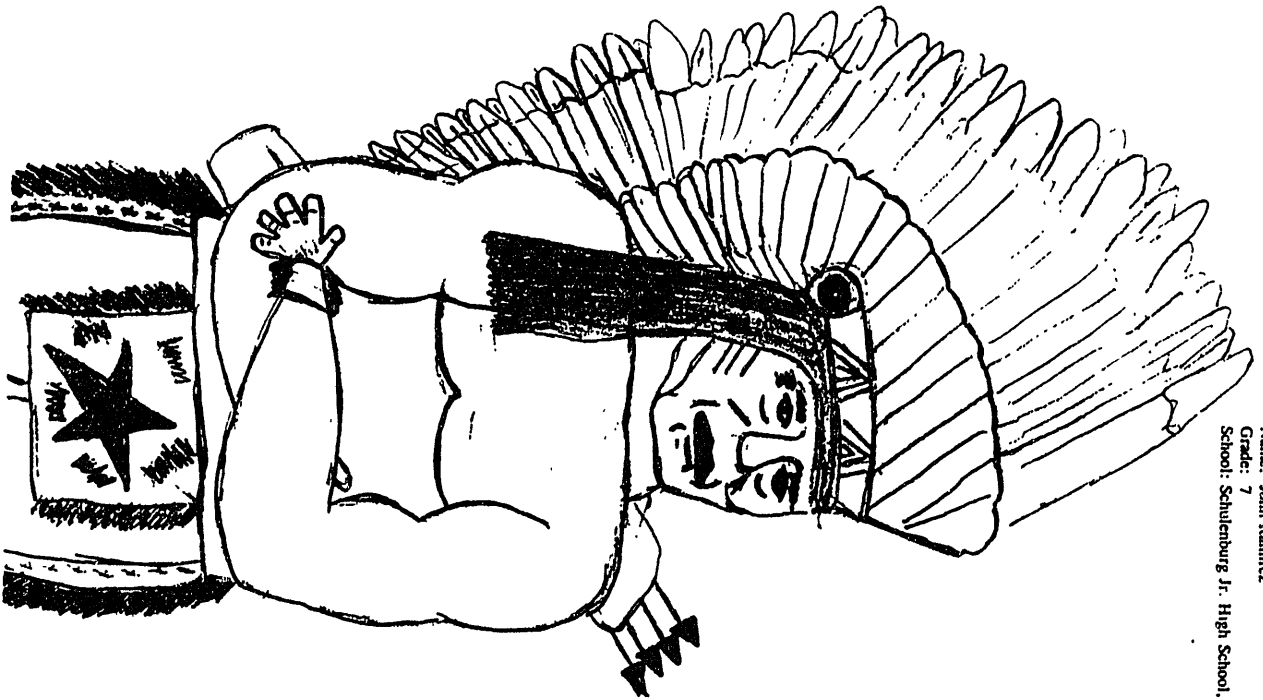


How about a game
of one on one?

THE
SCHOOL
COURT



Name: Josh Anthony
Grade: 8
School: Schulenburg Jr. High School, Schulenburg ISD



Name: John Ramirez
Grade: 7
School: Schulenburg Jr. High School, Schulenburg ISD

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 40. SOCIAL SERVICES AND ASSISTANCE

Part III. Texas

Commission on Alcohol and Drug Abuse

Chapter 145. Treatment Alternatives to Incarceration Programs

General Provisions

• 40 TAC §§145.1-145.7

The Texas Commission on Alcohol and Drug Abuse adopts on an emergency basis the repeal of §§145.1-145.7, concerning treatment alternatives to incarceration programs (TAIP). These rules are being repealed because the TAIP program has been eliminated and transferred to the Texas Department of Criminal Justice effective September 1, 1995.

The repeals are adopted on an emergency basis due to the agency being placed under conservatorship, and is mandated to make immediate changes to its rules and operations. Also, effective September 1, 1995, the TAIP program has been eliminated and transferred to the Texas Department of Criminal Justice.

The repeals are adopted on an emergency basis under Acts, 1991, 72nd Legislature, Chapter 490, §2, effective December 31, 1991, amending the Texas Health and Safety Code, Chapter 461 by adding §461.017, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to promulgate written rules and regulations setting forth minimum standards for the operation of treatment alternatives to incarceration programs which are designed to provide substance abuse offenders with screening, assessment, referral and placement into licensed and approved chemical dependency programs if appropriate.

§145.1. *Definitions.*

§145.2. *Objective.*

§145.3. *Scope of Rules, Regulations, and Standards.*

§145.4. *TAIP Program Approval.*

§145.5. *Approved TAIP Program Renewal*

§145.6. *Denial, Revocation, or Nonrenewal of Approval.*

§145.7. *Invalidity of Provisions.*

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

TRD-9510621

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

Effective date: September 1, 1995

Expiration date: December 30, 1995

For further information, please call: (512) 867-8241

Performance Standards

• 40 TAC §§145.20-145.30

The Texas Commission on Alcohol and Drug Abuse adopts on an emergency basis the repeal of §§145.20-145.30, concerning treatment alternatives to incarceration programs (TAIP). These rules are being repealed because the TAIP program has been eliminated and transferred to the Texas Department of Criminal Justice effective September 1, 1995. Identical emergency action has been simultaneously filed

The repeals are adopted on an emergency basis due to the agency being placed under conservatorship, and is mandated to make immediate changes to its rules and operations. Also, effective September 1, 1995, the TAIP program has been eliminated and transferred to the Texas Department of Criminal Justice.

The repeals are adopted on an emergency basis under Acts, 1991, 72nd Legislature, Chapter 490, §2, effective December 31, 1991, amending the Texas Health and Safety Code, Chapter 461 by adding §461.017, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to promulgate written rules and regulations set-

ting forth minimum standards for the operation of treatment alternatives to incarceration programs which are designed to provide substance abuse offenders with screening, assessment, referral and placement into licensed and approved chemical dependency programs if appropriate

§145.20. *Purpose of Approved TAIP Program*

§145.21. *TAIP Program Content*

§145.22. *Organizational Requirements*

§145.23. *Approved TAIP Program Admission*

§145.24. *TAIP Program Operations Requirement.*

§145.25. *Discrimination Prohibited*

§145.26. *Complaints.*

§145.27. *Confidentiality.*

§145.28. *Approved TAIP Program List*

§145.29. *Approved TAIP Program Monitoring.*

§145.30. *Payment of Referral*

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

TRD-9510623

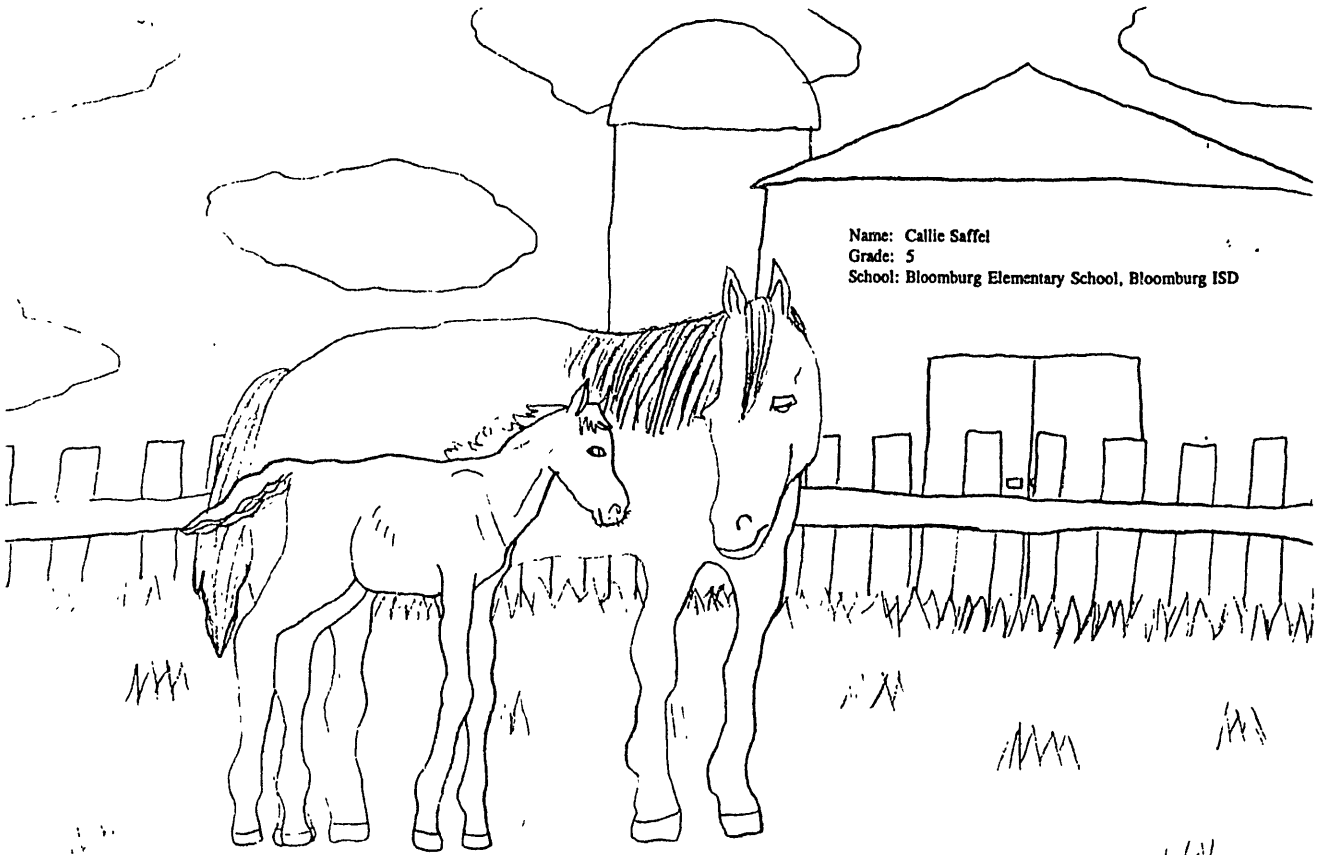
Thomas Mann, Jr
General Counsel
Texas Commission on
Alcohol and Drug
Abuse

Effective date: September 1, 1995

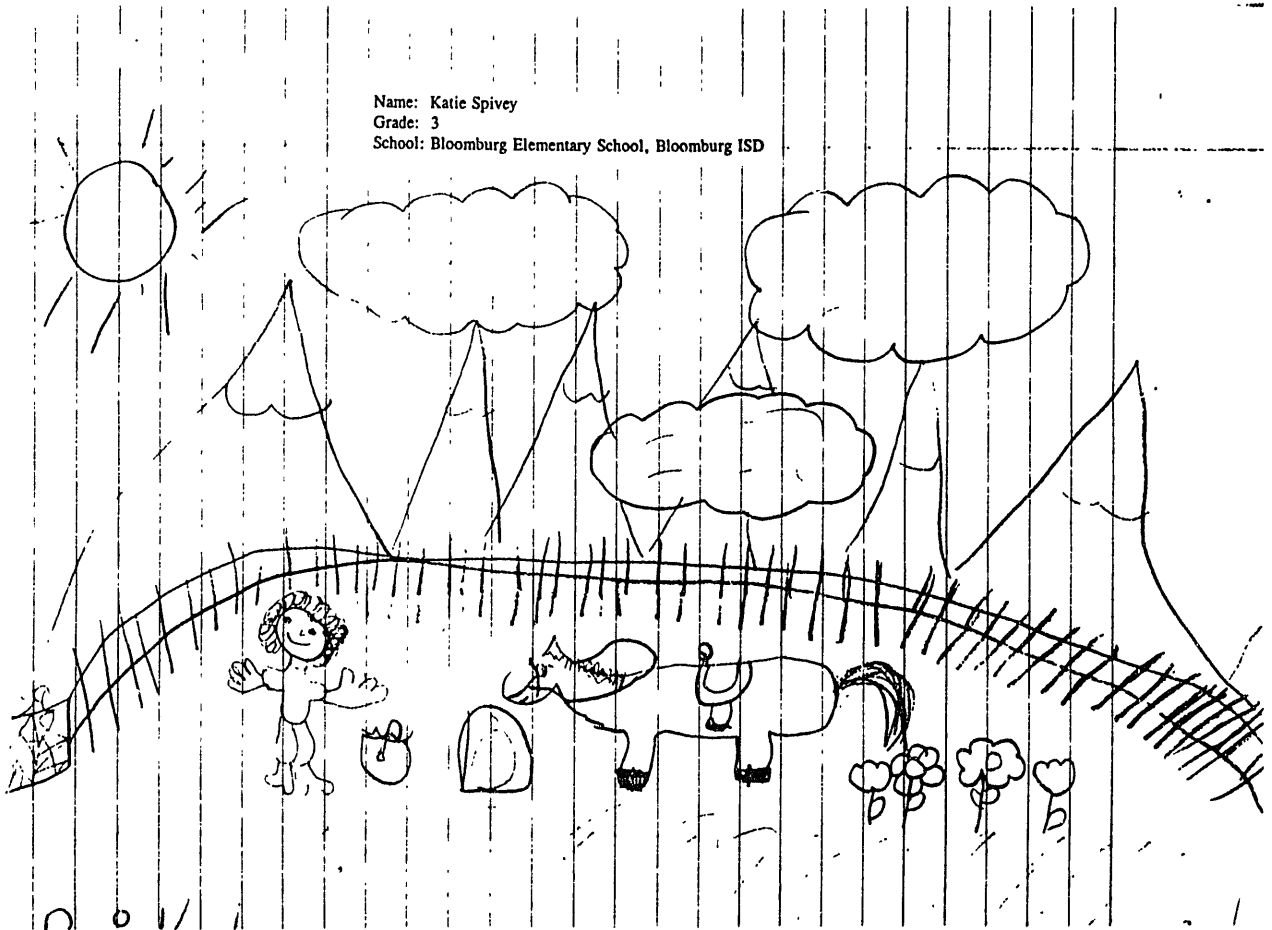
Expiration date: December 30, 1995

For further information, please call: (512) 867-8241

Name: Callie Saffel
Grade: 5
School: Bloomburg Elementary School, Bloomburg ISD



Name: Katie Spivey
Grade: 3
School: Bloomburg Elementary School, Bloomburg ISD



PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

Part V. General Services Commission

Chapter 115. Building and Property Services Division

State Owned Property

• 1 TAC §115.7

The General Services Commission proposes an amendment to §115.7(c), concerning burial in the State Cemetery. The amendment provides the commission with the discretion to permit applicants to place curbs or railings around individual grave spaces.

Carl Mullen, Acting Executive Director, has determined that for each of the first five years that the section as proposed is in effect, there will be no fiscal implications to the state as a result of enforcing or administering the section.

Mr. Mullen also has determined that for each year of the first five years the section is in effect the public benefit anticipated will be reduction in costs for maintenance of those grave sites surrounded by curbs or railings. The possible economic cost to applicants cannot be determined because all costs of interment, reinterment, grave monuments and incidental expenses are borne by the applicants.

Comments may be submitted to David Brown, Assistant General Counsel, General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than thirty days from the date of publication of the proposal to the *Texas Register*.

The amendment is proposed under Texas Civil Statutes, Article 601b, Article 4, which provide the General Services Commission with the authority to promulgate rules necessary to accomplish the purposes of this Article and Chapter.

The following statute is affected by the rule: Texas Civil Statutes, Article 601b.

§115.7. *Burial in the State Cemetery.*

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

(c) No curbs or railings shall be placed around individual grave spaces without written permission from the commission.

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

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

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

TRD-9510702

David Ross Brown
Assistant General Counsel
General Services
Commission

Earliest possible date of adoption: October 2, 1995

For further information, please call: (512) 463-3960

TITLE 13. CULTURAL RESOURCES

Part IV. Texas Antiquities Committee

Chapter 41. Rules of Practice and Procedure

• 13 TAC §§41.1, 41.3-41.5, 41.10-41.13

The Texas Historical Commission (committee) proposes amendments to §§41.1, 41.3-41.5, 41.11-41.13, and new §41.10, concerning Object, Antiquities Advisory Board, Compliance with Rules and Regulations, Amending of Rules, Definitions, Location and Discovery of Cultural Resources and Landmarks, Designation Procedure, and Designation of Private Property. These changes are needed to clarify and streamline rules related to changes made to the Antiquities Code of Texas by the 74th Texas Legislature. The changes include amendments, and the creation of new rules which reflect the elimination of the Texas Antiquities Committee, and the transfer of their authority under the Antiquities Code of Texas, to the Texas Historical Commission. These proposed rules establish an Antiquities Advisory Board that will assist the Texas Historical Commission in the ad-

ministration of the Antiquities Code of Texas. They also clarify new limitations (created by the 74th Texas Legislature) on the ability of private citizens to nominate for official State Archeological Landmark designation, historic buildings and archeological sites which belong to political subdivisions of the State.

Dr. James E. Bruseth, Deputy State Historic Preservation Officer, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. The rule changes related to the nomination of buildings or sites for official landmark designation, may result in a decrease in the number of buildings or sites that will be designated as State Archeological Landmarks. Therefore, less money or time may be spent by state or local governments in managing the protection of cultural resources. Cost savings are estimated at only a few hundred dollars per site nominated.

Dr. Bruseth also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be more efficient regulations related to the protection of significant cultural resources. There is no anticipated effect on small businesses. There are some limited anticipated new economic costs to persons who are required to comply with the rules as proposed, if those persons wish to nominate a building or site for official State Archeological Landmark designation.

Comments on the proposal may be submitted to Mark H. Denton, Certifying Official, Texas Historical Commission, Department of Antiquities Protection, P. O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendments and new section are proposed under the Natural Resources Code, Title 9, Chapter 191 (revised by Senate Bill 231, 68th Legislature, 1983, by House Bill 2056, 70th Legislature, 1987, and by Senate Bill 365, 74th Legislature, 1995), §191.052, which provides the committee with the authority to promulgate rules, and require contract or permit conditions to reasonably effect the purposes of Chapter 191.

Title 9, Natural Resource Code, is affected by these amendments and new section.

§41.1. *Object* The Texas Historical Commission [Antiquities Committee], hereafter referred to as the committee, is specifically empowered to adopt reasonable rules and regulations concerning salvage and other study of State Archeological Landmarks as well as having other powers specifically outlined in the Antiquities Code of Texas

§41.3 *Compliance with Rules and Regulations* If the permittee fails to comply with any of the rules and regulations of the committee [Texas Antiquities Committee] or any of the terms of the specific permit involved, or fails to properly conduct or complete the project, or fails to act in the best interest of the state, or fails to meet terms and conditions of defaulted permits, the committee [Antiquities Committee] may immediately cancel the permit and notify the permittee of such cancellation by registered letter, mailed to the first address furnished to the committee [Committee] by the permittee. Upon notification of cancellation, when determined to be appropriate, the permittee shall, in the case of ongoing projects, cease work immediately, remove all personnel and equipment, and vacate the area or site within 24 hours. Upon cancellation of a permit, the permittee forfeits all rights to the specimens and data recovered. A permit which has been canceled can be reinstated by the committee [Antiquities Committee] if good cause is shown within 30 days

§41.4 *Amending of Rules* The rules and regulations of the committee [Texas Antiquities Committee] may be amended with the approval of a majority of the committee [Committee] members

§41.5 *Definitions* The following words and terms, when used in this chapter, and the Antiquities Code of Texas, shall have the following meaning, unless the context clearly states otherwise.

Antiquities Advisory Board—A seven-member board that assists the Texas Historical Commission in reviewing matters related to the Antiquities Code of Texas.

Archeological Site—Any place containing evidence of human activity, including but not limited to the following.

(A) (No change)

(B) **Non-habitation sites.** Non habitation sites result from use during specialized activities and may include standing structures. Descriptions of each kind of site are given.

(i)-(iv) (No change.)

(v) **Cemeteries and burials,** marked and unmarked, are special locales set aside for burial purposes. Cemeteries contain the remains of more than one person placed in a regular or patterned order. Burials, in contrast, may contain the remains of one or more individuals located in a common grave in a locale not formerly or subsequently used as a cemetery. The site area encompasses the human remains present and also gravestones, markers, containers, coverings, garments, vessels, tools, and other goods which may be present. Cemeteries and burials that are publicly owned and are of prehistoric origin (i.e., dating prior to A.D. 1500), or classified as historic, are protected under the Antiquities Code. Cemeteries are considered historic if interments within the cemetery occurred at least one hundred years ago. Individual burials within a cemetery are not considered historic unless the interments occurred at least fifty years ago.

(vi)-(x) (No change.)

Commission—The Texas Historical Commission and its staff.

Committee or Antiquities Committee, or Texas Antiquities Committee—As redefined by the 74th Texas Legislature within §191.003 of the Antiquities Code, the committee means the Texas Historical Commission [Members of the Texas Antiquities Committee] and/or staff members of the Texas Historical Commission as represented through the Department of Antiquities Protection, Department [Division] of Architecture, or the National Register Department [as provided for in §191.018(b) of the Antiquities Code of Texas].

Designated historic district—Areas of archeological or historical significance indicated by listing on, or determined eligible for inclusion in on the National Register of Historic Places, designated as State Archeological Landmarks, or considered eligible for designation as State Archeological Landmarks, or have been identified by State agencies, or political subdivisions of the State as historically sensitive sites, districts, or areas. This includes designations by local landmarks commissions, boards, or other public authority, and/or through local preservation ordinances.

Public agency or agencies—Any State agency or political subdivision of the State.

§41.10. *Antiquities Advisory Board.* As provided for by the 74th Texas Legislature, within §442.005(r) of the Administrative Code of Texas (relating to the statutes of the Texas Historical Commission), the committee is authorized to create an Antiquities Advisory Board (hereafter referred to as the board). The board will be chaired by the Governor appointed professional archeologist member of the Texas Historical Com-

mission, and will make recommendations to the committee on issues related to the Antiquities Code of Texas. The board will also be composed of the following six membership positions; the representative of the Texas Archeological Society (TAS), the president of the Council of Texas Archeologists (CTA), a state agency archeologist, a contract archeologist, a historical architect, and a historian. With the exception of the TAS and CTA representatives, members will be appointed by the committee, and the board will provide nominations for those members. The contract archeologist, historical architect, and historian will serve staggered three-year terms, with one appointed and one retiring every third year on February 1. The state agency archeologist will serve a one year term that expires February 1, and the appointment must rotate between the state agencies that have staff archeologists. Specific duties of the board include providing recommendations on proposed State Archeological Landmark designations, and disputes regarding the issuance of Texas Antiquities Permits. The board shall convene immediately prior to each quarterly meeting of the committee unless otherwise requested by the board chair, and board meetings shall conform to the open meetings act, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Texas Civil Statutes, Article 6252-13a). The recommendations of the board will be brought to the committee by the board chair.

§41.11. *Location and Discovery of Cultural Resources and Landmarks.* The Texas Natural Resource Code of 1977, Title 9, Heritage, Chapter 191, Antiquities Code of Texas, §191.002 (relating to Declaration of Public Policy), declares that it is the public policy and in the interest of the State of Texas to locate archeological sites and other cultural resources, in, on, or under any land within the jurisdiction of the State of Texas. The Antiquities Code, §191.051 (relating to Powers and Duties In General) directs the Committee to provide for the discovery and/or scientific investigation of publicly owned cultural resources. The Antiquities Code of Texas, §191.174 (relating to Assistance from State Agencies, Political Subdivisions, and Law Enforcement Officers), further directs the Committee, state agencies, political subdivisions of the state, and law enforcement agencies to work together to locate and protect cultural resources when deemed prudent, necessary, and/or in the best interest of the State. To achieve these mandates, the Committee reviews construction plans for projects on public lands prior to development to determine the project's potential impact to cultural resources and invokes its power to issue and

supervise survey level antiquities permit investigations in accordance with the Antiquities Code, §191.054 (relating to Permit for Survey and Discovery, Excavation, Restoration, Demolition, or Study and Supervision). These mandates and the review of construction plans may be accomplished in the following manner.

(1) Project notification. As provided for in the Antiquities Code, §191.0525 (relating to Notice Required), [Public] public agencies should notify the committee [Committee at least 60 days] in advance of proposed public development projects that could take, alter, damage, destroy, salvage, or excavate [publicly-owned cultural resources and/or landmarks] archeological sites, designated historic district, or other cultural resources and/or landmarks on non-federal public land in Texas. The notification should contain a brief written scope of work and a copy of the appropriate topographical quadrangle map with the project boundaries clearly marked.

(2) Project review. As provided for in the Antiquities Code, §191.0525 (relating to Notice Required), the committee [The Committee] will respond within 30 (thirty) days, unless otherwise provided for within §191.0525, upon receipt of the review request. The committee [Committee] shall review submitted documentation and notify the public agency of the possible need for survey level investigations to locate cultural resources situated in the proposed development tract. If the committee does not respond within 30 days, the public agency may proceed without further notice to the committee. Expedited reviews (24 hours) will be accommodated on a case by case basis in emergency situations.

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

§41.12. Designation Procedure.

(a) Nomination. Any group or individual, public or private, and public agencies may submit a property in public ownership to the [Committee] committee for consideration. The nomination must be submitted to the committee on an approved Application for Nomination Form, [form] available from the Texas Historical Commission [Antiquities Committee], P.O. Box 12276, Capitol Station, Austin, Texas 78711-2276, at least 30 days in advance of the scheduled committee [nomination] meeting date.

(1) Any third-party private individual or a private group that desires to nominate a building or site owned by a political subdivision as a State Archeological Landmark must complete and return to the committee an Application for Nomination Form, and must give

notice of the nomination at the individual's or group's own expense, in a newspaper of general circulation published in the city, town, or county in which the building or site is located. If no newspaper of general circulation is published in the city, town, or county, the notice must be published in a newspaper of general circulation in an adjoining or neighboring county that is circulated in the county of the applicant's residence. The notice must:

(A) be printed in 12-point boldface type;

(B) include the exact location of the building or site; and

(C) include the name of the group or individual nominating the building or site.

(D) An original copy of the notice and an affidavit of publication signed by the newspaper's publisher must be submitted to the committee with a Application for Nomination Form. The committee will not consider a site owned by a political subdivision for designation as a State Archeological Landmark unless the notice and affidavit required by this section are attached to an Application for Nomination Form.

(2) If the committee's staff wishes to nominate a historic building or site for State Archeological Landmark designation, they must give the public agency that owns the property a written notification that a nomination will be presented to the committee. This notification must be received by the public agency a minimum of 15 day prior to the regularly scheduled public meeting of the committee at which the nomination is scheduled to be presented. The committee's staff must also send the public agency complete site information on the proposed nomination.

(b)-(j) (No change.)

§41.13. Designation of Private Property. Cultural resources of national, state, or local significance in private ownership may be nominated by individuals or institutions holding title to the property on which the resources are located. Nominations must be made on a committee [the Committee's] approved Application for Nomination Form [nomination form]. By [In] submitting an [a] Application for Nomination Form [nomination form], the owner agrees that if the property in question is designated as a State Archeological Landmark, he or she will [execute a designation form provided by the Committee,] file a notice of

the designation [a copy] with the deeds clerk of the county where the property is located, and pay any filing fees required. After filing of the designation form, the committee may [Committee will] provide the owner of the landmark with one cast aluminum marker. The owner will be responsible for prompt and permanent placement of the marker or markers on the site in such a way so as not to damage the resource. A site or structure on privately owned property which is designated as a State Archeological Landmark is afforded the same protection under the Code as resources on public property.

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 August 24, 1995.

TRD-9510771

Mark H Denton
Staff Archeologist
Texas Antiquities
Committee

Earliest possible date of adoption: October 2, 1995

For further information, please call: (512) 463-5711

TITLE 19. EDUCATION Part I. Texas Higher Education Coordinating Board

Chapter 21. Student Services

Subchapter GG. Fifth-Year Accounting Student Scholarship Program

• 19 TAC §§21.1030-21.1042

The Texas Higher Education Coordinating Board proposes new §§21.1030-21.1042, concerning Fifth-Year Accounting Student Scholarship Program. The program is scheduled by legislation to start operating in January 1996. The new rules are needed to guide the program operation. They will provide a framework for program operations.

Mack Adams, Assistant Commissioner for Student Services has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Adams also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that scholarships for eligible students will be available starting January 1996. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Dr. Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education

Coordinating Board, P. O. Box 12788, Austin, Texas 78711

The new sections are proposed under Texas Education Code, Chapter 61, Subchapter N, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Fifth-Year Accounting Student Scholarship Program.

There were no other sections affected by this rule.

§21.1030. Purpose. The purpose of the Fifth-Year Accounting Student Scholarship Program is to promote the professional and educational needs of the state; increase the number of highly trained and educated professional accountants available to serve the residents of this state; improve the state's business environment and encourage economic development and financial stability; and identify, recognize and support outstanding scholars who plan to pursue careers in accounting.

§21.1031. Administration. The Texas Higher Education Coordinating Board, or its successor or successors, shall administer the Fifth-Year Accounting Student Scholarship Program.

§21.1032. Delegation of Powers and Duties. The board delegates to the Commissioner of Higher Education the powers, duties and functions authorized by the Texas Education Code, Chapter 61, Subchapter N, as provided in this subchapter.

§21.1033. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

Board—The Texas Higher Education Coordinating Board.

Commissioner—The commissioner of higher education, the chief executive officer of the board.

Fifth-year accounting student—A student who has completed at least 120 semester credit hours or their quarter hour equivalent as defined by the institution in which the student is enrolled.

Financial need—The cost of attendance at an institution of higher education less the expected family contribution and any gift aid for which the student is eligible. The cost of education and family contribution are to be determined in accordance with board guidelines.

Half-time student—A student who has been formally admitted to the institution and is enrolled or is expected to be enrolled for a half-time course load as determined by the educational program in which he or she is enrolled.

Minority—An individual, other than a nonresident alien, who is a member of one

of the following ethnic groups: Black, not Hispanic; American Indian or Alaskan Native; Asian or Pacific Islander; or Hispanic.

Program Officer—The Fifth-Year Accounting Student Scholarship Program Officer designated by an eligible institution to represent the program described in this subchapter on that campus.

Scholastic ability and performance—Academic credentials of the student, measured by college grade point average as determined by the institution in which the student is enrolled.

§21.1034. Eligible Institution.

(a) An eligible institution of higher education may be any public institution as defined in the Texas Education Code, §61.003(8) or any nonprofit, independent institution approved by the board under the Education Code, §61.222.

(b) The chief executive officer of an eligible institution shall designate a Fifth-Year Accounting Student Scholarship Program Officer. Unless otherwise specified by the chief executive officer of the institution, the Director of Financial Aid shall serve as the Fifth-Year Accounting Student Scholarship Program Officer, and shall be the board's on-campus agent to certify all institutional transactions, activities and reports with respect to the program described in this subchapter.

§21.1035. Advisory Committee. The board shall appoint an advisory committee to advise the board concerning assistance provided under this subchapter to fifth-year accounting students.

(1) The advisory committee consists of:

(A) a chair named by the board;

(B) one representative named by the Texas State Board of Public Accountancy;

(C) one representative named by the Texas Society of Certified Public Accountants;

(D) a Texas representative of the American Accounting Association named by that organization;

(E) one representative named by the National Association of Black Accountants;

(F) one representative named by the American Association of Hispanic Certified Public Accountants; and

(G) two representatives named by the board who are the chairmen of accounting departments at Texas colleges and universities, at least one of whom must be a representative of a private college or university and at least one other of whom must be a representative from a college or university that primarily serves minority students.

(2) The costs of participation on an advisory committee of a member representing a particular organization or agency shall be borne by that member or the organization or agency the member represents.

(3) The duties of the advisory committee shall be to advise the board on:

(A) how the scholarships provided for under this subchapter should be established and administered to best promote the public purpose of the scholarships;

(B) the amount of money needed to adequately fund the scholarship program;

(C) set any priorities among the factors identified by §21.1036(b) of this title (relating to Eligible Students).

§21.1036. Eligible Students.

(a) To receive funds through the Fifth-Year Accounting Student Scholarship Program, a student must be enrolled as fifth year accounting students on at least a half-time basis in an eligible institution, and must sign a written statement confirming his/her intent to take the written examination conducted by the Texas State Board of Public Accountancy for the purpose of granting a certificate of "certified public accountant". The student's grade point average, as determined by the institution, must be equivalent to at least a 2.00 on a 4.00 scale.

(b) In determining student eligibility the board shall consider the following factors relating to each applicant:

(1) financial need;

(2) ethnic or racial minority status; and

(3) scholastic ability and performance.

§21.1037. Funding. Funds awarded through the program may not exceed the amount appropriated for that purpose, plus any gifts, grants and donations of real or personal property from any entity, subject to limitations or conditions set by law, for the purposes of this subchapter.

§21.1038. Dissemination of Information. The board shall provide for the distribution of information about the scholarship program established under this subchapter to institutions and professional associations of accounting students.

§21.1039. Certification and Disbursement Procedures.

(a) **Application Submission.** Eligible institutions will be asked to submit scholarship applications to the board for eligible students. The number of applications which may be submitted by each school will be determined by the board, and will be based on the relative size of the school's fifth year accounting student enrollment. The institution will need to specify a priority on each application, and applications will be serviced to the extent possible in priority number order until all funds are exhausted.

(b) **Maximum Awards.** The maximum award for a student through this program is the lesser of:

(1) an amount equal to the student's financial need; or

(2) the program maximum of \$3,000.

(c) **Funds Disbursement.** For those students receiving scholarships, the board will request warrants from the State Comptroller's Office. Annual awards will be issued in multiple disbursements, as scheduled by the institution on the scholarship application. A minimum of one disbursement per semester will be required. Once the warrants are delivered to the board, they will be forwarded to the institution's business office for disbursement to the student. No warrant shall be released to a student by the institution without confirmation of the student's eligibility for the award at the time of disbursement.

§21.1040. Affirmation Forms. Each disbursement of scholarship funds must be documented. An affirmation form, indicating the amount of scholarship being disbursed to a particular student and confirming the student's eligibility must be signed by the receiving student. One copy of the signed affirmation form must be forwarded to the board.

§21.1041. Program Review Requirements. Any institution whose students receive funds through the scholarship program in a year will be subject to a program review.

§21.1042. Reporting Requirements. Before January 15 of each odd-numbered year, the board shall report to the legislature con-

cerning the scholarship program. The report must include:

(1) the number and amount of scholarships awarded in the two calendar years preceding the year in which the report is due;

(2) the number of minority students, by racial or ethnic background, who have been awarded scholarships during that two-year period.

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

Issued in Austin, Texas, on August 23, 1995.

TRD-9510716

James McWhorter
Assistant Commissioner for
Administration
Texas Higher Education
Coordinating Board

Proposed date of adoption: October 27, 1995

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

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**TITLE 22. EXAMINING
BOARDS**
**Part I. Texas Board of
Architectural Examiners**
Chapter 1. Architects

Subchapter A. Scope; Definitions

• **22 TAC §§1.3, 1.5, 1.8**

The Texas Board of Architectural Examiners proposes amendments to §§1.3, 1.5, and 1.8, concerning legislative changes from Administrative Procedure and Texas Register Act (APTRA) to Administrative Procedure Act (APA). The amendments are being proposed to conform to the legislative changes.

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

Ms. Hendricks also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be clarification of terminology. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendments are proposed under the Texas Civil Statutes, Article 249a, which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

The proposed amendments do not affect any other statutes.

§1.3. Board's Regulatory Authority. The cited rules of the Board are promulgated under authority of the cited statute, Texas Civil Statutes, Article 249a, a practice and title law, and shall be in conformity with applicable provisions of the Administrative Procedure Act, Government Code, Chapter 2001, (APA) [Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, (APTRA).]

§1.5. Terms Defined Herein. The following words and terms, when used in these rules, shall have the following meanings, unless the context clearly indicates otherwise.

APA—Administrative Procedure Act, Government Code, Chapter 2001.

[APTRA—Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a]

§1.8. Meetings and Notices Thereof. Two regular meetings shall be held each year and as many special meetings as may be necessary for the proper performance of the duties of the Board. An annual meeting of the Board shall be held during the month of January of each year at a time, place, and date which shall be determined by the Board. Special meetings of the Board may be called by the Chairman or upon the request of any two members, by giving at least five days written notice to each member of the time and place of such meeting. All meetings of the Board shall be held in accordance with the Open Meetings Act (Government Code, Chapter 551) [(Texas Civil Statutes, Article 6252-17)].

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 August 24, 1995.

TRD-9510802

Cathy L. Hendricks
Executive Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption: October 2, 1995

For further information, please call: (512) 458-1363

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**Subchapter I. Charges Against
Architects: Action**

• **22 TAC §1.165, §1.174**

The Texas Board of Architectural Examiners proposes amendments to §1.165, and §1.174, concerning legislative changes from Administrative Procedure and Texas Register Act (APTRA) to Administrative Procedure Act (APA). The amendments are being proposed to conform to the legislative changes.

Cathy L. Hendricks, Executive Director, has determined that for the first five-year period

the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms Hendricks also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be clarification of terminology. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendments are proposed under the Texas Civil Statutes, Article 249a, which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

The proposed amendments do not affect any other statutes.

§1.165. Administrative Procedure Act [Administrative Procedure and Texas Register Act]. The provisions of the [Administrative Procedure and Texas Register Act (APTRA)] Administrative Procedure Act (APA) shall apply to the conduct of all disciplinary hearings, with additional rules as may be hereinafter adopted by the Board which shall be in addition to and not inconsistent with the APA [APTRA].

§1.174. Administrative Fine Notice and Payment.

(a) (No change.)

(b) Within the 30-day period immediately following the day on which the administrative fine order becomes final as provided by the Administrative Procedure Act (APA) [Administrative Procedure and Texas Register Act (APTRA)], the architect charged with the administrative fine shall.

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

(c)-(d) (No change.)

(e) Judicial review of the order by the Board levying the administrative fine shall be in accordance with APA [APTRA] procedures.

(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 August 24, 1995.

TRD-9510801

Cathy L. Hendricks
Executive Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption: October 2, 1995

For further information, please call: (512) 458-1363

Chapter 3. Landscape Architects

Subchapter A. Scope: Definitions

• 22 TAC §§3.3, 3.5, 3.8

The Texas Board of Architectural Examiners proposes amendments to §§3.3, 3.5, and 3.8, concerning legislative changes from Administrative Procedure and Texas Register Act (APTRA) to Administrative Procedure Act (APA). The amendments are being proposed to conform to the legislative changes.

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

Ms. Hendricks also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be clarification of terminology. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendments are proposed under the Texas Civil Statutes, Article 249c, which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

The proposed amendments do not affect any other statutes.

§3.3. Board's Regulatory Authority. The cited rules of the Board are promulgated under authority of the cited statute, Texas Civil Statutes, Article 249c, and shall be in conformity with applicable provisions of the Administrative Procedure Act (APA), Government Code, Chapter 2001 [Administrative Procedure and Texas Register Act (APTRA), Texas Civil Statutes, Article 6252-13a].

§3.5. Terms Defined Herein. The following words and terms, when used in these rules, shall have the following meanings, unless the context clearly indicates otherwise.

APA: Administrative Procedure Act, Government Code, Chapter 2001.

[APTRA-Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a].

§3.8. Meetings and Notices Thereof. Two regular meetings shall be held each year and

as many special meetings as may be necessary for the proper performance of the duties of the Board. An annual meeting of the Board shall be held during the month of January of each year at a time, place, and date which shall be determined by the Board. Special meetings of the Board may be called by the Chairman or upon the request of any two members, by giving at least five days' written notice to each member of the time and place of such meeting. All meetings of the Board shall be held in accordance with the Open Meetings Act (Government Code, Chapter 551) [(Texas Civil Statutes, Article 6252-17)].

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 August 24, 1995.

TRD-9510804

Cathy L. Hendricks
Executive Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption: October 2, 1995

For further information, please call: (512) 458-1363

Subchapter C. Written Examinations

• 22 TAC §3.46

The Texas Board of Architectural Examiners proposes an amendment to §3.46, concerning examination review for landscape architectural candidates. The amendment is being proposed to conform to the Council of Landscape Architectural Registration Boards requirements.

Cathy L. Hendricks, Executive Director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Hendricks also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarification of confusing terminology. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed under the Texas Civil Statutes, Article 249c, which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

The proposed amendment does not affect any other statutes.

§3.46. Scoring.

(a) (No change.)

(b) There will be no Board review of examinations with candidates. [Candidates may request an appointment, within 90 days after receipt of their grades, to come into the Board offices and look at their graphic solutions.] Candidates must request review of their examinations within 14 days of receipt of their exam results. Once they are notified by TBAE that their exam is available for review, the candidate must schedule and complete the review within 20 days. Any exam review requested outside of these time frames will require an additional fee per charges imposed by CLARB.

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 August 24, 1995.

TRD-9510783 Cathy L. Hendricks
Executive Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption: October 2, 1995

For further information, please call: (512) 458-1363

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Subchapter I. Charges Against
Landscape Architects: Action
• 22 TAC §3.161, §3.164

The Texas Board of Architectural Examiners proposes amendments to §3.161, and ~~§3.164~~, concerning legislative changes from Administrative Procedure and Texas Register Act (APTRA) to Administrative Procedure Act (APA). The amendment is being proposed to conform to the legislative changes.

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

Ms. Hendricks also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be clarification of terminology. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendments are proposed under the Texas Civil Statutes, Article 249c, which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

The proposed amendments do not affect any other statutes.

§3.161. Administrative Procedure Act [Administrative Procedure and Texas Register Act]. The provisions of the Administrative Procedure Act [Administrative Procedure and Texas Register Act] shall apply to the conduct of all disciplinary hearings, with additional rules as may be hereinafter adopted by the Board which shall be in addition to and not inconsistent with APA [APTRA].

§3.164. Appeals from Board Orders. A landscape architect who is aggrieved by a decision of the Board, may file an appeal within 30 days of receipt of a copy of the Board's Order as set out in the Landscape Architects' Registration Law and in compliance with APA [APTRA] 19(d).

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 August 24, 1995.

TRD-9510803 Cathy L. Hendricks
Executive Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption: October 2, 1995

For further information, please call: (512) 458-1363

◆ ◆ ◆
Chapter 5. Interior Designers
Subchapter A. Scope; Definitions
• 22 TAC §§5.3, 5.5, 5.8

The Texas Board of Architectural Examiners proposes amendments to §§5.3, 5.5, and 5.8, concerning legislative changes from Administrative Procedure and Texas Register Act (APTRA) to Administrative Procedure Act (APA). The amendments are being proposed to conform to the legislative changes.

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

Ms. Hendricks also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be clarification of terminology. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendments are proposed under the Texas Civil Statutes, Article 249e, which pro-

vide the Texas Board of Architectural Examiners with authority to promulgate rules.

The proposed amendments do not affect any other statutes.

§5.3. Board's Regulatory Authority. The cited rules of the Board are promulgated under authority of the cited statute, Texas Civil Statutes, Article 249e, a title law, and shall be in conformity with applicable provisions of the Administrative Procedure Act, Government Code, Chapter 2001, (APA) [Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, (APTRA)].

§5.5. Terms Defined Herein. The following words and terms, when used in these rules, shall have the following meanings, unless the context clearly indicates otherwise.

APA—Administrative Procedure Act, Government Code, Chapter 2001.

[APTRA—Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a].

§5.8. Meetings and Notices Thereof. Two regular meetings shall be held each year and as many special meetings as may be necessary for the proper performance of the duties of the Board. An annual meeting of the Board shall be held during the month of January of each year at a time, place, and date which shall be determined by the Board. Special meetings of the Board may be called by the Chairman or upon the request of any two members, by giving at least five days written notice to each member of the time and place of such meeting. All meetings of the Board shall be held in accordance with the Open Meetings Act (Government Code, Chapter 551) [(Texas Civil Statutes, Article 6252-17)].

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 August 24, 1995.

TRD-9510800 Cathy L. Hendricks
Executive Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption: October 2, 1995

For further information, please call: (512) 458-1363

◆ ◆ ◆
Subchapter I. Charges Against
Interior Designers: Action
• 22 TAC §5.174

The Texas Board of Architectural Examiners proposes an amendment to §5.174, concerning legislative changes from Administrative

Procedure and Texas Register Act (APTRA) to Administrative Procedure Act (APA). The amendment is being proposed to conform to the legislative changes.

Cathy L. Hendricks, Executive Director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Hendricks also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarification of terminology. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed under the Texas Civil Statutes, Article 249e, which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

The proposed amendment does not affect any other statutes.

§5.174. Administrative Procedure Act [Administrative Procedure and Texas Register Act]. The provisions of the Administrative Procedure Act (APA) [Administrative Procedure and Texas Register Act (APTRA)] shall apply to the conduct of all disciplinary hearings, with additional rules as may be hereinafter adopted by the Board which shall be in addition to and not inconsistent with the APA [APTRA].

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 August 24, 1995.

TRD-9510799
Cathy L. Hendricks
Executive Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption: October 2, 1995

For further information, please call: (512) 458-1363

Part XIV. Texas Board of Veterinary Medical Examiners

Chapter 573. Rules of Professional Conduct

Supervision of Personnel

• 22 TAC §573.10

The Texas Board of Veterinary Medical Examiners proposes new §573.10, concerning Supervision of Lay Personnel and withdraw-

ing the pending proposal which will appear in this issue of the *Texas Register*. The rule as published in the June 27, 1995, issue of the *Texas Register*, allowed euthanasia to be performed by a veterinary technician under the "direct" supervision of the veterinarian. This was an error. The Board specifically authorized and approved veterinary technicians to perform euthanasia only under the "immediate" supervision of a veterinarian, requiring the DVM to be within visual and audible range during the procedure. This is the only change and all other provisions of the rule remain the same as those published on June 27, 1995. The new rule defines acceptable levels of supervision and provides practitioners with guidelines as to what tasks a non-licensed employee may perform. It places sole responsibility for determining the employee's qualifications on the employing licensee.

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

Mr. Allen also has determined that for each year of the first five years the section is in effect the public will benefit because DVMs will be allowed to use employees, under proper supervision, where it will benefit patient treatment, and treat animals in an emergency situation where the DVM is not on the premises, but can instruct the employees by means of oral electronic communication.

There will be no effect on small businesses. There are no economic costs to persons required to comply with the new rule since there are no additional requirements beyond those already in place.

Comments on the proposed rule may be addressed to the Texas Board of Veterinary Medical Examiners, 1946 South IH-35, Suite 306, Austin, Texas 78704, (512) 447-1183.

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

The new section affects §7(c) which states "the Board may adopt rules for the use of registered veterinary technicians working under the supervision of a licensee."

§573.10. Supervision of Non-Licensed Employees.

(a) General Supervision. Supervision by a responsible veterinarian being readily available to communicate with the person being supervised by the veterinarian.

(b) Direct Supervision. The actual physical presence of a responsible veterinarian on the premises.

(c) Immediate Supervision. The responsible veterinarian is in audible and visual range of the animal patient and the person treating the animal.

(d) Official Health Test/Documents. A licensee must personally sign any official health documents, other than "rabies certificates" issued by said licensee. The issuance of any pre-signed official health documents by a licensee is a violation of this rule. Unless otherwise prohibited by this Act, Board Rule, State or federal law, a licensee may permit an unlicensed employee, under Direct Supervision of the licensee, to collect samples from animals for official test.

(e) Employee Qualifications. The veterinarian is the sole judge of the employee's qualifications necessary for the performance of routine treatment. Consequently, the licensee will be held accountable before the Board for the actions and/or potential problems associated with employees acting at his/her directions.

(f) Prohibited Services. An unlicensed individual shall not perform the following health care services: surgery; invasive dental procedure; diagnosis and prognosis of animal diseases and/or conditions; or, prescribing drugs and appliances.

(g) The Level of Supervision on Non-Licensed Employees. General or Direct supervision as defined by the Act, shall be at the discretion and responsibility of the licensed veterinarian except where such acts of non-licensees are prohibited by the Act or Board Rule. Licensees should consider both the level of training and experience when determining level of supervision and duties of non-licensed employees. When feasible a licensee should delegate greater responsibility to Registered Veterinary Technician (RVT) over non-registered veterinary technicians. RVT's may perform those duties they have been trained to do as set forth by American Veterinary Medical Association (Committee on Veterinary Technician Education and Activities) provided those duties are performed under the direction, supervision and responsibility of a veterinarian licensed by Board, and such duties are not prohibited by Board Rule, State or Federal law, and where employment of the RVT is not an attempt to circumvent the Act or Board Rule. An RVT may suture existing surgical skin incisions and induce anesthesia under the direct or immediate supervision of a veterinarian, and may be performed by a non-registered veterinary technician only under the immediate supervision by a veterinarian. Euthanasia may be performed by a veterinary technician only under the immediate supervision of a veterinarian.

(h) Emergency Care. A licensee, in an emergency situation where prompt treatment is essential for the prevention of death or alleviation of extreme suffering, may, after determining the nature of the emergency, and the condition of the animal,

issue treatment directions to an unlicensed person by means of telephone or radio communication. The Board can take action against a veterinarian if, in the Board's sole discretion, the veterinarian uses the privilege to circumvent this rule. The veterinarian assumes full responsibility for such treatment. However, nothing in this rule requires a licensee to accept a case under these circumstances.

(i) Care of Hospitalized Animals. It is permissible for an unlicensed person, in the absence of direct supervision, to follow the oral or written treatment orders of a licensed veterinarian in the care of hospitalized animals; provided however, that the veterinarian has examined the animal(s) and that a valid veterinarian/client/patient relationship exists.

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 August 22, 1995.

TRD-9510719 Ron Allen
Executive Director
Texas Board of Veterinary
Medical Examiners

Proposed date of adoption: October 5, 1995

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

TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 33. Continuing Care Retirement Facilities

Subchapter A. General Provisions

• 28 TAC §§33.1-33.10

The Commissioner of Insurance proposes amendments to §§33.1-33.10, concerning the general provisions for Chapter 33 of this title (relating to Continuing Care Retirement Community). The amendments are necessary to provide technical corrections, to clarify the sections, and to make changes mandated by amendments to Health and Safety Code, Chapter 246, enacted by the passage of House Bill 2389, 73rd Legislature, 1993. The amendment to §33.1 refers to the new cite for the Texas Continuing Care Facility Disclosure and Rehabilitation Act. The amendment to §33.2 revises the definitions for "affiliate", "commissioner", "continuing care", "control", "entrance fee", "person", and "provider", deletes the definition for "board", and adds definitions for "actuarial funded status", "audited financial statements", "debt service coverage ratio", "department", "fund balance", "long-term nursing care", "reservation agreement", and "reservation agreement deposit".

The amendment to §33.3 clarifies the persons to which this chapter apply. The amend-

ment to §33.4 provides that if a court of competent jurisdiction determines portions of this chapter are invalid, then the remaining portions will remain in effect. The amendment to §33.5 provides that violators of this chapter or any orders entered under this chapter may be subject to penalties under Texas Insurance Code, Article 1.10, §7. The amendment to §33.6 refers to the new cite for the Texas Continuing Care Facility Disclosure and Rehabilitation Act. The amendment to §33.7 makes reference to the new rule numbers used in Chapter 33.

The amendment to §33.8 adopts and incorporates by reference the following new forms: CCRC Form #4a-Biographical Data Form for Not-for-Profit CCRC Board Members, CCRC Form #11-Notice by Provider of Repayment of Previously Released Funds to the Reserve Fund Escrow Account under §33.406(a) of this title, CCRC Form #12-Affidavit of Repayment of Previously Released Funds to the Reserve Fund Escrow Account, under §33.406 of this title, CCRC Form #13-Notice of Lien filed under Health and Safety Code Act, §246.111, and CCRC Form #14 Calculations Concerning Conditions for Release of Entrance Fees to Provider under Health and Safety Code, §246.073. The calculations concerning conditions contained in CCRC Form #14 were in the prior version of §33.403(b), now proposed for repeal. The amendment to §33.8 deleted the former CCRC Form #2-Application for certificate of authority to do business in the State of Texas under the Act, §4(g) and adopted and incorporated by reference the new CCRC Form #2-Application for Approval by the Commissioner for Release of Loan Reserve Fund Escrow Account Amounts in Excess of that allowed under the Act, §246.078(a). Forms adopted by reference under §33.8 have also been changed to provide clearer and more complete information. Copies of these forms have been filed with the Secretary of State's Office, Texas Register Division. Persons desiring copies of these forms can obtain them from the Texas Department of Insurance, MC 305-2C, P.O. Box 149104, Austin, Texas 78714-9104. The amendment to §33.9 changed the address for all filings made under this chapter and the amendment to §33.10 clarified that unregistered facilities are required to respond to Commissioner inquiries and that the Commissioner may take action against unregistered facilities.

Kathy Wilcox, Director of Insurer Services, has determined that for each year of the first five-year period the proposed sections will be in effect, there will be no fiscal implications for local government as a result of enforcing or administering these sections, and there will be no effect on local employment or the local economy. There is no cost to state government to implement these sections other than the cost originally imposed upon state government by the statute. There is no anticipated loss or increase in revenue to state or local government as a result of the amendments to these sections.

Ms. Wilcox also has determined that for each year of the first five-year period the proposed sections are in effect, the public benefit anticipated as a result of enforcing the sections will be to provide protection from fraud or mis-

management for the investments of consumers in continuing care retirement facilities. Most of the costs connected with these rules are costs already required by statute. The incremental compliance costs resulting from the amended sections rather than to the statutes, are minimal in amount and administrative in nature. These incremental costs for completing and mailing forms are estimated to range from \$200 to \$1,000 for each year of the first five-year period the proposed sections are in effect. Based upon the cost per hour of labor, there will be no difference between the cost of compliance for small business and the cost of compliance for large businesses.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposed sections in the *Texas Register* in order to be considered by the commissioner. Comments should be mailed to Alicia M. Fechtel, Chief Clerk, Mail Code 113-1C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Kathy Wilcox, Director of Insurer Services, Mail Code 305-2C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for public hearing must be submitted separately, in writing, to the Office of the Chief Clerk.

The amendments are proposed under Health and Safety Code, Chapter 246, including the rulemaking authority conferred by §246.003 of that chapter; Insurance Code, Articles 1.03A and 1.10; House Bill 1461, §1.23, 73rd Legislature, 1993; and the Government Code, §§2001.04, et seq. Health and Safety Code, Chapter 246, sets out the statutory requirements for continuing care retirement facilities and §246.003 authorizes the board to regulate those facilities and to adopt rules as necessary to administer and enforce that chapter. Insurance Code, Article 1.03A provides the commissioner with the authorization to adopt rules and regulations for the conduct and execution of the duties and functions of the department. Insurance Code, Article 1.10 authorizes sanctions for violations by licensees of the department. House Bill 1461, §1.23 authorizes the transition of duties between the State Board and Commissioner of Insurance. The Government Code, §§2001.004, et seq. authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirements of available procedures and prescribes the manner for adoption of rules by a state administrative agency.

The following statutes are affected by these amendments. Health and Safety Code, Chapter 246, §§246.002, 246.071, and 246.114; Insurance Code, §1.10; Health and Safety Code, §§246.027, 246.021, 246.022, 246.042-46.055, 246.072-246.074, 246.077, 246.078, and 246.112-246.116

§33.1. Purpose. The provisions of this chapter implement the Texas Continuing Care Facility Disclosure and Rehabilitation Act, Health and Safety Code, Chapter 246. [first effective September 1, 1987, and codified as Texas Civil Statutes, Article 8876, as amended.]

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

Act—The Texas Continuing Care Facility Disclosure and Rehabilitation Act, Health and Safety Code, Chapter 246. [first effective September 1, 1987, and codified as Texas Civil Statutes Article 8876, as amended.]

Actuarial funded status—The ratio of actuarial assets plus net accounting assets to actuarial liabilities plus actuarial refund liabilities.

Affiliate—[An affiliate of, or person affiliated with, a specific person is] A [a] person that directly, or indirectly through one or more intermediaries, controls, [or] is controlled by, or is under common control with, the person specified.

Audited financial statements—Statements prepared by an independent Certified Public Accountant, which includes an audit opinion from the CPA concerning the financial statements.

[Board—The State Board of Insurance.]

Commissioner—The Commissioner of Insurance of the Texas Department of Insurance.

Continuing care—The furnishing [furnishing, to an individual who is not related by consanguinity or affinity to the person furnishing the care.] of a living unit, together with personal care services, nursing services, medical services, or other health-related services, to an individual who is not related by consanguinity or affinity to the provider of the care under a continuing care contract, regardless of whether [or not] the services and the living unit are provided at the same location. [location, under a contractual agreement that requires the payment of an entrance fee and that is effective either for life of the individual or for a period of more than one year.]

Continuing care contract—An agreement that requires the payment of an entrance fee by or on behalf of an individual in exchange for the furnishing of continuing care by a provider and that is effective for:

(A) the life of the individual; or

(B) more than one year.

Control—[Control, including the terms "controlling," "controlling by," and "under common control with" means] The [the] possession, direct or indirect, of the power to direct or cause the direction of management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management [nonmanagement] services, or otherwise,

unless the power is the result of an official position with or corporate office held by the person. This definition also includes the terms "controlling," "controlled by," and "under common control with". Control shall be presumed to exist if any person, directly or indirectly, owns, controls, or holds with the power to vote, or holds irrevocable proxies representing, 10% or more of the voting securities or authority of any other person. This presumption may be rebutted to show that control does not in fact exist.

Debt service coverage ratio—Total excess (deficit) of revenues and gains in excess of expenses and losses plus interest expense plus depreciation expense plus amortization expense minus amortization of deferred revenues from entry fees plus net proceeds from entry fees, divided by annual debt service (annual principal and interest payment or maximum annual debt service).

Department—The Texas Department of Insurance.

Entrance fee—An initial or deferred transfer of money, or other property valued at an amount in excess of three months' rent, made or promised to be made as full or partial consideration for acceptance by a provider of a specified individual as a resident in a facility. The term does not include a deposit made under a reservation agreement.

Fund balance—Assets as shown on the balance sheet minus liabilities shown on the balance sheet.

Long-term nursing care—Nursing care provided for a period longer than 365 consecutive days.

Person—An individual, corporation, association, or partnership, [All corporations, associations, partnerships, or individuals,] including a fraternal or benevolent order [orders] or society [societies].

Provider—A person [The owner, operator, or responsible person of an institution, building, residence, or other place, whether operated for profit or not.] who undertakes to provide continuing care in a facility.

Reservation Agreement—An agreement that requires the payment of a deposit to reserve a living unit for a prospective resident. A deposit made under a reservation agreement is not considered an entrance fee.

Reservation Agreement Deposit—A deposit paid under a reservation agreement.

§33.3. *Scope.* This chapter shall apply to a facility if continuing care is provided under a continuing care contract agreement; or continuing care contracts have been or are being entered into, offered, or solicited; or a reservation agreement is entered into, offered or solicited on or

after September 1, 1993. [This chapter shall apply to a person operating or developing a facility if all of the following conditions are met.

[(1) Continuing care is provided under an agreement that:

[(A) requires the payment of an entrance fee of an initial or deferred transfer of money, or other property valued at an amount in excess of three months' rent, made or promised to be made as full or partial consideration for acceptance by a provider of a specified individual as a resident in a facility; and

[(B) is either for the life of the individual or for a period of more than one year.

[(2) Continuing care contracts were entered into, offered, or solicited on or after September 1, 1987.

[(3) A living unit is furnished, together with personal care services, nursing services, medical services, or other health-related services, regardless of whether or not the services and the living unit are provided at the same location.]

§33.4. *Severability.* Where any terms or sections of this chapter are determined by a court of competent jurisdiction to be invalid, [inconsistent with the Texas Continuing Care Facility Disclosure and Rehabilitation Act, as identified by this chapter, the Act will apply, but] the remaining terms and sections of this chapter will continue in effect.

§33.5. *Violation of Rules.* A violation of any provision of this chapter or of any order of the Commissioner [commissioner of insurance] or the department [or State Board of Insurance] entered under this chapter may subject the violator to penalties, including those stated in the Insurance Code, Article 1.10, §7. [by virtue of the provisions of this chapter constitutes a violation of the Texas Continuing Care Facility Disclosure and Rehabilitation Act.]

§33.6. *Fees for Filing Application for Certificate of Authority [Fees].*

[(a)] The applicant [Each person] filing [an application] for a certificate of authority to operate a facility under Health and Safety Code §246.022, [pursuant to the Act, §4.] shall pay to the department a non refundable filing fee of \$10,000. [State Board of Insurance the appropriate fee in accordance with the Act, §22.]

[(b) Each provider filing an annual disclosure statement as required by the Act,

§7, shall pay to the State Board of Insurance the appropriate fee in accordance with the Act. §22.]

§33.7. *Fiscal Year.* A fiscal year is a period of 12 months ending on the last day of any month. The department will recognize a [A] fiscal year [will be established] only if it is established as the certificate-of-authority-holder's annual accounting period, and the books and records are kept corresponding to that period. The Commissioner [commissioner] must be notified of any change of fiscal year under §33, 508 [§33.510] of this title (Relating to Occasional Required Filings). [Change of Fiscal Year.]

§33.8. *Forms.* The forms listed in this section are published by the department [State Board of Insurance] and filed with the Office of the Secretary of State, Texas Register Section. [and copies] Copies of the forms may be obtained from the Texas Department of Insurance, CCRC Section, Insurer Services, Mail Code 305-2C, P.O. Box 149104, Austin, Texas 78714-9104. [Deputy Insurance Commissioner for Regulated Lines and Licensing, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.] The department [State Board of Insurance] adopts and incorporates [herein] by reference the [following] forms [forms,] listed in paragraphs (1)-(16) of this section, and their use is required, where applicable, for compliance with the provisions of this chapter. [chapter:]

(1) CCRC Form #1-Application [application] for Certificate of Authority to do Business in the State of Texas under the Act, §246.022; [§4(c).]

(2) CCRC Form #2-Application for Approval by the Commissioner for Release of Loan Reserve Fund Escrow Account Amounts in Excess of that Allowed Under the Act, §246.078(a); [application for certificate of authority to do business in the state of Texas under the Act §4(g).]

(3) CCRC Form #3-Officers [officers] and Directors Page; [directors page:]

(4) CCRC Form #4-Biographical Data Form; [biographical data form:]

(5) CCRC Form #4a-Biographical Data Form for Not-for-Profit CCRC Board Members; [instructions for completion of biographical data forms:]

(6) CCRC Form #5-Acknowledgment [acknowledgment] of Delivery [delivery] of Disclosure Statement; [disclosure statement:]

(7) CCRC Form #6-Form [form] for Disclosure Statement; [disclosure statement:]

(8) CCRC Form #6a-Instructions [instructions] for Preparation [preparation] of CCRC Disclosure Statement [disclosure statement] for Filing [filing] with the Texas Department of Insurance; [State Board of Insurance:]

(9) CCRC Form #7-Application for Change of Control of [change of control statement for] CCRC;

(10) CCRC Form #8-Certification [certification] of Changes [changes] to Disclosure Statement; [disclosure statement:]

(11) CCRC Form #9-Notice [notice] of Request to Release Entrance Fee Escrow Account Funds; [request to release entrance fee escrow funds; and]

(12) CCRC Form #10-Notice [notice] of Request [request] to Release Funds [release funds] from the Reserve Fund Escrow Account; [reserve fund escrow account.]

(13) CCRC Form #11-Notice by Provider of Repayment of Previously Released Funds to the Reserve Fund Escrow Account;

(14) CCRC Form #12-Affidavit of Repayment of Previously Released Funds to the Reserve Fund Escrow Account;

(15) CCRC Form #13-Notice of Lien; and

(16) CCRC Form #14-Calculations Concerning Conditions for Release of Entrance Fees to Provider.

§33.9. *Address for Filings.* All inquiries, correspondence, applications, and other filings under this chapter must be addressed to the Texas Department of Insurance, CCRC Section, Mail Code 305-2C, P.O. Box 149104, Austin, Texas 78714-9104 [as follows: State Board of Insurance, CCRC Section, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.]

§33.10. *Unregistered Facilities Required to Respond to Inquiries.* If the Commissioner [commissioner] becomes aware of an unregistered facility and makes inquiries to determine the applicability of this chapter and the Act to the facility, the recipient of an inquiry must respond within 30 days. The Commissioner [commissioner] may conduct any necessary investigation or examination regarding the inquiry [under the Act, §16.] and, if warranted, take action against. [proceed in district court under the Act, §17.]

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 August 25, 1995

TRD-9510822

Alicia M Fechtel
General Counsel and Chief
Clerk
Texas Department of
Insurance

Earliest possible date of adoption: October 2, 1995

For further information, please call. (512) 463-6327

◆ ◆ ◆
Subchapter B. Facilities Qualifying for a Certificate of Authority Under the Texas Continuing Care Facility and Disclosure and Rehabilitation Act

• 28 TAC §§33.101-33.108

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

The Texas Department of Insurance proposes the repeal of §§33.101-33.108. The proposed repeal is necessary because the rules contained in Subchapter B relate to Health and Safety Code §246.023, a grandfather provision that allowed certain providers to obtain certificates of authority if a facility was occupied by one or more residents on September 1, 1987; was under construction on September 1, 1987; or incurred substantial financial obligations before September 1, 1987 related to the development of the facility. These rules are no longer necessary or relevant because the provisions in Health and Safety Code §246.023 have already been executed. Section 33.101 provides the conditions for which the Commissioner shall issue a mandatory certificate of authority. Section 33.102 states providers shall submit evidence to the Commissioner that the facility meets one of the conditions in Health and Safety Code §246.023. Section 33.103 provides for the Commissioner to have a hearing on applications filed under the Health and Safety Code §246.023. Section 33.104 sets out the filing requirements for applications filed under Health and Safety Code §246.023. Section 33.105 discusses the contents of an application filed under Health and Safety Code §246.023. Section 33.106 describes the actions which may be taken for deficient applications filed under Health and Safety Code §246.023. Section 33.107 describes the applicability of the Texas Continuing Care Facility Disclosure Act to facilities covered under Health and Safety Code §246.023. Section 33.108 describes the transition period.

Kathy Wilcox, Director of Insurer Services, has determined that for each year of the first five-year period the proposed repeals will be

in effect, there will be no fiscal implications for state or local government or small business as a result of the repeals. There will be no effect on local employment or the local economy.

Ms. Wilcox also has determined that for each year of the first five-year period the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be the more efficient administrative regulation of insurance and to eliminate reference to obsolete rules and provisions of the Health and Safety Code. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposed sections in the *Texas Register* in order to be considered by the Commissioner. Comments should be mailed to Alicia Fechtel, Chief Clerk, Mail Code 113-1C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Kathy Wilcox, Director of Insurer Services, Mail Code 305-2C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for public hearing must be submitted separately, in writing, to Alicia Fechtel, Chief Clerk.

The repeals are proposed under Health and Safety Code, Chapter 246, including the rulemaking authority conferred by §246.003; Insurance Code, Article 1.03A; and House Bill 1461, §1.23, 73rd Legislature, Regular Session; and the Government Code, §§2001.004, et seq. Chapter 246 of Health and Safety Code sets out the statutory requirements for continuing care retirement facilities and §246.003 authorizes the board to regulate those facilities and to adopt rules and take other action as necessary to administer and enforce that chapter. Insurance Code, Article 1.03A provides the Commissioner with the authorization to adopt rules and regulations for the conduct and execution of the duties and functions of the department. Insurance Code, House Bill 1461, §1.23 authorizes the transition of duties between the State Board of Insurance and the Commissioner of Insurance. The Government Code, §§2001.004, et seq authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirements of available procedures and prescribes the manner for adoption of rules by a state administrative agency.

The following provisions of the Health and Safety Code are affected by these repeals: The Health and Safety Code, §246.023.

§33.101. Issuance of Certificate of Authority under the Act.

§33.102. Evidence of Qualification under the Act.

§33.103. Hearing on §4(g) Application by Continuing Care Provider.

§33.104. Filing Requirements for §4(g) Application by Continuing Care Provider.

§33.105. Contents of §4(g) Application by Continuing Care Provider.

§33.106. Deficient §4(g) Application by Continuing Care Provider.

§33.107. Applicability of Act and Rules Thereunder to Facilities Covered by the Act. §4(g).

§33.108. Transition Period.

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

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TRD-9510823 Alicia M. Fechtel
General Counsel and Chief
Clerk
Texas Department of
Insurance

Earliest possible date of adoption: October 2, 1995

For further information, please call: (512) 463-6327

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**Subchapter C. Application by
Continuing Care Provider
for Certificate of Authority**

• 28 TAC §§33.201-33.206

The Commissioner of Insurance proposes amendments to §§33.201-33.206, concerning application by continuing care provider for certificate of authority. The amendments are necessary to provide technical corrections, to clarify the sections and to make changes mandated by amendments to Health and Safety Code Annotated, Chapter 246, enacted by the passage of House Bill 2389, 73rd Legislature, 1993. The amendment to §33.201 refers to the new cite for the Texas Continuing Care Facility Disclosure and Rehabilitation Act and deletes a reference to Subchapter B of this chapter, which is now repealed. The amendment to §33.202 refers to the new cite for the Texas Continuing Care Facility Disclosure and Rehabilitation Act. The amendment to §33.203 clarifies the requirements for filing an application for certificate of authority and changes the verb tense from passive to active voice. The amendment to §33.204 clarifies the items which should be included with an application for certificate of authority, changes the verb tense from passive to active voice, makes reference to the new cite for the Texas Continuing Care Facility Disclosure and Rehabilitation Act, provides for the inclusion of CCRC Form #4a (Biographical Data Form for Not-for-Profit CCRC Board Members), and provides for certification of the number of persons and the percentage of the number of living units in the facility under reservation agreements with funds on deposit. The amendment to §33.205 clarifies the actions which may be taken for a deficient application for certificate of authority,

changes the verb tense from passive to active voice, and replaces the references to the commissioner with references to the department. The amendment to §33.206 refers to the new cites for the Administrative Procedure Act and the Texas Continuing Care Facility Disclosure and Rehabilitation Act.

Kathy Wilcox, Director of Insurer Services, has determined that for each year of the first five-year period the proposed sections will be in effect, there will be no fiscal implications for local government as a result of enforcing or administering these sections, and there will be no effect on local employment or the local economy. There is no cost to state government to implement these sections other than the cost originally imposed upon state government by the statute. There is no anticipated loss or increase in revenue to state or local government as a result of the amendments to these sections.

Ms. Wilcox, also has determined that for each year of the first five-year period the proposed sections are in effect, the public benefit anticipated as a result of enforcing the sections will be to provide protection from fraud or mismanagement for the investments of consumers in continuing care retirement facilities. Most of the costs of compliance with these rules are costs imposed by the statute, such as the \$10,000 non-refundable filing fee, the costs of filing the disclosure statement, obtaining an independent feasibility study, an actuarial review, and the costs of the hearing. The incremental compliance costs resulting from the amended sections, rather than the statutes, are minimal in amount and administrative in nature. These incremental costs for completing and mailing forms are estimated to range from \$500-\$1,000 each year of the first five year period the proposed sections are in effect. These are one time costs associated with the filing of the application. Based upon the cost per hour of labor, there will be no difference between the cost of compliance for small businesses and the cost of compliance for large businesses.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposed sections in the *Texas Register* in order to be considered by the Commissioner. Comments should be mailed to Alicia Fechtel, Chief Clerk, Mail Code 113-1C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Kathy Wilcox, Director of Insurer Services, Mail Code 305-2C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for public hearing must be submitted separately, in writing, to Alicia Fechtel, Chief Clerk.

The amendments are proposed under Health and Safety Code, Chapter 246, including the rulemaking authority conferred by §246.003 of that chapter; Insurance Code, Article 1.03A; House Bill 1461, §1.23, 73rd Legislature, Regular Session; and the Government Code, §§2001.004, et seq. Health and Safety Code, Chapter 246, sets out the statutory requirements for Continuing Care Retirement Facilities and §246.003 of that chapter authorizes the board to regulate those facilities and to adopt rules and take other action as neces-

sary to administer and enforce that chapter. Insurance Code, Article 1.03A. provides the Commissioner with the authorization to adopt rules and regulations for the conduct and execution of the duties and functions of the department. House Bill 1461, §1.23 authorizes the transition of duties between the State Board of Insurance and the Commissioner of Insurance. The Government Code, §§2001.004, et seq authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirements of available procedures and prescribes the manner for adoption of rules by a state administrative agency

The following statute is affected by these amendments. Health and Safety Code, Chapter 246, §§246.022, 246.023, 246.027, 246.042-246.057, 246.071-246.078, 246.114

§33.201. *Scope.* This subchapter establishes the procedure for application for certificate of authority under the Health and Safety Code §246.022. [Act, §4(c).] Providers owning or controlling more than one facility shall treat each facility [those facilities] as separate and distinct in form and substance and shall apply for a separate certificate of authority for each. [For applications pursuant to the Act, §4(g), refer to Subchapter B of this chapter (relating to Facilities Qualifying for a Certificate of Authority Under the Texas Continuing Care Facility Disclosure and Rehabilitation Act).]

§33.202. *Incorporated Entities Only.* Except for persons qualifying for a certificate [certificates] of authority under the Health and Safety Code §246.023, [Act, §4(g).] the Commissioner [commissioner] shall limit issuance of certificates of authority to incorporated entities.

§33.203. *Filing Requirements for Application [Application.] for Certificate of Authority.*

(a) The applicant shall submit the applicable filing fee, as referenced in §33.6 of this title (Relating to Fees for Filing Application for Certificate of Authority). [fee of \$10,000. The fee is nonrefundable.]

(b) The applicant shall provide the department with an [An] original and two copies of the entire application [must be submitted] in three-ring binders with all pages clearly legible and numbered.

(c) Each application binder must contain a table of contents and must be divided with tabs identified to correspond to the items listed in §33.204 of this title (relating to Contents of Application). If any item listed in that section is inapplicable to the applicant, the applicant shall include a page [shall be included] behind the tab for that item with a statement explaining the inapplicability.

(d) The applicant must submit all narrative [Narrative] material [must be] typed, double-spaced, and clearly legible.

(e) The original of the application becomes the charter file; therefore, all signatures on the required forms in the original application must be original [originals] signatures. [not photocopies.]

(f) If the application is revised or supplemented during the review process prior to hearing, the applicant must submit an original and two copies of a transmittal letter describing the revision or supplement plus an original and two copies of the specified revision or supplement. [supplement specified.]

(g) If a page is to be revised, two copies of the complete new page must be submitted with the changed item or information clearly marked on the two copies. [but not on] The [the] original page [page.] which is placed in the charter [file] copy of the application [application.] must not have any marks on it.

§33.204. *Contents of Application [Application.] for Certificate of Authority.*

(a) The applicant shall submit an original and two copies [appropriate number of copies] of the [following] items listed in paragraphs (1)-(9), as applicable. [applicable shall be submitted, organized as provided in §33.203 of this title (relating to Filing Requirements for Application):]

(1) CCRC Form #1 (Application [application] for Certificate of Authority To Do Business in the State of Texas under the Act, §246.022) ; §4(c);

(2) (No change.)

(3) CCRC Form #4 (Biographical Data Form) [Form]; or CCRC Form #4a (Biographical Data Form for Not-for-Profit CCRC Board Members);

(4)-(7) (No change.)

(8) agreements establishing the entrance fee and reserve fund accounts [escrow accounts described in the Act, §8 and §9.] or a verified statement explaining [of] why an escrow is not required. The agreements shall be accompanied by the items described in subparagraphs (A)-(C) of this paragraph. [required, with such agreements to be accompanied by the following:]

(A) (No change.)

(B) certification of the number of persons and the percentage of the number of living units in the facility under reservation agreements with funds on deposit in the entrance fee escrow accounts; and [names and addresses of per-

sons under contract or agreements with monies on deposit with the escrow agent; and]

(C) statement or set of instructions that the provider will [use or] send to the escrow agent to request a release of funds to the provider from the entrance fee and reservation fund escrow accounts; [under the provisions of the Act, §8 or §9;]

(9) complete disclosure statement on CCRC Form #6 (Form For Disclosure Statement); [meeting the requirements of the Act, §6;]

(10) [any] service contracts [contract] or agreements [agreement] with [an] affiliates; [affiliate;]

(11)-(13) (No change.)

(14) all priority agreements, reservation agreements, or any [other] types [type] of contracts [contract] or agreements [agreement] which the provider is using in soliciting [solicitation or offering of] continuing care contracts, contracting, or collection of funds, if not included in the disclosure statement;

(15)-(18) (No change.)

(19) any additional information relating to items required under paragraphs (1)-(18) of this subsection, as the department may request. [commissioner may require as needed for proper consideration.]

(b) The 180-day period during [in] which the commissioner is required to [shall] issue an order approving or disapproving an application for a certificate of authority shall commence on the date, as determined by the department, [commissioner.] that all required material is submitted to the department. [included in the application.]

§33.205. *Deficient Application.* If any of the items required under §33.204 of this title (relating to Contents of Application) is determined [deemed] to be insufficient by the department, [commissioner.] the department shall notify the applicant [shall be notified] and give [given] 30 days from the date of notice to correct the deficiencies. If [If.] the deficiencies have not been corrected after the 30 days have expired, [the deficiencies have not been corrected.] the department [commissioner] may take either [any one] of the [following] actions [actions;] listed in paragraphs (1)-(2) of this section:

(1) return the application, and require [in which event] the applicant to [must] completely refile, [refile] except for the fee, in order to be considered for a certificate of authority; [except that no additional filing fee need be paid;] or

(2) proceed to hearing on the [deficient] application

§33.206. *Hearing on Application.* Following review of the application by the commissioner or the commissioner's designee, a hearing shall be held in accordance with the Government Code, Chapter 2001, Administrative Procedure Act, [Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.] for the commissioner to make the determinations required under Health and Safety Code, §246.022. [the Act, §4(c).]

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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TRD-9510824 Alicia M Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: October 2, 1995

For further information, please call: (512) 463-6327

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Subchapter D. Disclosure Statement

• 28 TAC §33.304

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

The Texas Department of Insurance proposes the repeal of §33.304, concerning requirements for disclosure statement preparation and filing. The repeal is necessary because disclosure statement preparation and filing is addressed in §33.30(c) of this title

Kathy Wilcox, Director of Insurer Services, has determined that for each year of the first five-year period the repeal is in effect, there will be no fiscal implications for state or local government or small businesses as a result of the repeal. There will be no effect on local employment or the local economy

Ms. Wilcox also has determined that for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of the repeal will be more efficient administrative regulation of insurance. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposed section in the *Texas Register* in order to be considered by the Commissioner. Comments should be mailed to Alicia Fechtel, Chief Clerk, Mail Code 113-1C,

Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Kathy Wilcox, Director of Insurer Services, Mail Code 305-2C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for public hearing must be submitted separately, in writing, to Alicia Fechtel, Chief Clerk.

The repeal is proposed under Health and Safety Code, Chapter 246, including the rulemaking authority conferred by §246.003; Insurance Code, Article 1.03A; and House Bill 1461, §1.23, 73rd Legislature, Regular Session; and the Government Code, §§2001.004, et seq. Chapter 246 of Health and Safety Code sets out the statutory requirements for continuing care retirement facilities and §246.003 authorizes the board to regulate those facilities and to adopt rules and take other action as necessary to administer and enforce that chapter. Insurance Code, Article 1.03A provides the Commissioner with the authorization to adopt rules and regulations for the conduct and execution of the duties and functions of the department. House Bill 1461, §1.23 authorizes the transition of duties between the State Board of Insurance and the Commissioner of Insurance. The Government Code, §§2001.004, et seq authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirements of available procedures and prescribes the manner for adoption of rules by a state administrative agency.

The following provisions of the Health and Safety Code are affected by this repeal: §§246.021, 246.041-246.055

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§33.304. Disclosure Statement Preparation and Filing.

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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TRD-9510826 Alicia M Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: October 2, 1995

For further information, please call: (512) 463-6327

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Subchapter E. Escrow Accounts

• 28 TAC §33.401

The Commissioner of Insurance proposes an amendment to §33.401, concerning the requirements for the maintenance and use of escrow accounts by continuing care retirement facility providers. The amendment is necessary to provide technical corrections, to clarify the section, and to make changes mandated by amendments to Health and Safety Code, Chapter 246, enacted by the 73rd Legislature, 1993. The amendment to

describes the requirements for entrance fee escrow accounts, provides for the ownership of the interest accrued in the accounts, provides the requirements for depositing funds into the accounts and issuing status statements, changes the verb tense from the passive to the active voice, and provides that certain nonrefundable portions of deposits are not required to be held in the entrance fee escrow account.

Kathy Wilcox, Director, Insurer Services, has determined that for each year of the first five-year period the proposed section will be in effect, there will be no fiscal implications for local government as a result of enforcing or administering the section, and there will be no effect on local employment or the local economy. There is no cost to state government to implement these sections other than the cost originally imposed upon state government by the statute. There is no anticipated loss or increase in revenue to state or local government as a result of the amendment to this section.

Ms. Wilcox also has determined that for each year of the first five-year period the proposed section is in effect, the public benefit anticipated as a result of enforcing the section will be to provide protection from fraud or mismanagement of the investments of consumers in continuing care retirement facilities. During each year of the first five-year period the proposed section is in effect, there will be costs required by statute which are the same for both large and small businesses. These statutory costs have been in effect and are currently being borne by providers. Except for costs already required by statute, there is no anticipated economic cost to persons who are required to comply with this rule as proposed.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposed sections in the *Texas Register* in order to be considered by the Commissioner. Comments should be mailed to Alicia Fechtel, Chief Clerk, Mail Code 113-1C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Kathy Wilcox, Director, Insurer Services, Mail Code 305-2C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for public hearing must be submitted separately, in writing, to Alicia Fechtel, Chief Clerk.

The amendment is proposed under the Health and Safety Code, Chapter 246, including the rulemaking authority conferred by §246.003; Insurance Code, Article 1.03A, and 1.10; House Bill 1461, §1.23 enacted by the 73rd Legislature, 1993; and the Government Code, §§2001.004, et seq. The Health and Safety Code, Chapter 246, sets out the statutory requirements for continuing care retirement facilities and §246.003 authorizes the department to regulate those facilities, to adopt rules, and to take other action as necessary to administer and enforce that chapter. The Insurance Code, Article 1.03A provides the Commissioner with the authorization to adopt rules and regulations for the conduct and execution of the duties and functions of the department. Article 1.10 provides that the Commissioner, after notice and op-

portunity for a hearing, may take action against the holder of a Continuing Care Retirement Facility license. House Bill 1461, §1.23, authorizes the transition of duties between the State Board and Commissioner of Insurance. The Government Code, §§2001.004, et seq authorizes and requires each state agency to adopt rules or practice setting forth the nature and requirements of available procedures, and prescribes the manner for adoption of rules by a state administrative agency.

The following statute is affected by this amendment. Health and Safety Code, §§246.071, 246.075, 246.076

§33.401. Entrance Fee Escrow Account.

(a) The provider of a facility which was unoccupied [not occupied by one or more residents] on September 1, 1987, and for which continuing care contracts have been or will be entered into on or [that enters into continuing care contracts on or] after September 1, 1987, shall establish an entrance fee escrow account with a bank or trust company located in this state, as escrow agent. [pursuant to the Act, §8. The escrow account must be established with a bank or trust company that is located in this state as escrow agent.] The provider subject to this section shall establish the entrance fee escrow account before entering into a reservation agreement or a continuing care contract, and accepting an entrance fee or a reservation agreement deposit. [The escrow account must be established before the provider enters into any contract for the provision of continuing care.] The entrance fee escrow account [The funds deposited therein shall be fully secured by obligations of the United States Government or] shall be [kept and] maintained in an account [or accounts] separate [and apart] from the provider's business account [accounts] and must be fully covered by federal deposit insurance [insurance.] or secured by the United States Government.

(b) When the provider receives a refundable reservation agreement deposit, an entrance fee, or a portion of an entrance fee from a resident or prospective resident, the funds shall be deposited in the entrance fee escrow account. [When funds are received from a resident or a prospective resident.] The [the] provider shall give [deliver] the resident or prospective resident a written receipt for the funds. [to the resident.] The provider shall then deliver a copy of the receipt together with the funds to the escrow agent for deposit within 72 hours of the provider's receipt. [A copy of each receipt together with each entrance fee and each portion of an entrance fee shall be deposited with the escrow agent not later than 72 hours after the fee is received by the provider.]

(c) At any time upon the request of the resident or prospective resident, the provider, or the Commissioner, the [The] escrow agent shall issue a statement indicating the status of a resident or prospective resident's balance in the entrance fee escrow account. [account at the request of the resident or prospective resident, the provider, or the commissioner.]

(d) Accrued interest on the entrance fee escrow account [fees held in escrow] shall be the property of the provider unless otherwise provided in the continuing care contract.

(e) This section does not apply to any non refundable portion of an entrance fee or reservation agreement deposit that does not exceed two percent of the amount required as the entrance fee and that is clearly designated as non refundable in the relevant continuing care contract or reservation agreement.

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 August 25, 1995.

TRD-9510828 Alicia M. Fechtel
General Counsel and Chief
Clerk
Texas Department of
Insurance

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For further information, please call: (512) 463-6327

◆ ◆ ◆
• 28 TAC §§33.402-33.407

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

The Texas Department of Insurance proposes the repeal of §§33.402-33.407, concerning the requirements for the maintenance and use of escrow accounts by continuing care retirement facility providers. The repeals are necessary to eliminate unnecessary provisions, to make changes mandated by amendments to the Health and Safety Code, Chapter 246, enacted by the passage of House Bill 2389, 73rd Legislature, 1993, and to enable the Texas Department of Insurance to simultaneously adopt new §§33.402-33.406. Section 33.402 states the conditions under which entrance fees in escrow must be returned to the persons who paid them to providers. Section 33.403 sets forth a procedure for determining when entrance fees in escrow may be released to providers. The calculations in §33.403(b) are now contained in the new CCRC Form #14-Calculations Concerning Conditions for Release of Entrance Fees to Provider under Health and Safety Code, §246.073. Section 33.404 provides for the calculation of the total amount of

entrance fees in escrow for a particular facility that may be released to the provider before the facility is complete. Section 33.405 provides for the establishment of reserve fund escrow accounts with respect to continuing care retirement facilities. Section 33.406 places a limit on the amount of funds which may be released to a provider from the reserve fund escrow. Section 33.407 requires that escrow agreements for entrance fee and reserve fund escrow accounts contain provisions obligating the escrow agent to notify the board when a provider requests a release of funds.

Kathy Wilcox, Director of Insurer Services, has determined that for each year of the first five-year period the proposed repeals will be in effect, there will be no fiscal implications for state or local government or small businesses as a result of the repeals. There will be no effect on local employment or the local economy.

Ms. Wilcox also has determined that for each year of the first five-year period the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be the more efficient administrative regulation of insurance. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposed sections in the *Texas Register* in order to be considered by the Commissioner. Comments should be mailed to Alicia Fechtel, Chief Clerk, Mail Code 113-1C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Kathy Wilcox, Director of Insurer Services, Mail Code 305-2C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for public hearing must be submitted separately, in writing, to Alicia Fechtel, Chief Clerk.

The repeals are proposed under Health and Safety Code, Chapter 246, including the rulemaking authority conferred by §246.003; Insurance Code, Article 1.03A; and House Bill 1461, §1.23, 73rd Legislature, Regular Session; and the Government Code, §§2001.004, et seq. Chapter 246 of Health and Safety Code sets out the statutory requirements for continuing care retirement facilities and §246.003 authorizes the board to regulate those facilities and to adopt rules and take other action as necessary to administer and enforce that chapter. Insurance Code, Article 1.03A provides the Commissioner with the authorization to adopt rules and regulations for the conduct and execution of the duties and functions of the department. House Bill 1461, §1.23 authorizes the transition of duties between the State Board of Insurance and the Commissioner of Insurance. The Government Code, §§2001.004, et seq authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirements of available procedures and prescribes the manner for adoption of rules by a state administrative agency.

The following provisions of the Health and Safety Code are affected by these repeals: §§246.041, 246.042, 246.056, 246.073,

246.078, 246.091, 246. 112-246 113, and 246.115.

§33.402 *Refund of Entrance Fee.*

§33.403 *Release of Entrance Fees to Provider.*

§33.404. *Release of Entrance Fees Before Facility is Complete.*

§33.405. *Loan Reserve Fund Escrow.*

§33.406. *Release of Funds from Reserve Fund Escrow*

§33.407. *Notification by Escrow Agent.*

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 August 25, 1995

TRD-9510830

Alicia M Fechtel
General Counsel and Chief
Clerk
Texas Department of
Insurance

Earliest possible date of adoption: October 2, 1995.

For further information, please call: (512) 463-6327

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• 28 TAC §§33.402-33.406

The Commissioner of Insurance proposes new §§33.402-33.406, concerning the requirements for the maintenance and use of escrow accounts by continuing care retirement facility providers. These sections will replace the existing sections which are proposed for repeal in another section of this issue. The new rules are designed to clarify the sections and to make changes mandated by amendments to Health and Safety Code, Chapter 246, enacted by the 73rd Legislature, 1993. New §33.402 details provisions for refund of entrance fees and return of reservation agreement deposits, and details certain provisions the reservation agreement must contain. New §33.403 provides the escrow agent shall notify the department of a request for release of funds, contains the conditions for release of the entrance fee escrow account funds to the provider, and gives a limit on the amount of funds that may be released. New §33.404 details requirements for the loan reserve fund escrow account. New §33.405 contains the conditions and procedures for release of the loan reserve fund escrow account. New §33.406 provides for the repayment of funds released from the reserve fund escrow account.

Kathy Wilcox, Director, Insurer Services, has determined that for each year of the first five-year period the proposed sections will be in effect, there will be no fiscal implications for local government as a result of enforcing or

administering these sections, and there will be no effect on local employment or the local economy. There is no cost to state government to implement these sections other than the cost originally imposed upon state government by the statute. There is no anticipated loss or increase in revenue to state or local government as a result of the amendments to these sections.

Ms. Wilcox also has determined that for each year of the first five-year period the proposed sections are in effect, the public benefit anticipated as a result of enforcing the sections will be to provide protection from fraud or mismanagement of the investments of consumers in continuing care retirement facilities. Most of the costs connected within these rules are costs already required by statute. The incremental compliance costs resulting from the amended sections rather than to the statutes, are minimal in amount and administrative in nature. These incremental costs for completing and mailing forms are estimated to range from \$200 to \$1000 per year for each of the first five years the proposed sections are in effect. Based upon the cost per hour of labor, there will be no difference between the cost of compliance for small businesses and the cost of compliance for large businesses.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposed sections in the *Texas Register* in order to be considered by the Commissioner. Comments should be mailed to Alicia Fechtel, Chief Clerk, Mail Code 113-1C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Kathy Wilcox, Director, Insurer Services, Mail Code 305-2C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for public hearing must be submitted separately, in writing, to Alicia Fechtel, Chief Clerk.

The new sections are proposed under the Health and Safety Code, Chapter 246, including the rulemaking authority conferred by §246.003, Insurance Code, Article 1.03A, and 1.10; House Bill 1461, §1.23 enacted by the 73rd Legislature, 1993; and the Government Code, §2001.004, et seq. The Health and Safety Code, Chapter 246, sets out the statutory requirements for continuing care retirement facilities and §246.003 authorizes the department to regulate those facilities, to adopt rules, and to take other action as necessary to administer and enforce that chapter. The Insurance Code, Article 1.03A provides the Commissioner with the authorization to adopt rules and regulations for the conduct and execution of the duties and functions of the department. Article 1.10 provides that the Commissioner after notice and opportunity for a hearing, may take action against the holder of a Continuing Care Retirement Facility license. House Bill 1461, §1.23, authorizes the transition of duties between the State Board and Commissioner of Insurance. The Government Code, §2001.004, et seq authorizes and requires each state agency to adopt rules or practice setting forth the nature and requirements of available procedures, and prescribes the manner for adoption of rules by a state administrative agency.

The following statutes are affected by these new sections. Health and Safety Code, §§246.021, 246.056, 246.072, 246.074, 246.041, 246.042, 246. 073, 246.091, 246.077, 246.078, 246.112-246.113, 246.115; Insurance Code, Article 1.10, §7.

§33.402. *Refund of Entrance Fees or Reservation Agreement Deposit to Resident or Prospective Resident from the Entrance Fee Escrow Account.*

(a) If a person who has contracted with a provider elects to rescind his or her continuing care contract or if a person who has made a refundable reservation agreement deposit requests the return of the reservation agreement deposit, the funds or property held in the entrance fee escrow account, or released to the provider under §33.403 of this title (relating to Release of Entrance Fees Escrow Account to Provider) must be refunded in full within 30 days of request. This subsection does not apply to periodic charges specified in the relevant continuing care contract and which are applicable to the period in which the resident actually occupied the living unit under the continuing care contract.

(b) If an entrance fee escrow account is not released to the provider under §33.403 of this title (relating to Release of Entrance Fees Escrow Account to Provider), or deposited in the loan reserve fund escrow account under §33.405 of this title (relating to Loan Reserve Fund Escrow Accounts) within 36 months from the date on which the provider received any portion of the funds, the escrow agent shall return the funds to the resident or prospective resident. This subsection does not apply if a longer time is specified in the provider's disclosure statement delivered to the resident or prospective resident with the continuing care contract or reservation agreement under which the funds were paid.

(c) The reservation agreement must contain the provisions in paragraphs (1) and (2) of this subsection relative to the refund of the reservation agreement deposit.

(1) At the option of the prospective resident, the reservation agreement deposit may be either refunded to the prospective resident or applied to the entrance fee required under the continuing care contract, when the continuing care contract is executed. If the reservation agreement deposit is applied to the entrance fee, it shall be maintained in the entrance fee escrow account.

(2) A reservation agreement entered into prior to the issuance of a provider's certificate of authority shall require the provider to fully refund the reservation agreement deposit if requested for any reason.

§33.403. Release of Funds from the Entrance Fee Escrow Account to Provider.

(a) The escrow agent shall notify the department of a request for release of funds from the entrance fee escrow account to the provider in writing within three banking days of receipt of the request. The notice shall be sent to the department on CCRC Form #9 (Notice of Request to Release Entrance Fee Escrow Funds).

(b) The conditions listed in paragraphs (1)-(5) of this subsection must be met before funds in the entrance fee escrow account may be released to the provider.

(1) At least 50% of the living units in the facility must be reserved for residents or prospective residents. In support of this, the provider must have sufficient binding continuing care contracts and at least 10% of the entrance fees designated in the binding continuing care contracts on deposit in the entrance fee escrow account.

(2) The sum of the entrance fees received or receivable by the provider under binding continuing care contracts; the anticipated proceeds of any first mortgage loan or other long-term financing commitment described under paragraph (3) of this subsection; and funds from other sources in the provider's actual possession must be equal to or more than the sum of at least 90% of the aggregate cost of constructing or purchasing, equipping, and furnishing the facility, at least 90% of the funds estimated as necessary to cover initial losses of the facility as stated in the current disclosure statement on file with the department; and at least 90% of the amount of the loan reserve fund escrow account required under §33.405 of this title (Relating to Loan Reserve Fund Escrow Accounts).

(3) The provider must have commitments for all permanent mortgage loans and other long-term financing described in the statement of anticipated source and application of funds included in the current disclosure statement on file with the department.

(4) Except for the conditions regarding the completion of construction or closing on the purchase of the facility, the commitment for disbursement of funds must be unconditional.

(5) Either subparagraph (A) or (B) of this paragraph must be satisfied.

(A) If construction of the facility is not substantially completed:

(i) the appropriate party must have obtained all necessary governmental permits or approvals; and

(ii) the provider and the general contractor responsible for construction of the facility must have entered into a maximum price contract; and

(iii) a recognized surety authorized to do business in Texas must have executed a construction bond in favor of the provider covering the general contractor's faithful performance and payment of all obligations arising under the construction contract; and

(iv) the provider must have entered into a loan agreement for an interim construction loan in an amount which, when combined with the amount in the entrance fee escrow account plus the amount of funds from other sources in the provider's actual possession equals or exceeds the estimated cost of constructing, equipping, and furnishing the facility; and

(v) the lender must have disbursed at least 10% of the amount of the construction loan for physical construction or site preparation work; and

(vi) the provider must have placed orders at firm prices for at least 50% of the items necessary to equip and furnish the facility in accordance with the current disclosure statement on file with the department, including installation charges if applicable.

(B) If construction or purchase of the facility is substantially completed, both clauses (i) and (ii) must be satisfied, if appropriate.

(i) the appropriate local government must have issued an occupancy permit covering the living unit; and

(ii) if the entrance fee applies to a living unit which has been previously occupied, the living unit must be available for occupancy by the new resident.

(c) The provider shall deliver a completed CCRC #14 (Calculations Concerning Conditions for Release of Entrance Fees to Provider) to the department.

(d) The funds in the entrance fees escrow account that may be released before the facility is complete and before the loan reserve fund escrow is established under §33.405 of this title (relating to Loan Reserve Fund Escrow Accounts), may not exceed the total of entrance fees and reservation agreement deposits received or receivable by the provider under binding continuing care contracts less the amount of funds required to be deposited in the loan reserve fund escrow account.

§33.404. Loan Reserve Fund Escrow Account.

(a) Each provider shall establish and maintain a loan reserve fund escrow account with a bank or trust company located in Texas, as escrow agent. The provider must maintain the funds deposited in

an account separate from the provider's business account. The account must be fully covered by federal deposit insurance or fully secured by the United States Government.

(b) The amount required to be maintained in the loan reserve fund escrow account is equal to the total of all principal and interest payments due during the next 12 months on all first mortgage loans or other long-term financing arrangements for the facility. If no principal payments are due during the next 12 months, the provider shall maintain in the loan reserve fund escrow account an amount equal to interest payments due during the next 12 months.

(c) Until the loan reserve fund escrow account is fully funded, the provider shall deposit the funds listed in paragraphs (1) and (2) of this subsection into the loan reserve fund escrow account:

(1) Funds released under §33.403 of this title (relating to Release of Funds from the Entrance Fee Escrow Account to the Provider), and

(2) Funds remitted under binding continuing care contracts, when an entrance fee escrow account is not required.

(d) The provider may meet the loan reserve fund escrow account requirements in whole or in part by establishing other reserve funds held to meet long-term financing obligations, if the total amount equals or exceeds the amount required by subsection (b) of this section. The provider shall submit to the department sufficient evidence that the requirement has been met.

§33.405. Release of Funds from Loan Reserve Fund Escrow Account.

(a) For release of an amount equal to not more than one-twelfth of the loan reserve fund escrow account, the provider shall submit a request in writing to the escrow agent.

(b) For the release of an amount in excess of one-twelfth of the loan reserve fund escrow account, the procedures in paragraphs (1)-(3) of this subsection shall apply.

(1) The provider shall submit a completed CCRC Form #2 (Application for Approval of the Commissioner for Release of Loan Reserve Amounts in Excess of that Allowed by Health and Safety Code, §246.078(a)) with the department for approval. The provider may not withdraw funds under this paragraph more than once during a calendar year.

(2) The department shall notify the provider by letter whether the application is approved within 30 days after the completed application is received by the department. If the department disapproves

the application, the provider may request a hearing seeking Commissioner review of the matter by filing a motion for reconsideration addressed to the Commissioner and filed with the department's docket clerk. After a hearing, the Commissioner shall dispose of the matter by entering an order approving or disapproving the application. The department will send a copy of the order to the provider.

(3) If the department approves the application, the provider may present the letter of approval or the Commissioner's order approving the release to the escrow agent. The escrow agent shall then release the funds from the loan reserve fund escrow account in the amount requested.

(c) The escrow agent shall give the department notice of the release not later than the 11th day before the date of release. The notice shall be submitted to the department on CCRC Form #10 (Notice of Request to Release Funds from the Reserve Fund Escrow Account).

§33.406. Repayment of Funds Released from Reserve Fund Escrow Account.

(a) The provider must repay the reserve fund escrow account the amount released or withdrawn not later than 18 months after it is released or withdrawn. The provider shall notify the department of the repayment by completing and returning CCRC Form #11 (Notice by Provider of Repayment of Previously Released Funds to the Reserve Fund Escrow Account).

(b) When the funds have been repaid, the escrow agent shall submit to the department a completed CCRC Form #12 (Affidavit of Repayment of Previously Released Funds to the Reserve Escrow Account).

(c) The escrow agent shall notify the department if the provider fails to repay the amount released within the time required within 30 days of the date the repayment was due.

(d) If the provider fails to timely repay the amount released to the loan reserve escrow account, the department may take action against the provider including but not limited to disciplinary action under the Insurance Code, Article 1.10, §7.

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 August 25, 1995.

TRD-9510828
Alicia M. Fecthel
General Counsel and Chief
Clerk
Texas Department of
Insurance

Earliest possible date of adoption: October 2, 1995

For further information, please call: (512) 463-6327

◆ ◆ ◆
TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 321. Control of Certain Activities by Rule

Subchapter A. Boat Sewage Disposal

• **30 TAC §§321.1-321.4, 321.10, 321.15**

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §§321.1-321.4, 321.10, and 321.15, concerning disposal of sewage from marine sanitation devices.

The primary purpose of the proposed changes is to add Clear Lake to the list of waterbodies designated as "no-discharge" lakes contained in Subchapter A, Chapter 321. State law prohibits the discharge of untreated sewage into waters in the State. The proposed "no-discharge" designation would further prohibit the discharge of treated waste into Clear Lake and require the installation of certified on-board waste holding tanks on certain boats and the use of pump-out facilities for proper on-shore disposal. This proposed discharge prohibition is in response to the requests of local citizens, associations, and entities concerned with the impacts of waste discharges from an increasingly large number of water-craft on the contact recreational use of the lake, public health, and the aquatic environment.

The following lakes in Texas have been designated as "no-discharge" lakes: Austin, Bridgeport, Brownwood, Cedar Creek, Eagle Mountain, Granbury, Grapevine, Houston, Lewisville, Livingston, Lyndon B. Johnson, Meridith, Palestine, Possum Kingdom, Ray Hubbard, Sam Rayburn, Somerville, Texon.a, Toledo Bend, Travis, Waco and Whitney. For other lakes in Texas, waste from boats may be discharged if it is first properly treated by a certified marine sanitation device.

Sewage waste discharged from boats may degrade water quality by introducing disease-causing microorganisms into the aquatic environment and depressing oxygen levels as the sewage decays. Sufficient fecal coliform bacterial counts require the closing of shellfish beds. High fecal coliform counts can also require the closing of waterbodies to swimming and other contact recreation. Even treated waste may be unhealthy because, chemical treatment often sanitizes only the outer surfaces of waste clumps; chemicals routinely used in approved marine sanitation devices can be harmful to aquatic life and water quality (chlorine, formaldehyde, formaline, phenol derivatives, ammonia compounds, etc.); poorly maintained marine sani-

tation devices may not treat effluent to the prescribed standards; and even treated sewage contributes nutrients and lowers dissolved oxygen levels in water, lowering water quality for aquatic life.

The Clear Lake area currently harbors approximately 5,600 recreational boats and 500 houseboats. Some of these boats are equipped with on-board toilets which are currently allowed to discharge into the lake after proper treatment of the waste. The area is also used extensively for recreational activities including swimming, fishing, wind surfing, jet-skiing and other water sports. The combination of these factors has given rise to public concerns about the impact of waste disposal from such a large number of recreational boats on contact recreational safety, public health, and aquatic life.

Area marinas and associations are currently promoting Clear Lake as a "no-discharge" lake. This policy also has the endorsement of the Galveston Bay National Estuary Program. In response to these concerns and concerns regarding the health of the marine environment, the commission proposes that discharge of sewage from recreational boats no longer be allowed in Clear Lake. Rather, such sewage shall be contained on-board until it can be pumped out, treated, and disposed of properly on-shore.

Under the federal Clean Water Act, states may petition the U.S. Environmental Protection Agency (EPA) to designate certain water bodies requiring greater environmental protection as "no-discharge" areas where discharge of all sewage, treated or not, is prohibited. EPA will not approve a "no-discharge" area unless there are adequate pump-out facilities available to boat owners. Eight pump-out facilities are operational on Clear Lake, with another four scheduled to be built in the near future. Accordingly, the EPA approved TNRCC's petition making Clear Lake eligible for designation as a "no-discharge" lake on February 6, 1995.

Additionally, the proposed changes would clarify the size and type boat subject to Subchapter A and make discretionary that an inspection be required before a marine sanitation device or pump-out facility can be certified. These proposed rules are consistent with those established by the U.S. Coast Guard applicable to designated "no-discharge" areas in U.S. territorial waters.

Proposed changes to §321.1, Definitions, would remove references to fresh water and the definition of fresh water from the definitional section of this subchapter. References to fresh water are unnecessary and too limiting because Clear Lake is tidally influenced and brackish.

Proposed changes to §321.2, Discharge Prohibited, would add Clear Lake to the list of 24 Texas lakes designated as "no-discharge" areas.

Proposed changes to §321.3, Marine Sanitation Device Required, clarifies which recreational boats are subject to this rule.

Proposed changes to §321.4, Specifications for Approved Marine Sanitation Devices, deletes the unnecessary reference to Texas De-

partment of Health regulations which formed the basis of the criteria contained in this rule.

Proposed changes to §321.10, Certification of Pump-out Facilities, makes inspections of pump-out facilities discretionary rather than mandatory prior to certification. Rather, inspections shall be random and based upon available agency time and resources.

Proposed changes to §321.15, Renewal of Certification, would make inspections of pump-out facilities discretionary rather than mandatory prior to the renewal of a certification. Similarly, inspections shall be random and based upon available agency time and resources.

Concurrent with the proposal of this rule, TNRCC staff will explore the possibility of an agreement with the Texas Parks & Wildlife Department (TPWD) to assist in the enforcement of these proposed provisions.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections will be relatively minor fiscal implications as a result of the collection of additional fees and the enforcement and administration of the proposed sections. No significant effects on state government are anticipated. These revisions may also result in minor changes to procedures and agency workload in the Houston regional office. However, these changes are not anticipated to significantly add to current activities, particularly if TPWD assistance can be obtained in the enforcement of these proposed rules. Thus, the implementation of the proposed rules will be satisfied with the additional fees and within existing budget constraints. Slight increases to agency revenues are anticipated because of the annual certification fee requirement.

Owners of recreational boats that have permanently installed marine sanitation devices, or are longer than 26 feet in length and have permanent sleeping quarters, or are houseboats, and use a designated lake would be subject to these rules. Owners will potentially be affected by increased costs associated with requirements to install marine sanitation devices or to convert existing marine sanitation devices to "no-discharge" systems. Additionally, these boats will be subject to an annual \$15 fee for certification that the boat has an approved sanitation device.

Also, boat owners will be affected by the cost of pumping out on-board marine sanitation devices. The costs to individual owners cannot be determined exactly and will vary on a case-by-case basis with each installation or conversion and specific local circumstances. It is estimated, however, that in most cases, the costs to install a "no-discharge" marine sanitation device where none exists or to convert a marine sanitation device from a discharge system to a "no-discharge" system will range between \$300 and \$1,500 per boat, with a typical installation estimated to cost \$450. Some private operations affected by these sections would be classified as small businesses and would be affected to the same extent as any class of boat owner or

operator. The effects on small businesses will vary with the number and condition of boats owned or operated.

Owners of pump-out facilities on Clear Lake would also be subject to these rules. Some private operations affected by these sections would be classified as small businesses and would be affected if they currently operate pump-out facilities. These pump-out facilities would be subject to meeting the requirements of these sections and would be subject to an initial certification fee of \$35 and a yearly renewal fee of \$25. However, these small businesses may also benefit through increased revenue due to increased usage of pump-out facilities by boat owners.

Mr. Minick also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be improvements in the management of the discharge of human wastes as well as the chemicals that are used to treat them before discharge into Clear Lake. Increased protection of the quality of the water of Clear Lake is anticipated to benefit aquatic and wildlife resources of the state and protect public health and safety.

A public hearing will be held on Wednesday, September 20, 1995 at 7:00 p.m. in the Forest Room of the Bayou Building at the University of Houston, Clear Lake Campus, 2700 Bay Area Boulevard, Houston, Texas. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments on the proposal should reference Rule Log Number 95130-321-WT and may be submitted to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC-201, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640. Written comments must be received by 5:00 p.m. 30 days from the date of publication of this proposal in the *Texas Register*. For further information or questions concerning this proposal, please contact Mary Ambrose, Water Policy and Regulations Division, at (512) 239-4813.

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 amendments are proposed under the Texas Water Code (Vernon 1992), §5. 103, which provides the TNRCC with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state.

There are no other regulations, codes, or statutes that will be effected by this proposal.

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

Boat—Any vessel or other watercraft, whether moved by oars, paddles, sails, or other power mechanism, inboard or outboard, or any other vessel or structure floating on waters [public fresh water] in this [the] state, whether or not capable of self-locomotion, including but not limited to cabin cruisers, houseboats, barges, marinas, and similar floating objects.

Designated lake—Any of the [inland fresh] waters listed in §321.2(a) of this title (relating to Discharge Prohibited).

Fresh water—As geographically applied all of the surface lakes, streams, and reservoirs of the state, exclusive of the extent of ordinary tidal action on this water.]

Houseboat—Any [flat-bottomed] boat fitted for use as a dwelling or for leisurely cruising, including any barge.

§321.2. Discharge Prohibited.

(a) Discharges from marine sanitation devices are prohibited [The commission hereby finds and declares that the protection and enhancement of the quality of] in the following [inland fresh] waters: [in the state require greater environmental protection than is provided by federal standards applicable to discharges from marine sanitation devices:]

(1)-(24) (No change.)

(25) Clear Lake.

(b) (No change.)

§321.3. Marine Sanitation Device Required.

(a) When operated on any lake designated in §321.2 of this title (relating to Discharge Prohibited), the following boats shall be equipped with an approved marine sanitation device certified under §321.5 of this title (relating to Certification of Marine Sanitation Devices):

(1) any boat [less than 26 feet in length] which has a permanently installed marine sanitation device;

(2) any boat longer than 26 feet in length [or longer] which has permanent sleeping quarters [or a permanently installed marine sanitation device]; and

(3) (No change.)

(b) (No change.)

§321.4. Specifications for Approved Marine Sanitation Devices. [The specifications for sewage disposal devices and equipment adopted by the Texas Department of Health on June 13, 1966, form the framework for the following criteria:]

(a)[(1)] Any marine sanitation device permanently installed on or within any boat on any designated lake shall have an attached holding tank which meets the following specifications:

(1)[(A)] The holding tank shall be located inboard on the boat.

(2)[(B)] The holding tank shall be constructed so as to prevent the discharge of sewage except by pumping. Pumping shall be in accordance with approved and authorized methods as referred to §321.8(a) of this title (relating to Disposal of Boat Sewage).

(3)[(C)] The holding tank shall be installed so that it may be completely and efficiently emptied by pumping.

(4)[(D)] The holding tank shall be constructed of corrosion-resistant material.

(5)[(E)] The holding tank shall be so located and constructed as to minimize the possibility of rupture.

(6)[(F)] Any overboard vents shall be located to minimize the inboard return of odors and shall be provided with means to prevent the intake of waters or spray. Vents shall be connected to the tank so as to prevent pressure buildup in the tank and clogging from the contents of the tank.

(7)[(G)] Fittings intended for use in emptying holding tanks shall be designed to make a spill-proof connection with the pump-out facility. Such fittings shall assure a liquid-tight closure during normal operation of the boat, shall afford no obstruction to the flow of sewage, and shall be cleanable. They shall be constructed of corrosion-resistant material.

(8)[(H)] Conformance with coast guard regulations applicable to "no discharge" devices shall be deemed to constitute compliance with this subsection.

(b)[(2)] A portable marine sanitation device that is designed to facilitate the carry-off of sewage for onshore disposal is acceptable on any boat (other than a houseboat) less than 26 feet in length and as an additional marine sanitation device on any boat.

(c)[(3)] The executive director is authorized to allow the use of portable marine sanitation devices in certain cases where permanent facilities are now required by these sections.

§321.10. Certification of Pump-Out Facilities.

(a) (No change.)

(b) Owners of pump-out facilities operated on or adjacent to [fresh] water in the [this] state will be required to obtain certification of those facilities.

(c) (No change.)

(d) Inspections may be [are] required of pump-out facilities prior to certification.

(e) (No change.)

§321.15. Renewal of Certification.

(a) (No change.)

(b) Inspections of pump-out facilities may be [are] required prior to renewal of certification.

(c)-(e) (No change.)

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

Issued in Austin, Texas, on August 28, 1995.

TRD-9510831 Lydia Gonzalez-Gromatzky
Acting Director, Legal
Services Division
Texas Natural Resource
Conservation
Commission

Earliest possible date of adoption: October 2, 1995

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part X. Texas Water Development Board

Chapter 363. Financial Assistance Programs

The Texas Water Development Board (the board) proposes new §363.209, Administrative Cost Recovery, and amendments to §363.2, Definition of Terms, and §363.202, Definitions. New §363.209 provides for the assessment of charges to SRF applicants by the Board to recover the Board costs of administering the SRF financial assistance program. Amended §363.2 adds a definition for "commitment." Amended §363.202 adds definitions for "administrative cost recovery fund," "administrative costs" and "SRF program account." It is the intent of the board to offset the new charges to SRF borrowers by reducing the SRF borrowing rates.

Pamela Ansbury, the Director of Finance, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state government as a result of enforcing or administering the sections. The fiscal implications for local government as a result of enforcing or administering the rules will be zero increased costs for 1995, \$250 for 1996, \$500 for 1997, \$500 for 1998, and \$500 for 1999.

Ms. Ansbury also has determined that for each year of the first five years that the rules

are in effect the public benefit anticipated as a result of enforcing the rules will be to ensure that the SRF program is self-supporting and does not require appropriated funds for administration. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposals may be submitted within 30 days of publication to Kevin Ward, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, (512) 463-0991.

Subchapter A. General Provisions

Introductory Provisions

• 31 TAC §363.2

The amendment is proposed under Texas Water Code, §6.101, which requires the board to adopt rules that are necessary to carry out the powers and duties of the Board under the Texas Water Code and other laws of the state.

The proposed amendment affects Texas Water Code, Chapter 15, Subchapter J.

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

Commitment—An action of the board evidenced by a resolution approving a request for financial assistance from any loan program account.

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 August 28, 1995.

TRD-9510861 Craig Pedersen
Executive Administrator
Texas Water Development
Board

Earliest possible date of adoption: October 19, 1995

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

• 31 TAC §363.202, §363.209

The amendment and new section are proposed under Texas Water Code, §6.101, which requires the board to adopt rules that are necessary to carry out the powers and duties of the Board under the Texas Water Code and other laws of the state.

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

Administrative Cost Recovery Fund—An operating fund to finance the administration of the SRF program, to be held outside the state treasury and separate from the SRF Program Account.

Administrative Costs—All reasonable and necessary costs of administering any aspect of the SRF program, including the cost of servicing debt obligations of recipients of SRF financial assistance.

SRF Program Account—The program account is an account in the SRF created pursuant to a resolution of the board in issuing SRF bonds and is used, pursuant to such bond resolution(s), for the purpose of providing financial assistance to political subdivisions for construction of treatment works and, if needed, to pay rebate amounts to the federal government.

§363.209. *Administrative Cost Recovery.*

(a) **General.** The board will assess charges for the purpose of recovering administrative costs of all recipients of SRF financial assistance who receive commitments after the effective date of this section.

(b) **Payment Options.** Recipients of loan commitments made after the effective date of this section will select payment options one or two as provided in subsection (c) or (d) of this section.

(c) **Option One: Origination Charge Only.** Pursuant to this option, a loan origination charge will be assessed of 2.25% of the SRF loan amount, excluding the amount of the origination charge. The loan origination charge is a one-time charge that is due and payable at the time of loan closing. The loan origination charge may be financed as a part of the SRF loan.

(d) **Option Two: Origination Charge and Servicing Charge.**

(1) Pursuant to this option, both a loan origination charge and a servicing charge will be assessed.

(2) The loan origination charge will be 1.65% of the SRF loan amount, excluding the amount of the origination charge, and will be due and payable at the time of loan closing. The loan origination charge may be financed as a part of the SRF loan.

(3) The servicing charge will be 0.15% of the SRF loan, excluding the amount of the origination charge, and is due and payable annually at the time of the interest only payment date. A schedule of servicing charges will be calculated at the time of loan closing for the life of the SRF loan. In the event of early payoff of a loan, all remaining servicing charges calculated in this subsection must be paid in full at the time of the payoff.

(e) **Administrative Cost Recovery Fund.** Charges collected according to this section shall be deposited into the Administrative Cost Recovery Fund.

(f) **Use of Funds.** Monies deposited into the Administrative Cost Recovery Fund shall be used only for administration of the SRF program, unless transferred pursuant to this subsection.

(g) **Transfer of Funds.** Subject to subsection (f) of this section, the board may authorize transfer of funds from the Administrative Cost Recovery Fund into the SRF Program Account and used for any purpose for which other funds in the SRF Program Account can be used.

(h) **Investment of Funds.** Monies in the Administrative Cost Recovery Fund shall be invested in authorized investments as provided by board order, resolution, or rule.

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 August 28, 1995.

TRD-9510862 Craig Pedersen
Executive Administrator
Texas Water Development
Board

Earliest possible date of adoption: October 19, 1995

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

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

The Texas Water Development Board (board) proposes new §375.21, Administrative Cost Recovery, and amendment to §375.2, Definition of Terms. New §375.21 provides for the assessment of charges to SRF applicants by the Board to recover the Board costs of administering the SRF financial assistance program. Amended §375.2 adds definitions for "administrative cost recovery fund," "administrative costs" and "SRF program account." It is the intent of the board to offset the new charges to SRF borrowers by reducing the SRF borrowing rates.

Pamela Ansboury, the Director of Finance, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state government as a result of enforcing or administering the sections. The fiscal implications for local government as a result of enforcing or administering the rules will be zero increased costs for 1995, \$250 for 1996, \$500 for 1997, \$500 for 1998, and \$500 for 1999.

Ms. Ansboury also has determined that for each year of the first five years that the rules are in effect the public benefit anticipated as a result of enforcing the rules will be to ensure

that the SRF program is self-supporting and does not require appropriated funds for administration. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted within 30 days of the date of this publication to Kevin Ward, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, (512) 463-0991.

Introductory Provisions

• **31 TAC §375.2**

The amendment is are proposed under the authority of Texas Water Code, §6.101 and §15.605, which require the board to adopt rules necessary to carry out the powers and duties of the board provided by Texas Water Code, and adopt rules for the State Water Pollution Control Revolving Fund.

The amendment affects Texas Water Code, Chapter 15, Subchapter J and Chapter 16, §16.093.

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

Administrative Cost Recovery Fund—An operating fund to finance the administration of the SRF program, to be held outside the state treasury and separate from the SRF Program Account.

Administrative Costs—All reasonable and necessary costs of administering any aspect of the SRF program, including the cost of servicing debt obligations of recipients of SRF financial assistance.

SRF Program Account—The program account is an account in the SRF created pursuant to a resolution of the board in issuing SRF bonds and is used, pursuant to such bond resolution(s), for the purpose of providing financial assistance to political subdivisions for construction of treatment works and, if needed, to pay rebate amounts to the federal government.

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 August 28, 1995.

TRD-9510863 Craig Pedersen
Executive Administrator
Texas Water Development
Board

Earliest possible date of adoption: October 19, 1995

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

Program Requirements

• 31 TAC §375.21

The new section is proposed under the authority of Texas Water Code, §6. 101 and §15.605, which require the board to adopt rules necessary to carry out the powers and duties of the board provided by Texas Water Code, and adopt rules for the State Water Pollution Control Revolving Fund.

§375.21. Administrative Cost Recovery.

(a) General. The board will assess charges for the purpose of recovering administrative costs of all recipients of SRF financial assistance who receive binding commitments after the effective date of this section.

(b) Payment Options. Recipients of binding commitments made after the effective date of this section will select payment options one or two as provided in subsection (c) or (d) of this section.

(c) Option One: Origination Charge Only. Pursuant to this option, a loan origination charge will be assessed of 2.25% of the SRF loan amount, excluding the amount of the origination charge. The loan origination charge is a one-time charge that is due and payable at the time of loan closing. The loan origination charge may be financed as a part of the SRF loan.

(d) Option Two: Origination Charge and Servicing Charge.

(1) Pursuant to this option, both a loan origination charge and a servicing charge will be assessed.

(2) The loan origination charge will be 1.65% of the SRF loan amount, excluding the amount of the origination charge, and will be due and payable at the time of loan closing. The loan origination charge may be financed as a part of the SRF loan.

(3) The servicing charge will be 0.15% of the SRF loan, excluding the amount of the origination charge, and is due and payable annually at the time of the interest only payment date. A schedule of servicing charges will be calculated at the time of loan closing for the life of the SRF loan. In the event of early payoff of a loan, all remaining servicing charges calculated in this subsection must be paid in full at the time of the payoff.

(e) Administrative Cost Recovery Fund. Charges collected according to this section shall be deposited into the Administrative Cost Recovery Fund.

(f) Use of Funds. Monies deposited into the Administrative Cost Recovery Fund shall be used only for administration of the SRF program, unless transferred pursuant to subsection (g) of this section.

(g) Transfer of Funds. Subject to subsection (f) of this section, the board may authorize transfer of funds from the Administrative Cost Recovery Fund into the SRF Program Account and used for any purpose for which other funds in the SRF Program Account can be used.

(h) Investment of Funds. Monies in the Administrative Cost Recovery Fund shall be invested in authorized investments as provided by board order, resolution, or rule.

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 August 28, 1995.

TRD-9510864 Craig Pedersen
Executive Administrator
Texas Water Development
Board

Earliest possible date of adoption: October 19, 1995

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

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part IX. Texas Commission on Jail Standards

Chapter 259. New Construction Rules

The Commission on Jail Standards proposes amendments to §§259.135, 259.136, 259.330, 259.331, 259.430, 259.431, 259.510, and 269.610, concerning New Construction Rules to allow more than 48 inmates to congregate in dormitories and day rooms as allowed by a recent change in statute.

Jack E. Crump, executive director, has determined that for the first five year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Crump also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections as proposed will be to provide less costly jail space by allowing more inmates to congregate in one housing area. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

New Jail Design, Construction and Furnishing Requirements

• 37 TAC §259.135, §259.136

The amendments are proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

The statute that is affected by these rules is Local Government Code, Chapter 351, §351.002 and §351.015.

§259.135. *Dormitories.* Dormitories shall contain 9 to 48 [24] bunks, except medium and low-risk [direct supervision] dormitories which may contain additional [up to 48] bunks not to exceed a total of 72 with the written concurrence of the owner, sheriff/operator and approved by the Executive Director. Dormitories shall contain not less than 40 square feet of clear floor space for the first bunk plus 18 square feet of clear floor space for each additional bunk. Each dormitory shall have adequate toilets and lavatories. Dormitories with contiguous day rooms in direct supervision facilities may exceed 40% of the facility capacity.

§259.136. *Day Rooms.* All single cells, multiple occupancy cells, and dormitories shall be provided with day rooms. Separation cells, violent cells, holding cells, detoxification cells, and medical cells are exempt from this requirement. Day rooms shall be designed for no more than 48 [24] inmates, except [direct supervision] day rooms for medium and low-risk inmates which may be designed for additional [up to 48] inmates not to exceed a total of 72 with the written concurrence of the owner, sheriff/operator and approved by the Executive Director. Based on the design capacity of the cells served, the day rooms shall contain: not less than 40 square feet of clear floor space for the first inmate plus 18 square feet of clear floor space for each additional inmate; adequate toilets, lavatories, mirrors, showers, seating, and tables. A utility sink should be provided. Day rooms may be contiguous with inmate living areas provided that space requirements for living areas and day rooms are met. Convenient electrical receptacles circuited with ground fault protection shall be provided. Power to receptacles should be individually controlled outside of the cell.

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 August 24, 1995.

TRD-9510755

Jack E. Crump
Executive Director
Commission on Jail
Standards

Earliest possible date of adoption: October 2, 1995

For further information, please call: (512) 463-5505

◆ ◆ ◆
**New Medium-Risk Design,
Construction and Furnishing
Requirements**

◆ ◆ ◆
• 37 TAC §259.330, §259.331

The amendments are proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

The statute that is affected by these rules is Local Government Code, Chapter 351, §351.002 and §351.015.

§259.330. *Dormitories.* Dormitories shall contain 9 to 48 [24] bunks[, except direct supervision]. Dormitories [which] may contain additional [up to 48] bunks not to exceed a total of 72 with the written concurrence of the owner, sheriff/operator and approved by the Executive Director. Dormitories shall contain not less than 40 square feet of clear floor space for the first bunk plus 18 square feet of clear floor space for each additional bunk. Each dormitory shall have adequate toilets and lavatories.

§259.331. *Day Rooms.* All single cells, multiple occupancy cells, and dormitories shall be provided with day rooms. Separation cells, violent cells, holding cells, and medical cells are exempt from this requirement. Day rooms shall be designed for no more than 48 [24] inmates. [, except direct supervision] Day rooms may be designed for additional [up to 48] inmates not to exceed a total of 72 with the written concurrence of the owner, sheriff/operator and approved by the Executive Director. Based on the design capacity of the cells served, the day rooms shall contain: not less than 40 square feet of clear floor space for the first inmate plus 18 square feet of clear floor space for each additional inmate; adequate toilets, lavatories, mirrors, showers, seating, and tables. A utility sink should be provided. Day rooms may be contiguous with inmate living areas provided that space requirements for living areas and day rooms are met. Convenient electrical receptacles circuited with ground fault protection shall be provided. Power to receptacles should be individually controlled outside of the cell.

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 August 24, 1995.

TRD-9510810

Jack E. Crump
Executive Director
Commission on Jail
Standards

Earliest possible date of adoption: October 2, 1995

For further information, please call: (512) 463-5505

◆ ◆ ◆
New Low-Risk Design, Construction and Furnishing Requirements

◆ ◆ ◆
• 37 TAC §259.430, §259.431

The amendments are proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

The statute that is affected by these rules is Local Government Code, Chapter 351, §351.002 and §351.015.

§259.430. *Dormitories.* Dormitories shall contain 9 to 48 [24] bunks. [,except direct supervision] Dormitories [which] may contain additional [up to 48] bunks not to exceed a total of 72 with the written concurrence of the owner, sheriff/operator and approved by the Executive Director. Dormitories shall contain not less than 40 square feet of clear floor space for the first bunk plus 18 square feet of clear floor space for each additional bunk. Each dormitory shall have adequate toilets and lavatories.

§259.431. *Day Rooms.* All single cells, multiple occupancy cells, and dormitories shall be provided with day rooms. Separation cells, violent cells, holding cells, and medical cells are exempt from this requirement. Day rooms shall be designed for no more than 48 [24] inmates. [,except direct supervision] Day rooms may be designed for additional [up to 48] inmates not to exceed a total of 72 with the written concurrence of the owner, sheriff/operator and approved by the Executive Director. Based on the design capacity of the cells served, the day rooms shall contain: not less than 40 square feet of clear floor space for the first inmate plus 18 square feet of clear floor space for each additional inmate; adequate toilets, lavatories, mirrors, showers, seating, and tables. A utility sink should be provided. Day rooms may be contiguous with inmate living areas provided that space requirements for living ar-

eas and day rooms are met. Convenient electrical receptacles circuited with ground fault protection shall be provided.

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 August 24, 1995.

TRD-9510809

Jack E. Crump
Executive Director
Commission on Jail
Standards

Earliest possible date of adoption: October 2, 1995

For further information, please call: (512) 463-5505

◆ ◆ ◆
Temporary Housing

◆ ◆ ◆
• 37 TAC §259.510

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

The statute that is affected by this rule is Local Government Code, Chapter 351, §351.002 and §351.015.

§259.510. *Capacity.* Maximum capacity of a tent shall not exceed 48 [24] inmates. [unless operated as a direct supervision unit. Tents for direct supervision units shall not exceed a capacity of 48 inmates.] Tents may accommodate additional inmates not to exceed a total of 72 with the written concurrence of the owner, sheriff/operator and approved by 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 August 24, 1995.

TRD-9510756

Jack E. Crump
Executive Director
Commission on Jail
Standards

Earliest possible date of adoption: October 2, 1995

For further information, please call: (512) 463-5505

◆ ◆ ◆
• 37 TAC §259.610

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

The statute that is affected by this rule is Local Government Code, Chapter 351, §351.002 and §351.015.

§259.610. *Capacity.* Maximum capacity of any living area shall not exceed 48 [24] inmates. [unless operated as a direct supervision unit. A living area operated as a direct supervision unit shall not exceed a capacity of 48 inmates.] Medium and low-risk areas may accommodate additional inmates not to exceed a total of 72 with the written concurrence of the owner, sheriff/operator and approved by 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 August 24, 1995.

TRD-9510757 Jack E. Crump
Executive Director
Commission on Jail
Standards

Earliest possible date of adoption: October 2, 1995

For further information, please call. (512) 463-5505



Chapter 260. County Correctional Centers

CCC Design, Construction and Furnishing Requirements

• 37 TAC §260.131, §260.132

The Commission on Jail Standards proposes amendments to §260.131 and §260.132, concerning County Correctional Centers. The sections are being amended to allow more than 48 inmates to congregate in dormitories and day rooms as allowed by a recent change in statute.

Jack E. Crump, executive director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Crump also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections as proposed will be to provide less costly jail space by allowing more inmates to congregate in one housing area. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendments are proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards

for the construction, equipment, maintenance and operation of county jails.

The statute that is affected by these rules is Local Government Code, Chapter 351, §351.002 and §351.015.

§260.131. *Dormitories.* Dormitories shall contain 9 to 48 [24] bunks, except medium and low-risk [direct supervision] dormitories which may contain additional [up to 48] bunks not to exceed a total of 72 with the written concurrence of the owner, sheriff/operator and approved by the Executive Director. Dormitories shall contain not less than 40 square feet of clear floor space for the first bunk plus 18 square feet of clear floor space for each additional bunk. Each dormitory shall have adequate toilets and lavatories.

§260.132. *Day Rooms.* All single cells, multiple occupancy cells, and dormitories shall be provided with day rooms. Separation cells, holding cells, and medical cells are exempt from this requirement. Day rooms shall be designed for no more than 48 [24] offenders. [, except direct supervision] Day rooms may be designed for additional [up to 48] offenders not to exceed a total of 72 with the written concurrence of the owner, sheriff/operator and approved by the Executive Director. Based on the design capacity of the cells served, the day rooms shall contain: not less than 40 square feet of clear floor space for the first offender plus 18 square feet of clear floor space for each additional offender; adequate toilets, lavatories, mirrors, showers, seating, and tables. A utility sink should be provided. Day rooms may be contiguous with offender living areas provided that space requirements for living areas and day rooms are met. Convenient electrical receptacles circuited with ground fault protection shall be provided. Power to receptacles should be individually controlled outside of the cell.

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 August 24, 1995.

TRD-9510758 Jack E. Crump
Executive Director
Commission on Jail
Standards

Earliest possible date of adoption: October 2, 1995

For further information, please call: (512) 463-5505



Chapter 291. Services and Activities

• 37 TAC §291.3

The Commission on Jail Standards proposes an amendment to §291.3, concerning Services and Activities. The section is being amended to change the requirement for frequency of commissary audits in county jails from quarterly to yearly as changed in statute.

Jack E. Crump, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Crump also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section as proposed will be to require less audits of commissary accounts therefore saving money on payments to auditors. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

The statute that is affected by this rule is Local Government Code, Chapter 351, §351.002 and §351.015.

§291.3. *Inmate Commissary Plan.* Each facility shall have and implement a written plan, approved by the commission, governing the availability and use of an inmate commissary which allows for the purchase of hygiene items and sundries. The plan shall:

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

(4) provide for yearly [quarterly] audits by the county auditor in accordance with the Local Government Code, §351.0415;

(5) (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 August 24, 1995.

TRD-9510759 Jack E. Crump
Executive Director
Commission on Jail
Standards

Earliest possible date of adoption: October 2, 1995

For further information, please call: (512) 463-5505



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part III. Texas

Commission on Alcohol and Drug Abuse

Chapter 144. Funding Requirements

Subchapter C. Fiscal

- 40 TAC §§144.211-144.215, 144.221-144.228, 144.231-144.238, 144.241-144.245, 144.251-144.256, 144.261-144.265, 144.271, 144.281-144.283

The Texas Commission on Alcohol and Drug Abuse proposes new §§144. 211-144.215, 144.221-144.228, 144.231-144.238, 144.241-144.245, 144.251-144. 256, 144.261-144.265, 144.271, and 144.281-144.283, concerning fiscal requirements for providers funded by the commission. The new sections are being proposed to establish minimum criteria for fiscal practices, including financial management; accounting systems; internal controls; budget controls, cost allocation plan; payments; cash management; matching; program income; award revisions; allowable costs; costs requiring prior approval; unallowable costs; double billing; minor remodeling, financial documentation; use of property; procurement; subcontracting; termination; and refunds. Identical emergency action has been simultaneously filed.

J. Michael Weiss, Chair of the Conservatorship Board, has determined that for the first five-year period the new sections are to be in effect there will be no fiscal implications for state or local government as a result of enforcing the new sections.

Mr. Weiss 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 enforcing the new sections will be sound financial management by providers and more effective use of public dollars. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply new sections the new sections as proposed.

Comments on the proposal may be submitted to Tamara Allen, Program Compliance, Texas Commission on Alcohol and Drug Abuse, 710 Brazos Street, Austin, Texas 78701.

The new sections are proposed under the Texas Health and Safety Code, Title 6, Subtitle B, §461.012(15), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in administering any commission programs.

The code affected by the proposed new sections is the Texas Health and Safety Code, Title 6, Subtitle B, Chapter 461.

§144.211. General Principles.

(a) Providers who have multiple awards and funding sources shall ensure that program activities and costs are allocated to the correct award and funding source and are documented.

(b) Providers shall use commission funds to supplement and increase, to the extent feasible and practical, the level of federal, state, and local funds that in the absence of these funds would be made available for the services provided under the award.

(c) Commission funds shall not be used to displace federal, state, local, and other funds that would otherwise be available for the services provided under the award.

§144.212. Financial Management.

(a) The provider shall maintain a financial management system which provides:

(1) information needed to prepare all reports required by federal and state law, commission rules and procedures, and the grant or contract agreement;

(2) records which identify adequately the source and application of funds to establish that the funds have not been used in violation of any applicable statute or regulation;

(3) effective control over and accountability for all funds, property, and other assets. Providers shall adequately safeguard all assets and shall assure that they are used solely for authorized purposes;

(4) comparisons of actual amounts expended with budgeted amounts for each grant or contract.

(b) Expenditures and administration of commission funds shall follow guidelines for reasonableness, allowability, and administration according to the cost principles and administrative requirements for the appropriate organizational structure as specified below:

(1) State and local governments shall comply with cost principles found in the Office of Management and Budget Circular A-87 and administrative requirements found in 34 Code of Federal Regulations, Part 80, and Office of Management and Budget Circular A-102, the Common Rule.

(2) All other organizations, including not-for-profit organizations, education institutions, and for-profit organizations shall comply with cost principles found in the Office of Management and Budget Circulars A-21 and A-122, and administrative requirements found in 34 Code of Federal

Regulations, Part 74, and Office of Management and Budget Circular A-110.

§144.213. Accounting Systems.

(a) All providers shall have written accounting policies and procedures that are available for staff use and that are reviewed and approved annually by the board of directors.

(b) Accounting for commission funds, and any required match funds, shall be in accordance with generally accepted accounting principles (GAAP) applicable to providers of state and federal funds.

(c) The accounting system shall establish a separate restricted cost center for income and expenditures related to each commission funded program using a double entry bookkeeping system.

(d) The system shall have a chart of accounts.

(e) The system shall provide sufficient information to separately identify the receipt and expenditure of the commission and federal funds and shall maintain copies of all financial reports submitted to the commission.

(f) Expenditures shall be recorded in sufficient detail to show the exact nature and purpose of the expenditures for each account.

(g) The accounting records shall be supported by source documentation.

(h) The following accounting records and related documentation shall be maintained:

- (1) a general ledger;
- (2) a cash receipts journal;
- (3) a cash disbursement journal;
- (4) individual payroll records for all staff members employed by the provider;

(5) all bank statements and canceled checks;

(6) all invoices, purchase orders, vouchers, and paid bills;

(7) employee attendance records;

(8) copies of all contracts and lease agreements to which the provider is a party; and

(9) any other financial documentation that the commission may require by rule or by the terms and conditions of the provider's individual letter of award or contract.

(i) The system shall provide accurate, current, and complete financial reporting information.

(j) The system shall be integrated with systems of internal controls designed to safeguard funds and assets, check the accuracy and reliability of accounting data, promote operational efficiency, and encourage adherence to management policies.

(k) The system shall include procedures for regular inventories and procedures for the acquisition, maintenance, and disposition of property and funds derived from the sale of property purchased in whole or in part with commission funds.

(l) The system shall include procedures for recording the actual time each employee of the provider works by program.

(m) Records shall be maintained in a manner which permits preparation of commission required financial reports and indicates that funds are used for the purpose for which the award is made.

(n) These requirements also apply to subcontractors of the provider.

§144.214 Internal Controls.

(a) Providers shall establish and maintain internal control systems to provide accountability and safeguard assets, ensure usage and purpose are in compliance with applicable laws and regulations, and ensure personnel are qualified, knowledgeable, adequately trained, and managed effectively.

(b) The provider shall compare recorded accountability for assets to existing assets at reasonable intervals and take appropriate action when differences are identified.

(c) The system of internal controls shall include:

- (1) segregation of functions;
- (2) proper authorization;
- (3) proper recording of transactions;
- (4) limiting access to assets, and
- (5) evaluation of progress toward objectives.

§144.215 Budget Controls.

(a) During program or contract implementation, providers shall ensure that recorded financial transactions relate to that specific program or contract.

(b) Providers shall then compare actual expenditures with budgeted amounts to determine whether the project, program, or award is properly projected.

(c) If unit cost data is required, estimates shall be based on actual historical data. If not feasible, estimate based on available documentation may be accepted.

§144.221 Cost Allocation Plan.

(a) Cost allocation plans shall be submitted to the commission for advance approval whenever indirect cost reimbursements are requested and shall include a detailed explanation and itemization of what costs are included as direct and what costs are allocated as indirect. This plan shall be submitted with the budget plan or cost report.

(b) The plan shall set forth the formula or basis for distributing indirect costs to a cost center. The formula shall include elements such as cost center, cost type, allocation factors, and allocation rationale. These elements shall be supported by documentation.

(c) If a cost allocation plan is used to charge certain costs to the match share of the budget, supporting documentation for the plan shall include:

- (1) the base upon which cost is allocated;
- (2) the rationale for base selected; and
- (3) the relevance to the program.

§144.222 Payments.

(a) Payments shall be made only after the grant or contract has been fully executed, all commission requirements and conditions have been met, and the provider has begun to implement the program.

(b) Providers shall receive payment only for expenditures which are properly documented and authorized by the terms and conditions of the grant or contract.

(c) Payments are contingent upon the provider's continuous compliance with commission requirements, which include:

- (1) rules published in the Texas Administrative Code;
- (2) provisions in the award agreement; and
- (3) procedures documented in the commission's Provider Compliance Manual.

(d) The provider shall submit all performance reports, financial reports, and requests for payment through the electronic forms interchange (EFI) system, unless otherwise exempted by the commission.

§144.223. *Methods of Payment.* Reimbursement is the commission's standard form of payment. The provider shall submit a request for reimbursement to receive payment. Payments are based on actual client services, cash disbursements or eligible ex-

penditures by the provider which can be supported by quarterly financial reports.

§144.224 Cash Management.

(a) Providers receiving cash advances shall implement procedures for minimizing the time between receipt and disbursement of funds.

(b) Advance payments must be liquidated during the award period.

(c) Advance payments shall be provided only to providers who demonstrate extreme hardship and receive approval from the commission.

(1) The provider shall use advance funds for direct program costs and the proportionate share of any allowable indirect costs within three days of receiving payment. The provider may not keep more than three days cash on hand.

(2) Providers receiving advance payments shall deposit and maintain the commission's funds in an insured account. The bank account shall be interest bearing unless the provider receives less than \$120,000, the interest earned per year does not exceed \$100, or the required average or minimum balance is not feasible for the entity.

(d) The provider shall be placed on the reimbursement method of payment for noncompliance with these standards.

§144.225. *Matching.* Unless waived by the commission, all providers funded through a grant mechanism shall contribute a 5.0% cash match for each grant funded by the commission. Cash match shall be:

- (1) verifiable by records;
- (2) not included as match for any other federally assisted program;
- (3) allowable under the cost principles; and
- (4) not paid for by another award funded by federal funds.

§144.226 Program Income.

(a) Providers shall separately record and report all income earned through commission-funded activities, such as fees collected from clients/participants or third parties, and interest earned on program fund deposits.

(b) The provider shall remit interest earned on advanced funds to the commission at least quarterly. Up to \$100 per year may be retained by the provider for administrative expenses, but any additional interest shall be returned to the commission.

(c) The provider may charge fees for services that are funded by the commis-

sion, provided no one is refused services for inability to pay and that the resulting income is used according to program income regulations. Program income from sources such as client fees, interest earned on program fund deposits, and cash donations may be used only as follows:

(1) program income can be used to offset allowable costs of the program and may count toward satisfying the cash match requirements;

(2) with prior approval from the commission, income may be used to expand or increase program activities or objectives;

(3) program income may be deducted from the amount of the award. Program income cannot remain after the end of the fiscal year. Any program income generated as a result of a commission funded program during the fiscal year and not expended shall be used to reduce the amount of the award;

(4) any other use of these funds is prohibited.

§144.227. Budget Revisions for Grant Awards. Providers shall report all budget and program design changes and request prior approvals for the following revisions:

(1) change in statement of work, services, program setting or site, target population, catchment area, goals, scope, or program objective;

(2) change in key personnel that affect the providers ability to carry out the approved statement of work;

(3) transfers between budget categories which involve personnel, equipment, or contractual items; and

(4) costs that require prior commission approval as defined in appropriate Office of Management and Budget Circulars and Codes of Federal Regulations.

§144.228. Contract and Cost Report Revisions.

(a) All changes or additions to the terms of the contract shall be approved in writing by the commission before implementation. The provider shall request any proposed revision in writing.

(b) The provider shall receive written approval before adding or deleting service types or transferring funds into or out of methadone or Orlaam services. Funds may be transferred between other service types without prior approval.

(c) A request for a modification or waiver shall not be considered unless it is made in writing and includes:

(1) the specific provision or requirement involved; and

(2) an alternative with justification that meets the intent of the provision or requirement.

(d) Cost reports cannot be revised during the fiscal year unless the revision results from an independent auditor's service type cost audit which is submitted and approved by the commission.

§144.231. Allowable Cost Criteria. An allowable cost meets the following criteria:

(1) It is necessary and reasonable for proper and efficient administration of the funded program.

(2) It can be allocated to the funded program and is not a general expense needed to carry out the provider's general responsibilities.

(3) It is authorized or is not prohibited under applicable laws or regulations.

(4) It conforms to applicable limitations or exclusions.

(5) It is consistent with applicable policies, regulations, and procedures.

(6) It is treated consistently through the application of generally accepted accounting principles appropriate to the circumstances.

(7) It is not allocated or included as a cost of any other government program in either the current or a prior period.

(8) It is net of all applicable credits.

§144.232. Direct Costs. Direct costs that can be charged to an award include but are not limited to:

(1) Personnel. Wages for personnel are directly associated with the provision of services to clients.

(2) Fringe Benefits. Benefits are paid to personnel directly associated with service delivery. These benefits include retirement program, health insurance programs, paid vacations, and sick leave.

(3) Depreciation. Costs are related to the use of buildings, capital improvements, and equipment directly associated with funded activities. Any generally-accepted method of computing depreciation may be used. However, the method of computing depreciation must be consistently applied for any specific asset or class of assets for all state funded programs. The computation of depreciation will be based on acquisition cost, and adequate property records must be maintained. Depreciation costs must be allocated when assets are used by two or more activities. Depreciation of assets cannot be less than the useful life, and depreciation on idle or

excess facilities is not allowable unless specifically authorized by the commission.

(4) Rent. The rental or lease cost of equipment or facilities is used in providing substance abuse services.

(5) Maintenance and Repair. The direct costs are incurred to keep facilities and equipment in working condition.

(6) Utilities. Fuel, electricity, telephones, water, and sewer costs result from the delivery of substance abuse services.

(7) Direct Services. Costs are associated with subcontracting direct services.

(8) Materials and Supplies. All materials and supplies are directly used to provide substance abuse services.

(9) Travel. Staff training or staff development activities are necessary to the substance abuse program. The reimbursement may not exceed the current State of Texas rate for local and other in-state travel and the current federal rate for out-of-state travel. If the provider's board approves a lower rate, that rate shall be used.

§144.233. Indirect Cost. Allowable indirect costs include administrative costs, data processing, personnel record creation and maintenance, bookkeeping, and audit. Indirect costs are limited to 3.1% of the total award and shall have an approved cost allocation plan.

§144.234. Unrecovered Allowable Costs. A provider shall obtain the prior written approval from the commission to charge unrecovered allowable costs incurred during a previous award period to the current award.

§144.235. Expenditures Requiring Commission's Prior Approval. Costs that are allowable only with prior approval from the commission are:

(1) Equipment. Costs are incurred for the purchase of equipment having a unit price of \$1,000 or more, a useful life of more than one year, and which is used solely for the delivery of substance abuse services.

(2) Contractual Services. Costs are incurred for the purchase of professional services, including medical, psychological, legal, accounting, auditing, training, program development, evaluation, data processing, urinalysis, and other laboratory testing.

(3) Vehicle Purchase and Use. A vehicle is defined as a full-size van or mini-van, a mobile unit such as a camper-trailer, or a bus which also meets the defini-

tion of equipment. Vehicles purchased with commission funds shall be used only for program related purposes; personal use of the vehicle is not allowed. When vehicles are purchased by a commission-funded program, the provider shall:

(A) obtain advance written approval by the commission;

(B) purchase and take possession of the vehicle during the award period for which the vehicle purchase was approved;

(C) have a written board-approved policy for the use of vehicles;

(D) maintain written documentation of the vehicle's usage which include destination, passengers, date, duration of use, mileage, and program related purpose;

(E) submit a written disposition to the commission designating title transfer in accordance with the Text of the Common Rule, Subpart C, §149.25.32, in the event the program for which approval was made no longer provides services;

(F) notify the commission in writing and dispose of or transfer the vehicle in accordance with 34 Code of Federal Regulations, Part 74, §74.139, as amended by Volume 59, *Federal Register*, Page 43775, Text of the Common Rule, or Subpart C, §149.25.32, whichever is applicable, in the event the program for which the vehicle was approved terminates;

(G) follow all applicable state, federal, local, and commission laws, regulations and policies pertaining to the purchase, use, and disposition of vehicle equipment.

(4) Other. Costs are incurred for insurance and indemnification, management studies, pre-agreement costs, proposal costs, and public information costs.

§144.236. Unallowable Costs. Providers may not budget or expend funds for unallowable costs as defined in applicable Office of Management and Budget Circulars and the Code of Federal Regulations. Unallowable costs include but are not limited to the following items.

(1) advertising costs other than those incurred for personnel recruitment, solicitation of bids, and disposal of surplus materials;

(2) bad debts;

(3) contingency reserve fund;

(4) contributions and donations;

(5) entertainment costs including amusement/social activities and their related costs (meal, beverages, lodgings, rentals, transportation, and gratuities);

(6) fines and penalties;

(7) fundraising;

(8) interest; and

(9) lobbying.

§144.237. Prohibitions Against Billing More Than One Entity. A provider shall not bill more than one entity for the same service at the same time for the same client. Double billing may result in the termination of existing awards and the inability to obtain future awards.

§144.238. Minor Remodeling.

(a) Providers shall not use commission funds to purchase, construct, or permanently improve any building or other facility, except for minor remodeling.

(b) Minor remodeling is work required to change the interior arrangements or other physical characteristics of an existing facility, or to install equipment so that the facility may be used more effectively

(c) Minor remodeling shall meet the following criteria:

(1) the building's useful life shall be consistent with program purposes;

(2) the remodeling shall be essential to the project funded by the grant;

(3) the remodeled space shall be occupied by the project;

(4) prior approval from the commission shall be obtained before remodeling begins;

(5) the facility shall be owned by the provider; or if the facility is leased, there shall be a minimum of three years remaining in the lease period.

(d) The provider shall meet all procurement requirements and request approval from the commission before initiating a minor remodeling project.

(e) The amount budgeted or used for minor remodeling for an identified program during three consecutive budget periods cannot exceed the lesser of:

(1) \$150,000; or

(2) 25% of total funds awarded for direct costs for the three consecutive budget periods.

(f) Remodeling projects which are not allowable include relocation of exterior

walls, roofs and floors, development repair of parking lots, and completion of unfinished shell space.

(g) If the program is funded in part by the commission, only a pro-rata share of the total cost may be charged to the commission.

§144.241. General Documentation Requirements.

(a) Appropriate documentation shall be available to support any cost charged to a grant or contract.

(b) Documentation shall be:

(1) written;

(2) independently generated or verifiable by an independent third party;

(3) generated at the point of occurrence of the transaction;

(4) in support of the amounts reflected on the books; and

(5) filed in a manner that allows easy retrieval.

(c) Documentation for direct, program-specific costs charged to the commission or shown as cash match shall show the cost's relevance and application to the program.

§144.242. Personnel Documentation. Documentation for personnel costs shall include payroll records, personnel activity reports (PARs), or timekeeping reports for all staff whose activities are funded in whole or in part by an award or are used for match.

(1) Personal activity reports. The personal activity reports shall account for the employee's total activity. Additional documentation shall be maintained for non-professional or nonexempt personnel indicating the hours worked each day. Personal activity reports for professional and professional staff employed by universities shall be completed each academic term, but not less than once every six months. All other personal activity reports shall be completed monthly.

(2) Timekeeping reports. If administrative personnel costs are charged through a percentage allocation method, timesheets shall clearly reflect the amount of total time and the basis for allocation. All timekeeping reports must include:

(A) grant/program/contract number(s) worked on;

(B) employee name;

(C) position or job title;

(D) grant/program/contract related activities;

(E) number of hours worked per activity category;

(F) employee signature;

(G) supervisor signature; and

(H) applicable pay period(s).

(3) Personnel files. Personnel files shall contain:

(A) signed and completed form W-4 (for IRS withholding allowances);

(B) signed and completed form I-9 (certification of citizenship);

(C) personnel data form that includes date hired, rate of pay, prior work history, credentials, qualifications, mailing address, and results of reference checks;

(D) documentation of specific qualifications for professional employees such as licensure or certification;

(E) performance evaluations;

(F) written summary of the exit interview (for terminated employees) that includes reason for leaving, date of termination, whether fired or quit, latest mailing address, and phone number; and

(G) documentation of all pay increases and bonuses. Bonuses are not allowed unless the organization establishes and maintains a written policy setting forth criteria for bonuses which is applicable to the entity as a whole and not specific to the commission's funded program.

(4) Fringe benefit schedule. A fringe benefit schedule shall be prepared which shows the distribution of fringe benefits to each employee supported by award funds.

§144.243. Travel Documentation.

(a) A system of documenting travel costs related to the program shall be developed, including written prior approval from the executive director for out-of-town travel.

(b) Documentation for local travel shall include a travel log recording all travel expenses to agency staff for use of a personal vehicle for program-related activities. The log shall include:

(1) name and signature of individual receiving travel funds;

(2) signature of supervisor of financial administration authority;

(3) grant/program or contract number;

(4) date the particular log was approved;

(5) date(s) of travel;

(6) destination/specific locations traveled to and from;

(7) purpose/relationship to program;

(8) number of miles incurred; and

(9) total cost for trip.

§144.244. Other Documentation.

(a) Equipment. Records shall be maintained on all equipment. In addition, a physical inventory shall be conducted and reconciled with the accounting records at least once per year. Differences shall be investigated. Equipment records shall include:

(1) a description of the equipment;

(2) identification number;

(3) acquisition date and total and unit costs;

(4) information which can be used to calculate the percentage of federal participation in the cost of the equipment;

(5) location and condition of the equipment and the date the information was reported; and

(6) ultimate disposition, including date of disposal and sales price or method used to determine current fair market value, if applicable.

(b) Photocopy/postage. To receive commission reimbursement for the cost of photocopying or postage, a system of recognizing and documenting costs related to the award shall be developed. This may include a postage/photocopy log or other approved allocation method. If a log is used, it shall include:

(1) date;

(2) initials of user;

(3) number of copies or stamps;

(4) cost per copy or stamp;

(5) description of relevance to the award; and

(6) signature of the authority reviewing the log.

(c) Printed material. All printed program materials developed with commission funds which are copyrightable work shall contain this disclaimer: "The contents of this (insert type of publication) were developed under an award from the Texas Commission on Alcohol and Drug Abuse. However, these contents do not necessarily represent the policy of the commission, and you should not assume endorsement by the Federal or State Government."

(d) Donated time. A timekeeping report shall be kept for each person whose donated services are recorded as match, including:

(1) month ended (for which services were provided);

(2) donor name;

(3) description of services provided;

(4) hours worked;

(5) signature of donor; and

(6) signature of supervisor or authorized individual.

(e) Donated property. Records of donated materials, equipment, and facilities shall include an appraisal form or a signed form indicating how the estimated value was determined. For facilities, the provider shall obtain a written opinion of fair rental value from an independent licensed real estate brokerage firm.

§144.245. Federal and State Tax Requirements.

(a) The provider shall file quarterly and annual payroll tax returns for wages to employees who are subject to FICA or withholding. Late fees, interest, and penalties are not allowable costs.

(b) The provider shall obtain an employer ID number from the IRS and the Texas Employment Commission.

(c) The provider shall file all required federal tax returns.

§144.251. Property Standards. The provider shall establish property standards that set uniform requirements governing the management and disposition of property whose cost was charged to a project supported by a federal or state award. These standards shall include the provisions in §§144.252-144.256 of this title (relating to Real Property, Equipment, Supplies, Intangible Property, and Insurance Coverage(s)).

§144.252. Real Property.

(a) Approval. Capital expenditures for the purchase or improvement of real property shall be approved in advance by the commission. This includes all situations in which a portion of the acquisition cost is charged as a direct cost to federal or state funds.

(b) Definition. Real property includes land, land improvements, structures, and facilities, excluding movable machinery and equipment.

(c) Title. Unless otherwise provided by the terms of the grant or contract, title to real property shall vest in the provider. The provider shall, however, use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval from the commission.

(d) Disposition. When real property is no longer needed for the originally authorized purpose, or when the provider ceases to be funded by the commission, the provider shall request disposition instructions from the commission. The instructions shall prescribe one of the following alternatives:

- (1) retain title after compensating the commission;
- (2) sell the property and compensate the commission;
- (3) transfer the title to the commission or to a designated third party and receive compensation;

(e) Exempt property. When statutory authority exists, the commission has the option to vest title in the provider without requiring compensation.

§144.253. Equipment.

(a) Approval. Capital expenditures for equipment shall be approved in advance by the commission. This includes all situations in which a portion of the acquisition cost is charged as a direct cost to federal or state funds.

(b) Definition. Equipment includes all tangible personal property that costs more than \$1,000 per unit and has a useful life of more than one year.

(c) Title. Unless otherwise provided by the terms of the grant or contract, title to equipment shall vest in the provider. The provider shall, however, use the equipment for the authorized purpose of the project as long as it is needed and shall not encumber the equipment without approval from the commission.

(d) Replacement Equipment. With the commission's approval, equipment may be exchanged or sold and the proceeds used to purchase replacement equipment.

(e) Disposition. When equipment is no longer needed for the originally authorized purpose, or when the provider ceases to be funded by the commission, the provider shall request disposition instructions from the commission. The instructions shall prescribe one of the following alternatives:

(1) Equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold, or otherwise disposed of with no further obligation to the commission.

(2) Equipment with a current per-unit fair market value of \$5,000 or more may be retained or sold, provided the commission receives compensation.

(3) The commission has the option to transfer title to the commission or to a designated third party and compensate the provider for its participation in the cost of the original purchase to the current fair market value of equipment.

§144.254. Supplies.

(a) Definition. Materials, supplies, and other expendable property includes property needed to carry out an award that costs less than \$1,000.

(b) Title. Title to supplies and other expendable property shall vest in the provider.

(c) Disposition. When the award ends, the provider shall compensate the commission for its share of any unused materials and supplies that exceeds \$5,000 in total aggregate fair market value, unless the supplies are needed for another federal or state sponsored program.

§144.255. Intangible Property.

(a) The provider may copyright any work which is subject to copyright and was developed or purchased under an award. The commission reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, the work for federal or state purposes.

(b) Providers are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce.

§144.256. Insurance Coverage. The provider shall have insurance to cover the replacement or repair of damaged, lost, or stolen capital expenditure items purchased with federal or state funds. Insurance coverage shall include but is not limited to:

- (1) property insurance covering losses due to fire, theft and accident;

(2) liability insurance on property and vehicles;

(3) workers' compensation insurance for employees; and

(4) employee bonding for all employees who have direct access to commission funds and for those who are responsible for the administration, care, management, or supervision of the funds. These employees shall be bonded through a licensed insurance company or otherwise covered for possible losses that might result from unauthorized use of the funds or from lack of care and oversight.

§144.261. Procurement Standards.

(a) The provider shall establish written policies and procedures governing the procurement of goods and services.

(b) Providers shall award subcontracts only to contractors demonstrating the ability to perform successfully under the terms and conditions of a proposed procurement.

(1) Provider responsibilities. The provider is responsible for all contractual and administrative issues related to procurements made under the award. This includes disputes, protests of award, source evaluation, and other contractual matters.

(2) Codes of conduct. The provider shall have written standards of conduct governing the performance of its employees involved in the award and administration of contracts. No employee, officer, or agent of the provider can participate in the selection, award, or administration of a contract if a real or apparent conflict of interest exists.

(3) Competition. All procurement transactions shall provide open and free competition. Contractors who develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals cannot compete for those procurements. Providers shall select the bidder who responds appropriately to the solicitation and offers the greatest advantage in terms of price, quality, and other factors.

§144.262. Procurement Procedures.

(a) Procedures. All providers shall have written procurement procedures that provide for

(1) review of proposed procurements to avoid purchase of unnecessary or duplicate items;

(2) analysis of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical and practical procurement; and

(3) solicitations for goods and services which clearly describe all requirements that must be met in order for a bid to be evaluated.

(b) Use of small businesses, minority-owned and women's business enterprises. Providers shall make positive efforts to use small businesses, minority-owned firms, and women's business enterprises.

(c) Protest procedures. Providers shall have protest procedures to resolve disputes relating to their procurements. Each time a protest is filed, the provider shall inform the commission. A protester cannot pursue a protest with the commission until all administrative remedies with the provider have been exhausted. The commission shall not review any protest unless it involves:

(1) violations of federal law or regulations or commission rules and procedures; or

(2) violations of the provider's protest procedures for failure to review a complaint or protest.

(d) Use of historically underutilized businesses. Providers shall make a good faith effort to include historically underutilized businesses in at least 30% of the total value of contracts awarded.

§144.263. *Methods of Procurement.*

(a) Methods. Providers shall follow one of the procurement methods described in this section.

(b) Procurement by small purchase procedures. These are simple and informal methods for obtaining services, supplies, or other property costing no more than \$25,000 in total. Price or rate quotations shall be obtained from a minimum of three qualified sources.

(c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed-price contract is awarded to the responsible bidder whose bid conforms with all the material terms and conditions of the invitation for bids and is the lowest in price.

(1) Sealed bids shall not be used unless:

(A) a complete, adequate, and realistic specification or purchase description is available;

(B) three or more responsible bidders are willing and able to compete for the business; and

(C) the procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made largely on the basis of price.

(2) The following requirements apply:

(A) the invitation for bids shall be publicly advertised and bids solicited from an adequate number of known suppliers;

(B) the invitation for bids shall clearly define the items or services;

(C) all bids shall be opened at the time and place stated in the invitation;

(D) a firm fixed-price contract award shall be made in writing to the lowest responsive and responsible bidder; and

(E) any or all bids may be rejected if there is sound documented reason.

(d) Procurement by competitive proposals. Proposals are publicly solicited, and either a fixed-price or reimbursement-type contract is awarded. The following requirements apply:

(1) requests for proposals shall be publicized and shall identify all evaluation factors and their relative importance;

(2) proposals shall be solicited from a minimum of three qualified sources;

(3) providers shall have a method for conducting technical evaluations of the proposals received and for selecting providers;

(4) awards shall be made to the applicant who submits the proposal that provides the greatest benefit to the program, with price and other factors considered.

(e) Procurement by noncompetitive proposals. This method shall be used only when the award of a contract is not feasible under small purchase procedures, sealed bids, or competitive proposals and one of the following circumstances apply:

(1) the item is available only from a single source;

(2) a public emergency does not permit the delay that would result from a competitive process;

(3) the awarding agency authorizes noncompetitive proposals; or

(4) after competitive solicitation, competition is found to be inadequate.

§144.264. *Cost and Price Analysis.* The provider shall perform a cost or price analysis for every procurement action, including contract modifications. Providers shall make independent estimates before receiving bids or proposals.

(1) A cost analysis shall be performed when bidders submit the elements of their estimated cost, and when competition is lacking.

(2) Price analysis may be used for other procurements.

(3) Costs or prices based on estimated costs for contracts under grants are allowable only to the extent that costs incurred (or cost estimates included in negotiated prices) are consistent with applicable cost principles.

(4) The cost plus a percentage of cost and the percentage of construction cost methods of contracting are not allowed as a bases for estimated costs.

§144.265. *Procurement Records.*

(a) Providers shall maintain records detailing the significant history of a procurement. These records shall include:

(1) cost and price analysis;

(2) the rationale for the method of procurement;

(3) the rationale for the selection of contract type;

(4) the rationale for the contractor selection or rejection; and

(5) the basis for the contract price.

(b) If a small purchase method is not used, the records shall also include:

(1) the basis for contractor selection;

(2) the justification for lack of competition when a competitive process is not used; and

(3) the basis for the award cost or price.

§144.271. *Subcontract Administration and Provisions.*

(a) The provider shall maintain a system for subcontract administration to ensure the subcontractor complies with the terms, conditions, and specifications of the subcontract and to ensure timely follow up of all purchases.

(b) The provider shall evaluate the subcontractor's performance, documenting whether the terms, conditions, and specifications of the contract were met.

(c) In addition to provisions defining a sound and complete agreement, providers shall include the following provisions in all subcontracts greater than \$25,000. These provisions also apply to subcontracts.

(1) The subcontract shall allow and provide for administrative, subcontractual, or legal remedies when the subcontractor violates or breaches the terms of the subcontract.

(2) The subcontract shall state how and under what conditions the provider may terminate the subcontract. It shall also describe conditions under which the subcontract may be terminated for default or for circumstances beyond the control of the subcontractor.

(3) The subcontract shall allow authorized representatives of the provider, the commission, or the Comptroller General of the United States to examine or copy any books, documents, papers, and records of the subcontractor which relate directly to a specific program.

§144.281. Close-out Procedures.

(a) The commission shall close out all awards at the end of the fiscal year.

(b) The provider shall submit all reports and other required documents within 45 days after the award period ends.

(c) The commission is not liable for provider costs filed more than 90 days after the end of the award period.

(d) The commission shall review the reports and make upward or downward adjustments to the final allowable costs if necessary.

(e) The provider shall refund any balances of unobligated cash unless the commission authorizes the provider to retain it.

(f) If the commission paid the provider more than the finally determined amount, the provider shall refund this amount to the commission within 15 calendar days of notification.

(g) The close out of an award does not affect:

(1) the commission's right to disallow costs and recover funds on the basis of a later audit or other review;

(2) the provider's obligation to return funds due as a result of later refunds, corrections, or other transactions;

(3) record retention;

(4) property management requirements; or

(5) audit requirements.

§144.282. Termination for Convenience.

(a) The provider may terminate an award in whole or in part by notifying the commission in writing of the effective date of termination.

(b) The commission may terminate an award in whole or in part at any time without the consent of the provider. The commission shall send written notification with the effective date of termination.

§144.283. Refunds.

(a) Currently funded providers who owe a refund may:

(1) pay the total amount due on the due date; or

(2) execute a repayment agreement allowing payments to be deducted from subsequent requests for reimbursement for a period of time not to exceed two years. If the provider is placed on suspension or the award is terminated, the full amount becomes due and shall be paid by the specified date.

(b) Providers who are not currently funded shall pay the total amount due at the time specified by the commission. A repayment agreement may be negotiated if it is approved by the commission and does not exceed two years.

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 August 22, 1995.

TRD-9510735

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

Earliest possible date of adoption: October 2, 1995

For further information, please call: (512) 867-8241

Chapter 145. Treatment Alternatives to Incarceration Programs

General Provisions

• 40 TAC §§145.1-145.7

(Editor's Note: The Texas Commission on Alcohol and Drug Abuse proposes for permanent adoption the repealed sections it adopts on an emergency basis in this issue. The text of the repealed sections may be examined in the offices of the Texas Commission on Alcohol and Drug Abuse or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Commission on Alcohol and Drug Abuse proposes the repeal of §§145.1-145.7,

concerning treatment alternatives to incarceration programs (TAIP). These rules are being repealed because the TAIP program has been eliminated and transferred to the Texas Department of Criminal Justice effective September 1, 1995.

J. Michael Weiss, Chair of the Board of Conservators, 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 repealing and replacing the rule.

Mr. Weiss also has determined that for each year of the first five years after the repeals occur the public benefits anticipated as a result of repealing the rule will be that the commission shall not impose rules beyond its jurisdiction. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Tamara Allen, Program Compliance, Texas Commission on Alcohol and Drug Abuse, 710 Brazos Street, Austin, Texas 78701.

The repeals are proposed under Acts, 1991, 72nd Legislature, Chapter 490, §2, effective December 31, 1991, amending the Texas Health and Safety Code, Chapter 461 by adding §461.017, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to promulgate written rules and regulations setting forth minimum standards for the operation of treatment alternatives to incarceration programs which are designed to provide substance abuse offenders with screening, assessment, referral and placement into licensed and approved chemical dependency programs if appropriate.

The code affected by the proposed repeals is the Acts, 1991, 72nd Legislature, Chapter 490, §2, effective December 31, 1991, amending the Texas Health and Safety Code, Chapter 461 by adding §461.017.

§145.1. Definitions.

§145.2. Objective.

§145.3. Scope of Rules, Regulations, and Standards.

§145.4. TAIP Program Approval.

§145.5. Approved TAIP Program Renewal.

§145.6. Denial, Revocation, or Nonrenewal of Approval.

§145.7. Invalidity of Provisions.

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 August 22, 1995.

Earliest possible date of adoption: October 2, 1995

For further information, please call: (512) 867-8241

Performance Standards

• 40 TAC §§145.20-145.30

(Editor's Note: The Texas Commission on Alcohol and Drug Abuse proposes for permanent adoption the repealed sections it adopts on an emergency basis in this issue. The text of the repealed sections may be examined in the offices of the Texas Commission on Alcohol and Drug Abuse or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Commission on Alcohol and Drug Abuse proposes the repeal of §§145.20-145.30, concerning treatment alternatives to incarceration programs (TAIP). These rules are being repealed because the TAIP program has been eliminated and transferred to the Texas Department of Criminal Justice effective September 1, 1995.

J. Michael Weiss, Chair of the Board of Conservators, 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 repealing and replacing the rule.

Mr. Weiss also has determined that for each year of the first five years after the repeals occur the public benefits anticipated as a result of repealing the rule will be that the commission shall not impose rules beyond its jurisdiction. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Tamara Allen, Program Compliance, Texas Commission on Alcohol and Drug Abuse, 710 Brazos Street, Austin, Texas 78701.

The repeals are proposed under Acts, 1991, 72nd Legislature, Chapter 490, §2, effective December 31, 1991, amending the Texas Health and Safety Code, Chapter 461 by adding §461.017, which provides the Texas Commission on Alcohol and Drug Abuse with the authority to promulgate written rules and regulations setting forth minimum standards for the operation of treatment alternatives to incarceration programs which are designed to provide substance abuse offenders with screening, assessment, referral and placement into licensed and approved chemical dependency programs if appropriate.

The code affected by the proposed repeals is the Acts, 1991, 72nd Legislature, Chapter 490, §2, effective December 31, 1991, amending the Texas Health and Safety Code, Chapter 461 by adding §461.017.

§145.20. Purpose of Approved TAIP Program.

§145.21. TAIP Program Content.

§145.22. Organizational Requirements.

§145.23. Approved TAIP Program Admission.

§145.24. TAIP Program Operations Requirement.

§145.25. Discrimination Prohibited.

§145.26. Complaints.

§145.27. Confidentiality.

§145.28. Approved TAIP Program List.

§145.29. Approved TAIP Program Monitoring.

§145.30. Payment of Referral.

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

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For further information, please call: (512) 867-8241

Part IX. Texas Department on Aging

Chapter 260. Area Agency on Aging Administrative Requirements

• 40 TAC §260.1

The Texas Department on Aging proposes an amendment to §260.1(a), relating to definitions and a new subsection (n), relating to conflict of interest.

The purpose of the amendment is to add definitions that relate directly to the new conflict of interest policy established in the Texas Administrative Code for compliance by area agencies on aging and service providers.

Ann Ammons, director of field operations, Texas Department on Aging, has determined that for the first five-year period the section is in effect there will be no fiscal implications for

state or local government as a result of enforcing or administering the section.

Ms. Ammons also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a greater understanding of the role, responsibilities, and mission of the Department. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Ann Ammons, Director of Field Operations, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711.

The amendment is proposed under Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operations of the Department.

The Human Resources Code, Chapter 101, relating to the operation of the Texas Department on Aging is affected by this proposed amendment.

§260.1. Area Agency on Aging Administrative Requirements.

(a) Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Definitions relating to targeted populations are as outlined in the Older Americans Act, as amended, and the Americans with Disabilities Act of 1990, as amended, or as defined below.

(1)-(14) (No change.)

(15) Current board member—A person presently a member of the governing board of a grantee agency sponsoring an area agency on aging.

(16) Current aging advisory committee member—A person presently a member of the advisory committee for an area agency on aging.

(17) Current employee—A person presently employed by a grantee agency sponsoring an area agency on aging.

(18)[(15)] Department—The Texas Department on Aging, the single state agency for Older Americans Act programs.

(19)[(16)] Developmental disability—A severe, chronic disability attributable to a mental or physical impairment, or combination of both that:

(A) is manifested before age 22;

(B) is likely to continue indefinitely;

(C) results in substantial limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency; and

(D) results in the need for individually planned and coordinated services lifelong or over an extended period of time.

(20)[(17)] Education and training-Providing the experience and/or knowledge for clients to acquire skills, in a formal or informal, individual or group, setting. In the Options program, this service is directed to older persons and their caregivers to help them improve their abilities in responding to their health care needs and limitations in overall functioning capacity.

(21)[(18)] Emergency Response System (ERS)-Services provided to the homebound, frail elderly using an automatic monitoring system to link them to emergency medical services when life and/or safety are in jeopardy. These ERS services include the installation of the individual monitoring unit, training associated with the use of the system, periodic checking to assure that the unit is functioning properly, equipment maintenance calls, response to an emergency call by a medical professional, paraprofessional or volunteer, and follow-up with the client.

(22)[(19)] Follow up-Contacting by telephone, correspondence or in person the inquirers and/or the agency to which referred, to verify that linkage has been established between the inquirer and the agency to which referred.

(23) Former board member-A former member of the governing board of a grantee agency sponsoring an area agency on aging whose last date of service was within the immediately preceding two years.

(24) Former aging advisory committee member-A former member of an aging advisory committee whose last date of service was within the immediately preceding two years.

(25) Former employee-A former grantee employee whose last date of service was within the immediately preceding two years.

(26)[(20)] Frail-An older person who:

(A) is unable to perform at least two activities of daily living without substantial human assistance, including verbal reminding, physical cuing, or supervision; and

(B) requires substantial supervision due to a cognitive or other mental impairment and behaves in a manner that poses a serious health or safety hazard to himself or others.

(27)[(21)] Friendly visitor-A volunteer who does not participate in complaint resolution. Friendly visitors receive orientation and may receive local training but do not receive certification.

(28)[(22)] Grantee-An eligible entity awarded funds by the Texas Board on Aging to provide services funded by the Department.

(29)[(23)] Hispanic-A person with a heritage originating from Mexico, Spain, Puerto Rico, Central America, South America, or any other area where Spanish is the native language.

(30)[(24)] Home delivered meals-Hot, cold, frozen, dried, canned or supplemental food (with a satisfactory storage life) which provides a minimum of one-third of the daily recommended dietary allowances (RDAs) as established by the Food and Nutrition Board of the National Academy of Sciences-National Research Council, and which is delivered to an eligible person in his/her place of residence.

(31)[(25)] Homemaker-A service provided by trained and supervised homemakers involving the performance of housekeeping/home management, meal preparation and/or escort tasks, provided to individuals who need assistance with these activities in their place of residence. The objective is to help the recipient sustain independent living in a safe and healthful environment.

(32)[(26)] Information and assistance-Services which inform, guide, direct and link individuals to appropriate human service resources. This may include individual client screening and/or assessment, which is a process of gathering and analyzing all pertinent information to identify an individual's strengths and needs for the purpose of determining a plan to assist the individual in the achievement of objectives and goals. (Used interchangeably with the term information and referral).

(33)[(27)] Information giving-The process of providing basic or detailed information about resources to an inquirer by a staff person.

(34)[(28)] Information and referral service-See information and assistance.

(35)[(29)] Instrumental activities of daily living (IADLs) -Tasks which may not need to be done every day (like ADLs), but which are never-the-less important for living independently: meal preparation,

housework, laundry, shopping, taking medicines, getting around outside, transportation, money management, and telephone use.

(36)[(30)] Inquirer-Any person or organization seeking assistance from the system.

(37)[(31)] In service-A planned educational effort conducted or coordinated by professional staff or certified volunteers.

(38)[(32)] Legal assistance-Advice and representation by an attorney (including assistance by a paralegal or law student under the supervision of an attorney), or counseling or representation by a non-lawyer where permitted by law, to older individuals with economic and social needs. Legal assistance activities include the following.

(A) Advice/Counseling-A recommendation made to a client regarding a course of conduct, or how to proceed in a matter, given either on a brief or one-time basis, or on an ongoing basis, and given either in person or by telephone.

(B) Document preparation-Personal assistance given to a client which helps him in the preparation of necessary documents relating to public entitlements, health care/long-term care, individual rights, planning/protection options, and housing and consumer issues.

(C) Representation-Advocacy on behalf of a client in protesting or complaining against a procedure, or seeking special considerations, appealing an administrative decision, or representation by an attorney of a client or class of clients in either the state or federal court systems.

(39)[(33)] Legal awareness-The dissemination of accurate, timely and relevant information, eligibility criteria, requirements and procedures, to older Texans about public entitlements, health/long-term care, individual rights, planning/protection options, and housing and consumer issues.

(40)[(34)] Long-term care facility-A facility that is licensed or regulated or that is required to be licensed or regulated by the Texas Department of Human Services.

(41)[(35)] Low income-A level of income (as defined by the federal Office of Management and Budget), below which a person or persons is considered to be living in poverty.

(42)[(36)] Major life activities-Functions such as:

(A) Self care-Daily activities which enable a person to meet basic life needs for food, hygiene and appearance;

(B) Receptive and expressive language—Communication involving verbal and/or non-verbal behavior enabling the individual to both understand others and to express ideas/information to others;

(C) Learning—Ability to acquire new behaviors, perceptions and information, and to apply experiences in new situations;

(D) Mobility—Ability to use fine and gross motor skills. Ability to move one's person from one place to another with or without mechanical aids;

(E) Self direction—Management and taking control over one's social and personal life. Ability to make decisions affecting and protecting one's own interests;

(F) Capacity for independent living—Ability to live without extraordinary assistance from other persons, especially to maintain normal societal roles;

(G) Economic self sufficiency—Absence of dependence on family or public assistance for financial support;

(H) Cognitive functioning—General cognitive competence; and

(I) Emotional adjustment—Self-esteem, self-confidence, and emotionally stability.

(43)[(37)] Minority—A person in one or more of the following four racial/ethnic groups: Black, Hispanic, Asian/Pacific Islander, and Native American.

(44)[(38)] Office—The Office of the State Long-Term Care Ombudsman, a division of the Texas Department on Aging.

(45)[(39)] Ombudsman intern—A volunteer who has been admitted to the regional training program as a potential certified volunteer ombudsman.

(46)[(40)] Outreach—Methods that seek to increase the availability and utilization of services by ensuring that a particular individual or group is aware of available services and encouraged to participate.

(47)[(41)] Personal assistance—Assisting another person with tasks which that individual would typically do if they were able. This covers hands-on assistance in all activities of daily living.

(48)[(42)] Professional—Refers to an individual who has obtained a four-year bachelors degree in aging related areas

or human services, but may include an individual who does not have a four-year degree, but who has qualifying experience as a substitute for a degree. Such substitution shall be consistent with the employing entity's personnel policies.

(49)[(43)] Referral giving—Active participation in linking the inquirer with needed services after assessing the inquirer's needs and suggesting appropriate resources.

(50)[(44)] Regional program—A provider and its implementation of these standards on a sub-state level. Regional programs are area agencies on aging or other entities, as defined by the Board on Aging, Texas Department on Aging.

(51)[(45)] Related disorders (dementia)—The loss of intellectual functions (such as thinking, remembering, and reasoning), not caused by Alzheimer's Disease, of sufficient severity to interfere with an older person's daily functioning, including as listed in definition for [(36)] Major life activities.

(52) Relative—A current or former board member's or current or former advisory committee member's or current or former employee's spouse, father, mother, sister, brother, son or stepson, daughter or stepdaughter, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law, or daughter-in-law.

(53)[(46)] Residential repair—Services consist of repairs or modifications of client occupied dwellings which are essential for the health and safety of the occupants. This also includes providing limited housing counseling and moving expenses where repairs or modifications will not attain reasonable standards of health and safety.

(54)[(47)] Resource file—An organized, cross-indexed file of information on services and programs in the area covered by the information and assistance service.

(55)[(48)] Respite care—

(A) In home respite care—An array of services provided to dependent older persons who need supervision. Services are provided in the client's home environment on a short-term, temporary basis while the primary caregiver is unavailable or needs relief. In addition to supervision, services may include meal preparation, housekeeping, assistance with personal care and/or social and recreational activities.

(B) Institutional/facility based respite care—An array of services provided in a congregate or residential setting

(hospital, nursing home, adult day care center) to dependent older persons who need supervision. Services are offered on a short-term, temporary basis while the primary care giver is unavailable or needs relief. In addition to supervision, services may include, when appropriate, meals, social/recreational activities, personal care, monitoring of health status, medical procedures, and/or transportation.

(56)[(49)] Rural—Any county outside an identified metropolitan statistical area (MSA).

(57)[(50)] Service authorization—A process which includes determining eligibility for service(s), and using direct purchase of service (DPS) procedures to obtain and initiate one or more services.

(58)[(51)] Staff ombudsman—The professional staff person at the regional level who directs ombudsman program activities. The staff ombudsman shall be appointed by the regional program and so designated by the Executive Director, Texas Department on Aging, and under state law shall be granted access to long term care facility resident records. The staff ombudsman shall be a representative of the office.

(59)[(52)] State ombudsman—The person designated by the Executive Director, Texas Department on Aging, as Chief Administrator of the Office of the State Long-Term Care Ombudsman. The state ombudsman is accountable to the Executive Director, Texas Department on Aging, for program and personnel matters.

(60) Substantial financial interest—Ownership or control by a former employee (or relative) or a former board member (or relative) or former advisory committee member (or relative) of 10% or more of the contracting firm or its stock or an investment of \$2,500 or more in the organization, whichever is less; or receipt of a 25% or more increase in overall annual benefits, including salary or wages, upon employment by a contractor of a former employee who held one of the positions listed under the definition of "substantial involvement in the development of the contract," as compared to the employee's grantee salary and benefits.

(61) Substantial involvement in the development of the contract—Direct or indirect participation by a former employee (or relative) or a former board member (or relative) or former advisory committee member (or relative) in the development of program policy which influenced the type or services provided by the contracting organization. The following positions are assumed to have had such participation: board member, executive director, division director, and program specialist.

(62)[(53)] Targeting—The focusing of service provision efforts on those populations identified in the Older Americans Act of 1965, Section 306(a)(5)(B)(i), as amended.

(63)[(54)] Units of service for legal assistance and legal awareness—One unit of legal assistance shall equal one hour. One unit of legal awareness shall equal one contact.

(b)-(m) (No change.)

(n) Conflict-of-interest Requirements. Area agencies on aging (AAA) and their governing boards shall seek to avoid conflict-of-interests, in fact and perception, and provide proper notification when potential conflict-of-interests do occur.

(1) An area agency on aging grantee shall ensure that neither a current employee, nor any current board member, nor any aging advisory committee member holds any financial interest, directly or indirectly, in the profits of any entity from which services or goods are contracted or otherwise procured by the area agency, nor derives personal profit, directly or indirectly, from any entity which would conflict in any manner or degree with the performance of responsibilities of the employee, board member, or advisory committee member.

(A) No current employee, current board member, or advisory committee member who exercises any functions or responsibilities in the review or award of any contract for the procurement of services or goods on behalf of the area agency, shall:

(i) participate in any decision relating to the contract or procurement of services or goods in which he has a direct or indirect personal interest;

(ii) have any pecuniary interest, directly or indirectly, in the contract or procurement of services or goods or the proceeds thereof. Nothing in this subsection shall prohibit public officials of units of local government from serving on a grantee's board or aging advisory committee, notwithstanding the fact that such unit of local government is receiving or may receive funds for the provision of services or goods under the terms of the contract or procurement.

(B) For a period of two years from the date a person ceases his employment, board member duties, or committee member duties with an area agency on aging or its grantee, the grantee will not award a contract to an entity in which any former board member's, former committee member's or former employee's relative is an officer, director, employee, or owner, in part or whole, if the former employee, former board or committee member, or former employee's relative has a substantial financial interest in the contract or had a substantial involvement in the development of the contract.

(2) Board members and area agency on aging advisory committee members who may have a conflict-of-interests, in fact or perception, on any agenda item of a meeting shall refrain from comment on the item.

(A) The member shall announce the potential conflict-of-interests and shall abstain from voting on any such agenda item.

(B) The actions of conflict-of-interests notice and voting abstention shall be recorded in the minutes of the meeting.

(3) Area agencies on aging shall include a requirement in all Requests for Proposal (RFP) for services to the elderly and requests for vendor enrollment that any potential conflict-of-interest be identified in the RFP response.

(A) The notification of potential conflict-of-interests shall include:

(i) The person for which a potential conflict-of-interests exists;

(ii) the relationship to any current or former board member, current or former aging advisory committee member, or current or former employee; and

(iii) the nature of the potential conflict-of-interests.

(B) The person for which the potential conflict-of-interest exists shall certify that he will abide by all rules established in §260.19(n) (relating to Direct Purchase of Services).

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

Issued in Austin, Texas, on August 24, 1995.

TRD-9510753

Mary Sapp
Executive Director
Texas Department on
Aging

Earliest possible date of adoption: October 2, 1995

For further information, please call: (512) 444-2727



Texas Department of Insurance Exempt Filing

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

(Editor's Note As required by the Insurance Code, Article 5.96 and 5.97, the Texas Register publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the Texas Register not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the Texas Register not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas

Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

The Commissioner of Insurance at a hearing scheduled under Docket Number 2171 on October 6, 1995, at 9:00 a.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, will consider approval of a filing made by the National Council on Compensation Insurance ("NCCI") pertaining to the standard workers' compensation and employers' liability insurance policy ("the policy"). The ten changes being proposed to the policy are set forth below in the order found in the current policy language. In addition, the endorsements listed in #11 below are being proposed to be changed to allow coverages excluded by the

proposed policy language to be included on the policy, if requested.

1. General Section C. is proposed to be amended to clarify the exclusion of any federal workers or workmen's compensation law and any federal occupational disease law under the policy. The purpose of this language is to exclude the following coverages: Longshore and Harbor Workers' Compensation Act; Defense Base Act; Nonappropriated Fund Instrumentalities Act; Outer Continental Shelf Lands Act; Federal Coal Mine Health and Safety Act of 1969; and any other federal compensation obligation. The coverage provided by the policy is not changed as a result of this proposed revision.

2. Part 2.C.7. is proposed to be amended to include the language of the standard Employers Liability Endorsement WC 00 03 16. The purpose of this endorsement was to clarify that the acts listed within the endorsement fall outside common law negligence, the principal risk to be covered by employers' liability insurance. Approval of the proposed changes to the policy is approval to withdraw Employers Liability Insurance Endorsement WC 00 03 16

3. Part 2.C.8. is proposed to exclude coverage under the Longshore and Harbor Workers' Compensation Act, the Nonappropriated Fund Instrumentalities Act, the Outer Continental Shelf Lands Act, the Defense Base Act, the Federal Coal Mine Health and Safety Act of 1969, any other federal workers' or workmen's compensation law or other federal occupational disease law, or any amendment to these laws. Approval of the proposed changes to the policy is approval to withdraw the exclusionary endorsements.

4. Part 2.C.9. is proposed to exclude coverage for work subject to the Federal Employers' Liability Act, any other federal laws obligating an employer to pay damages to an employee due to bodily injury arising out of or in the course of employment, or any amendments to those laws. This exclusion removes the need for the Federal Employers' Liability Act Exclusion Endorsement WC 00 01 05. Approval of the proposed changes to the policy is approval to withdraw this endorsement.

5. Part 2.C.10. is proposed to exclude bodily injury to a master or member of the crew of any vessel. The exclusionary language of the Maritime Exclusion Endorsement WC 00 02 02 is proposed to become part of the policy language. This clarifies that damages under the Jones Act are excluded and eliminates the need for the Maritime Exclusion Endorsement WC 00 02 02. Approval of the proposed changes to the policy is approval to withdraw this endorsement.

6. Part 2.C.11. is proposed to exclude fines and penalties imposed for violation of federal or state law. This section provides clear notice that fines or penalties imposed for violation of federal or state law are not covered.

7. Part 2.C.12. is proposed to exclude damages under the Migrant and Seasonal Agricultural Worker Protection Act and under any other federal law awarding damages for violation of those laws or regulations issued thereunder, and any amendments to those laws.

8. Part 2.I. is proposed to include a provision that the insurer is not relieved of an obligation to pay due to the bankruptcy or insolvency of the insured. This provision ensures that an injured worker will receive payment under the Employers Liability Section of the policy even if the employer is bankrupt or insolvent.

9. Part 3.A.2. is proposed to read "If you begin work in any one of those states after the effective date of this policy and are not insured or are not self-insured for such work,

all provisions of the policy will apply as though that state were listed in Item 3.A. of the Information Page". The additions to this section were made to clarify that all notification and other provisions of the policy apply to Other States insurance.

10. Part 3.A.4. is proposed to add this language to the policy: "If you have work on the effective date of this policy in any state not listed in Item 3.A. of the Information Page, coverage will not be afforded for that state unless we are notified with thirty days." If the insured fails to notify the insurance company that on the effective date of the policy work is being performed in a state that is not listed in Item 3.A. of the Information Page, then coverage may not be provided in that other state. In conjunction with the proposed changes as outlined above, the following endorsements will need to be revised to allow federal coverages that are excluded by the proposed changes to the policy to be included on the policy, if requested: Defense Base Act Coverage Endorsement-WC 00 01 01; Longshore and Harbor Workers' Compensation Act Coverage Endorsement-WC 00 01 06; Nonappropriated Fund Instrumentalities Act Coverage Endorsement-WC 00 01 08; Outer Continental Shelf Lands Act Coverage Endorsement-WC 00 01 09; Maritime Coverage Endorsement-WC 00 02 01; and Employers' Liability Coverage Endorsement-WC 00 03 03.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.56, 5.57 and 5.96.

A copy of the petition containing the full text of the proposed changes to the workers' compensation and employers liability insurance policy and the proposed changes to endorsements is available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 322-4147 (refer to Reference Number W-0695-14).

This notification is made pursuant to the Texas Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure.

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

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

TRD-9510847 Alicia M. Fechtel
Counsel and Chief Clerk
Texas Department of
Insurance

For further information, please call: (512)
463-6327

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(Editor's Note: As required by the Insurance Code, Article 5.96 and 5.97, the Texas Register publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed

under Article 5.96 must be published in the Texas Register not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the Texas Register not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

The Commissioner of Insurance, at a public hearing under Docket No. 2172 scheduled for September 22, 1995, at 9:00 a.m. in Special Master's Hearing Room 102 of the Texas Department of Insurance Building, 333 Guadalupe Street, Austin, Texas, will consider a form filing by the Texas Department of Transportation for a revised surety bond form entitled "Motor Transportation Broker Bond, Form 1897 9/95" (Bond). The Bond is a requirement of Article 911m, Texas Civil Statutes, Chapter 6 Title 25, General Laws, acts of the 74th Legislature, Regular Session 1995.

The authority to regulate motor transportation brokers has been moved from the Texas Railroad Commission to the Texas Department of Transportation which requires the following revisions to the Bond: The obligee on the Bond has been changed to the Texas Department of Transportation. References to the statute in the Bond have been revised to reflect Article 911m, Texas Civil Statutes, Chapter 6 Title 25, General Laws, acts of the Seventy Fourth Legislature, Regular Session 1995. There was one other minor revision to the Bond changing "Know all men by these present:" to "KNOW ALL PERSONS BY THESE PRESENT:"

Copies of the full text of the proposed bond form for the Texas Department of Transportation is available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the text, please contact Angie Arizpe at (512) 322-4147, (refer to Reference Number O-0895-27).

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure Act.

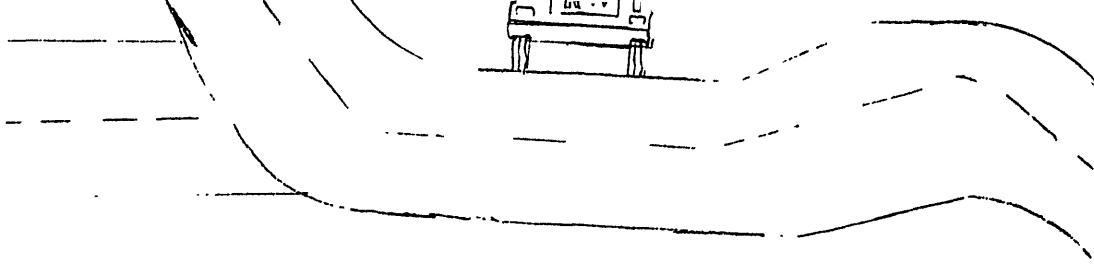
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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

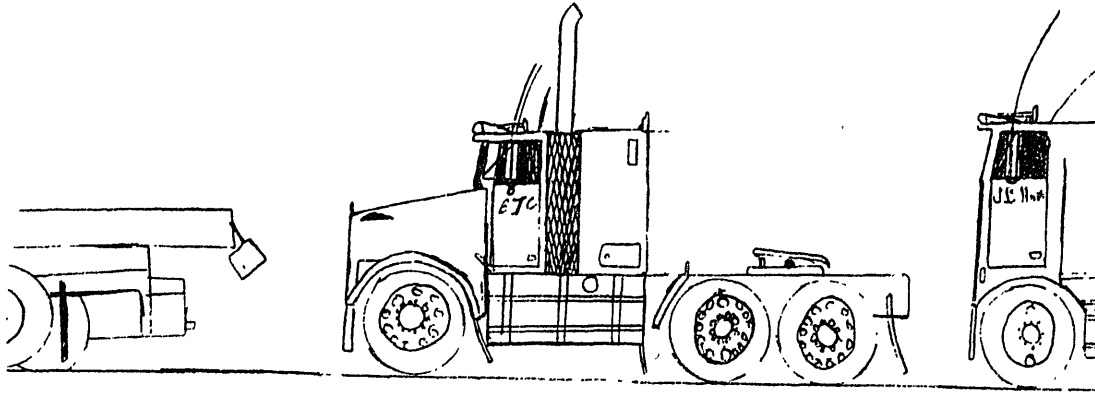
TRD-9510844 Alicia M. Fechtel
Counsel and Chief Clerk
Texas Department of
Insurance

For further information, please call: (512)
463-6327

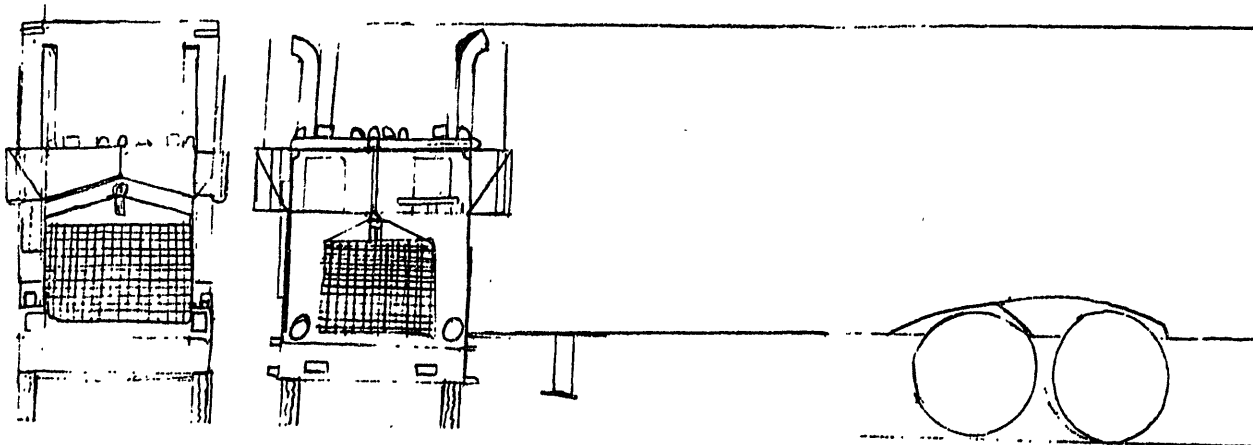
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Name: Josh Hamilton
Grade: 8
School: Bloomburg High School, Bloomburg ISD



Name: Josh Hamilton
Grade: 8
School: Bloomburg High School, Bloomburg ISD



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 16. ECONOMIC REGULATION

Part III. Texas Alcoholic Beverage Commission

Chapter 41. Auditing

Identification Stamps

- 16 TAC §41.73

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed new §41.73, submitted by the Texas Alcoholic Beverage Commission has been automatically withdrawn, effective August 25, 1995. The new section as proposed appeared in the February 24, 1995, issue of the *Texas Register* (20 TexReg 1319).

TRD-9510806

TITLE 22. EXAMINING BOARDS

Part XIV. Texas Board of Veterinary Medical Examiners

Chapter 573. Rules of Professional Conduct

Supervision of Personnel

- 22 TAC §573.10

The Texas Board of Veterinary Medical Examiners has withdrawn from consideration for permanent adoption a proposed new §573.10, which appeared in the June 27, 1995, issue of the *Texas Register* (20 TexReg 4618). The effective date of this withdrawal is August 24, 1995.

Issued in Austin, Texas, on August 24, 1995.

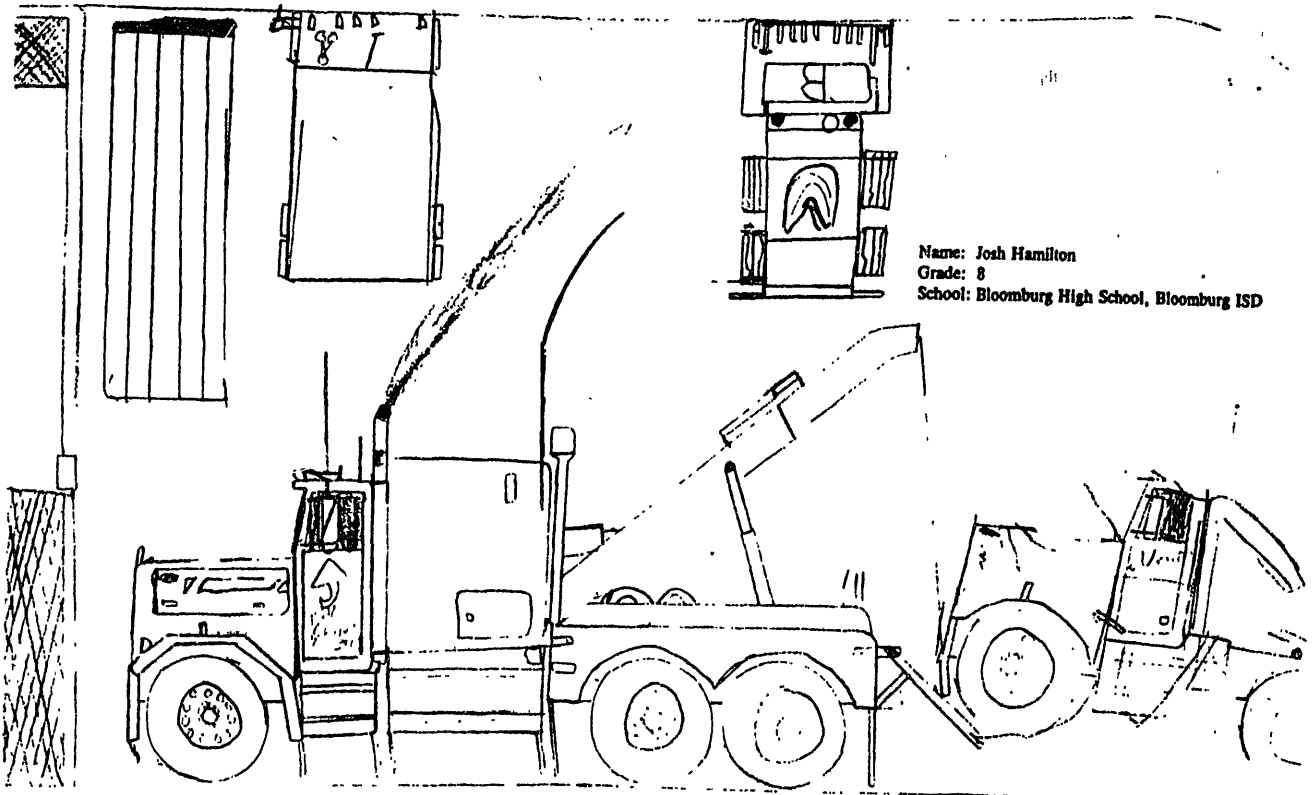
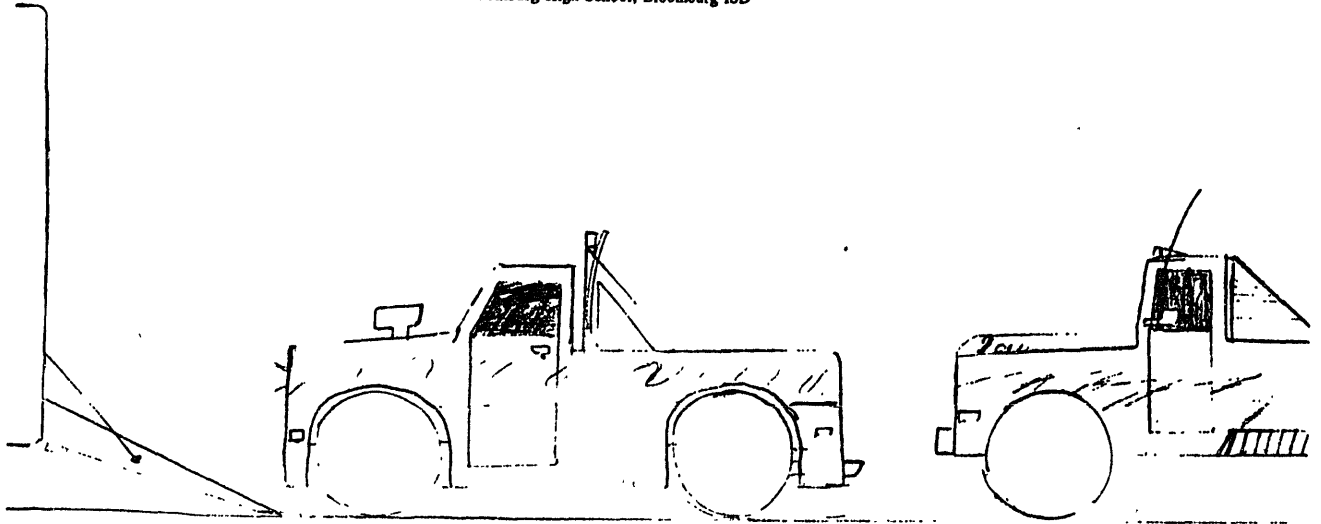
TRD-9510720

Ron Allen
Executive Director
Texas Board of Veterinary
Medical Examiners

Effective date: August 24, 1995

For further information, please call: (512)
447-1183

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Name: Josh Hamilton
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School: Bloomburg High School, Bloomburg 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 1. ADMINISTRATION

Part VII. State Office of Administrative Hearings

Chapter 155. Rules of Procedure

• 1 TAC §§155.5, 155.22, 155.55

The State Office of Administrative Hearings adopts amendments to §§155.5, 155.22 and new §155.55. Section 155.22 and §155.55 are adopted with changes to the proposed text as published in the July 18, 1995, issue of the *Texas Register* (20 TexReg 5115). The amendment to §155.5 is adopted without changes and will not be republished.

The amendment to §155.5 is adopted to assure the ability of the Office to resolve problematic conflicts between the rules of practice and procedure before the Office and the rules of the agency for which a hearing is being conducted. At §155.5(3) the amendment gives the judge discretion to order that an Office rule which conflicts with an agency procedural rule controls, if necessary to ensure the fair and efficient handling of a case.

The amendments to §155.22 are adopted to reflect new filing procedures for cases that will be referred to the Office by the Public Utility Commission of Texas and the Texas Natural Resource Conservation Commission, effective September 1, 1995; to establish uniform procedures for the filing of confidential materials; and, generally, to reflect more closely the needs and practices of participants in contested case hearings at the State Office of Administrative Hearings.

Section 155.22(1) recognizes that during the pendency of most contested cases the Office is the repository for the official record, and it is amended to require filing of only one original document and no copies in such cases. For cases referred to the Office by the Public Utility Commission of Texas and the Texas Natural Resource Conservation Commission, the official record will be maintained at the agencies, where (except for exhibits filed at a prehearing conference or hearing) the originals of all pleadings and documents will be filed; the parties will serve copies of filings on the judge. Section 155.22(2) requires parties to designate and clearly label confidential materials filed with the Office. It also establishes

a procedure for submission to the judge of appropriately labelled materials for in camera review. Section 155.22(3) requires that only the portions of discovery materials at issue in a dispute, or that will be used in the hearing, be submitted to the Office. Sections (4) and (5), concerning service and the certificate of service, respectively, retain the language from the original §155.22. Section 155.22(6) informs the parties that documents may be filed with the Office or served on the judge until 5:30 p.m. on working days. Finally, §155.22(7) permits parties to file with the Office, or serve on the judge, documents containing 20 or fewer pages by electronic transmission. No follow-up originals or copies are to be filed or served.

New §155.55 is adopted to establish procedures for judges to send certified questions to the Public Utility Commission of Texas (PUC) and the Texas Natural Resource Conservation Commission (TNRCC). The Section is adopted pursuant to Senate Bill 12, §1, 74th Legislature, Regular Session (to be codified at Government Code, Chapter 2003, §2003.047(f)), and Senate Bill 373, §1.35, 74th Legislature, Regular Session (to be codified at Government Code, Chapter 2003, §2003.047(f)), which require the Office to jointly adopt certified question rules with the agencies.

Section 155.55(a), which provides the procedure for submitting certified questions to the PUC, lists at §155.55(a)(1) the issues which are appropriate for certification. Section 155.55(a)(2) requires the judge to submit the issue to the secretary of the PUC. The secretary must place the issue on the agenda at the earliest time practicable that is not earlier than twenty days after its submission, and parties may file briefs within 13 days of submission. Section 155.55(a)(3) reflects the PUC's obligation to issue a decision within 30 days of submission, and recognizes that the decision is not subject to a motion for rehearing.

Section 155.55(b), which provides the procedure for submitting certified questions to the TNRCC, lists at §155.55(b)(1) the issues which are appropriate for certification. Section 155.55(b)(2) requires the judge to submit the question to the chief clerk of the TNRCC, who must provide copies of the question to the general counsel and commissioners. The parties are permitted to file briefs within five days after the question is filed. If the general counsel or one or more of the commissioners

requests the chief clerk to schedule the question for consideration within 15 days after filing, the clerk will schedule the question for consideration during a commissioners' meeting.

This adoption includes several changes to the proposed text as published

In §155.22(1)(B)(iii), the adopted section was rewritten to emphasize that the parties in PUC proceedings must supply the judge with copies of documents filed at the PUC on the same day as the filing.

In §155.22(1)(B)(iv), the adopted section was changed to specify that the court reporter must serve the transcript and exhibits on the judge in PUC proceedings, because that procedure is specified in the agency rule, 16 Texas Administrative Code §22.204(d).

In §155.22(1)(C)(ii), the adopted section was changed to reflect that the date materials are filed at the TNRCC will be determined by whichever is earlier—the stamp affixed by the commission mail room or the chief clerk. This change tracks the language in the agency rule, 30 Texas Administrative Code §261.17(e).

In §155.22(3)(A), the adopted section was changed in two ways. The first sentence was rewritten to clarify the fact that the discovery procedure described applies both to documents filed in general cases pending in the Office and to documents served on the judge in PUC and TNRCC cases. In the second sentence, the words "true and accurate copy of" were added.

In §155.22(7), the first sentence was changed by moving the words "served on the judge" to the end of the word "cases," to make the meaning of the sentence clearer.

In §155.55(a)(2) and (3), the text of the adopted subsections was changed by substituting the word "issue" for "question." Also, in §155.55(a)(2) the time frames were changed. These changes track the language in PUC rule 16 Texas Administrative Code §22.127.

Comments were received from the Texas Natural Resource Conservation Commission, the Texas Workers' Compensation Commission, Gulf States Utilities Company, Houston Lighting & Power Company and Texas Utilities Electric Company.

Comments relating to §155.5. One commenter opposed §155.5(3) for five reasons. First, the commenter interpreted the

section as permitting a judge to discard an agency rule in favor of an Office rule, thus ignoring agency expertise. The Office disagrees with this interpretation, because the section gives the judge discretion to find an Office rule controls over an agency rule only in one narrowly circumscribed situation—when there is a conflict between the rules, and one must be followed instead of the other. In that circumstance, the judge may implement the Office rule, if doing so is necessary to ensure the fair and efficient handling of a case. The section should never interfere with an agency's area of expertise. The Office believes that its statutory role is to hold fair and efficient hearings, and the section will only apply if an agency rule directly conflicts with that goal. Second, the commenter construed the section to be a violation of the requirement in Texas Government Code, §2001.058 that the judge consider applicable agency rules. The Office construes the section as complying with the statutory standard, because the judge will, of necessity, carefully consider an agency rule in making a determination under §155.5(3). Third, the commenter argued the section could require an agency to carry an additional factual and legal burden to justify its rule, adding to the cost of presenting its case. The Office believes the issue will only arise on rare occasions, and that the section's goal of aiding the judge in providing all parties fair and efficient hearings outweighs any slight increase in an agency's workload in such exceptional instances. Fourth, the commenter criticized the section for failing to require the judge to specify the factual and legal basis for such a finding. The Office believes that the most efficient way to handle the issue is to give the judge discretion to tailor each decision to the particular needs of each case. Finally, the commenter opposed the rule because it does not require a written order to be entered in sufficient time prior to the close of an evidentiary hearing for the agency to develop a factual and legal basis supporting its rule. Again, the Office believes leaving the timing and form of the judge's determination of such conflicts discretionary will aid in achieving the most fair and efficient process in each case.

Another commenter supported adoption of §155.5(3), analogizing it to 16 Texas Administrative Code §22.5(b), which allows a judge to grant exceptions to the PUC's procedural rules for "good cause." However, the commenter suggested that §155.5(3) be qualified to permit the judge to find an Office rule controls over an agency "procedural" rule, so that the rule as currently written could not be interpreted to permit a judge to find an Office rule controls over a substantive rule of an agency. While this qualifying language would work in cases referred to the Office by the PUC because it specifically identifies some of its rules as procedural and some as substantive, the Office finds that the majority of agencies do not make this distinction in their rules. Moreover, since the Office's rules are only procedural, the Office believes there is no possibility these rules could conflict with an agency's substantive rules.

Comments relating to §155.22. One commenter interpreted §155.22(1)(A) to prohibit any requirement for the filing of docu-

ments in a general contested case with an agency's docket clerk. The Office wrote the section to ensure that parties file one of each document in such a case with the Office and to prohibit the current common practice of filing multiple copies with the Office. The section does not address filing requirements at other agencies.

Two commenters opposed §155.22(1)(B)(iii), because it requires a party filing a document with the clerk at the PUC to serve a copy of that document on the judge at the Office. The commenters suggested that parties only be required to file documents in one place, and that the PUC should be responsible for delivering copies of all pertinent documents to the Office. The Office notes that this issue is a topic of continuing discussion between itself and the PUC, believes the issue will be efficiently resolved, but chooses not to place this burden on the PUC. The first sentence in §155.22 states that all filing and service rules may be modified by order of the judge. Therefore, if an informal delivery system is worked out between the PUC and the Office, the parties may not experience any additional service burden through this rulemaking.

Two commenters opposed §155.22(1)(B)(iv) as originally proposed, pointing out that it closely paralleled the PUC rule, 16 Texas Administrative Code §22.204(d), but that unlike the PUC rule it neglected to require the court reporter to serve the transcript and exhibits on the judge. The Office agreed with the commenters that this inconsistency could prove confusing, and §155.22(1)(B)(iv) as adopted makes this change.

One commenter opposed §155.22(1)(C)(ii) as originally proposed, because the analogous TNRC rule, §261.17(e), was changed to provide that the time of filing would be whichever was earlier—the date stamp affixed to the document by the chief clerk, or the date stamp affixed to the document by the commission mail room. The Office agreed that the inconsistency should be corrected, and §155.22(1)(C)(ii) as adopted makes this change.

One commenter supported §155.22(2), which establishes procedures for filing confidential materials or service of materials on the judge for in camera review. However, the commenter suggested that a sentence be added to §155.22(2)(B) staying a judge's order to disclose documents deemed privileged by a producing party for ten working days while the party appealed the order to the PUC. The Office notes that this section applies to all cases referred for hearing by agencies and suggests that the proper place for such a change would be in the PUC's procedural rules. One commenter felt §155.22(2)(A) and (B) could result in confusion if a party wished to submit materials marked "confidential" for in camera review. The Office believes that close attention to the requirements in the subsections will avoid any potential confusion.

One commenter pointed out that §155.22(3) as originally proposed could cause confusion in PUC cases, because the Office filing rule, §155.22(1)(B), requires parties to file originals with the clerk at the PUC, and the proposed §155.22(3) required the party filing a discov-

ery document with the Office to become custodian of the original. Therefore, adopted §155.22(3) made this change.

Two commenters proposed changes to §155.22(7), concerning filing and service of documents at the Office by electronic transmission; the proposed changes, however, were based on misunderstandings of the rule. The first commenter read the rule as permitting electronic transmission of documents to the Office only in cases referred by the PUC and TNRC. The Office modified the first sentence in §155.22(7), so that the adopted §155.22(7) more clearly indicates that electronic transmission of documents is permitted both for filing of documents in general cases and service of documents on the judge in PUC and TNRC cases. The second commenter felt that the requirement in §155.22(7) that the sender maintain the original of the transmitted document was inconsistent with the requirement in the Office filing rule, §155.22(1)(B), that parties file originals with the clerk at the PUC. However, the Office notes that the PUC procedural rule concerning electronic transmission, 16 Texas Administrative Code §22.71(f), permits filing a facsimile copy in lieu of an original. Read together, the rules are consistent.

Comments relating to §155.55. Three commenters suggested that proposed §155.55(a) should be modified to use the term "certified issue" instead of "certified question," because that terminology is used in the PUC's certified question rule, 16 TAC §22.127. The Office agreed, and that change was made in the text of adopted §155.55(a). However, the Office has retained the heading's reference to "Certified Questions," to maintain parallel construction with the heading of the subsection concerning TNRC certified questions, §155.55(b). The three commenters also suggested changes to the time frames in proposed §155.55(a) to match the changes made by the PUC in its jointly adopted rule, 16 Texas Administrative Code §22.127, based on comments and discussions at their public hearing. The Office agreed, and adopted §155.55(a) was changed accordingly. One commenter suggested a change to the last sentence of §155.55(a)(3), to state that a PUC decision on a certified issue is not subject to motion for rehearing prior to issuance of a proposal for decision. The Office notes that §155.55(a) is jointly adopted with PUC rule 16 Texas Administrative Code §22.127. Since the PUC did not adopt this language, the Office will not.

The new and amended rules are adopted under Government Code, Chapter 2003, which authorizes the State Office of Administrative Hearings to conduct contested case hearings, Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures, Senate Bill 12, §1, 74th Legislature, Regular Session (to be codified at Government Code, Chapter 2003, §2003.047), and Senate Bill 373, §1.35, 74th Legislature, Regular Session (to be codified at Government Code, Chapter 2003, §2003.047).

§155.22. Filings. The following requirements govern the filing or service on the judge of documents in contested cases pending before the Office unless modified by order of the judge.

(1) Place for Filing Original Materials.

(A) General Contested Cases. The original of all pleadings and documents in a contested case, except contested cases referred to the Office by the Public Utility Commission of Texas and the Texas Natural Resource Conservation Commission, shall be filed with the Office once it acquires jurisdiction under §155.7(b) of this title (relating to Jurisdiction). The time and date of filing shall be determined by the file stamp affixed by the Office. Unless otherwise ordered by the judge, only the original and no additional copies of any pleading or document shall be filed.

(B) Cases Referred by the Public Utility Commission of Texas.

(i) Except for exhibits filed at a prehearing conference or hearing, the original of all pleadings and documents in a contested case referred to the Office by the Public Utility Commission of Texas shall be filed with the clerk at the Public Utility Commission of Texas in accordance with the rules of the Public Utility Commission of Texas.

(ii) The time and date of filing said materials shall be determined by the file stamp affixed by the clerk.

(iii) The party filing a document with the clerk at the Public Utility Commission of Texas, except those excluded under §155.22(3) of this title (relating to Discovery Materials), shall supply a copy of the document to the judge; the party shall assure that the judge receives the copy on the same day as the filing.

(iv) The court reporter shall serve the transcript and exhibits in a proceeding on the judge at the time the transcript is provided to the requesting party. The Office shall maintain the transcript and exhibits until they are released to the Public Utility Commission of Texas by the judge. If no court reporter is requested by a party, the Office shall maintain the record and exhibits until they are released to the Public Utility Commission of Texas by the judge.

(C) Cases Referred by the Texas Natural Resource Conservation Commission.

(i) Except for exhibits filed at a prehearing conference or hearing, the original of all pleadings and documents

in a contested case referred to the Office by the Texas Natural Resource Conservation Commission shall be filed with the chief clerk at the Texas Natural Resource Conservation Commission in accordance with the rules of the Texas Natural Resource Conservation Commission.

(ii) The time and date of filing said materials shall be determined by the file stamp affixed by the chief clerk, or as evidenced by the file stamp affixed to the document or envelope by the commission mail room, whichever is earlier.

(iii) The party filing a document with the chief clerk at the Texas Natural Resource Conservation Commission, except those excluded under §155.22(3) of this title (relating to Discovery Materials), shall serve a copy of the document on the judge by delivery on the same day as the filing.

(iv) The transcript and exhibits in a proceeding shall be served on the judge at the time the transcript is provided to the requesting party. The Office shall maintain the transcript and exhibits until they are released to the Texas Natural Resource Conservation Commission by the judge. If no court reporter is requested by a party, the Office shall maintain the record and exhibits until they are released to the Texas Natural Resource Conservation Commission by the judge.

(2) Confidential Materials.

(A) General Filings. A party filing materials made confidential by law shall file them in an enclosed, sealed and labelled container, accompanied by an explanatory cover letter. The cover letter shall identify the docket number and style of the case and explain the nature of the sealed materials. The container shall identify the docket number, style of the case, and name of the submitting party, and be marked "CONFIDENTIAL & UNDER SEAL" in bold print at least one inch in size. Each page of the confidential material shall be marked "confidential."

(B) Materials Submitted for In Camera Review. A party submitting materials for in camera review by the judge shall supply them to the judge in an enclosed, sealed and labelled container, accompanied by an explanatory cover letter copied to all parties. The cover letter, addressed to the judge, shall identify the docket number, style of the case, explain the nature of the sealed materials, and specify the relief sought. The container, addressed to the judge, shall identify the docket number, style of the case, and name of the submitting party, and be marked "IN CAMERA REVIEW" in bold print at least one inch in size. Each page for which a

privilege is asserted shall be marked "privileged." Said materials will not be received for filing by the Office unless the judge so orders. Unless otherwise ordered by the judge, materials reviewed in camera will be returned to the party which submitted them.

(3) Discovery Materials.

(A) Discovery documents shall be served upon other counsel or the parties, but shall not be filed with the Office or served on the judge in Public Utility Commission or Texas Natural Resource Conservation Commission cases, except on special order of the judge. The party responsible for service of the discovery material shall retain a true and accurate copy of the original documents and become their custodian.

(B) If relief is sought in a discovery dispute, copies of the portions of the material in dispute only shall be filed with the Office contemporaneously with any pertinent motion.

(C) If discovery documents are to be used at trial or are necessary to a prehearing motion which might result in a final order on any issue, only the portions to be used shall be supplied to the Office.

(4) Service on All Parties. Pursuant to §155.21(d) of this title (relating to Appearance of Parties at Hearings; Representation), a copy of all filings shall be served on all parties.

(5) Certificate of Service. The person filing the document shall include a certificate of service that certifies compliance with this rule. If a filing does not contain a certificate of service or otherwise show service on all other parties, and the judge, if applicable, the Office may:

(A) return the filing; or

(B) send notice of noncompliance to all parties, stating the filing will not be considered until all parties have been served; or

(C) send a copy of the filing to all parties.

(6) Time of Filing. Documents may be filed with the Office or served on the judge until 5:30 p.m. local time, Monday through Friday, on working days, unless otherwise ordered by the judge.

(7) Electronically Transmitted Filings. Documents containing 20 or fewer pages, including exhibits, may be filed, or in Public Utility Commission or Texas Natural Resource Conservation Commission

cases served on the judge, by electronic transmission according to the following requirements.

(A) The quality of the original hard copy shall be clear and dark enough to transmit legibly.

(B) Neither the original nor any additional copies of electronically transmitted filings should be filed with the Office.

(C) The sender shall maintain the original of the document with the original signature affixed.

(D) The date and time imprinted by the Office's fax machine on the transaction report that accompanies the document will determine the date and time of filing. Documents filed after 5:30 p.m. local time shall be deemed filed the first day following that is not a Saturday, Sunday or official state holiday.

§155.55. Agency-Specific Rules.

(a) Certified Questions In Cases Referred by the Public Utility Commission of Texas. The judge may certify to the Public Utility Commission of Texas an issue that involves an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the commission by law.

(1) Issues Eligible for Certification. The following types of issues are appropriate for certification:

(A) the commission's interpretation of its rules and applicable statutes;

(B) which rules or statutes are applicable to a proceeding; and

(C) whether commission policy should be established or clarified as to a substantive or procedural issue of significance to the proceeding.

(2) Procedure for Certification. The judge shall submit the certified issue to the secretary of the commission. The secretary shall place the certified issue on the commission's agenda to be considered at the earliest time practicable that is not earlier than twenty days after its submission. Parties may file briefs on the certified issue within 13 days of its submission. The judge may abate the proceeding while a certified issue is pending.

(3) Commission Action. The commission shall issue a written decision

on the certified issue within 30 days of its submission. A commission decision on a certified issue is not subject to motion for rehearing.

(b) Certified Questions In Cases Referred by the Texas Natural Resource Conservation Commission. On a motion by a party served on the judge or on the judge's own motion, the judge may certify a question to the Texas Natural Resource Conservation Commission at any time during a proceeding.

(1) Issues Eligible for Certification. Issues regarding commission policy, jurisdiction, or the imposition of any sanction by the judge that would substantially impair a party's ability to present the case are appropriate for certification. Policy questions, for certification purposes, include, but are not limited to:

(A) the commission's interpretation of its rules and applicable statutes;

(B) which rules or statutes are applicable to a proceeding; and

(C) whether commission policy should be established or clarified as to a substantive or procedural issue of significance to the proceeding.

(2) Procedure for Certification. The certified question shall be filed with the chief clerk. Within five days after the certified question is filed, parties to the proceeding may file briefs or replies. The chief clerk shall provide copies of the certified question and any briefs or replies to the general counsel and commissioners.

(A) Upon the request of the general counsel or one or more commissioners to the general counsel, the certified question will be scheduled for consideration during a commissioners' meeting. The chief clerk shall give the judge notice of the request. The judge may, in his or her discretion, abate the hearing until the commission answers the certified question, or continue with the hearing if the judge determines that no party will be substantially harmed by proceeding while awaiting a response.

(B) If no request to set the question for consideration is received from the general counsel by the chief clerk within 15 days after filing, the commission's decision is that it does not wish to consider the question.

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 August 28, 1995.

TRD-9510857

Sheila Bailey Taylor
Deputy Chief Administrative
Law Judge
State Office of
Administrative Hearings

Effective date: September 18, 1995

Proposal publication date: July 18, 1995

For further information, please call: (512) 475-4993

TITLE 4. AGRICULTURE Part I. Texas Department of Agriculture

Chapter 7. Pesticides

• 4 TAC §7.25, §7.26

The Texas Department of Agriculture (the department) adopts amendments to §7.25 and §7.26, concerning scope of pesticide application standards and notification requirements, with changes to the proposed text as published in the May 23, 1995, issue of the *Texas Register* (20 TexReg 3811). The amendments are adopted in order to establish prior notification requirements for areawide government-sponsored spray programs such as the Texas Boll Weevil Eradication Foundation's (the foundation) boll weevil eradication program. Section 7.26 is adopted with changes. Section 7.25 is adopted without changes and will not be republished.

The amendment to §7.26 is adopted with changes to subsection (o)(7) adopted upon a request that the raising of a flag or sign be specified in the rule as an option for providing notice of an application. The department agrees that this method should be specified as an option and has changed subparagraph (7) accordingly.

The amendment to §7.25 clarifies that the exemption for regulatory pest control does not include the foundation or other similar entity in respect to the providing of prior notification. The amendment to §7.26 gives responsibility to the foundation or other similar program for the providing of prior notification to eligible persons, upon request. The amendment to §7.26 also provides requirements and procedures for requesting and receiving prior notification.

Comments generally in favor of the proposal were received from Plains Cotton Growers, Inc. and the Texas Boll Weevil Eradication Foundation. As noted previously one commenter, Texas Rural Legal Aid, Inc. (TRLA) provided a comment regarding the methods of notification found at §7.26(o)(7). One other commenter requested that the proposed language be changed to require that the Texas Boll Weevil Eradication Foundation and other entities covered by the proposal provide prior notification to farmers whose land is being treated to avoid potential problems with early reentry by the farmer, his or her employees and contractors, or scouts and flaggers. The department does not agree with this request because the issue of notification to the farm operator is not an issue which is

intended to be addressed by this rule. The rule is intended to pertain to notification to the public, not the landowner or farm operator, of applications made by certain areawide spray programs.

The department extended the comment period to July 26, 1995, to allow members of the Agriculture Resources Protection Authority (ARPA) to comment on the proposal. One board member requested that comments submitted on preliminary drafts of the rule by interested parties from which the department sought input should be included as comments on the proposal. One comment to the preliminary draft was that the person requesting notification should be required to make that request to the foundation or other entity, rather than to the farm operator. Changes were made to the preliminary draft based on that comment and the amendment allows the requesting party to file a request with either the farm operator or the covered entity. The department believes including the option of filing a request with the farm operator is necessary because a requesting party may be more familiar with or more comfortable with dealing with the farm operator than with the foundation or other entity. Also, the requestor may wish to be notified of all applications, including those being made on the field in question by the farm operator, rather than the covered entity. If the requesting party prefers not to deal with the farm operator, a request may be made directly to the entity conducting the spray program for applications made by the program. Another comment requested clarification that a private entity would be covered by subsection (o). The department believes that the amendment is clear that it would cover a private entity if that entity is involved in a government-sponsored spray program, which is the intent of the rule. Another comment requested that parties be defined in subpart (o)(7). That language was also clarified in the proposal as a result of the comment. Another comment was that the notification to labor camps was too restrictive. That subpart was also amended on the basis of the comment to provide for posting in a central, on-site posting place readily accessible to labor camp residents.

The amendments are adopted under the Texas Agriculture Code, §76.004, which provides the Texas Department of Agriculture with the authority to adopt rules for carrying out the provisions of Chapter 76; and §76.104, which authorizes the department to adopt rules for application of pesticides.

§7.26. Notification Requirements.

(a) Responsibility. Except as provided in subsection (o) of this section, the farm operator shall be responsible for meeting prior notification requirements.

(b)-(n) (No change.)

(o) Applications by the Texas Boll Weevil Eradication Foundation or other areawide pest control program sponsored by a governmental entity.

(1) Responsibility. For applications made by the foundation as part of its

boll weevil eradication program or other areawide pest control program sponsored by a governmental entity, the entity making the application or causing the application to be made is responsible for meeting prior notification requirements of this subsection. The farm operator is responsible for accepting requests for and providing prior notification in accordance with this section for applications made by the farm operator.

(2) Who may request. A request for notification of an application made by an entity covered by this subsection may be made by all of those persons listed in subsection (c) of this section. No request is necessary for prior notification of farm labor camps owned, managed or controlled by a farm operator and located on or within 1/4 mile of a field on which pesticides are to be applied by the foundation or other entity; provided that the farm operator is responsible for notifying the foundation or other entity of the presence of such labor camps.

(3) Filing and content of request. Requests made under this section shall be made in writing to the foundation or other entity or the farm operator and shall include all of the information required by subsection (d) of this section.

(4) Notification by farm operator. The farm operator is responsible for notifying the foundation or other entity covered by this subsection of any requests for prior notification received by the farm operator relating to an application that will be made or caused to be made by the foundation or other entity. The information must be provided to the foundation or other entity within 24 hours of its receipt by the farm operator. The information may be provided:

(A) by telephone at a telephone number obtained from the department;

(B) by forwarding the written request to the foundation or other entity in the U.S. mail at a mailing address obtained from the department; or

(C) by any other reasonable means, as long as the information is forwarded within 24 hours of its receipt.

(5) Request for notification by the foundation or other entity. Prior to the making of the first application in each calendar year, the foundation or other entity shall request that the farm operator notify it of any requests for prior notification already in effect for property on which the foundation or other entity will be making applications and of any future requests for prior notification on that property.

(6) Effective date and length of effectiveness of request. A request for prior notification under this subsection shall be in effect through December 31 of the year that the request is received. The foundation or other entity shall begin notifying the requesting party of scheduled pesticide applications within ten days of receipt of a request for notification.

(7) Methods of notification and content of notice.

(A) Notification shall be provided as follows.

(i) Notification may be given in writing, by raising a flag/sign in the manner provided at (h)(1)(A) of this section, in person, by telephone in English or, when appropriate, Spanish, or by other means mutually agreed upon by the requesting party and the foundation or other entity. This agreement must be in writing and a copy filed with the department. For purposes of providing notice to medically affected persons or to licensed day care centers, primary and secondary schools, hospitals, inpatient clinics and nursing homes, "notification in writing" means other than by mail such as by posting a written notice on the requester's front door or at the requester's place of business.

(ii) If the foundation or other entity is unable to reach a person entitled to notification under this section after making reasonable efforts, the foundation or other entity may immediately notify the department by telephone of the following information:

(I) the name and telephone number(s) of the foundation or other entity;

(II) the name and telephone number(s) of the requesting party;

(III) the location of the field scheduled to be treated;

(IV) the intended date and approximate time of the pesticide application; and

(V) the trade and common chemical name of the pesticide.

(iii) The department shall maintain a record of the information provided by the foundation or other entity.

(iv) If the foundation or other entity telephones the department between 8:00 a.m. and 5:00 p.m., Monday-Friday, the department shall immediately attempt to telephone the requesting party

and give notification of the scheduled application. A record showing the date and time of all such attempt shall be maintained by the department.

(v) In addition to the methods of notification provided at subparagraph (7)(a) of this subsection, notification to farm labor camps may be provided in writing by placing a written notice on an on-site bulletin board or other central, on-site posting place which is readily accessible to labor camp residents.

(B) The notice shall include:

(i) the location of the field on which the application is to be made;

(ii) the intended date and approximate time of application;

(iii) the trade and common chemical name of the pesticide to be applied; and

(iv) who to contact for additional information.

(C) Notice shall be given no later than the day prior to a scheduled pesticide application.

(8) Emergency provision. Advance notice need not be given on the day before an application when an immediate application is required and time does not reasonably allow the giving of notice on the day before the pesticide application. Notice of an emergency application shall be given:

(A) by the method selected in accordance with subparagraph (7) (A) of this subsection as soon as reasonably possible before the application; or

(B) by telephone or in person to a medically-affected person as soon as reasonably possible, but not less than one hour before the application. However, an emergency application need not be postponed if after reasonable efforts by the foundation or other entity actual notice cannot be given.

(9) Duty to notify of address change. A person who has requested notice of a pesticide application under this section shall notify the foundation or other entity promptly and in writing of any change of address or telephone number.

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 August 24, 1995.

TRD-9510782

Dolores Alvarado Hibbs
Chief Administrative Law
Judge
Texas Department of
Agriculture

Effective date: September 14, 1995

Proposal publication date: May 23, 1995

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

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TITLE 19. EDUCATION
Part I. Texas Higher
Education Coordinating
Board

Chapter 5. Program
Development

Subchapter K. Private and
Out-of-State Public Degree-
Granting Institutions Operat-
ing in Texas

• **19 TAC §5.214**

The Texas Higher Education Coordinating Board adopts an amendment to §5. 214, concerning Standards for Nonexempt Institutions, with changes to the proposed text as published in the June 9, 1995, issue of the *Texas Register* (20 TexReg 4191).

The amendment was necessary because the Coordinating Board standard on governance of nonexempt degree-granting institutions was more restrictive than the corresponding criterion of the Commission on Colleges of the Southern Association of Colleges and Schools, the recognized agency whose accreditation is the basis for exemption of the majority of private degree-granting institutions in Texas. Accreditation by a recognized agency is required of all affected institutions by the Texas Education Code, Chapter 61, Subchapter G, after eight years of certification by the Board. The Board is making the change because it was found inappropriate to require a standard more stringent than that required for accreditation which is the goal set by law for all institutions certified by the Board to grant degrees. The amended standard will be applied equitably to all nonexempt institutions seeking certification to grant degrees in Texas. The effect will be to equalize the standard with the criterion required of the institutions that later seek accreditation as required by law.

There were no comments received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code, §61.305, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Private and Out-of-State Public Degree-Granting Institutions Operating in Texas.

5.214. Standards for Nonexempt Institutions.

(a) The decision to grant a certificate of authority to an institution will be based on its compliance with the following 24 standards, priority given to education, responsiveness to recommendations and

suggestions for improvement, and, in the case of a renewal of a certificate of authority, record of improvement and progress following initial approval which would ensure accreditation within the allotted time. The 24 standards represent generally accepted administrative and academic practices and principles of accredited institutions of higher education in Texas. Such practices and principles are generally set forth by the Commission on Colleges, Southern Association of Colleges and Schools and by specialized accrediting bodies and the several academic and professional societies which have established standards for their members' programs such as the National Association of College and University Business Officers and the American Association of Collegiate Registrars and Admissions Officers.

(1) (No change.)

(2) Governing Board. The governing board, consisting of at least five members, must be an active policy-making body and must exercise its authority to ensure that the mission of the institution is carried out. Membership of the governing board of the institution shall be comprised of individuals who represent the institution's constituency, including faculty, students, and supporters. The presiding officer of the board, along with a majority of the other voting members, must have no contractual, employment, or personal or familial financial interest in the institution and derive no financial gain from the operations of the institution.

(3)-(24) (No change.)

(b) (No change.)

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

Issued in Austin, Texas on August 23, 1995

TRD-9510718

James McWhorter
Assistant Commissioner for
Administration
Texas Higher Education
Coordinating Board

Effective date: September 14, 1995

Proposal publication date: June 9, 1995

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

◆ ◆ ◆
Subchapter P. Testing and Re-
mediation

• **19 TAC §5.313**

The Texas Higher Education Coordinating Board adopts an amendment to §5. 313, concerning Testing and Remediation (Eligibility), with changes to the proposed text as published in the June 20, 1995, issue of the *Texas Register* (20 TexReg 4462).

The Coordinating Board is charged by law to exempt students from the TASP due to certain scores on the ACT, SAT, AND TAAS tests. The board had originally set standards on these tests that was thought to exempt about 10% of all entering students from TASP. However, actual data from the first full year of these exemptions revealed that only about half that many had been exempted. Therefore, the board is adjusting the exemption standards to more closely approximate the desired level. More students will be exempted from TASP requirements.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Education Code, §51.306 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Testing and Remediation (Eligibility).

§5.313. Eligibility.

(a) Any student with at least three college-level credit hours accumulated prior to the fall of 1989 shall not be required to take the examination. Such credit hours must be certified as college-level by the granting institution and need not be applicable toward a degree or certificate. In addition, students who perform at or above a level set by the Coordinating Board on the American College Test (ACT), Scholastic Assessment Test (SAT), or Texas Assessment of Academic Skills (TAAS), shall be exempt from the Texas Academic Skills Program. This exemption will be in effect for five years from the date the ACT or SAT test was taken and for three years from the date the TAAS test was taken. While tests may be retaken, ACT, SAT, or TAAS scores meeting or exceeding the standard set by the board must be achieved on a single test administration. Effective fall 1995 and until amended by the Board, standards for exemption from the Texas Academic Skills Program (TASP) are:

(1) ACT: composite score of 26, with a minimum of 22 on both the English and the mathematics test; or

(2) SAT: combined verbal and mathematics score of 1,180, with a minimum of 550 on both the verbal and the mathematical tests (recentered scale for tests taken April, 1995 and thereafter); or for tests taken prior to April 1995, a combined verbal and mathematics score of 1090 with a minimum of 470 on the verbal test and a minimum of 530 on the mathematics test; or

(3) TAAS: a minimum score of 1,780 on the writing test, and a Texas Learning Index (TLI) of 86 on the mathematics test and 89 on the reading test.

(b)-(m) (No change.)

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

Issued in Austin, Texas, on August 23, 1995.

TRD-9510717

James McWhorter
Assistant Commissioner for
Administration
Texas Higher Education
Coordinating Board

Effective date: September 14, 1995

Proposal publication date: June 20, 1995

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

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 330. Municipal Solid Waste

Subchapter A. General Information

• 30 TAC §330.4

The Texas Natural Resource Conservation Commission (TNRCC) adopts an amendment to §330.4, concerning Municipal Solid Waste Management Type V Facilities, that are exempt from permit requirements. Section 330.4(q) is adopted without changes to the proposed text as published in the May 2, 1995, issue of the *Texas Register* (20 TexReg 3238).

The adopted amendment deletes one sentence from a rule published in the January 24, 1995, issue of the *Texas Register* (20 TexReg 352). The rule went into effect on February 2, 1995. The sentence deleted by this amendment was inadvertently submitted to the *Texas Register* and was not in language approved by the TNRCC at its agenda meeting on January 11, 1995. The language in question deals with an exemption from permitting established by Senate Bill 963, 73rd Legislature (1993), which amended the Texas Solid Waste Disposal Act, §361.111.

Only one written comment was received by a national waste management association agreeing with the amendment as proposed, and TNRCC wishes to acknowledge their supportive comment.

The amendment is adopted under the Texas Water Code, §5.103, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code; and the Texas Solid Waste Disposal Act (The Act), Texas Health and Safety Code, §361.024 and §361.061, which provide the Texas Natural Resource Conservation Commission with the authority to regulate the operation, management and control of solid waste under its jurisdiction.

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

Issued in Austin, Texas, on August 28, 1995.

TRD-9510855

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

Effective date: September 18, 1995

Proposal publication date: May 2, 1995

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

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part IX. Texas Commission on Jail Standards

Chapter 259. New Construction Rules

New Jail Design, Construction and Furnishing Requirements

• 37 TAC §259.162

The Texas Commission on Jail Standards adopts an amendment to §259.162, concerning New Construction Rules, without changes to the proposed text as published in the July 18, 1995, issue of the *Texas Register* (20 TexReg 5208).

Adoption of this rule will delete the requirement for providing warm water at lavatories in court holding cells.

The rule will function to clarify which lavatories are exempt from providing warm water.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Government Code 511 which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing standards for the construction, equipment, maintenance and operation of county jails.

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 August 24, 1995.

TRD-9510754

Jack E. Crump
Executive Director
Commission on Jail
Standards

Effective date: September 14, 1995

Proposal publication date: July 18, 1995

For further information, please call: (512) 463-5505

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 47. Primary Home Care

Service Requirements

• 40 TAC §47.2901, §47.2902

The Texas Department of Human Services (DHS) adopts amendments to §47.2901 and §47.2902, without changes to the proposed text as published in the May 16, 1995, issue of the *Texas Register* (20 TexReg 3655).

The justification for the amendments is to stipulate that an individual is eligible for retroactive payment for Medicaid services up to three months prior to the date of Medicaid application.

The amendments will function by allowing individuals who are Medicaid eligible to immediately access services through the primary home care program.

During the public comment period, DHS received one comment from the Houston Welfare Rights Organization in support of the proposal.

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413(502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement §§22.001-22.024 and §§32.001-32.041 of the Human Resources Code.

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 August 24, 1995.

TRD-9510714 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Effective date: October 1, 1995

Proposal publication date: May 16, 1995

For further information, please call: (512) 450-3765

Chapter 48. Community Care for Aged and Disabled

Case Management

• 40 TAC §48.3901

The Texas Department of Human Services (DHS) adopts an amendment to §48.3901,

without changes to the proposed text as published in the May 16, 1995, issue of the *Texas Register* (20 TexReg 3656).

The justification for the amendment is to stipulate that an individual is eligible for retroactive payment for Medicaid services up to three months prior to the date of Medicaid application.

The amendment will function by allowing individuals who are Medicaid eligible to immediately access services through the primary home care program.

During the public comment period, DHS received one comment from the Houston Welfare Rights Organization in support of the proposal.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413(502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

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

Issued in Austin, Texas, on August 24, 1995.

TRD-9510715 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Effective date: October 1, 1995

Proposal publication date: May 16, 1995

For further information, please call: (512) 450-3765

Chapter 79. Legal Services

Subchapter R. Release Hearings

• 40 TAC §§79.1701-79.1716

The Texas Department of Human Services (DHS) adopts the repeal of §§79.1701-79.1716, without changes to the proposed text as published in the July 21, 1995, issue of the *Texas Register* (20 TexReg 5370).

The repeals are justified to delete the rules related to hearings held in cases involving child care facility licensing and adult protective services. The responsibility for the management of these programs was transferred from DHS to the Department of Protective and Regulatory Services. The repeal of the rules from DHS's Legal Services rule chapter were inadvertently omitted at the time of the transfer.

The repeals will function by ensuring that a conflict with the rules adopted for Long Term Care-Regulatory will not occur.

The department received no comments regarding adoption of the repeals.

The repeals are adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

The repeals implement the Human Resources Code, §§22.001-22.024.

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 August 25, 1995.

TRD-9510836 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Effective date: October 1, 1995

Proposal publication date: July 21, 1995

For further information, please call: (512) 450-3765

Part IX. Texas Department on Aging

Chapter 254. Operation of the Texas Department on Aging

• 40 TAC §254.13

The Texas Department on Aging adopts an amendment to §254.13, relating to the Department's responsibility to impose sanctions, with changes to the proposed text as published in the June 16, 1995, issue of the *Texas Register* (20 TexReg 4403).

The amendment is necessary to correct references which have been outdated as a result of the reissue of the rules of the Texas Department on Aging.

The Texas Association of Regional Councils, and the Board and staff of the Department commented on the rules. During the public hearing, additional changes were suggested to the paragraphing of the rule to improve logic and readability. As a consequence, subparagraph §254(c)(2)(iii) contains amended language. In subsection (f), subparagraph (1) was eliminated and subparagraph (2) was moved to (g) as subparagraph (1) with no changes in the text. The remaining subparagraphs in (g) were then renumbered with no changes to the text.

The amendment is adopted under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the Department.

The Human Resources Code, Chapter 101, relating to the operation of the Texas Department on Aging, is affected by this action.

§254.13. *Department Responsibilities for Imposing Sanctions.*

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

(c) Department Responsibilities.
The Department shall take appropriate ac-

tion to secure the continuing administrative compliance of the grantee. For failure to fulfill routine and standard administrative or operational requirements listed in subsection (b) of this section, the Department shall:

(1) (No change.)

(2) if no response is received by the due date the Department shall notify the grantee by certified mail, return receipt requested, no later than three working days after the due date of the items for which compliance has not been demonstrated and the effective date of the sanction to be imposed, in the following sequence:

(A) withholding of funds from the grantee agency on a temporary basis for specifically budgeted function or service or any part thereof, for failure to meet administrative and operation requirements listed in subsection (b) of this section.

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

(iii) If the matter is not resolved by the end of the 90-day period, the Department may continue such suspension of funds and notify the grantee of intent to impose the sanction listed in subparagraph (B) of this paragraph using the procedures in this section.

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

(d) DEDesignation. The Department may withdraw an area agency designation whenever the Department, for specific reasons and after reasonable notice and opportunity for a hearing as provided in §254.15, Hearing Procedures for Area Agencies on Aging finds that:

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

(e) (No change.)

(f) Notification of the Grantee/Contractor. The grantee shall be notified, by certified mail, return receipt requested, ten working days prior to the effective date of the dedesignation as an area agency on aging. Such notification shall explain the right of the agency to appeal such decisions as outlined in §254.15, Hearing Procedures for Area Agencies on Aging.

(g) Procedures following withdrawal of designation. If the Department withdraws an area agency's designation, the Department shall take the following action.

(1) Administration of the grant. If a grant to an area agency is terminated, the Department may administer the area plan during the period of termination or designate a new grantee.

(2) Notify appropriate entities. The Department shall notify, by certified

mail, return receipt requested, the Assistant Secretary on Aging Department of Health and Human Services, and those individuals and agencies specified in subsection (e) of this section.

(3) Continue services. The Department shall provide a plan for the continuity of services in the affected planning and service area and will:

(A) discontinue reimbursement to the grantee concerned;

(B) notify service providers to submit requests for reimbursement directly to the Texas Department on Aging or to the designated contractor/grantee;

(C) place a notice in local and regional newspapers advising that claims against the grantee related to Older Americans Act programs shall be referred to the Texas Department on Aging; and

(D) designate an interim area agency in the planning and service area in a timely manner, or designate a new area agency in the planning and service area in a timely manner.

(4) Administration by the Department. If necessary to ensure continuity of services in a PSA, the Department may for a period of up to 180 days after withdrawing designation of an area agency:

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

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

Issued in Austin, Texas, on August 24, 1995.

TRD-9510750

Mary Sapp
Executive Director
Texas Department on
Aging

Effective date: September 14, 1995

Proposal publication date: June 16, 1995

For further information, please call: (512) 444-2727

Chapter 260. Area Agency on Aging Administrative Requirements

• 40 TAC §260.1, §260.2

The Texas Department on Aging adopts amendments to §260.1, relating to area agency on aging administrative monitoring requirements, and §260.2, relating to direct purchase of services policy, with changes to the proposed text as published in the June 16, 1995, issue of the *Texas Register* (20 TexReg 4403).

The purpose of these amendments is to update policy regarding these activities.

No comments were received regarding adoption of the amendments.

The amendments are proposed under Chapter 101, Human Resources Code, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the Department.

The Human Resources Code, Chapter 101, relating to the operation of the Texas Department on Aging, is affected by this action.

§260.1. Area Agency on Aging Administrative Requirements.

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

(e) Monitoring.

(1) Area agencies shall conduct not less than one on-site fiscal and program monitoring of service providers during the legislative biennium. Fiscal and program monitoring shall be conducted concurrently if possible.

(2) Desk reviews of subcontractors shall be conducted by the area agency on aging on all service providers during the fiscal year an on-site visit is not conducted.

(3) Should the biannual monitoring reveal that the service provider is at "high risk," as defined in §270.2 of this Title (relating to definitions), the area agency will conduct annual followup monitoring until the high risk environment has been corrected.

(4) An annual customer satisfaction survey of program participants/clients shall be conducted by all service providers. The results of this survey will be a part of the area agency's annual monitoring by the Department.

(f)-(l) (No change.)

§260.2. Area Agency on Aging Fiscal Responsibilities.

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

(f) Contracting. Area agencies shall apply prudent business judgement in areas on contracting for services and goods to be purchased and the reimbursement methodologies to be used in funding such contracts.

(1) (No change.)

(2) The area agency shall use any or all of the four contracting methodologies for the procurement of goods and services for provision of services to older persons. These contracting methods are known as cost reimbursement, performance based unit rate, direct purchase of services and sole source procurement.

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

(C) Direct purchase of service contracting is an alternative contracting methodology for the purchase of services. It allows for the purchase of service on a client-by-client basis instead of contracting annually by either the performance based or cost reimbursement methods. The area agency sets aside a sum of money, known as a direct purchase pool, to be used by Access and Assistance staff when developing an individual's care plan. Direct purchase of services match requirements are established in 40 TAC §260.19 of this title (relating to Direct Purchase of Services).

(D) (No change.)

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

(g) (No change.)

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

Issued in Austin, Texas, on August 24, 1995.

TRD-9510751

Mary Sapp
Executive Director
Texas Department on
Aging

Effective date: September 14, 1995

Proposal publication date: June 16, 1995

For further information, please call: (512) 444-2727

◆ ◆ ◆
Chapter 270. General Service Requirements

◆ ◆ ◆
• 40 TAC §270.2

The Texas Department on Aging adopts an amendment to §270.2, concerning service definitions, without changes to the proposed text as published in the June 16, 1995, issue of the *Texas Register* (20 TexReg 4404).

The purpose of this amendment is to include definitions for risk and risk analysis into the current definitions used by the Texas Department on Aging and Area Agencies on Aging in the monitoring of service delivery.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Chapter 101, Human Resources Code, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the Department.

The Human Resources Code, Chapter 101, relating to the operation of the Texas Department on Aging, is affected by this action.

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

Issued in Austin, Texas, on August 24, 1995.

TRD-9510752

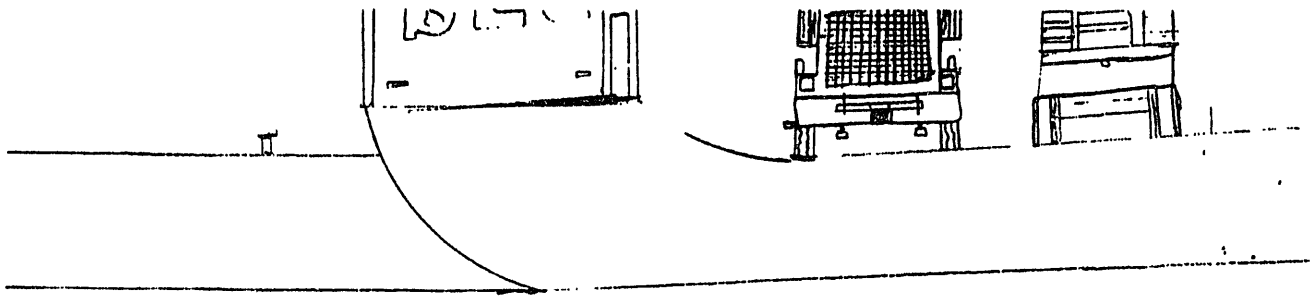
Mary Sapp
Executive Director
Texas Department on
Aging

Effective date: September 14, 1995

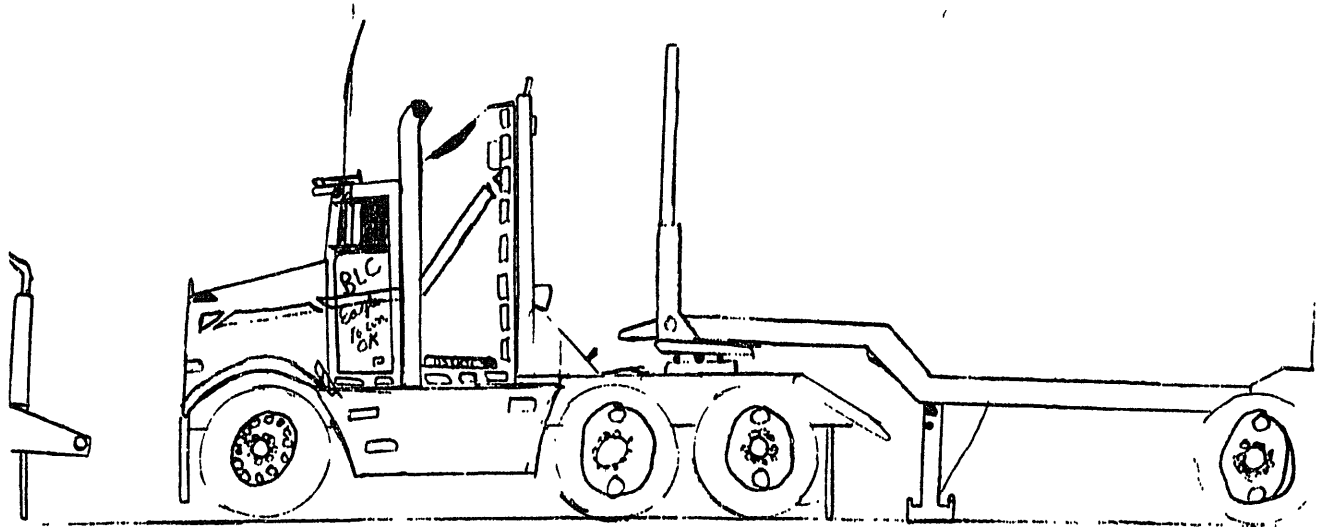
Proposal publication date: June 16, 1995

For further information, please call: (512) 444-2727

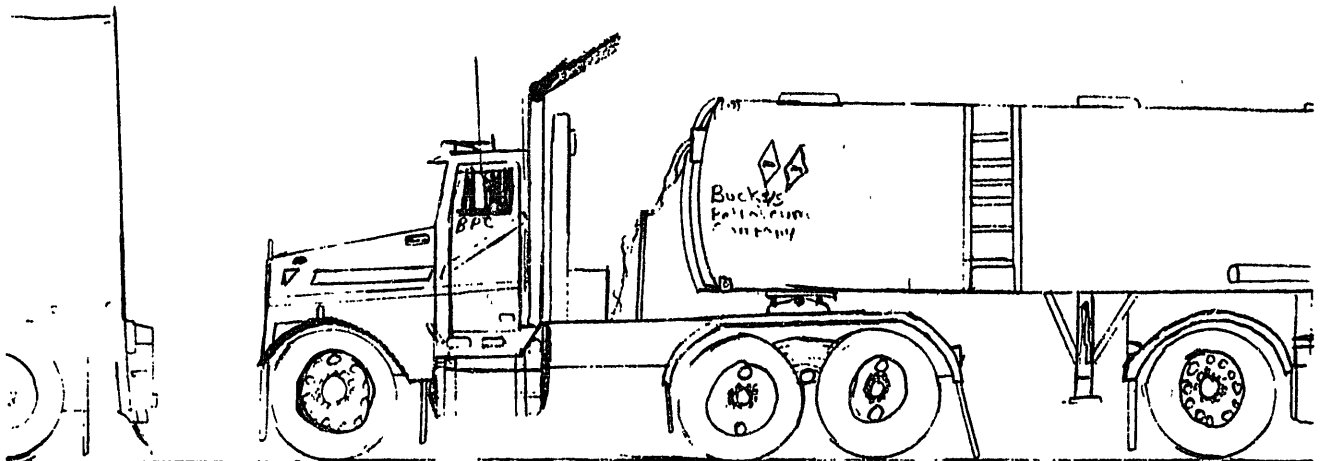
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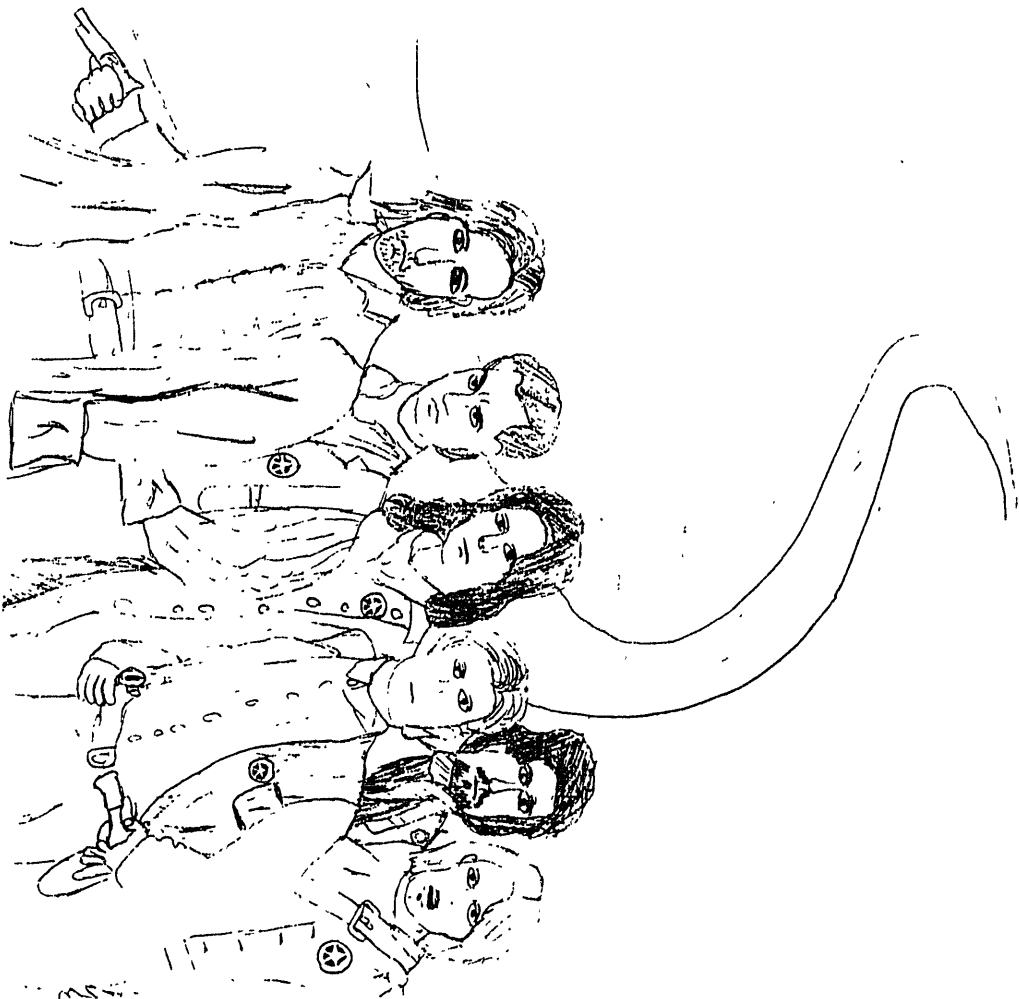
Name: Josh Hamilton
Grade: 8
School: Bloomburg High School, Bloomburg ISD



Name: Josh Hamilton
Grade: 8
School: Bloomburg High School, Bloomburg ISD



Name: Josh Huipers
Grade: 7
School: Schulenburg Jr. High School, Schulenburg ISD



Name: Victor James
Grade: 9
School: Schulenburg High School, Schulenburg ISD

OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the **Texas Register**.

Emergency meetings and agendas. Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the **Texas Register**.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Conservatorship Board

Monday, August 28, 1995, 1:30 p.m.

710 Brazos, Perry Brooks Building

Austin

Emergency Revised Agenda

AGENDA:

Action on administrative hearing decisions in the matter of the license of Jose Humberto Gomez and in the manner of the license of Gary P. Chambers.

Reason for Emergency: Necessary for Conservatorship Board to meet in order to meet Statutory mandate.

Contact: Tom Mann, 710 Brazos, Austin, Texas 78701, (512) 867-8809.

Filed: August 24, 1995, 2:07 p.m.

TRD-9510748

Texas Cosmetology Commission

Saturday, September 9, 1995, 10:00 a.m.
Possibly Continued Sunday, September 10, 1995, 10:00 a.m.

Texas Cosmetology Commission, Hearing Room, 5717 Balcones Drive

Austin

Revised Agenda

Commission Meeting

AGENDA:

Call to order and introduction; approval of minutes of previous meeting(s); excuses for absent members; staff reports; fiscal year 1996 operating budget and possible vote; discussion and possible action on commission meetings for fiscal year 1996; Paula McDade, NoRics regarding restrooms in salon and possible vote; Delores Law, Homestead Beauty College, regarding student facial hours and possible vote; approval of Old Hours; discussion of practical services and possible vote; discussion of time clocks and possible vote; discussion of corrections on time cards and possible vote; discussion of Aladdin Schools emergency and possible vote; report on school closures; discussion of cost of written exams and possible vote; discussion of non-English exams and possible vote; adoption of proposed rule changes §§89.1-89.76; executive session; open session to vote on executive session; other business; adjourn.

Contact: Alicia C. Watson, P.O. Box 26700, Austin, Texas 78755-0700, (512) 454-4674.

Filed: August 24, 1995, 10:45 a.m.

TRD-9510734

Texas County and District Retirement System

Wednesday, September 6, 1995, 7:30 p.m.

303 West 15th Street

Austin

Investment Committee Meeting

AGENDA:

Chairperson will open meeting. Approve minutes of preceding meeting. Receive report from Investment Officer. Consider and act on Investment Policy revisions. Consider and act on Corporate Resolution for Boston Safe Deposit and Trust Company. Report on custody of assets. Review and demonstrate Wilshire Software Package. Set date and location of December, 1995 meeting. Adjourn meeting.

Contact: Alan Adams, 400 West 14th Street, Austin, Texas 78701, (512) 469-9668.

Filed: August 24, 1995, 10:10 a.m.

TRD-9510732

Advisory Commission on State Emergency Communications

Friday, September 8, 1995, 12:30 p.m.

South Texas Poison Center, UT Health Science Center at San Antonio, 7703 Floyd Curl Drive, Room 144

San Antonio

Poison Center Coordinating Committee Meeting

AGENDA:

The committee will call the meeting to order and recognize guests; hear public comment; hear reports and discuss and take committee action, as necessary, on: Ap-

proval of July 7, 1995 meeting minutes; old business; brief status update from each poison center; report from the Texas Department of Health and the Advisory Commission on State Emergency Communications; outcome study of Poison Center Network; report of the Subcommittee on Medical Management and Protocols; report of the Subcommittee on Operations; report of the Subcommittee on Education; report of the Subcommittee on DUMP the Medicines Campaign; report of the Subcommittee on Telecommunications; report of the Subcommittee on Finance; new business; and adjourn.

Persons requesting interpreter services for the hearing- and speech-impaired should contact Velia Williams at (512) 305-6933 at least two working days prior to the meeting.

Contact: Jim Goerke, 333 Guadalupe Street, Austin, Texas 78701, (512) 305-6911.

Filed: August 28, 1995, 2:13 p.m.

TRD-9510873

◆ ◆ ◆
Texas State Board of Registration for Professional Engineers

Wednesday, September 6, 1995, 10:00 a.m.

1917 IH-35 South, Board Room

Austin

Ad Hoc Committee on the North American Free Trade Agreement

AGENDA:

1. A. Meeting convened by Chairman Guerra at 10:00 a.m.
- B. Roll call
- C. Welcome visitors
2. Discuss the North American Free Trade Agreement (NAFTA) Mutual Recognition Document.
3. Discuss the Texas State Board of Registration for Professional Engineers' position concerning the Mutual Recognition Document and the North American Free Trade Agreement.
4. Discuss reservations concerning the North American Free Trade Agreement.
5. Adjourn

Contact: John R. Speed, P.E., 1917 IH-35 South, Austin, Texas 78741, (512) 440-7723.

Filed: August 29, 1995, 1:12 p.m.

TRD-9510865

Texas Commission on Fire Protection

Wednesday-Thursday, September 6-7, 1995, 9:00 a.m.

12675 North Research Boulevard

Austin

Fire Code Committee

AGENDA:

- I. Discussion of committee's mission.
 - II. Discussion and possible action relating to the development of rules including standards to be enforced by the State Fire Marshal in conducting inspections under the authority of §417.008 of the Government Code.
 - III. Discussion and possible action on future meeting dates, agenda items, and locations.
- Contact: Carol Menchu, 12675 North Research Boulevard, Austin, Texas 78759, (512) 918-7100.

Filed: August 25, 1995, 9:39 a.m.

TRD-9510796

◆ ◆ ◆
General Land Office

Tuesday, September 5, 1995, 10:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Room 831

Austin

School Land Board

AGENDA:

Approval of previous board meeting minutes; pooling applications, Giddings (Austin Chalk-3), Robertson County; Giddings (Austin Chalk-3) Burleson and Brazos counties; Pita Island (9,250), Nueces County; Wildcat Field, Matagorda County; applications to lease highway rights of way for oil and gas, Victoria County; direct land sales, Brewster County; excess acreage application, Castro County; coastal public lands, commercial lease applications, Clear Lake, Galveston County; Offatts Bayou, Galveston County; lease application, Taylor Lake, Harris County; easement renewals, applications and amendments, Galveston Bay, Harris County; West Bay, Galveston County; Arroyo Colorado, Cameron County; Caney Creek, Matagorda County; structure (cabin) permit renewals, rebuilding requests and amendments, Corpus Christi Bay, Nueces County; Laguna Madre, Kenedy County; Laguna Madre, Kleberg County; and Bastrop Bay, Guyton Cut, Brazoria County; executive session-pending and proposed litigation; executive session-consideration of land trade, Nueces County; open session-consideration of land trade, Nueces County.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: August 28, 1995, 1:13 p.m.

TRD-9510866

◆ ◆ ◆
Office of the Governor

Saturday, August 26, 1995, Noon.

Governor's Mansion, 1010 Colorado

Austin

Commission for Women

AGENDA:

The Women's Commission is having its first meeting to orient members to their charges in the Executive Order and discuss issues.

- I. Call to order
- II. Introduction of members
- III. Discuss and approve bylaws
- IV. Discuss members' roles and mission
- V. General info on Governor's office
- VI. Discuss potential projects and issues
- VII. Adjourn

Contact: Lucy Weber, P.O. Box 12428, Austin, Texas 78711, (512) 475-2615.

Filed: August 25, 1995, 3:52 p.m.

TRD-9510840

◆ ◆ ◆
Office of the Governor, Criminal Justice Division

Friday, September 15, 1995, 1:30 p.m.

221 East 11th Street, First Floor, Main Conference Room

Austin

Disproportionate Minority Confinement

AGENDA:

- I. Welcome and introductions; II. Background of research project; III. Discussion of Texas A&M grant application; IV. Recommendation regarding final research design; V. Adjourn.

Contact: Glenn Brooks or Ed Santiago, P.O. Box 12428, Austin, Texas 78711, (512) 463-1944 or (512) 463-1786.

Filed: August 28, 1995, 4:21 p.m.

TRD-9510887

Texas Department of Health

Friday, September 22, 1995, 10:00 a.m.

Room M-739, Texas Department of Health,
1100 West 49th Street

Austin

HIV/AIDS Interagency Coordinating Council

AGENDA:

The council will discuss and possibly act on: revision of workplace guidelines; approval of the minutes from June 9, 1995 meeting; overview of meeting format; report from chairmen of advisory committees (medical-social services (council discussion and recommendations); prevention(council discussion and recommendations)); and set next meeting date.

Contact: Linda Moore, 1100 West 49th Street, Austin, Texas 78756, (512) 458-6403. 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: August 24, 1995, 2:45 p.m.

TRD-9510760

Texas Department of Human Services

Thursday, September 7, 1995, 10:00 a.m.

701 West 51st Street, Fourth Floor, Conference Room 460

Austin

Client Self-support Services Advisory Council

AGENDA:

I. Call to order.

II. Approval of minutes of June 8, 1995, meeting.

III. Chairman's comments.

IV. Deputy commissioner comments.

V. Election of new vice-chair.

VI. New business

A. Action items: Emergency assistance through the AFDC program for eligible state agencies.

B. Information items: Implementation of Work First, child and adult care food program reports to the Board of Human Services, technical corrections/clarifications to food distribution and processing rules; authorizing restaurants as retailers in the food stamp program, expanded education and outreach plan for the Texas A&M University family nutrition program, transition of employment and child care programs, and adult learning labs.

VII. Next meeting/adjourment.

Contact: Tom Lemm, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-4147.

Filed: August 28, 1995, 8:53 a.m.

TRD-9510852

Texas Department of Insurance

Monday, September 11, 1995, 9:00 a.m.

State Office of Administrative Hearings,
300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0961.C

To consider whether All-Type Insurance Agency has complied with the abatement requirements set forth in the Supervision Order 95-0222.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: August 29, 1995, 8:50 a.m.

TRD-9510892

Monday, September 11, 1995, 9:00 a.m.

State Office of Administrative Hearings,
300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0873.C

To consider whether disciplinary action should be taken against Robert S. Hoback, Arlington, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: August 29, 1995, 8:50 a.m.

TRD-9510893

Monday, September 11, 1995, 9:00 a.m.

State Office of Administrative Hearings,
300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0907.C

To consider whether disciplinary action should be taken against Kenneth Ray McFall, Austin, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License, a Variable Contract Agent's License, Local Recording Agent's License, a State, Salaried, Special Agent or Travel

Baggage Agent's License and a Life Insurance Counselor'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: August 29, 1995, 8:50 a.m.

TRD-9510894

Tuesday, September 12, 1995, 9:00 a.m.

State Office of Administrative Hearings,
300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0686.C

To consider whether disciplinary action should be taken against Nathan P. Morris, New Home, Texas, who holds an Agricultural Insurance Agent's License and a Solicitor'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: August 29, 1995, 8:50 a.m.

TRD-9510895

Wednesday, September 13, 1995, 9:00 a.m.

State Office of Administrative Hearings,
300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0453.C

To consider whether disciplinary action should be taken against Jean Lynne Maness, Madisonville, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License and a Local Recording Agent's License issued by the Texas Department of Insurance (continued from August 18, 1995).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: August 29, 1995, 8:50 a.m.

TRD-9510896

Lamar University System

Tuesday, August 29, 1995, 2:00 p.m.

Lamar University-Port Arthur Student Center, 1500 Proctor

Port Arthur

Board of Regents

AGENDA:

Call to order-approval of minutes
Executive session
Reconvene open meeting/recess for committee meetings
Building and Grounds
Finance and Audit
Personnel
Reconvene Board of Regents meeting
Consider approval of committee reports
Chair's report-Chancellor's report-other reports

Contact: Joseph E. Champagne, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: August 25, 1995, 8:33 a.m.

TRD-9510787

Tuesday, August 29, 1995, 2:00 p.m.

Lamar University-Port Arthur Student Center, 1500 Proctor

Port Arthur

Revised Agenda

Board of Regents

AGENDA:

Call to order-approval of minutes
Executive session
Reconvene open meeting/recess for committee meetings
Building and Grounds
Finance and Audit
Personnel
Reconvene Board of Regents meeting
Consider approval of committee reports
Chair's report-Chancellor's report-other reports

Contact: Joseph E. Champagne, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: August 25, 1995, 10:21 a.m.

TRD-9510805

Tuesday, August 29, 1995, 2:00 p.m.

Lamar University-Port Arthur Student Center, 1500 Proctor

Port Arthur

Revised Agenda

Board of Regents

AGENDA:

Call to order-approval of minutes
Executive session
Reconvene open meeting/recess for committee meetings

Building and Grounds
Finance and Audit-Add Item 3030
Personnel
Reconvene Board of Regents meeting
Consider approval of committee reports
Chair's report-Chancellor's report-other reports
Contact: Joseph E. Champagne, P.O. Box 11900, Beaumont, Texas 77710, (409) 880-2304.

Filed: August 25, 1995, 12:38 p.m.

TRD-9510821

Texas Department of Licensing and Regulation

Tuesday, September 5, 1995, 9:00 a.m.
920 Colorado, E. O. Thompson Building, First Floor

Austin

Inspections and Investigations: Boxing

AGENDA:

According to the complete agenda, the department will hold an administrative hearing to consider the application of Wayne Corbett for a boxing license in accordance with the Texas Civil 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: August 28, 1995, 1:41 p.m.

TRD-9510869

Thursday, September 7, 1995, 9:30 a.m.
E. O. Thompson Building, 920 Colorado, Fourth Floor

Austin

Texas Commission of Licensing and Regulation

AGENDA:

The complete agenda is as follows. The Commission will hold a regular meeting according to the following outline: I. Call to order; II. Roll call and certification of quorum; III. Contested cases; IV. Agreed orders; V. Representative from the Governor's Committee on People with Disabilities; VI. Rules submissions; VII. Staff reports; VIII. Operating budget; IX. Executive session; X. Open session/public comments; XI. Discussion of date, time and location of next commission meeting; and XII. Adjournment.

Contact: Phyllis Wilson, 920 Colorado, E. O. Thompson Building, Austin, Texas 78701, (512) 463-3173.

Filed: August 25, 1995, 11:38 a.m.

TRD-9510814

Texas Lottery Commission

Wednesday, September 6, 1995, 10:00 a.m.

6937 North IH-35, American Founders Building, First Floor Auditorium

Austin

Bingo Advisory Committee

AGENDA:

According to the complete agenda, the Bingo Advisory Committee will call the meeting to order; consideration and possible approval of the July 17, 1995 minutes; discussion and consideration of the July 24-25 Electronic Bingo Cardminder Vendor Conference including but not limited to any new information compiled on this subject since the July vendor presentation, report by the Bingo Advisory Committee secretary of the August 12, 1995 Texas Lottery Commission meeting regarding issues relating to the bingo industry including but not limited to the Bingo Advisory Committee; consideration and possible action on the bingo laws, rules and regulations including prospective rules; discussion and consideration of Bingo Pulltab and Electronic Cardminder devices and their effect on the charities; report and discussion of the August 14, 1995 System Service Provider presentation; consideration and possible action on improving the communication system between the Bingo Advisory Committee and the bingo industry including the Bingo Bulletin; consideration and possible designation of future Bingo Advisory Committee meetings; and adjournment.

For ADA assistance, call Michelle Guerrero at (512) 323-3791 at least two days prior to meeting.

Contact: Kimberly L. Kiplin, P.O. Box 16630, Austin, Texas 78761-6630.

Filed: August 29, 1995, 9:17 a.m.

TRD-9510899

State Medical Education Board

Saturday, September 9, 1995, 2:00 p.m.

Chevy Chase Office Complex, Building One, Room 1.102, 7700 Chevy Chase Drive

Austin

Board Meeting

AGENDA:

Statistical report; review of accounts needing board attention; follow-up from last meeting regarding Harvey, M.D., Anna and

Russell, M.D., Marion; current considerations regarding Hall-Hoskins, Admerle, Erler, M.D., Theresa A., and Russell, M.D., Kenneth Lynn; and other business regarding the Collections Division of the AG's office and Bailey, M.D., Michael Gene.

Contact: Sharon Cobb, P.O. Box 12788, Austin, Texas 78711, (512) 483-6206.

Filed: August 29, 1995, 9:08 a.m.

TRD-9510898

Texas State Board of Medical Examiners

Tuesday, August 29, 1995, 10:30 a.m.

1812 Centre Creek Drive, Suite 300

Austin

Emergency Revised Agenda

Texas State Board of Acupuncture Examiners, Examination, Licensure and Fee Committee

AGENDA:

Call to order

Roll call

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 for private consultation and advice of counsel concerning pending litigation relative to applications for licensure and licensee disciplinary actions.

Open session to review applicants for licensure by Examination: Edward Zarandin Saloma and Zhaoxu Xing

Citizen communication: a maximum of ten speakers will be allowed to speak to the committee for up to three minutes each, on a "first-come, first-served" basis regarding examination, licensure and fee issues.

Adjourn

Reason for Emergency: Information has come to the attention of the agency and requires prompt consideration.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, Fax: (512) 834-4597.

Filed: August 25, 1995, 9:36 a.m.

TRD-9510795

Tuesday, August 29, 1995, 3:00 p.m.

1812 Centre Creek Drive, Suite 300

Austin

Emergency Agenda

Disciplinary Panel

AGENDA:

1. Call to order

2. Roll call

3. Consideration of the application for temporary suspension of the license of Nick Jay Newman, M.D., License E-8284.

4. Adjourn

Reason for Emergency: Information has been received by the agency and requires prompt consideration.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402.

Filed: August 28, 1995, 3:24 p.m.

TRD-9510880

Texas Natural Resource Conservation Commission

Wednesday, September 6, 1995, 9:30 a.m.

12118 North Interstate 35, Building E, Room 201S

Austin

AGENDA:

The commission will consider approving the following matters on the following agenda: Class 2 modification; district matters; water utility matter; water right permit; authorization to construct; superfund contract; municipal waste discharge enforcement; agricultural enforcement; petroleum storage tank enforcement; report; hearing request denial; examiner items; executive session; 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: August 25, 1995, 4:23 p.m.

TRD-9510841

Monday, October 2, 1995, 10:00 a.m.

TNRCC, 12124 Park 35 Circle, IH-35 North at Yager Lane, Building B, Room 201A

Austin

AGENDA:

On an application by Sonntag Trucking Company. Proposed Standard Exemption Registration Number 29014, to construct and operate a concrete batch plant under a

standard exemption. The proposed plant will be located east of Highway 720, 3.7 miles south of Highway 380 in Little Elm, Denton County, Texas.

Contact: Helga Chatelle, P.O. Box 13087, Austin, Texas 78711, (512) 239-1585.

Filed: August 28, 1995, 8:07 a.m.

TRD-9510850

Board of Nurse Examiners

Wednesday, September 13, 1995, 8:00 a.m.

Beaumont City Hall, 801 Main Street

Beaumont

AGENDA:

The Board of Nurse Examiners will receive the minutes from the July meeting; June and July financial statements; consider education/examination, practice and investigation matters. An open forum will be held from 1:30-2:00 p.m. on September 13, 1995, to provide an opportunity for public comment. The board will receive reports from various committees; consider the publication of proposed amendments to rules §217.2 and §217.7, Licensure and Practice; consider repeal and new rules 222 regarding Limited Prescriptive Authority; take action on seven proposed board orders, and one petition for a declaratory order.

Contact: Erlene Fisher, Box 140466, Austin, Texas 78714, (512) 835-8675.

Filed: August 28, 1995, 9:09 a.m.

TRD-9510853

Public Utility Commission of Texas

Thursday, September 7, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A prehearing conference will be held on the above date and time in Docket Number 12817: joint petition and agreement of Texas Alltel, Inc., for extended area service (EAS) from the Acton, Cresson, and Godley exchanges to the Fort Worth Metropolitan exchanges of Southwestern Bell Telephone Company.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 28, 1995, 1:13 p.m.

TRD-9510867

Texas Senate

Thursday, September 14, 1995, 9:30 a.m.

1400 Congress Avenue, Capitol Extension,
Room E1.012

Austin

Interim Committee on Juvenile Justice and
Child Support

AGENDA:

I. Organizational meeting

Contact: Senate Jurisprudence Committee,
P.O. Box 12068, Austin, Texas 78711,
(512) 463-0070.

Filed: August 24, 1995, 1:52 p.m.

TRD-9510744

The Texas A&M University System, Board of Regents

Thursday, August 31, 1995, 9:00 a.m.

Texas A&M University, MSC, Room 292,
Joe Routt Boulevard

College Station

Executive Committee

AGENDA:

Approval of minutes of board meetings; naming of facilities at System Institutions and Service agencies; adoption of resolution on Joe B. Foster; adoption of resolutions on athletic endeavors; grant emeritus titles; confirm appointments and promotions; approve academic tenure; confirm terminations of employments; appointments of interim vice president for Student Affairs and Special Services, vice president for External Affairs and Dean of the College of Education at Texas A&M-Kingsville; appointment of Dean of the College of Science and Technology at Texas A&M International; appointments of Deputy Chancellor for Finance and Operations and Vice Chancellor for Business Services, Texas A&M University System; system reorganization and authorization for the chancellor to do any and all things necessary to implement such reorganization.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: August 24, 1995, 4:07 p.m.

TRD-9510774

Thursday, August 31, 1995, 9:30 a.m. (or upon adjournment of the Meeting of the Executive Committee)

Texas A&M University, MSC, Room 292,
Joe Routt Boulevard

College Station

Board of Regents

AGENDA:

Approve minutes, facility namings, operating budgets, holiday schedule, increase in general use fees, off-campus fees, application fee for DVM degree, memo of understanding with Art Museum of South Texas, fertilizer tonnage fee, position of student liaison to board, degrees; system reorganization and authorization for the chancellor to do any and all things necessary to implement such reorganization; adopt resolutions; grant emeritus titles; confirm appointments and promotions, tenure, terminations, budget and fiscal transfers, salary increases and new positions, gifts, grants, loans and bequests; authorize degrees, purchase and sale of land, contract for external peer review of internal audit functions, revolving fund bank accounts and officers and employees to sign checks, PUF refunding bonds, revenue financing commercial paper notes and PUP subordinate lien notes, PUF bonds for rehabilitative capital needs, equipment purchases, contract for pathological services, contract with Victoria Bank and Trust for cash dispensing services, lease of space, easements, assignment of interest in oil, gas and sulphur lease, oil, gas and sulphur lease auctions; action on bids for construction projects; initiate and appropriate funds for construction projects; cancel construction projects; select architects/engineers; confirm construction contract actions by the chancellor or CEOs, appropriations by the chancellor or CEOs; consider and possible action to establish and endorse centers; consider and adopt new and revised policies; appointments of interim vice president/Student Affairs and Special Services, vice president/External Affairs and dean/College of Education at Texas A&M-Kingsville; dean/College of Science and Technology at Texas A&M International; deputy chancellor/Finance and Operations and vice chancellor/Business Services.

Closed session discussions: consultation with system attorneys on pending and proposed litigation and matters recognized as attorney/client confidential and privileged; acquisition, lease, exchange, disposition and value of real estate, negotiated contracts for prospective gifts or donations; matters involving the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal, or to hear complaints or charges against an officer or employee; appointments of interim vice president/Student Affairs and Special Services, vice president/External Affairs and Dean/College of Education at Texas A&M-Kingsville; appointment of Dean/College of Science and Technology at Texas A&M International; appointments of deputy chancellor/Finance and Operations and vice chancellor/Business Services

Closed session conferences: including but not limited to reports from the chancellor and general counsel; and system reorganization

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: August 25, 1995, 8:33 a.m.

TRD-9510790

Thursday, August 31, 1995, 3:30 p.m. (or upon recess of the Board Meeting)

Texas A&M University, MSC, Room 292,
Joe Routt Boulevard

College Station

Finance and Audit Committee

AGENDA:

Authorization to negotiate and execute contract with firm to perform external peer review of the system internal audit function; authorization for revolving fund bank accounts, sources of funds, depository banks and officers and employees to sign checks for withdrawal; authorization for the issuance of PUF refunding bonds, series 1996 and selection of Managing Senior Underwriter; amendment of resolutions authorizing revenue financing system commercial paper notes and PUF subordinate lien notes; allocation of PUF bonds for Tarleton State University rehabilitative capital needs; allocation for equipment purchases from PUF debt proceeds; approval of increased general use fees effective academic year 1995-1996 at the Academic Institutions; approval of fiscal year 1996 operating budgets; approval of formula for setting off-campus course fees, Tarleton State University; authorization to change individual application fee for admission to curriculum leading to DVM degree, Texas A&M; authorization to execute contract with Brazos Valley Medical Center for provision of pathological services, Texas A&M; approval of contract with Victoria Bank and Trust to establish cash dispensing services, Texas A&M; approval of memorandum of understanding with the Art Museum of South Texas, Texas A&M-Corpus Christi; increase in fertilizer tonnage fee, Texas Agricultural Experiment Station; confirmation of budget and fiscal transfers, salary increases and new positions; confirmation of gifts, grants, loans and bequests.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: August 24, 1995, 4:07 p.m.

TRD-9510775

Friday, September 1, 1995, 8:15 a.m. (or upon recess of Board Meeting and/or adjournment of the meeting of the Finance and Audit Committee)

Texas A&M University, MSC, Room 292,
Joe Routt Boulevard

College Station

Facilities Planning and Building Committee

AGENDA:

Action on bids for rebidding the University Services Center, Texas A&M-Corpus Christi; action on bids for the new district headquarters, Fort Stockton, Texas Agricultural Extension Service; initiation of Good Laboratory Practices Facility; Texas Engineering Experiment Station; initiation and appropriation for design of the energy conservation initiatives, 1995, Texas A&M; action on bids for Annual Science Teaching and Research Complex, Texas A&M; cancellation of the Lubbock Street Mail project, Texas A&M; selection of architect/engineer for the energy conservation initiatives project, Texas A&M; status reports of construction projects; confirm report of construction contract actions by the chancellor or CEOs; confirm report of appropriations by the chancellor or CEOs.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: August 24, 1995, 4:07 p.m.

TRD-9510776

Friday, September 1, 1995, 9:15 a.m. (or upon adjournment of the meeting of the Facilities Planning Building Committee)

Texas A&M University, MSC, Room 292,
Joe Routt Boulevard

College Station

Committee for Academic Campuses

AGENDA:

Approval of 1995-1996 holiday schedule; approval of position of student liaison to the Board of Regents; authorization for a Master of Education degree in English as a second language, Texas A&M-Kingsville

Consider and possible action to establish the Center for the Study of Collaborative Learning Communities of Texas A&M, the Center for the Humanities in the College of Liberal Arts of Texas A&M, and the Center for Professional Ethics at Texas A&M-Kingsville

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: August 24, 1995, 4:07 p.m.

TRD-9510777

Friday, September 1, 1995, 9:15 a.m. (or upon adjournment of the meeting of the Facilities Planning and Building Committee)

Texas A&M University, MSC, Room 292,
Joe Routt Boulevard

College Station

Revised Agenda

Committee for Academic Campuses

AGENDA:

Addition to agenda: Update on the academic building of the Bush Presidential Library Center and how space will be allocated in the building.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: August 29, 1995, 9:00 a.m.

TRD-9510897

Friday, September 1, 1995, 10:15 a.m. (or upon adjournment of the meeting of the Committee for Academic Campuses)

Texas A&M University, MSC, Room 292,
Joe Routt Boulevard

College Station

System Policies Committees

AGENDA:

The purpose of the meeting is to review and possibly take action on the following policies for recommendation to the full board: community collaboration; system investment; system airplane travel; control of fraud and fraudulent actions; debt management; budget/authorizations, limitation, and delegation of authority; crisis management; real property, gift and bequest acceptance; administration of real estate; system litigation; ethics; research agreement; and tenure.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: August 24, 1995, 4:07 p.m.

TRD-9510778

Friday, September 1, 1995, 1:30 p.m. (or upon adjournment of the meeting of the System Policies Committee, Heep Foundation meeting and Report on Runyon Art Collection)

Texas A&M University, MSC, Room 292,
Joe Routt Boulevard

College Station

Committee for Service Units

AGENDA:

Consider and possible action to establish the Rural Hispanic Center, Texas Agricultural Experiment Station/Texas Agricultural Extension Service; the Center for Grazinglands and Ranch Management, Texas Agricultural Experiment Station/Texas Agricultural Extension Service; and the Mary Kay O'Connor Process Safety Center, Texas Engineering Experiment Station

Endorsement of the NSF, Industry/University Cooperative Research Center for electronic materials, devices and systems, Texas Engineering Experiment Station, the NSF, Industry/University Cooperative Center in Ergonomic, Texas Engineering Experiment Station; and the Center for Ports and Waterways, Texas Transportation Institute.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: August 24, 1995, 4:07 p.m.

TRD-9510779

Friday, September 1, 1995, 2:30 p.m. (or upon adjournment of the meeting of the Committee for Service Units)

Texas A&M University, MSC, Room 292,
Joe Routt Boulevard

College Station

Committee for Land and Mineral Resources

AGENDA:

Authorization for Texas A&M to lease space within the IBT building to the University of Texas Health Sciences Center in Houston to support its institute for molecular medicine; authorization to grant pipeline right-of-way and surface easements to Ferguson-Burleson County gas gathering system across Texas A&M property in Brazos County; ratification of assignment of interest in oil, gas and sulphur lease, Texas A&M property in Henderson County; authorization for an oil, gas and sulphur lease auction, 252.7 acres, Texas Agricultural Experiment Station property in Hardeman County; authorization for an oil, gas and sulphur lease auction, 158.9 acres, Texas A&M University property in Chambers County; authorization to purchase land in Pecos County for the Texas Agricultural Extension Service; authorization for the sale of Texas A&M University property in Fort Bend County.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: August 24, 1995, 4:07 p.m.

TRD-9510780

◆ ◆ ◆
The Texas State University System

Thursday, August 31, 1995, 1:30 p.m.

Panhandle Room, Hyatt Regency Austin,
208 Barton Springs Road

Austin

Minority Enhancement Committee

AGENDA:

Review and discussion of methods to enhance minority recruitment within the sys-

tem of faculty, staff and students. (Where appropriate and permitted by law, executive sessions may be held for the above listed subjects.)

Contact: Lamar Urbanovsky, 333 Guadalupe, Tower III, Suite 810, Austin, Texas 78701, (512) 463-1808.

Filed: August 25, 1995, 8:55 a.m.

TRD-9510792

Thursday, August 31, 1995, 4:00 p.m.

Panhandle Room, Hyatt Regency Austin, 208 Barton Springs Road

Austin

Board of Regents

AGENDA:

Review of matters of the board and the Universities in the System including: review and approval of personnel actions including, employment, reemployment, resignations, terminations, tenure and special appointment or interim appointment of any system employee including faculty, presidents and the chancellor; discussion of litigation; approval of budgetary changes and operating budgets; review and approval of end of fiscal year procedures and beginning of fiscal year authorizations to presidents and chancellor; and approval of change orders for the Lawrence Hall project at Sul Ross State University. Review and approval of authorizations and recommendations concerning the transfer of the Lamar University System components into the Texas State University System; and employment of firms to provide bond counsel and financial services to the system. (Where appropriate and permitted by law, executive sessions may be held for the above listed subjects.)

Contact: Lamar Urbanovsky, 333 Guadalupe, Tower III, Suite 810, Austin, Texas 78701, (512) 463-1808.

Filed: August 25, 1995, 8:55 a.m.

TRD-9510791

Texas Turnpike Authority

Wednesday, September 6, 1995, 9:30 a.m.

3015 Raleigh Street

Dallas

Budget Committee Meeting

AGENDA:

Roll call of committee members.

Recognition of other directors present.

1. Discussion of preliminary approval of proposed operating budgets for calendar year 1996.

a. Dallas North Tollway budgets.

b. Mountain Creek Lake Bridge budgets.

c. Feasibility study fund budget.

2. Executive session-pursuant to Chapter 551, Subchapter D, Texas Government Code, §551.074(a), deliberation concerning appointment, employment, reassignment, duties, discipline, and/or dismissal of various staff persons.

3. Consider resolutions recommending (a) Dallas North Tollway 1996 budgets, (b) Mountain Creek Lake Bridge 1996 budgets, and (c) Feasibility study fund budget for 1996, and (d) transfer of capital from the DNT capital improvement fund to the TTA feasibility fund.

Adjournment

Contact: Jimmie G. Newton, 3015 Raleigh Street, Dallas, Texas 75219, (214) 522-6200.

Filed: August 24, 1995, 10:48 a.m.

TRD-9510737

Wednesday, September 6, 1995, 11:00 a.m.

3015 Raleigh Street

Dallas

Legislative Committee Meeting

AGENDA:

Roll call of committee members.

Recognition of other directors present.

1. Discussion with staff and general counsel of policy and legislative matters relative to Sunset Commission review of the TTA in 1997 and Acts of the 74th Legislature.

2. Executive session-pursuant to Chapter 551, Subchapter D, Texas Government Code, §551.075; receive information from staff relative to sunset review of TTA in 1997 and potential future policies and legislation beneficial to TTA.

3. Consider adoption of committee recommendation concerning potential future policies and legislation for presentation to Board of Directors of the TTA and the Sunset Commission.

Adjournment

Contact: Jimmie G. Newton, 3015 Raleigh Street, Dallas, Texas 75219, (214) 522-6200.

Filed: August 24, 1995, 10:48 a.m.

TRD-9510736

The University of Texas at Austin

Monday, August 28, 1995, 11:00 a.m.

21st and San Jacinto Streets, Ex-Students' Association

Austin

Council for Intercollegiate Athletics for Women

AGENDA:

I. Call to order

II. Approval of minutes of the previous meeting

III. New business

IV. Announcements/information reports

V. Adjournment

Contact: Jody Conradt, Belmont Hall 718, Austin, Texas 78712-1286, (512) 471-7693.

Filed: August 24, 1995, 4:50 p.m.

TRD-9510785

Regional Meetings

Meetings Filed August 24, 1995

The Andrews Center Board of Trustees met at 2323 West Front Street, Tyler, August 29, 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-9510772.

The Andrews Center Board of Trustees met at 2323 West Front Street, Board Room, Tyler, August 31, 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-9510784.

The Bandera County Appraisal District (Revised Agenda.) Board of Directors met at the Bandera County Appraisal District, 1116 Main Street, Bandera, August 29, 1995, at 3:00 p.m. Information may be obtained from P. H. Coates, IV, P.O. Box 1119, Bandera, Texas 78003, (210) 796-3039. Fax: (210) 796-3672. TRD-9510745.

The Bastrop Central Appraisal District Board of Directors met at 1200 Cedar Street, Bastrop, August 29, 1995, at 7:30 p.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, (512) 321-3925. TRD-9510770.

The Deep East Texas Council of Governments Budget Committee met at 274 East Lamar Street, Jasper, August 29, 1995, at 1:00 p.m. Information may be obtained from Walter G. Diggles, 274 East Lamar Street, Jasper, Texas 75951, (409) 384-5704. TRD-9510781.

The Texas Panhandle Mental Health Authority Board of Trustees, TPMHA met at 7201 I-40 West, Second Floor, Amarillo, August 31, 1995, at 11:00 a.m. Information may be obtained from Shirley Hollis, P.O. Box 3250, Amarillo, Texas 79116-3250, (806) 353-3699, fax: (806) 353-9537. TRD-9510769.

The San Antonio-Bexar County Metropolitan Planning Organization Transportation Steering Committee met at the International Conference Center, Convention Center Complex, San Antonio, August 28, 1995, at 1:30 p.m. Information may be obtained from Janet A. Kennison, 434 South Main, Suite 205, San Antonio, Texas 78204, (210) 227-8651. TRD-9510773.

The Sharon Water Supply Corporation Board of Directors met at the office of Sharon Water Supply Corporation, Route 5, Box 50361, Winnsboro, August 28, 1995, at 7:00 p.m. Information may be obtained from Gerald Brewer, Route 5, Box 50361, Winnsboro, Texas 75494. (903) 342-3525. TRD-9510749.

The Upper Leon River Municipal Water District Board of Directors met at the General Office, located off FM 2861, Lake Proctor Dam, Comanche, August 29, 1995, at 6:30 p.m. Information may be obtained from Gary D. Lacy, P. O. Box 67, Comanche, Texas 76442, (817) 879-2258. TRD-9510786.

Meetings Filed August 25, 1995

The Ark-Tex Council of Governments (ATCOG) met at 2425 Ferguson Road, Mt. Pleasant, August 31, 1995, at 5:30 p.m. Information may be obtained from Becky Borgeson, P.O. Box 5307, Texarkana, Texas 75505, (903) 832-8636. TRD-9510834.

The Central Counties Center for MHMR Services (Emergency Meeting.) Board of Trustees met at 304 South 22nd Street, Temple, August 29, 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-9510808.

The Education Service Center, Region III Board of Directors met at 1905 Leary Lane, Victoria, August 30, 1995, at 10:30 p.m. Information may be obtained from Julius D. Cano, 1905 Leary Lane, Victoria, Texas 77901, (512) 573-0731. TRD-9510789.

The Education Service Center, Region III Board of Directors met at 1905 Leary Lane, Victoria, August 30, 1995, at 1:30 p.m. Information may be obtained from Julius D. Cano, 1905 Leary Lane, Victoria, Texas 77901, (512) 573-0731. TRD-9510788.

The Garza Central Appraisal District Board of Directors met at 124 East Main, Post, August 30, 1995, at 9:00 a.m. Information may be obtained from Billie Y. Windham, P.O. Drawer F, Post, Texas 79356, (806) 495-3518. TRD-9510798.

The Gonzales County Appraisal District Appraisal Review Board will meet at 928 St. Paul, Gonzales, September 7, 1995, at 9:00 a.m. Information may be obtained from Connie Barfield or Glenda Strackbein, 928 St. Paul, Gonzales, Texas 78629, (210) 672-2879 or Fax: (210) 672-8345. TRD-9510842.

The Heart of Texas Council of Governments Executive Committee met at 300 Franklin Avenue, Waco, August 31, 1995, at 4:00 p.m. Information may be obtained from Donna Teat, 300 Franklin Avenue, Waco, Texas 76701, (817) 756-7822. TRD-9510838.

The Heart of Texas Council of Governments Board of Directors (Semi-Annual Meeting) met at 3900 Parrish, Waco, August 31, 1995, at 6:00 p.m. Information may be obtained from Donna Teat, 300 Franklin Avenue, Waco, Texas 76701, (817) 756-7822. TRD-9510839.

The Kempner Water Supply Corporation Board of Directors met at the Lampasas County Courthouse, 400 South Live Oak, Lampasas, August 30, 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-9510807.

The Lavaca County Central Appraisal District Appraisal Review Board will meet at 113 North Main Street, Hallettsville, September 7, 1995, at 9:00 a.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396. TRD-9510793.

The Lavaca County Central Appraisal District Agricultural Appraisal Advisory Board will meet at 113 North Main Street, Hallettsville, September 8, 1995, at 8:00 a.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396. TRD-9510794.

The Lavaca County Central Appraisal District Board of Directors will meet at 113 North Main Street, Hallettsville, September 11, 1995, at 4:00 p.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396. TRD-9510849.

The Panhandle Ground Water Conservation District Number 3 Board of Directors (Public Meeting) met at the District Office, 300 South Omohundro Street, White Deer, August 30, 1995, at 7:30 p.m. Information may be obtained from C. E. Williams, Box 637, White Deer, Texas 79097, (806) 883-2501. TRD-9510811.

The Panhandle Ground Water Conservation District Number 3 Board of Directors (Public Meeting) met at the District Office, 300 South Omohundro Street, White Deer, August 30, 1995, at 8:00 p.m. Information may be obtained from C. E. Williams, Box 637, White Deer, Texas 79097, (806) 883-2501. TRD-9510812.

The Panhandle Ground Water Conservation District Number 3 Board of Directors (Public Meeting) met at the District Office, 300 S Omohundro Street, White Deer, August 30, 1995, at 8:30 p.m. Information may be obtained from C. E. Williams, Box 637, White Deer, Texas 79097, (806) 883-2501. TRD-9510813.

The Upper Leon River Municipal Water District (Revised Agenda.) Board of Directors met at the General Office, located off FM 2861, Lake Proctor Dam, Comanche, August 29, 1995, at 6:30 p.m. Information may be obtained from Gary D. Lacy, P.O. Box 67, Comanche, Texas 76442, (817) 879-2258. TRD-9510835.

Meetings Filed August 28, 1995

The Austin-Travis County MHMR Center (Emergency Meeting.) Board of Trustees met at 1430 Collier Street, Board Room, Austin, August 29, 1995, at 5:30 p.m. (This is the only time a quorum of Trustees would be available.) Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78764-3548. TRD-9510879.

The Education Service Center, Region III (Revised Agenda.) Board of Directors met at 1905 Leary Lane, Victoria, August 30, 1995, at 1:30 p.m. Information may be obtained from Julius D. Cano, 1905 Leary Lane, Victoria, Texas 77901, (512) 573-0731. TRD-9510870.

The Fisher County Appraisal District FCAD Board of Directors will meet in the Fisher County Courtroom, Fisher County Court House, Roby, September 14, 1995, at 8:00 a.m. Information may be obtained from Betty Mize, P.O. Box 516, Roby, Texas 79543, (915) 776-2733. TRD-9510888.

The Hood County Appraisal District Board of Directors will meet at 1902 West Pearl Street, District Office, Granbury, September 12, 1995, at 7:30 p.m. Information may be obtained from Harold Chesnut, P.O. Box 819, Granbury, Texas 76048, (817) 573-2471. TRD-9510872.

The South Texas Private Industry Council Incorporated met at 901 Kennedy Street, Zapata, August 31, 1995, at 4:00 p.m. Information may be obtained from Myrna V. Herbst, P.O. Box 1757, Laredo, Texas 78044-1757, (210) 722-0546. TRD-9510851.

The Tyler County Appraisal District Board of Directors will meet at 806 West Bluff, Woodville, September 7, 1995, at 4:00 p.m. Information may be obtained from Eddie Chalmers, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9510860.

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**Meetings Filed August 29,
1995**

The Permian Basin Regional Planning Commission Policy Advisory Committee will meet at the Midland Center, 105 North

Main, Midland, September 19, 1995, at 2:00 p.m. Information may be obtained from Jerry Tschauner, P.O. Box 60660, Midland, Texas 79711, (915) 563-1061. TRD-9510903.

The Permian Basin Regional Planning Commission Policy Advisory Committee will meet at Abel Junior High, 3201 Heritage Boulevard, Midland, September 19, 1995, at 6:00 p.m. Information may be obtained from Jerry Tschauner, P.O. Box 60660, Midland, Texas 79711, (915) 563-1061. TRD-9510902.

The Permian Basin Regional Planning Commission Policy Advisory Committee

will meet at the Ector County Courthouse Annex, 1010 East Eighth Street, Odessa, September 21, 1995, at 2:00 p.m. Information may be obtained from Jerry Tschauner, P.O. Box 60660, Midland, Texas 79711, (915) 563-1061. TRD-9510901.

The Permian Basin Regional Planning Commission Policy Advisory Committee will meet at the Ector Junior High School, 809 West Clements, Odessa, September 21, 1995, at 6:00 p.m. Information may be obtained from Jerry Tschauner, P.O. Box 60660, Midland, Texas 79711, (915) 563-1061. TRD-9510900.

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IN ADDITION

The **Texas Register** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Office of the Attorney General Correction of Error

The Office of the Attorney General adopted an amendment to §61.10, concerning crime victims compensation. The rule appeared in the August 15, 1995, issue of the *Texas Register* (20 TexReg 6201).

Due to submission the last paragraph of the rule as adopted was not included in the publication. It follows the last section (7) and states: "Under unusual fact and circumstance, the Chief may authorize awards in excess of the limits contained in this rule."

Texas Clean Air Act Enforcement Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Clean Air Act. The Texas Health and Safety Code, §382.096, provides that before the State may settle a judicial enforcement action under the Clean Air Act, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Clean Air Act.

Case Title and Court: Harris County and State of Texas v. Waste Recovery, Inc., Cause Number 94-038960, 164th District County, Harris County, Texas.

Nature of Defendant's Operations: Waste Recovery, Inc. (WRI), operates a waste tire recovery facility.

Proposed Agreed Judgment: The Agreed Final Judgment orders WRI to comply with regulations concerning air

pollution, water pollution, and management of waste tires, and further orders WRI to perform a Supplemental Environmental Project by removing 8,000 cubic yards of waste from an abandoned dump site.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment and written comments on the judgment should be directed to Burgess Jackson, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

Issued in Austin, Texas on August 24, 1995

TRD-9510733

Jerry Benedict
Assistant Attorney General
Office of the Attorney General

Filed: August 24, 1995

Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons

Correction of Error

The Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons submitted an open meeting. The meeting was published in the August 25, 1995, issue of the *Texas Register* (20 TexReg 6684)

Due to publication error, the meeting date was incorrect. The correct meeting date should be August 31, 1995.

Comptroller of Public Accounts Local Sales Tax Changes Effective October 1, 1995

The 1.0% city sales tax will become effective October 1, 1995, in the following cities.

026 - Local Sales Tax Changes Effective October 1, 1995 - figure 1.

City Name	City Code	New Rate	Combined Rate
Bardwell (Ellis County)	2070149	0.01000	0.07250
Industry (Austin County)	2008066	0.01000	0.07750

026 - Local Sales Tax Changes Effective October 1, 1995 - figure 2.

City Name	City Code	New Rate	Combined Rate
*DeSoto (Dallas County)	2057182	0.02000	0.08250

026 - Local Sales Tax Changes Effective October 1, 1995 - figure 3.

City Name	City Code	New Rate	Combined Rate
*Gainesville (Cooke County)	2049012	0.01500	0.08250
Galveston (Galveston County)	2084018	0.02000	0.08250
*Sugar Land (Fort Bend County)	2079051	0.02000	0.08250

026 - Local Sales Tax Changes Effective October 1, 1995 - figure 4.

City Name	City Code	New Rate	Combined Rate
*Brenham (Washington County)	2239012	0.01500	0.08250
*New Braunfels (Comal County)	2046015	0.01500	0.08250
*New Braunfels (Guadalupe County)	2046015	0.01500	0.08250

026 - Local Sales Tax Changes Effective October 1, 1995 - figure 5.

City Name	City Code	New Rate	Combined Rate
Anson (Jones County)	2127026	0.02000	0.08250
Arcola (Fort Bend County)	2079131	0.02000	0.08250
Atlanta (Cass County)	2034028	0.02000	0.08250
Buffalo (Leon County)	2145015	0.01500	0.08250
*Canadian (Hemphill County)	2106012	0.02000	0.08250
Celina (Collin County)	2043090	0.01500	0.07750
Clarendon (Donley County)	2065011	0.01500	0.07750
Clyde (Callahan County)	2030013	0.01500	0.07750
Crockett (Houston County)	2113013	0.01500	0.08250
*Duncanville (Dallas County)	2057084	0.02000	0.08250
Franklin (Robertson County)	2198039	0.01500	0.07750
*Frona (Parmer County)	2185016	0.02000	0.08250
*Grand Saline (Van Zandt County)	2234026	0.02000	0.08250
*Groom (Carson County)	2033038	0.02000	0.08250
*Gruver (Hansford County)	2098021	0.02000	0.08250
Kemp (Kaufman County)	2129033	0.01500	0.07750
Kerrville (Kerr County)	2133019	0.01500	0.08250
Lake Jackson (Brazoria County)	2020097	0.01500	0.08250
*Lancaster (Dallas County)	2057020	0.02000	0.08250
Liberty (Liberty County)	2146032	0.01500	0.08250
Lorena (McLennan County)	2161103	0.01500	0.08250
*Merkel (Taylor County)	2221021	0.02000	0.08250
*Montgomery (Montgomery County)	2170040	0.02000	0.08250
Nash (Bowie County)	2019063	0.01500	0.08250
Olton (Lamb County)	2140047	0.01500	0.07750
*Prosper (Collin County)	2043125	0.02000	0.08250
*Roma Los Saenz (Starr County)	2214011	0.02000	0.08250
Runaway Bay (Wise County)	2249109	0.01500	0.08250
Seagoville (Dallas County)	2057208	0.02000	0.08250
Seagoville (Kaufman County)	2057208	0.02000	0.08250
Tye (Taylor County)	2221049	0.01500	0.07750
Van Horn (Culberson County)	2055013	0.01500	0.07750
West Columbia (Brazoria County)	2020060	0.01500	0.08250
Winfield (Titus County)	2225036	0.01500	0.08250

026 - Local Sales Tax Changes Effective October 1, 1995 - figure 6.

City Name	City Code	New Rate	Combined Rate
Llano (Llano County)	2150017	0.02000	0.08250

026 - Local Sales Tax Changes Effective October 1, 1995 - figure 7.

City Name	City Code	New Rate	Combined Rate
Hawley (Jones County)	2127044	0.02000	0.08250
Knox City (Knox County)	2138014	0.02000	0.08250
Somerset (Bexar County)	2015165	0.02000	0.08250
Sunnyvale (Dallas County)	2057244	0.02000	0.08250

026 - Local Sales Tax Changes Effective October 1, 1995 - figure 8.

City Name	City Code	New Rate	Combined Rate
*Brenham (Washington County)	2239012	0.01500	0.08250
Lubbock (Lubbock County)	2152015	0.01125	0.07875
*New Braunfels (Comal County)	2046015	0.01500	0.08250
*New Braunfels (Guadalupe County)	2046015	0.01500	0.08250

026 - Local Sales Tax Changes Effective October 1, 1995 - figure 9.

City Name	City Code	New Rate	Combined Rate
*Gainesville (Cooke County)	2049012	0.01500	0.08250
*Lancaster (Dallas County)	2057020	0.02000	0.08250
*Sugar Land (Fort Bend County)	2079051	0.02000	0.08250

026 - Local Sales Tax Changes Effective October 1, 1995 - figure 10.

City Name	City Code	New Rate	Combined Rate
Alvarado (Johnson County)	2126054	0.01500	0.07750
Balch Springs (Dallas County)	2057119	0.01500	0.07750

Bedford (Tarrant County)	2220102	0.01500	0.07750
*Canadian (Hemphill County)	2106012	0.02000	0.08250
Dalhart (Dallam County)	2056012	0.02000	0.08250
Dalhart (Hartley County)	2056012	0.02000	0.08250
*DeSoto (Dallas County)	2057182	0.02000	0.08250
*Duncanville (Dallas County)	2057084	0.02000	0.08250
Earth (Lamb County)	2140038	0.01500	0.07750
Friendswood (Galveston County)	2084054	0.01500	0.07750
Friendswood (Harris County)	2084054	0.01500	0.07750
*Friona (Parmer County)	2185016	0.02000	0.08250
*Grand Saline (Van Zandt County)	2234026	0.02000	0.08250
*Groom (Carson County)	2033038	0.02000	0.08250
*Gruver (Hansford County)	2098021	0.02000	0.08250
Hamlin (Fisher County)	2127017	0.02000	0.08250
Hamlin (Jones County)	2127017	0.02000	0.08250
Hitchcock (Galveston County)	2084036	0.02000	0.08250
Jersey Village (Harris County)	2101133	0.01500	0.07750
Kenefick (Liberty County)	2146103	0.01500	0.08250
*Merkel (Taylor County)	2221021	0.02000	0.08250
*Montgomery (Montgomery County)	2170040	0.02000	0.08250
*Prosper (Collin County)	2043125	0.02000	0.08250
*Roma Los Saenz (Starr County)	2214011	0.02000	0.08250
Scotland (Archer County)	2005032	0.01500	0.08250
Sunset Valley (Travis County)	2227070	0.01500	0.07750
Village of Pleak (Fort Bend County)	2079140	0.01500	0.07750

026 - Local Sales Tax Changes Effective October 1, 1995 - figure 11.

<u>County Name</u>	<u>County Code</u>	<u>New Rate</u>	<u>Combined Rate</u>
Kleberg County	4137006	0.00500	0.06750
Oldham County	4180002	0.00500	0.06750
Terry County	4223001	0.00500	0.06750

026 - Local Sales Tax Changes Effective October 1, 1995 - figure 12.

<u>County Name</u>	<u>County Code</u>	<u>New Rate</u>	<u>Combined Rate</u>
Terrell County	4222002	0.01000	0.07250

026 - Local Sales Tax Changes Effective October 1, 1995 - figure 13.

<u>SPD Name</u>	<u>SPD Code</u>	<u>New Rate</u>	<u>Combined Rate</u>
Fort Worth Crime Control District	5220503	0.00500	See Note Below

<>Note: The boundaries of the Fort Worth Crime Control District are the same boundaries as the City of Fort Worth. The combined rate in the City of Fort Worth will be 0.08250.

026 - Local Sales Tax Changes Effective October 1, 1995 - figure 14.

<u>MTA Name</u>	<u>MTA Code</u>	<u>New Rate</u>	<u>Combined Rate</u>
Austin MTA (Capital Metro)	3227999	0.01000	0.07250

*These cities have a rate increase for economic and industrial development and a rate increase for property tax relief. Both rate increases will become effective October 1, 1995. The new rate and the combined rate include both increases.

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

TRD-9510797 Martin Cherry
Chief, General Law
Comptroller of Public Accounts

Filed: August 25, 1995

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**Texas Court Reporters Certification
Board**

Certification of Court Reporters

Following the examination of applicants on July 28, 1995, the Court Reporters Certification Board certified to the Supreme Court the following individuals who are qualified in the method indicated to practice shorthand reporting pursuant to the Texas Government Code, Chapter 52, Texas Civil Statutes:

MACHINE SHORTHAND: Sara Lisa Allen-Cleburne; Diana Austin-Norco; Lori Ann Balzer-Austin; Cinnamon Berry-The Colony; Jamie Marie Boudreaux-Dallas; Shera D. Buhrkuhl-Dallas; Cynthia R. Clanton-Arlington; Sharolyn Coleman-Dallas; Amy Davidson Enberg-Dallas; Carol Ann Feder-Van Nuys, CA; Shara Lynn Hamrick-Kemah; Maury Kelly Harbin-Benbrook; Ellen Kay Huffman-Leander; William Bernard Jalufka-Blessing; Janice Kay Le Sueur-The Woodlands; Jerrold Phillip Lefler-Coppell; Eva Lynn Pagano-Houston; Raquel Alicia Rios-Corpus Christi; Cori Shea Savage-Abilene; Lisa Renee Seburn-LaPorte; Sandy Ann Treft-Frisco; Teresa Sandoval Ward-Aubrey; Gina Lynn Watson-Houston; Jill Marie Webb-Dickinson; and Jodi Lynn Wells-Deer Park.

Issued in Austin, Texas, on August 24, 1995.

TRD-9510747 Peg Liedtke
Executive Secretary
Texas Court Reporters Certification Board

Filed: August 24, 1995

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Reprimands

On July 29, 1995, the Texas Court Reporters Certification Board issued a reprimand to Elizabeth Weldon of League City, Texas, as a Certified Shorthand Reporter (CSR Number 4832) in the State of Texas. The Board found that Ms. Weldon engaged in acts which constitute willful or negligent violation or failure of duty and unprofessional conduct. The reprimand is suspended provided Ms. Weldon successfully passes a written examination prepared by the

Board on the rules of court reporting procedures within a 12-month period. If Ms. Weldon cannot successfully pass this written test within three attempts, then the reprimand becomes effective immediately.

On July 29, 1995, the Texas Court Reporters Certification Board issued a reprimand to Sherry B. Turner of Missouri City, Texas, as a Certified Shorthand Reporter (CSR Number 3657) in the State of Texas. The Board found that Ms. Turner engaged in acts which constitute willful or negligent violation or failure of duty and unprofessional conduct. The reprimand is suspended provided Ms. Turner successfully passes a written examination prepared by the Board on the rules of court reporting procedures within a 12-month period. If Ms. Turner cannot successfully pass this written test within three attempts, then the reprimand becomes effective immediately.

Issued in Austin, Texas, on August 21, 1995.

TRD-9510746 Peg Liedtke
Executive Secretary
Texas Court Reporters Certification Board

Filed: August 24, 1995

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**Texas Department of Health
Public Hearing**

The Texas Department of Health (department) recently published the proposed repeal of existing 25 Texas Administrative Code, §§119.1-119.15 and new §§119.1-119.14 concerning health maintenance organizations. The proposed repeal and new sections were published in the August 8, 1995, issue of the *Texas Register* (20 TexReg 5990).

The department will hold a public hearing on the proposed repeal and new sections on Friday, September 8, 1995 at the Texas Department of Health, 1100 West 49th Street, Room K-100, Austin, Texas 78756-3183. If you have any questions regarding the proposed new section or the public hearing, contact Christine Cordes, RN, MSN, Health Facility Licensing Division, at (512) 834-6647.

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

TRD-9510843 Susan K. Steeg
General Counsel
Texas Department of Health

Filed: August 25, 1995

**Texas Department of Housing and
Community Affairs**
Home Investment Partnership Program
Policies and Procedures for Rental
Project Assistance

The following policies and procedures apply to the use and distribution of HOME Investment Partnerships Program Rental Project Assistance funds when combined with Low-Income Housing Tax Credits. The Texas Department of Housing and Community Affairs (Department) is creating policies and procedures applicable to HOME which is administered by the Department on behalf of the State of Texas (State). The United States Department of Housing and Urban Development (HUD) through the HOME Program provides funds to the State pursuant to Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, (42 United States Code section 12701-12839) and HUD's Regulations at 24 Code of Federal Regulations (CFR) Part 92, as may be amended from time to time.

I. Definitions: The following words and terms, when used in these policies and procedures, shall have the following meanings, unless the context clearly indicates otherwise.

Board—The governing body of the Texas Department of Housing and Community Affairs.

Community Housing Development Organization (CHDO)—A private non-profit organization as defined by 24 CFR 92.2.

HOME—The HOME Investment Partnerships Program pursuant to 42 United States Code section 12701-12839 and HUD regulations at 24 CFR Part 92, as amended.

HUD—The United States Department of Housing and Urban Development, or its successor.

Low-income families—Families whose annual incomes do not exceed 80% of the median income for the area, as determined by HUD, with adjustments for family size.

Low Income Housing Tax Credit Program—As per the Internal Revenue Code of 1986, Section 42 as amended, Department program which provides allocation of credits against federal income taxes for owners of qualified low-income rental housing projects.

Participating jurisdiction (PJ)—any state or unit of general local government, including consortia per 24 CFR 92.101, as designated by HUD in accordance with 24 CFR 92.105.

Project—A site or an entire building, or two or more buildings, together with the site or sites on which the building or buildings are located, that are under common ownership, management, and financing and are to be assisted with HOME funds, under a commitment by the owner, as a single undertaking under 24 CFR Part 92.2. Project includes all the activities associated with the site and building. A project may include more than one site only if the sites are within a four block area of each other.

Public housing agency (PHA)—any state, county, municipality or other governmental entity or public body (or its agency or instrumentality) that is authorized to engage in or assist in the development or operation of low-income housing.

Single room occupancy (SRO) housing—Housing consisting of single room dwelling units that is the primary

residence of its occupant or occupants. Unit must contain either food preparation or sanitary facilities (or both) if the projects consists of new construction, conversion of non-residential space, or reconstruction. For acquisition or rehabilitation of an existing residential structure or hotel, neither food preparation nor sanitary facilities are required to be in the unit. If units do not contain sanitary facilities, the building must contain sanitary facilities that are shared by tenants. SRO does not include facilities for students.

Transitional housing—Housing that (1) is designed to provide housing and appropriate support services to persons, including (but not limited to) de-institutionalized individuals with disabilities, homeless individuals with disabilities, and homeless families with children; and (2) has as its purpose facilitating the movement of individuals and families to independent living within a time period that is set by the participating jurisdiction or project owner before occupancy.

Unit of General Local Government—A city, town, county, or other general purpose political subdivision of the State; a consortium of such subdivisions recognized by HUD in accordance with 24 CFR Part 92.101; and any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive to act on behalf of the jurisdiction. An urban county is considered a unit of general local government under the HOME Program.

Very Low-Income Families—Low-income families whose annual incomes do not exceed 50% of the median family income for the area as established by HUD, with adjustments for family size.

II. Applicant Requirements:

(a) **Eligible Applicants.** The following organizations or entities are eligible to apply for HOME Rental Project Assistance funds unless otherwise approved by the Board and/or set out in the application:

- (1) nonprofit organizations which have established status under the Internal Revenue Code of 1986, section 501(c), and state chartered non-profit organizations;
- (2) units of general local government;
- (3) for-profit housing development entities; and
- (4) public housing agencies.

(b) **Performance requirements:** Applicants must satisfy each of the following requirements in order to be eligible to apply for HOME Program funding:

- (1) demonstrate that applicant has satisfactorily met fiscal, programmatic, and contract compliance on existing or prior Department contracts.
- (2) demonstrate reasonable expenditure and project performance on open HOME contracts.
- (3) provide evidence of their ability to carry out the project in the areas of financing, acquiring, rehabilitating, developing or managing affordable housing developments.
- (4) have resolved any previous audit findings and outstanding monetary obligations with the Department.

III. Limitations:

(1) **Income Targeting:** The HOME Program requires that 100% of all rental units assisted with HOME funds be used for rental housing benefiting low income families with annual incomes that do not exceed 80% of the

median income for the area, as determined and made available by HUD, with adjustments for smaller and larger families at the time of occupancy or at the time funds are invested, whichever is later.

In addition, at initial occupancy, at least 90% of HOME-assisted units must be occupied by households with incomes at or below 60% of the area median income. In the case of projects with three or more rental units, or in the case of an owner of multiple one or two unit projects with a total of three or more rental units, not less than 20% of the HOME-assisted units in a project must be occupied by very-low income families (50% or less of the area median income). In determining the income eligibility of a household, the household's income must be calculated in a manner consistent with the methods used under Section 8 of the United States Housing Act of 1937 (or, if such program is terminated, under such program as in effect immediately before such termination).

(2) **Rent Limits:** The HOME and Low-Income Housing Tax Credit Programs place limits on rents that may be charged for HOME-assisted and Low-Income Housing Tax Credit units. In regards to HOME-assisted units, with the exception of one and two unit rental projects, each project has two HOME rents: "High HOME Rents" and "Low HOME Rents." In one- or two-unit rental projects, the High HOME Rents apply to all HOME-assisted units.

High HOME Rents are the maximum rents that may be charged for the remaining HOME-assisted units. High HOME Rents are the lesser of the Section 8 Fair Market Rents (FMR) and HUD's 65% Rent limits.

Low HOME Rents are the maximum rents that can be applied to at least 20% of the HOME-assisted units in a rental project of three or more HOME-assisted units. Low HOME Rents are the lesser of the Section 8 Fair Market Rents (FMR) and HUD's 50% Rent limits. These units must be occupied by households with incomes at or below 50% of the area median income.

Low-Income Housing Tax Credit units may not exceed the applicable 50% or 60% tax credit rent limit as established by HUD.

In determining the maximum monthly rent that may be charged for a unit that is subject to this limitation, the owner must subtract a monthly allowance for any utilities and services (excluding telephone) to be paid by the household.

In the event that there is a conflict in the amount of rent charged to a unit (HOME rent versus Low-Income Housing Tax Credit rent), the most restrictive rent applies.

(3) **Maximum HOME Per-Unit Subsidy Amount:** HOME Rental Project Assistance funds may not exceed \$10,000 per HOME-assisted unit.

(4) **Total Per Unit Cost Limit:** The total per unit cost will be the lesser of the per unit dollar limits established by HUD under Section 221(d)(3) of the National Housing Act that apply to the area in which the housing is located or that which is applicable under the Low-Income Housing Tax Credit Program.

(5) **Type of Development:** Multi-family, Single-family, Cooperative, Transitional Housing, Congregate Care, Scattered Site, or other developments eligible under the HOME and Low-Income Housing Tax Credit Programs.

(6) **Types of Units:** Apartment, One- to four-family residence, Single room occupancy housing (SRO),

Townhouse, Semi-detached, or Detached, or other types of units eligible under the HOME and Low-Income Housing Tax Credit Programs.

IV. Site and Neighborhood Standards: HOME-assisted rental housing projects must meet applicable site and neighborhood standards as specified in 24 CFR 92.202.

V. Displacement, Relocation, and Acquisition: HOME-assisted rental housing projects involving displacement or relocation, must adhere to the Uniform Relocation Assistance and Real Property Policies Act of 1970, and its implementing regulations, 49 CFR Part 24; Section 104(d) of the Housing and Community Development Act; and 24 CFR 92.353.

VI. Compliance and Extended Use Period:

Compliance Period: The compliance period is 15 years (20 years if new construction or acquisition of newly constructed housing) unless a longer period is elected by the project owner.

Extended Use Period: The extended use period begins on the 1st day of the compliance period and ends on the later of:

- (a) the date specified by the Department in a written agreement, or
- (b) the date which is 15 years after the close of the compliance period.

VII. Participating Jurisdictions: Applicants may submit applications for rental housing projects located in a participating jurisdiction designated by HUD; however, the Department will give priority to rental housing projects located in non-participating jurisdictions with populations not exceeding 40,000.

VIII. Eligible Activities: HOME funds may be used to develop and support affordable rental housing through the acquisition, new construction, reconstruction or rehabilitation of non-luxury housing with suitable amenities, including real property acquisition, site improvements, conversion, demolition, and other expenses specified in 24 CFR 92.205.

IX. Prohibited Activities: HOME funds for Rental Project Assistance may not be used per 24 CFR Part 92.214 to:

- (1) provide a project reserve account for replacements, a project reserve account for unanticipated increases in operating costs, or operating subsidies;
- (2) provide Tenant-Based Rental Assistance for existing Section 8 Programs, or preventing displacement from rental projects;
- (3) provide non-federal matching contributions for other programs;
- (4) provide assistance to PHA owned or leased projects;
- (5) carry out Public Housing Modernization;
- (6) provide pre-payment of low-income housing mortgages under 24 CFR Part 248;
- (7) provide assistance to a project previously assisted with HOME funds during the period of affordability; and
- (8) provide funds to reimburse a grantee for acquisition costs for a property they already own.

X. Eligible Project Costs: HOME Rental Project Assistance funds may be used to pay the following costs: development hard costs, related soft costs, relocation costs,

and operating and administrative costs as allowed in 24 CFR 92.206, 92.207 and 92.208.

XI. Distribution of Funds: HOME Rental Project Assistance funds will be distributed through an application process and will be awarded on a repayable or deferred loan basis. An amount designated in the HOME Program Funding Plan will be reserved for HOME Rental Project Assistance applicants that apply for and receive an allocation of tax credits during the 1995B Low-Income Housing Tax Credit allocation round. The deadline for application submission will be published in a Notice of Funding Availability (NOFA) in the *Texas Register*.

(1) **Reallocation:** If HOME funds reserved for this category remain available after HOME Rental Project Assistance applications have been funded, then the remaining balance of funds will be transferred to the regular Rental Project Assistance fund of the HOME Program and the Department will designate these remaining funds as additional funds under that HOME activity.

(2) **Marginal Applications:** If remaining HOME funds reserved for this category are insufficient to completely fund the next ranked HOME Rental Project Assistance application, the Department is authorized to reduce the amount of the request or transfer the remaining funds to the regular Rental Project Assistance fund of the HOME Program and designate these remaining funds as additional funds under that HOME activity.

(3) **Denial of Low-Income Housing Tax Credits:** If a Low-Income Housing Tax Credit applicant does not receive a 1995B tax credit allocation, their HOME Rental Project Assistance application submitted under this category will not be considered for HOME funding.

(4) **Terms of HOME Loan:** 3.0% interest rate amortized over 30 years.

XII. HOME Application Review Procedures: Applications will be selected through an application process.

(1) **Application Process:** Upon receipt, HOME Rental Project Assistance applications will be reviewed by Department staff for completeness. Incomplete applications (information not provided in the application as requested by the Department) and applications containing false information will be disqualified. Disqualified applicants will be notified in writing.

(2) **Selection Procedures:**

(A) HOME Rental Project Assistance and Low-Income Housing Tax Credit applications will be reviewed by Department staff to ensure that the proposed rental housing project meets applicable HOME and Low-Income Housing Tax Credit requirements.

(B) The highest ranked Low-Income Housing Tax Credit applicants from the Rural and General Projects Set-Aside, that have identified HOME Rental Project Assistance Funds as a source of funds in their application, must receive an underwriting analysis by the Department's Underwriting staff. The underwriting process will include an analysis of whether the project is eligible for 9.0% or 4.0% tax credits. The Low-Income Housing Tax Credit applicant must receive a minimum score of 65.0 from the Underwriting Department to be considered for funding for HOME Rental Project Assistance funds.

(C) HOME Rental Project Assistance funding priority will be given to multi-family projects in non-participating jurisdictions with populations not exceeding 40,000.

(D) Low-Income Housing Tax Credit applicants that have identified HOME Rental Project Assistance funds as a source of funds in their application, and have received a minimum score of 65.0 from the Underwriting Department, will be presented to the Board for the approval of Low-Income Housing Tax Credits and HOME Rental Project Assistance funds, pending the availability of HOME Rental Project Assistance Funds.

(E) Board approval for award of HOME Rental Project Assistance Funds will be conditional upon a successful loan closing.

XIII. Program Administration:

(1) **Agreement.** Upon approval by the Board, each HOME recipient shall be required to enter into, execute, and deliver to the Department all written agreements required by the Department.

(2) **Amendments.** Where extenuating circumstances exist, and upon recommendation by the Department, the Board may modify, amend, or reduce the funding level or the scope of activities as needed to meet federal, state, or local requirements.

(3) **Deobligation.** The Department reserves the right to deobligate funds if a HOME recipient fails to expend funds in a timely manner or performs any activities construed as breach of contract, or as set out in the agreements referenced in Part XIII(1).

Issued in Austin, Texas, on August 28, 1995.

TRD-9510856

Larry Paul Manley
Executive Director
Texas Department of Housing and
Community Affairs

Filed: August 28, 1995

Notice of Fund Availability

The Texas Department of Housing and Community Affairs (TDHCA), through its HOME Investment Partnership Program, announces the availability of funds for the development and support of decent, safe and affordable rental housing for low- and very-low income persons and families. As of the date of this NOFA, TDHCA intends to make approximately \$3 million in HOME funds available for applicants that apply for and receive an allocation of tax credits during the 1995B Low-Income Housing Tax Credit allocation round. These funds will be distributed according to the rules and procedures as set forth in the HOME Investment Partnership Program Policies and Procedures for Rental Project Assistance when Combined with Low-Income Housing Tax Credits, published elsewhere in this issue of the *Texas Register*.

II. ELIGIBLE ACTIVITIES:

(A) Acquisition, Rehabilitation, New Construction or Reconstruction of Multi-family, Single-family, Cooperative, Transitional Housing, Congregate Care, Scattered Site, or other developments eligible under the HOME and Low-Income Housing Tax Credit Programs;

(B) Conversion of Commercial Property to Multi-Family Housing;

(C) Site Improvements, Demolition and other expenses specified in 24 CFR 92. 205.

III. ELIGIBLE APPLICANTS:

- (1) Non-profit organizations which have established status under the Internal Revenue Code of 1986, section 501(c), and state-chartered non-profit organizations;
- (2) Units of general local government;
- (3) For-profit housing development entities; and
- (4) Public housing agencies.

Requests for HOME Rental Project Assistance applications, questions or requests for additional information may be directed to the HOME Investment Partnership Program, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, (512) 475-3109.

Applications must be received by TDHCA no later than 5:00 p.m., September 29, 1995. Applications received after this time will not be considered for funding. Applications sent by facsimile will not be accepted. Applications should be mailed to: HOME Program, Texas Department of Housing and Community Affairs, P.O. Box 13941, 811 Barton Springs Road, Suite 300, Austin, Texas 78711-3941.

Issued in Austin, Texas on August 28, 1995.

TRD-9510858 Larry Paul Manley
Executive Director
Texas Department of Housing and
Community Affairs

Filed: August 28, 1995

Texas Department of Human Services Availability of Funds to Develop Spanish Language Information Media Materials for Family Violence Prevention and Services

The Texas Department of Human Services (DHS), in conjunction with the Texas Council on Family Violence, a non-profit agency, announces the availability of up to \$55,000 in funds for the development of Spanish language educational media 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 who can best demonstrate the ability to efficiently develop an educational video and accompanying educational print materials regarding domestic violence. The video and print materials will focus on the prevention of family violence, and will provide information regarding immediate shelter and related assistance for the victims of family violence and their dependents.

The video and accompanying print materials will target the Spanish-speaking community in Texas. All media materials for this project should be original and scripted completely in Spanish. Materials scripted originally in English, and subsequently translated into Spanish will not be accepted.

All agencies, organizations, groups, and individuals with experience in the development of Spanish language media materials are encouraged to submit proposals.

Contact Person: To request an application packet, including background information on DHS's family violence program and the Texas Council on Family Violence, write or call Juan Antonio Flores, Policy Planner, Texas Department of Human Services, 9101 Burnet Road, Suite 216, Austin, Texas 78758, (512) 873-2400.

Application Deadline: The deadline for submitting proposals under this announcement is October 2, 1995.

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

TRD-9510837 Nancy Murphy
Section Manager, Media and Policy
Services
Texas Department of Human Services

Filed: August 25, 1995

Texas Department of Insurance Notice of Applications by Small Employer Carriers to be Risk- Assuming Carriers

Notice is given to the public of the application of the listed small employer carrier to be a risk-assuming carrier under Texas Insurance Code Article 26.52. A small employer carrier is defined by Chapter 26 of the Texas Insurance Code as a health insurance carrier that offers, delivers or issues for delivery, or renews small employer health benefit plans subject to the chapter. A risk-assuming carrier is defined by Chapter 26 of the Texas Insurance Code as a small employer carrier that elects not to participate in the Texas Health Reinsurance System. The following small employer carrier has applied to be a risk-assuming carrier:

Harris Health Plan, Inc.

The application is subject to public inspection at the offices of the Texas Department of Insurance, Financial Monitoring Unit, 333 Guadalupe, Hobby Tower 3, Third Floor, Austin, Texas.

If you wish to comment on this application to be a risk-assuming carrier, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Alicia M. Fechtel, Chief Clerk, Mail Code 113-1C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-91204. An additional copy of the comments must be submitted to Mike Boerner, Managing Actuary, Actuarial Division of the Financial Program, Mail Code 304-3A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Upon consideration of the application, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to approve the application to be a risk-assuming carrier.

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

TRD-9510848 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: August 25, 1995

Notices of Public Hearing

The Commissioner of Insurance, at a public hearing under Docket Number 2172 scheduled for September 22, 1995, at 9:00 a.m. in Special Master's Hearing Room 102 of the

Texas Department of Insurance Building, 333 Guadalupe Street, Austin, Texas, will consider a form filing by the Texas Department of Transportation for a revised surety bond form entitled "Motor Transportation Broker Bond, Form 1897 9/95" (Bond). The Bond is a requirement of Article 911m, Texas Civil Statutes, Chapter 6 Title 25, General Laws, acts of the 74th Legislature, Regular Session 1995.

The authority to regulate motor transportation brokers has been moved from the Texas Railroad Commission to the Texas Department of Transportation which requires the following revisions to the Bond: The obligee on the Bond has been changed to the Texas Department of Transportation. References to the statute in the Bond have been revised to reflect Article 911m, Texas Civil Statutes, Chapter 6 Title 25, General Laws, acts of the Seventy Fourth Legislature, Regular Session 1995. There was one other minor revision to the Bond changing "Know all men by these present:" to "KNOW ALL PERSONS BY THESE PRESENT:".

Copies of the full text of the proposed bond form for the Texas Department of Transportation is available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the text, please contact Angie Arizpe at (512) 322-4147. (refer to Reference Number O-0895-27).

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

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

TRD-9510846 Alicia M. Fachtel
Counsel and Chief Clerk
Texas Department of Insurance

Filed: August 25, 1995



The Commissioner of Insurance at a hearing scheduled under Docket Number 2171 on October 6, 1995, at 9:00 a.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, will consider approval of a filing made by the National Council on Compensation Insurance ("NCCI") pertaining to the standard workers' compensation and employers' liability insurance policy ("the policy"). The ten changes being proposed to the policy are set forth below in the order found in the current policy language. In addition, the endorsements listed in #11 below are being proposed to be changed to allow coverages excluded by the proposed policy language to be included on the policy, if requested.

1. General Section C. is proposed to be amended to clarify the exclusion of any federal workers or workmen's compensation law and any federal occupational disease law under the policy. The purpose of this language is to exclude the following coverages: Longshore and Harbor Workers' Compensation Act; Defense Base Act; Nonappropriated Fund Instrumentalities Act; Outer Continental Shelf Lands Act; Federal Coal Mine Health and Safety Act of 1969; and any other federal compensation obligation. The coverage provided by the policy is not changed as a result of this proposed revision.

2. Part 2.C.7. is proposed to be amended to include the language of the standard Employers Liability Endorsement WC 00 03 16. The purpose of this endorsement was to

clarify that the acts listed within the endorsement fall outside common law negligence, the principal risk to be covered by employers' liability insurance. Approval of the proposed changes to the policy is approval to withdraw Employers Liability Insurance Endorsement WC 00 03 16.

3. Part 2.C.8. is proposed to exclude coverage under the Longshore and Harbor Workers' Compensation Act, the Nonappropriated Fund Instrumentalities Act, the Outer Continental Shelf Lands Act, the Defense Base Act, the Federal Coal Mine Health and Safety Act of 1969, any other federal workers' or workmen's compensation law or other federal occupational disease law, or any amendment to these laws. Approval of the proposed changes to the policy is approval to withdraw the exclusionary endorsements.

4. Part 2.C.9. is proposed to exclude coverage for work subject to the Federal Employers' Liability Act, any other federal laws obligating an employer to pay damages to an employee due to bodily injury arising out of or in the course of employment, or any amendments to those laws. This exclusion removes the need for the Federal Employers' Liability Act Exclusion Endorsement WC 00 01 05. Approval of the proposed changes to the policy is approval to withdraw this endorsement.

5. Part 2.C.10. is proposed to exclude bodily injury to a master or member of the crew of any vessel. The exclusionary language of the Maritime Exclusion Endorsement WC 00 02 02 is proposed to become part of the policy language. This clarifies that damages under the Jones Act are excluded and eliminates the need for the Maritime Exclusion Endorsement WC 00 02 02. Approval of the proposed changes to the policy is approval to withdraw this endorsement.

6. Part 2.C.11. is proposed to exclude fines and penalties imposed for violation of federal or state law. This section provides clear notice that fines or penalties imposed for violation of federal or state law are not covered.

7. Part 2.C.12. is proposed to exclude damages under the Migrant and Seasonal Agricultural Worker Protection Act and under any other federal law awarding damages for violation of those laws or regulations issued thereunder, and any amendments to those laws.

8. Part 2.I. is proposed to include a provision that the insurer is not relieved of an obligation to pay due to the bankruptcy or insolvency of the insured. This provision ensures that an injured worker will receive payment under the Employers Liability Section of the policy even if the employer is bankrupt or insolvent.

9. Part 3.A.2. is proposed to read "If you begin work in any one of those states after the effective date of this policy and are not insured or are not self-insured for such work, all provisions of the policy will apply as though that state were listed in Item 3.A. of the Information Page". The additions to this section were made to clarify that all notification and other provisions of the policy apply to Other States insurance.

10. Part 3.A.4. is proposed to add this language to the policy: "If you have work on the effective date of this policy in any state not listed in Item 3.A. of the Information Page, coverage will not be afforded for that state unless we are notified with thirty days." If the insured fails to notify the insurance company that on the effective date of the policy work is being performed in a state that is not listed in Item 3.A. of the Information Page, then coverage may not be provided in that other state. In conjunction

with the proposed changes as outlined above, the following endorsements will need to be revised to allow federal coverages that are excluded by the proposed changes to the policy to be included on the policy, if requested: Defense Base Act Coverage Endorsement-WC 00 01 01; Longshore and Harbor Workers' Compensation Act Coverage Endorsement-WC 00 01 06; Nonappropriated Fund Instrumentalities Act Coverage Endorsement-WC 00 01 08; Outer Continental Shelf Lands Act Coverage Endorsement-WC 00 01 09; Maritime Coverage Endorsement-WC 00 02 01; and Employers' Liability Coverage Endorsement-WC 00 03 03.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.56, 5.57, and 5.96.

A copy of the petition containing the full text of the proposed changes to the workers' compensation and employers liability insurance policy and the proposed changes to endorsements is available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 322-4147, (refer to Reference Number W-0695-14).

This notification is made pursuant to the Texas Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedures and Texas Register Act.

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

TRD-9510845 Alicia M. Fechtel
Counsel and Chief Clerk
Texas Department of Insurance

Filed: August 25, 1995

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Texas Lottery Commission

Invitation for Bids for Uniformed Security Officers for Security Control Station

The Texas Lottery Commission is soliciting bids to obtain physical security services for the Texas Lottery Commission headquarters and uniformed security officers to staff the security courtesy station as provided in the Invitation for Bid.

Objectives.

The Texas Lottery requires uniformed security officers to perform security control functions at the Lottery Headquarters Facility. Security systems at Headquarters and 23 outlying claim centers will be monitored and controlled from the security control station at the Lottery Headquarters. Security systems include building access, card access, interior and exterior cameras, time lapse records, intrusion devices, and annunciation panels. Most of these systems are integrated and controlled by a personal computer.

Schedule.

Event-Date

IFB Issued-August 28, 1995

Bid Due Date-September 15, 1995 4:00 p.m. CT

Primary term. Prices quoted must be in effect for the primary term of this contract which is the date of execution through August 31, 1996. At its sole option, the Texas

Lottery Commission may extend this contract for two one-year periods following the primary term (August 31, 1996).

For a copy of the complete Invitation for Bids please contact: Ridgely C. Bennett, Staff Attorney, (512) 371-4935.

Issued in Austin, Texas, on August 28, 1995.

TRD-9510859 Ridgely C. Bennett
Staff Attorney
Texas Lottery Commission

Filed: August 28, 1995

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Texas Natural Resource Conservation Commission

Notice of Amendment of a Consulting Services Contract

The Texas Natural Resource Conservation Commission (TNRCC) furnishes this notice of an amendment of a consulting services contract which was awarded for identification of the current status and historical trends in ambient water, sediment, fish and shellfish tissue quality in the Corpus Christi Bay National Estuary Program (CCBNEP) study area.

The notice for request for proposals was published in the June 17, 1994, issue of the *Texas Register*.

Description of Services. The contractor will provide information regarding performing a characterization study of the current status and historical status and historical trends in the incidence of marine/bay debris in the Corpus Christi Bay National Estuary Program study area. The following major products will be produced: Draft Report, August 31, 1995; Final Report, October 31, 1995.

Effective Date and Value of Contract. This amendment is a no cost contract extension of the contract from the original termination date of August 31, 1995 to a new termination date of November 30, 1995. The amendment will make the contract effective from October 31, 1994, until November 30, 1995. The total cost of the contract is the same original, \$41,316.

Name of the Contractor. The contract has been awarded to the University of Texas Marine Science Institute at Port Aransas in care of Office of Sponsored Projects, University of Texas at Austin, P.O. Box 7726, Austin, Texas 78713-7726.

Persons who have questions concerning this award may contact Richard Volk, Corpus Christi Bay National Estuary Program, TAMU-CC, Campus Box 290, 6300 Ocean Drive, Corpus Christi, Texas 78412, (512) 985-6767.

Issued in Austin, Texas, on August 28, 1995.

TRD-9510832 Lydia Gonzalez-Gromatzky
Acting Director, Legal Division
Texas Natural Resource Conservation Commission

Filed: August 25, 1995

Notice of Applications for Waste Disposal Permits

Notices of applications for waste disposal permits issued during the period of August 18-25, 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 BRENHAM; the wastewater treatment facilities are at 2005 East Alamo Street, south of and adjacent to Hog Branch in the City of Brenham, in Washington County, Texas; renewal; 10388-01.

CHEVRON U.S.A., INC.; an oil and gas production research facility; the facility is at 2202 Oil Center Court approximately 1.4 miles north of the intersection of Farrell Road and Hardy Road in the City of Houston in Harris County, Texas; new; 03822.

CHRIST'S HAVEN FOR CHILDREN; the wastewater treatment facilities and the disposal site are southeast of the intersection of Cayler Road and Keller-Haslett County Line Road, approximately two miles northwest of the City of Keller in Tarrant County, Texas; renewal; 11216-01.

CONROE INDEPENDENT SCHOOL DISTRICT; the San Jacinto Elementary School Wastewater Treatment Plant is approximately 2,000 feet northwest of the intersection of FM Road 1314 and Bennette Estates Road in Montgomery County, Texas; amendment; 12205-01.

CROWN CENTRAL PETROLEUM CORPORATION; the La Gloria Oil and Gas Company, a petroleum refinery; the plant site is at 1702 East Commerce Street in the City of Tyler, Smith County, Texas; renewal; 01590.

DIAMOND SHAMROCK REFINING AND MARKETING COMPANY; the Harlingen Refined Products Terminal, a petroleum bulk storage facility; the plant site is adjacent to State Highway 106 approximately 0.75 miles south of the intersection of State Highway 106 and FM Highway 1595, south of the City of Rio Hondo, Cameron County, Texas; new; 03818.

FINA OIL AND CHEMICAL COMPANY; the Big Spring Refinery and Petrochemical plant is adjacent to Interstate Highway 20 (IH-20) and approximately 1/2 mile east of the intersection of IH-20 and FM Road 700 near the City of Big Spring, Howard County, Texas; renewal; 01768.

EDWIN ELSTON; the dairy is on the south side of County Road 433, approximately one mile southeast of the intersection of State Highway 108 and County Road 433 (approximately 0.5 miles north of the intersection of State Highway 108 and FM Road 2303) in Erath County, Texas; new; 03839.

LARRY DEE GIBSON; the dairy is near Dublin, on the south side of State Highway 6, approximately 3.5 miles east of the intersection of State Highway 6 and U.S. Highway 67, in Erath County, Texas; renewal; 03218.

HASTINGS DEVELOPMENT COMPANY, INC.; the wastewater treatment facilities are on the east side of Detering Street at a point approximately 300 feet south of Memorial Drive, approximately 500 feet southeast of the intersection of Detering Street and Memorial Drive in Harris County, Texas; renewal; 12199-01.

ROBERT LUECK; the dairy is located on the east side of FM Road 219 approximately 2.0 miles south of the intersection of FM Road 219 and FM Road 8 in Erath County, Texas; renewal; 03439.

MONTGOMERY COUNTY UTILITY DISTRICT Number 2; the wastewater treatment facilities are on the east side of Lake Conroe, immediately south of FM Road 830 and approximately 500 feet east of Kingston Cove Lane in Montgomery County, Texas; renewal; 11271-01.

NORTHSIDE FORD, INC.; the wastewater treatment facilities are approximately 2,900 feet east of U.S. Highway 59 and 1,900 feet south of Little York Road in the City of Houston in Harris County, Texas; renewal; 13111-01.

WARREN AND BOBBY OWEN; the cattle feedyard is on the southeast corner of the intersection of Progressive Road and Dairy Road. The site is east of Hereford, Deaf Smith County, Texas; renewal; 03232.

CITY OF PALACIOS; the Palacios Wastewater Treatment Facilities; the facilities are approximately 1,800 feet west of the intersection of 12th Street and Mosier Drive in Matagorda County, Texas; renewal; 10593-01.

CITY OF SCHULENBURG; the wastewater treatment facilities are approximately 500 feet west of the intersection of Babylon Lane and Williams Avenue in the City of Schulenburg in Fayette County, Texas; renewal; 10115-02.

ADOLFO A. TAPIA; the dairy is on the west side of an unnamed county road. The site is located approximately two miles north of the intersection of the unnamed county road and FM Road 1692. The site is in Tom Green

County, Texas; new; 03824.

TRINITY RIVER AUTHORITY OF TEXAS; the water treatment facility will serve the City of Huntsville; the water treatment facility is on Wallace Road, approximately 1.8 miles north of FM Road 2628 in Walker County, Texas; new; 13795-01.

CITY OF WORTHAM; the wastewater treatment facilities are approximately 0.75 mile east of State Highway 14 and one mile north of FM Road 27 in the northeast section of the City of Wortham in Freestone County, Texas; renewal; 10551-01

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

TRD-9510819 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: August 25, 1995

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Notice of Opportunity to Comment on Permitting Actions—For the Week Ending August 25, 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.

Consideration of the application of Orange County Water Control and Improvement District Number 1, Water Certificate of Convenience and Necessity (CCN) Number 10115 and Sewer CCN Number 20048, to Lease 'ine Shadows Water and Sewer Systems and Transfer 'water Certificate of Convenience and Necessity Number 11912 and Sewer Certificate of Convenience and Necessity Number 20628 from Twenty-One Twenty Development, Inc. in Orange County, Texas (Application Numbers 30658-S and 30659-S, Vera Poe).

Consideration of the application of City of Southlake to Transfer Water CCN Number 12210 from West Park Water Association, Inc.; Amend Water CCN Number 10101; Cancel Water CCN Number 12210 in Denton County, Texas (Application Number 30501-S, Albert Holck).

REQUEST FOR APPROVAL OF THE TRANSFER OF A MUNICIPAL SOLID WASTE PERMIT (Permit Number MSW249-C) from TEXAS WASTE SYSTEMS, INC. to WASTE MANAGEMENT OF TEXAS, INC.

Application Number 23-854C by Olmito Water Supply Corporation for a Texas Water Code, §11.122, Water Use Permit Application. Applicant has purchased 100 acre-feet of Class "A" irrigation water rights authorized under Certificate of Adjudication 23-829 and seeks to change the ownership, place of use (to applicant's service area within Cameron County) and purpose of use (to municipal) of these water rights and to combine them with applicants water rights under Certificate Number 23-854, as amended. The diversion point will not change. Rio Grande, Rio Grande Basin, Cameron County, Texas (Kellye Rila).

Application Number 23-4520A by Valley Acres Irrigation District for a Texas Water Code, §11.122, Water Use Permit Application. Certificate of Adjudication currently authorizes applicant to divert and use not to exceed 5,000 acre-feet of water per annum from the Pilot Channel of the North Floodway, tributary of Laguna Madre, to irrigate a maximum of 10,000 acres land within the boundaries of the Valley Acres Irrigation District, Hidalgo and Cameron Counties, Nueces-Rio Grande Coastal Basin. Applicant seeks to amend this certificate by changing the purpose of use of 300 acre-feet of water per annum to industrial use (Kellye Rila).

Consideration of the Application of City of Bastrop to amend Water Certificate of Convenience and Necessity Number 11198 and Sewer Certificate of Convenience and Necessity Number 20466 in Bastrop County, Texas (Application Numbers 30826-C and 30827-C, Vera Poe).

Application Number 23-3997Z by the City of Laredo for a Texas Water Code, §11.122, Water Use Permit Application. Amendment to Certificate Number 23-3997 to sever 268.625 acre-feet of Class "B" irrigation water rights from Certificate Number 23-110, and to change ownership, point of diversion, purpose and place of use authorized for these water rights and to combine them with water rights owned by applicant under Certificate Number 23-3997, Rio Grande, Rio Grande Basin, Webb County, Texas (Kellye Rila).

TEMPLE-INLAND FOREST PRODUCTS CORPORATION for a minor amendment to Permit Number 01153 in order to remove Outfalls 002 and 005 from its existing permit. The permit currently authorizes: (1) the discharge of treated process wastewater and stormwater at a volume not to exceed an average flow of 170,000 gallons per day

via Outfall 001; (2) intermittent flow variable discharges of commingled remediated groundwater, utility wastewater and stormwater runoff via Outfall 003; (3) intermittent flow variable discharges of boiler blowdown and cooling tower blowdown commingled with stormwater runoff via Outfall 004; and (4) intermittent flow variable discharges of stormwater via Outfall 006, which will remain the same. The applicant currently operates a wood and wood products manufacturing complex. The plant site is approximately 1/4 mile west of U.S. Highway 59 at the South-west quadrant of the intersection of Borden Drive and First Street, in the City of Diboll, Angelina County, Texas.

APPLICATION Number 14-1382A BY THE WILBURN BAILEY ESTATE TO AMEND CERTIFICATE Number 14-1382, PURSUANT TO TEXAS WATER CODE, §11.122. FOR EXECUTIVE DIRECTOR'S CONSIDERATION. Applicant seeks to add 124 acres of adjacent land to be irrigated and an additional diversion point that falls between the three existing diversion points. The total diversion of 444 acre-feet of water per annum will remain as authorized in the original certificate as will the original maximum combined diversion rate of 3.33 cfs (1,500 gpm). The irrigated land is located approximately 11 miles west of Paint Rock on the Concho River, tributary of the Colorado River, Colorado River Basin, Concho County, Texas.

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

TRD-9510818

Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: August 25, 1995

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Notice of Receipt of Application and Declaration of Administrative Completeness for Municipal Solid Waste Facilities for the Week Ending August 25, 1995

APPLICATION BY THE CITY OF LUBBOCK, Proposed Permit Number MSW2252, authorizing a Type I (Landfill) municipal solid waste facility. The site covers approximately 1,237 acres of land, will daily receive approximately 1,182 tons of solid waste and is located at the southeast intersection of FM Road 579 and FM Road 2528, north of the city of Lubbock, in Lubbock County, Texas.

The application is subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue the permit unless one or more persons file written protests and/or requests for hearing within 30 days of the date of newspaper publication.

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, TNRCC docket 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 and/or requests for hearing are filed on an application, the Executive Director will approve the application. 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 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, Mail Code 105, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

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

TRD-9510820

Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: August 25, 1995

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Provisionally-Issued Temporary Permits to Appropriate State Water

Listed are permits issued during the period of August 17-21, 1995.

Application Number TA-7521 for Mitchell Energy Corporation diversion of two acre-feet in a six-month period for mining (oil and/or gas well drilling) use. Water may be diverted from near the Oliver Creek Road crossing of Oliver Creek, approximately one mile west of Denton, Denton County, Texas, Trinity River Basin.

Application Number TA-7522 for QL Corp doing business as Quick Line Service Company diversion of four acre-feet in a one-year period for mining use. Water may be diverted from the stream crossing of Texas Highway 96 and Rush Creek, approximately 19 miles north of Jasper, Jasper County, Texas, Neches River Basin.

Application TA-7520 for T. E. Products Pipeline Company, Limited Partnership diversion of four acre-feet in a six-month period for industrial (hydrostatic test) use. Water may be diverted approximately six miles northwest of Anahuac in Chambers County, Texas, Neches-Trinity River.

Application TA-7523 for S. F. W. Construction, Inc. diversion to satisfy the requested diversion of one acre-foot in a one-year period for industrial use. Water may be diverted from a reservoir at the intersection of FM 1687 and Pleasant Hill Lane, approximately six miles northwest of Bryan, Brazos County, Texas, Brazos River Basin.

Application TA-7524 for Torres Ready-Mix, Inc. diversion to satisfy the requested diversion of ten acre-feet in a six-month period for mining (washing operation-sand and gravel) use. Water may be diverted from the FM 1436 crossing of the Nueces River, approximately 25 miles north of Crystal City, Zavala County, Texas, Nueces River Basin.

Application Number TA-7525 for Railroad Commission of Texas diversion to satisfy the requested diversion of one acre-foot in a one-year period for industrial use. Water

may be diverted just east of U.S. Highway 69, approximately 25 miles northwest of Jasper, Texas, Neches River Basin.

The Executive Director of the TNRCC has reviewed each application for the permits listed and determined that sufficient water is available at the proposed point of diversion to satisfy the requirements of the application as well as all existing water rights. Any person or persons who own water rights or who are lawful users of water on a stream affected by the temporary permits listed above and who believe that the diversion of water under the temporary permit will impair their rights may file a complaint with the TNRCC. The complaint can be filed at any point after the application has been filed with the TNRCC and the time the permit expires. The Executive Director shall make an immediate investigation to determine whether there is a reasonable basis for such a complaint. If a preliminary investigation determines that diversion under the temporary permit will cause injury to the complainant the commission shall notify the holder that the permit shall be cancelled without notice and hearing. No further diversions may be made pending a full hearing as provided in §295.174. Complaints should be addressed to Water Rights Permitting Section, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-4433. Information concerning these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78731, (512) 239-3300.

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

TRD-9510817 Gloria A Vasquez
Chief Clerk
Texas Natural Resource Conservation -
Commission

Filed: August 25, 1995

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Public Hearing Notice

Notice is hereby given that pursuant to the requirements of the Texas Government Code, Subchapter B, Chapter 2001, the Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct a public hearing to receive testimony concerning disposal of sewage from marine sanitation devices.

The Texas Natural Resource Conservation Commission (TNRCC) proposes amendments to 30 TAC §§321.1, 321.2, 321.3, 321.4, 321.10 and 321.15. The purpose of the proposed changes is to add Clear Lake to the list of waterbodies for which TNRCC has received from EPA the authorization to promulgate rules for "no discharge" lakes. The Clear Lake area harbors approximately 5,600 recreational boats and 500 houseboats. Some of these boats are equipped with on-board toilets which are currently allowed to discharge into the lake after treatment of the waste. The area is also used extensively for recreational activities including swimming, fishing, wind surfing, jet-skiing and other water sports. The combination of these factors has given rise to public concerns about contact recreational safety and public health. There is also a growing concern on the part of the boating public that additional pump-out facilities be made available to them. In an attempt to address these concerns eight pump-out facilities are operational on Clear Lake with another four scheduled to be built in the near future. Area marinas and associations are already responding by promoting Clear Lake as a no

discharge lake. Finally, the U.S. Environmental Protection Agency (EPA) has designated Clear Lake as a no discharge lake on February 6, 1995. In response to these concerns, and concerns regarding the health of the marine environment, the Commission is proposing that discharge of sewage from recreational boats no longer be allowed in Clear Lake.

A public hearing will be held on Wednesday, September 20, 1995 at 7:00 p.m. in the Forest Room of the Bayou Building at the University of Houston, Clear Lake Campus, 2700 Bay Area Boulevard, Houston, Texas. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments on the proposal should mention Log Number 95130-321-WT and may be submitted to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC-201, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640. Written comments must be received by 5:00 p.m., 30 days from the date of publication of the proposed rules in the *Texas Register*. For further information or questions concerning this proposal, please contact Bonnie Rubey, Legal Services, at (512) 239-0676.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-1459. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on August 28, 1995.

TRD-9510833 Lydia Gonzalez-Gromatzky
Acting Director, Legal Division
Texas Natural Resource Conservation
Commission

Filed: August 25, 1995

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Public Notice

In accordance with §361.613, Subchapter S, Solid Waste Disposal Act, the executive director of the Texas Natural Resource Conservation Commission (TNRCC or commission) annually shall calculate the commission's costs to administer the Voluntary Cleanup Program (VCP), and shall publish the rate established for the purposes of identifying the costs recoverable by the commission. The TNRCC is publishing the hourly billing rate of \$60.80 for fiscal year 1996 for the Voluntary Cleanup Program.

The Voluntary Cleanup Law is effective September 1, 1995 and as such, this will be the first year of operation for the program. Therefore, the commission will not be able to use data from the previous year to calculate the rate for fiscal year 1996. The commission will base the rate on amounts budgeted for the operation of the VCP. The hourly billing rate was derived from current projections for salaries plus the fringe benefit rate and the indirect cost rate, less federal funding divided by the estimated billable salary hours. Billable salary hours were derived by subtracting the release time hours from the total available hours and a further 20% reduction to account for non site-specific hours. The release time includes sick leave, jury duty, holidays, etc. and is set at 18.54% (fiscal year 1994's

actual rate). The current fringe benefit rate is 29.32%. Fringe benefits include retirement, social security and insurance expenses, and is calculated as a rate that applies to the agency as a whole. The current indirect cost rate is 40.77%. Indirect costs include allowable overhead expenses, and is also calculated as a rate that applies to the whole agency. The billings processed for fiscal year 1996 will use the hourly billing rate of \$60.80 and will not be adjusted. All travel related expenses will be billed as a separate expense. After an applicant's initial \$1,000 application fee has been expended by the Voluntary Cleanup Program in site review and oversight, invoices will be sent to the applicant on a quarterly basis for payment of additional program expenses.

The commission does anticipate receiving federal funding during fiscal year 1996 for the development and implementation of the VCP. These federal funds are instrumental in the commission having some of the lowest rates of any state VCP. If the federal funding anticipated for fiscal year 1996 does not become available, the commission may publish a new rate. Federal funding of the VCP should occur prior to October 1, 1995.

For more information concerning this notice, please contact Charles Epperson, Voluntary Cleanup Section, Pollution Cleanup Division, MC-143, Texas Natural Resource Conservation Commission, 12118 North Interstate Highway 35, Building D, Austin, Texas 78753, (512) 239-2498.

Issued in Austin, Texas on August 28, 1995.

TRD-9510854 Lydia Gonzalez-Gromatzky
Acting Director, Legal Services Division
Texas Natural Resource Conservation
Commission

Filed: August 28, 1995

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Public Utility Commission of Texas
Notice of Filing of Application to
Change Depreciation Rate

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application to change depreciation rates pursuant to Public Utility Commission Substantive Rule 23.61(h)(1).

Docket Title and Number. Application of Southwestern Bell Telephone Company for change in depreciation rates. Docket Number 14383.

The Application. Southwestern Bell Telephone Company is requesting approval of a change in its depreciation rates to remain consistent with its interstate depreciation rates and amortization.

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 August 25, 1995.

TRD-9510816 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: August 25, 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 Alvin Community College, Alvin, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for Alvin Community College pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 14579.

The Application. Southwestern Bell Telephone Company is requesting approval of a new PLEXAR-Custom service for Alvin Community College. The geographic service market for this specific service is the Alvin, 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 August 24, 1995.

TRD-9510739 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: August 24, 1995

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Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific contract.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for approval of a customer-specific contract for Billing and Collection Services with TCA Communications, Inc. pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Number 14581.

The Application. Southwestern Bell Telephone Company is requesting approval of a customer-specific contract for Billing and Collection Services with TCA Communications, Inc. The geographic service market for this specific service is anywhere within the State of Texas where TCA Communications, Inc. provides services to Southwestern Bell end user customers.

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 August 24, 1995.

TRD-9510740 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: August 24, 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 General Services Administration-Fort Worth, Fort Worth, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for General Services Administration-Fort Worth pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 14578.

The Application. Southwestern Bell Telephone Company is requesting approval of a new PLEXAR-Custom service for General Services Administration-Fort Worth. The geographic service market for this specific service is the Fort Worth, 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 August 24, 1995.

TRD-9510738 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: August 24, 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 a customer-specific contract for Billing and Collection Services with Axces, Inc.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for approval of a customer-specific contract for Billing and Collection Services with Axces, Inc. pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Number 14590.

The Application. Southwestern Bell Telephone Company is requesting approval of a customer-specific contract for Billing and Collection Services with Axces, Inc. Billing and collection services are currently comprised of various services which enable customers to bill their respective end users their service charges. The geographic service market for this specific service will be offered anywhere within the state of Texas where Axces, Inc. provides services to Southwestern Bell end user customers.

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

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

TRD-9510815 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: August 25, 1995



Notices of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.28

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.28 for approval of promotional rates for new customers of an existing service, Caller ID.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for approval of promotional rates for new customers of an existing service, Caller ID. Pursuant to Substantive Rule 23.28. Tariff Control Number 14580.

The Application. Southwestern Bell Telephone Company is requesting administrative review of the application. SWBT is proposing to waive the applicable installation charge for customers who subscribe to Caller ID service between October 1, 1995 and November 30, 1995. The geographic service market for this specific service will be available on a statewide basis where facilities are available.

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 August 24, 1995.

TRD-9510741 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: August 24, 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 23.28 for approval of promotional rates for new customers of an existing service, Telebranch.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for approval of promotional rates for new customers of an existing service, Telebranch. Pursuant to Public Utility Commission Substantive Rule 23.28. Tariff Control Number 14582.

The Application. Southwestern Bell Telephone Company is requesting administrative review of the application. SWBT is proposing to waive the applicable \$15.90 installation charge for customers who subscribe to Telebranch service between October 1, 1995 and November 30, 1995. The geographic service market for this specific service will be available on a statewide basis where facilities are available.

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 August 24, 1995.

TRD-9510742 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: August 24, 1995

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Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.28 for approval of promotional rates for SelectVideo Plus Service.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for approval of promotional rates for SelectVideo Plus Service pursuant to Public Utility Commission Substantive Rule 23.28. Tariff Control Number 14585.

The Application. Southwestern Bell Telephone Company is requesting approval of promotional rates for SelectVideo Plus Service. The application will propose tariff changes to the Digital Link Service Tariff, Section 12.

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 August 24, 1995.

TRD-9510743 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: August 24, 1995

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

Notices of Contract Award

Under the provisions of Government Code, Chapter 2254, the Texas Low-Level Radioactive Waste Disposal Authority publishes this notice of a consulting services award for providing archaeological surveys on the Faskin Ranch in Hudspeth County as defined for the purpose of documenting significant site locations, if any, so significant cultural sites can be preserved, remediated, or archived, as needed.

The request for consultant proposal was published in the July 4, 1995, *Texas Register* (20 TexReg 4951).

The consultant proposal contract was awarded to Deborah Martin, Ph.D., Anthropological Consultant, 5540 Fernwood Circle, El Paso, Texas 79932.

The total value of the contract is \$15,000. The contract period started on September 1, 1995, and will continue until August 31, 1996.

For additional information, contact Lawrence R. Jacobi, Jr., P.E., Texas Low-Level Radioactive Waste Disposal Authority, 7701 North Lamar Boulevard, Suite 300, Austin, Texas 78752, (512) 451-5292.

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

TRD-9510686 Lee H. Mathews
Deputy General Manager and General
Counsel
Texas Low-Level Radioactive Waste
Disposal Authority

Filed: August 23, 1995

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Under the provisions of Government Code, Chapter 2254, the Texas Low-Level Radioactive Waste Disposal Authority publishes this notice of a consulting services award for providing health physics/radiation safety support as necessary and requested for the licensing and development of the Authority's facility. Contractor will also be required to prepare and revise operating plans and detailed operations procedures; assist with environmental monitoring program at the proposed facility; and revise license application documents.

The request for consultant proposal was published in the July 4, 1995, *Texas Register* (20 TexReg 4951).

The consultant proposal contract was awarded to Hugh Bryant, 7308 Grass Cove, Austin, Texas 78759.

The total value of the contract is \$50,000. The contract period started on September 1, 1995, and will continue until August 31, 1996.

For additional information, contact Lawrence R. Jacobi, Jr., P.E., Texas Low-Level Radioactive Waste Disposal Authority, 7701 North Lamar Boulevard, Suite 300, Austin, Texas 78752, (512) 451-5292.

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

TRD-9510687 Lee H. Mathews
Deputy General Manager and General
Counsel
Texas Low-Level Radioactive Waste
Disposal Authority

Filed: August 23, 1995

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Under the provisions of Government Code, Chapter 2254, the Texas Low-Level Radioactive Waste Disposal Authority publishes this notice of a consulting services award for providing community development and implementing a plan for dealing with the impacts, including training, education, leadership development, and infrastructure improvements in Hudspeth County.

The request for consultant proposal was published in the July 4, 1995, *Texas Register* (20 TexReg 4951).

The consultant proposal contract was awarded to Eduardo Gutierrez, Program Development Associates, P.O. Box 12724, San Antonio, Texas 78212.

The total value of the contract is \$20,000. The contract period started on August 10, 1995, and will continue until August 31, 1996.

For additional information, contact Lawrence R. Jacobi, Jr., P.E., Texas Low-Level Radioactive Waste Disposal Authority, 7701 North Lamar Boulevard, Suite 300, Austin, Texas 78752, (512) 451-5292.

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

TRD-9510688

Leo H. Mathews
Deputy General Manager and General
Counsel
Texas Low-Level Radioactive Waste
Disposal Authority

Filed: August 23, 1995



Office of the Secretary of State, Texas Register

Correction of Error

The Table of Contents contained an error in the August 25, 1995, issue of the *Texas Register* (20 TexReg 6521). Due to an error by the *Texas Register*, a notice for the Office of the Governor concerning appointments, was printed under the heading for the Office of the Attorney General.

