

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Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

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

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

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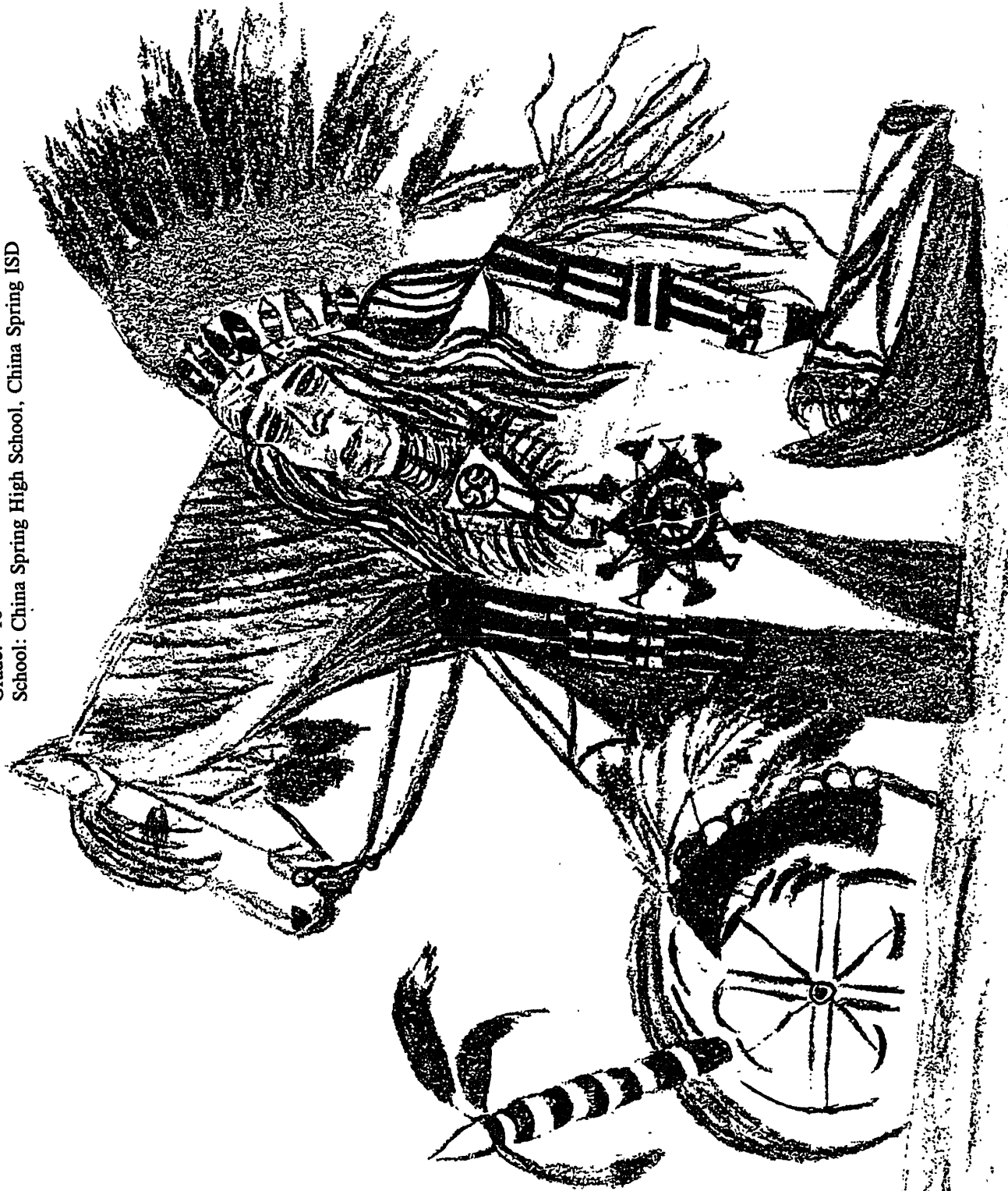
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School: China Spring High School, China Spring ISD



Name: Lacy Scarborough  
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School: China Spring High School, China Spring ISD





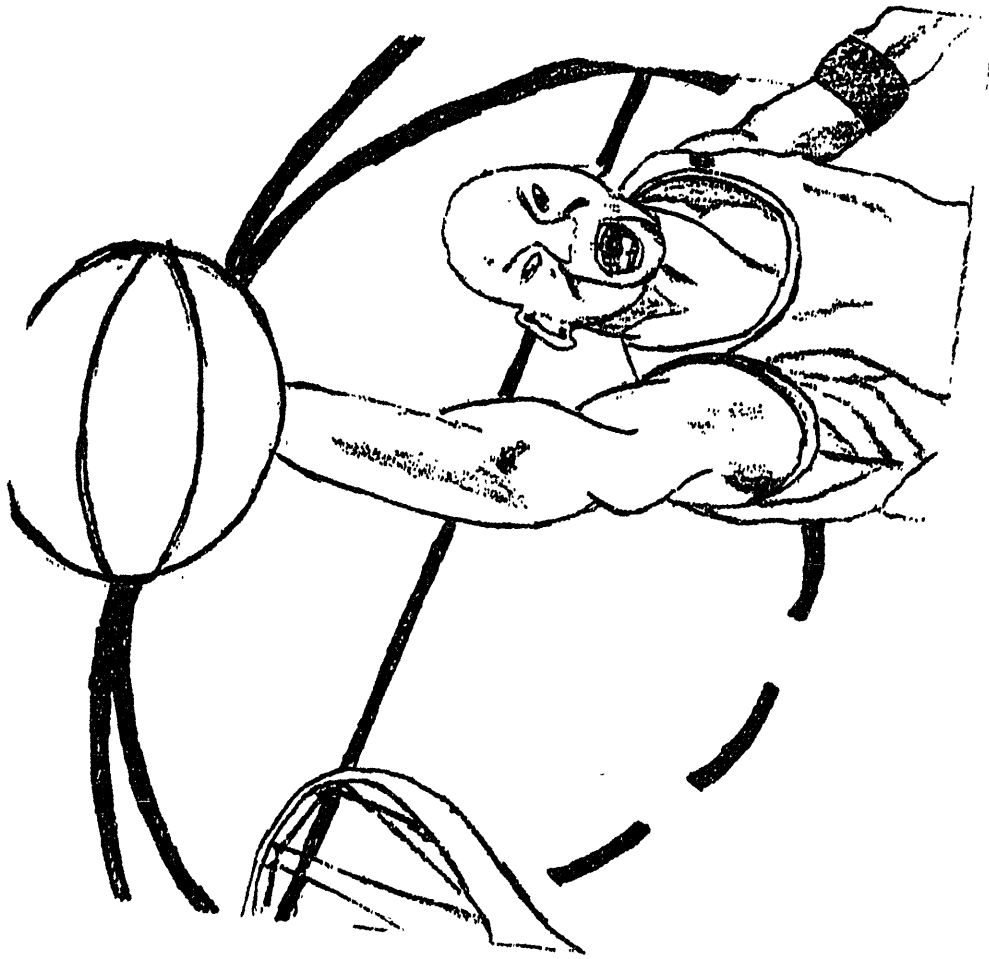
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School: China Spring High School, China Spring ISD

# ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042 and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the *Texas Register*. The Attorney General responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. To request copies of opinions, phone (512) 462-0011. To inquire about pending requests for opinions, phone (512) 463-2110.

## Letter Opinions

**LO-95-045 (ID #31186).** Request from Honorable Pete P. Gallego, Chair, Committee on General Investigating, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether a microwave oven in commercial food vending service must be surveyed every six months and related questions.

**Summary of Opinion.** Generally, the Health and Safety Code, Chapter 401 of title 25 of the Texas Administrative Code, and the Texas Regulations for the Control of Radio-Frequency Electromagnetic Radiation (the "regulations"), see 2 *Texas Register* 3668 (1977) (Department of Health), apply to a microwave oven used in commercial food vending service. The regulations do not supersede either the Health and Safety Code, Chapter 401 or title 25, Texas Administrative Code, §289.6. The regulations, incorporated into title 25 of the Texas Administrative Code, §289.6, implement the legislative directives expressed in Chapter 401 of the Health and Safety Code.

The regulations do not apply to a microwave oven in commercial food vending service if the oven is an installation of a department or agency of the United States. On the other hand, the regulations do not exempt a microwave oven in commercial food vending service if the oven is an installation of a city, a county, or the state. A microwave oven in commercial food vending service that is an installation of a city, county, or the state also is subject to those regulations specifically applicable to microwave ovens in commercial food vending service.

Except for the survey and sanitation requirements, all microwave ovens that exceed the accessible emission levels specified in table 90-1 of the regulations must comply with the standards articulated in part 90 of the regulations. Only such a microwave oven in commercial food vend-

ing service must be surveyed every six months, in accordance with paragraph 90.5(e). The term "commercial food vending service" denotes a microwave oven associated with the sale of food, such as a microwave oven provided by the retailer. Furthermore, a microwave oven is in commercial food vending service only if it is for public use.

Generally, a microwave oven installed in a hotel or motel room is not provided in association with the sale of food or beverages, either in the room or elsewhere in the hotel or motel, that need to be heated; therefore, such a microwave oven generally is not in commercial food vending service. Additionally, a microwave oven provided in an apartment is not for the use of the general public and thus is not a microwave oven in commercial food vending service. While a microwave oven installed in a hotel, motel, or apartment unit ordinarily is not subject to those regulations specific to microwave ovens in commercial food vending service, it is subject to the standards applicable to microwave ovens generally, unless the microwave oven is not subject to part 90.

Applicability of the regulations is not premised on the type of business in which the microwave oven is installed, but rather initially on the microwave oven's accessible emission levels and then on the way in which the microwave oven is used.

Pursuant to paragraph 90.5(e) of the regulations, the user of a microwave oven that produces an accessible emission level exceeding the levels listed in table 90-1 of the regulations and that is used in commercial food vending service must survey the microwave oven every six months. Any microwave oven that produces an accessible emission level exceeding the same levels, including such a microwave in a commercial setting or commercial food vending service, must comply with the caution

signs, symbols, labels, and posting requirements set forth in paragraph 90.4.

Section 401.063 of the Health and Safety Code authorizes the Department of Health to inspect any nonfederal premises to ascertain whether a user of a microwave oven is in compliance with Chapter 401 of the Health and Safety Code or the department's rules, licenses, registrations, and orders issued pursuant to Chapter 401.

TRD-9512199

## Open Records Decisions

**(ORD-633) (RQ-672).** Earl Bracken, Jr., City Attorney, City of Waco, P.O. Box 2570, Waco, Texas 76702-2570, concerning whether the Texas Open Records Act permits a governmental body to require a requestor to accept one record as a substitute for another; whether the act permits a governmental body to charge a requestor for costs incurred in redacting information that falls within any of the act's nonmandatory exceptions to required public disclosure.

**Summary of Decisions.** The City of Waco does not comply with the Open Records Act by releasing to a requestor of police narrative reports a "Major Incident Form" as a substitute for any report portions that are not excepted from required public disclosure, unless the requestor agrees to the substitution. In addition, the Open Records Act does not permit the City of Waco to charge the requestor for costs incurred in redacting from the requested narrative reports information that falls within any of the Open Records Act's nonmandatory exceptions to required public disclosure.

TRD-9512200

## Opinions

**DM-360 (RQ-701).** Barry Williamson, Chair, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967, concerning whether the Texas Railroad Commission is required to pay certain fees requested by county clerks.

**Summary of Opinion.** Local Government Code, §154.004(b) does not preclude the Texas Railroad Commission from paying a real property records filing fee pursuant to Local Government Code, §118.011(a)(2) and 118.013(a), a records management and preservation fee pursuant to Local Government Code, §118.011(b)(2) and §118.0216, or a courthouse security fee under Local Government Code §291.007(d) when filing notices required by §89.043(e) of the Natural Resources Code.

TRD-9512203

**DM-363 (RQ-821).** Honorable Rodney Ellis, Chair, Intergovernmental Relations, Texas State Senate, P.O. Box 12068, Austin, Texas 78711, concerning whether the recently enacted concealed handgun law, Senate Bill 60, particularly the provision to be codified as Texas Civil Statutes, Article 4413(29ee), §32, permits a business owner or operator to post notices prohibiting license holders carrying concealed handguns from the premises of the business, and related questions.

**Summary of Opinion.** Section 46.03 of the Penal Code, as amended by Senate Bill 60, prohibits the carrying of a concealed handgun on the physical premises of a school, an educational institution, or a passenger transportation vehicle of a school or an educational institution, whether the school or educational institution is public or private, unless pursuant to written regulations or written authorization of the institution; on the premises of a polling place on the day of an election or while early voting is in progress; in any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court; on the premises of a racetrack; or into a secured area of an airport.

Section 46.035 to the Penal Code, as added by Senate Bill 60, prohibits a person from intentionally, knowingly, or recklessly carrying a handgun under the authority of Article 4413(29ee): on the premises of a business that has a permit or license issued under Chapter 25, 28, 32, or 69 of the Alcoholic Beverage Code, if the business derives 51% or more of its income from the sale of alcoholic beverages for on-premises consumption; on the premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place, unless the license holder is a participant in the event and a handgun is used in the event; on the premises of a correctional

facility; on the premises of a hospital licensed under Chapter 241 of the Health and Safety Code, or on the premises of a nursing home licensed under Chapter 242 of the Health and Safety Code, unless the license holder has written authorization of the hospital or nursing home, as appropriate; in an amusement park; on the premises of a church, synagogue, or other established place of religious worship; or at any meeting of a governmental entity. While §46.035 prohibits the carrying of a handgun at the foregoing places, it does not prohibit the carrying of a handgun in the driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area of a business that sells alcoholic beverages, a high school, collegiate, or professional sporting event or interscholastic event, correctional facility, hospital or nursing home, amusement park, or church, synagogue, or other established place or religious worship.

Senate Bill 60 does not preclude private property owners from excluding license holders carrying concealed handguns from their premises under the criminal trespass statute, Penal Code, §30.05. A license holder who enters or remains on property or in a building of another carrying a concealed handgun without effective consent to carry and who has had notice that concealed handguns are prohibited commits a criminal offense.

TRD-9512202

**DM-364 (RQ-828).** Honorable Ron Wilson, Chair, Licensing and Administrative Procedures, House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether a rapid transit authority established under Texas Civil Statutes, Article 1118x (to be recodified as Transportation Code, Chapter 451) may prohibit a concealed handgun licensee from carrying a concealed handgun on a public conveyance operated by the rapid transit authority; whether a city or county may prohibit a concealed handgun licensee from carrying a concealed handgun in a city or county park.

**Summary of Opinion.** Texas Civil Statutes, Article 4413(29ee), §32 does not affect the power, if any, of a rapid transit authority to prohibit the carrying of handguns on its vehicles by persons other than employees of the rapid transit authority.

A rapid transit authority may invoke the police power delegated to it in Texas Civil Statutes, Article 1118x, §13 to abridge the right of a citizen to use his private property if the use will endanger public safety in the rapid transit system. The reasonableness and necessity of a measure taken under the rapid transit authority's police power is, in the first instance, a matter within the authority's discretion. The courts would not disturb a rapid transit authority's regulation of handguns on public conveyances unless

the regulation were clearly shown to be unreasonable and arbitrary.

The legislature, in the concealed handgun law, has specifically taken away from a municipality the authority to prohibit the licensed carrying of concealed handguns in a city or county park. See Act of May 16, 1995, 74th Legislative, Regular Session, Chapter 229, §7, 1995 Texas Session Law Service 1998, 2014-15.

A county has the power to adopt a rule providing for the exclusion or ejection of persons carrying handguns from county parks if such a rule is reasonably necessary and appropriate for the accomplishment of a legitimate object falling within the county's police power under §331.007 of the Local Government Code. The reasonableness and necessity of a measure taken under the county's police power is, in the first instance, a matter within the county's discretion. The courts would not disturb a county's regulation of handguns in county parks unless the regulation were clearly shown to be unreasonable and arbitrary.

TRD-9512201

## Requests for Opinions

**(RQ-839).** Request from Honorable Chris Harris, Chair, Administration, Texas State Senate, P.O. Box 12068, Austin, Texas 78711, regarding authority of the Texas Education Agency with regard to driver education courses and driver safety courses.

**(RQ-840).** Request from Honorable John B. Holmes, Jr., District Attorney, District Attorney's Building, 201 Fannin, Suite 200, Houston, Texas 77002-1901, regarding whether the Harris County Committee of District and Statutory County Court Judges is subject to the Open Meetings Act when it meets to participate in the management of the Harris County Community Supervision and Corrections Department.

**(RQ-841).** Request from David R. Smith, M.D., Commissioner, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, regarding whether the Texas Hazard Communication Act, Health and Safety Code, Chapter 502, which provides "employees" with accessibility to certain information regarding hazardous chemicals at work sites, is applicable to inmates of the Texas Department of Criminal Justice.

**(RQ-842).** Request from Honorable David Sibley, Texas State Senate, P.O. Box 12068, Austin, Texas 78711, regarding whether the Texas Racing Commission may permit simulcasting at Class 3 and Class 4 racetracks.

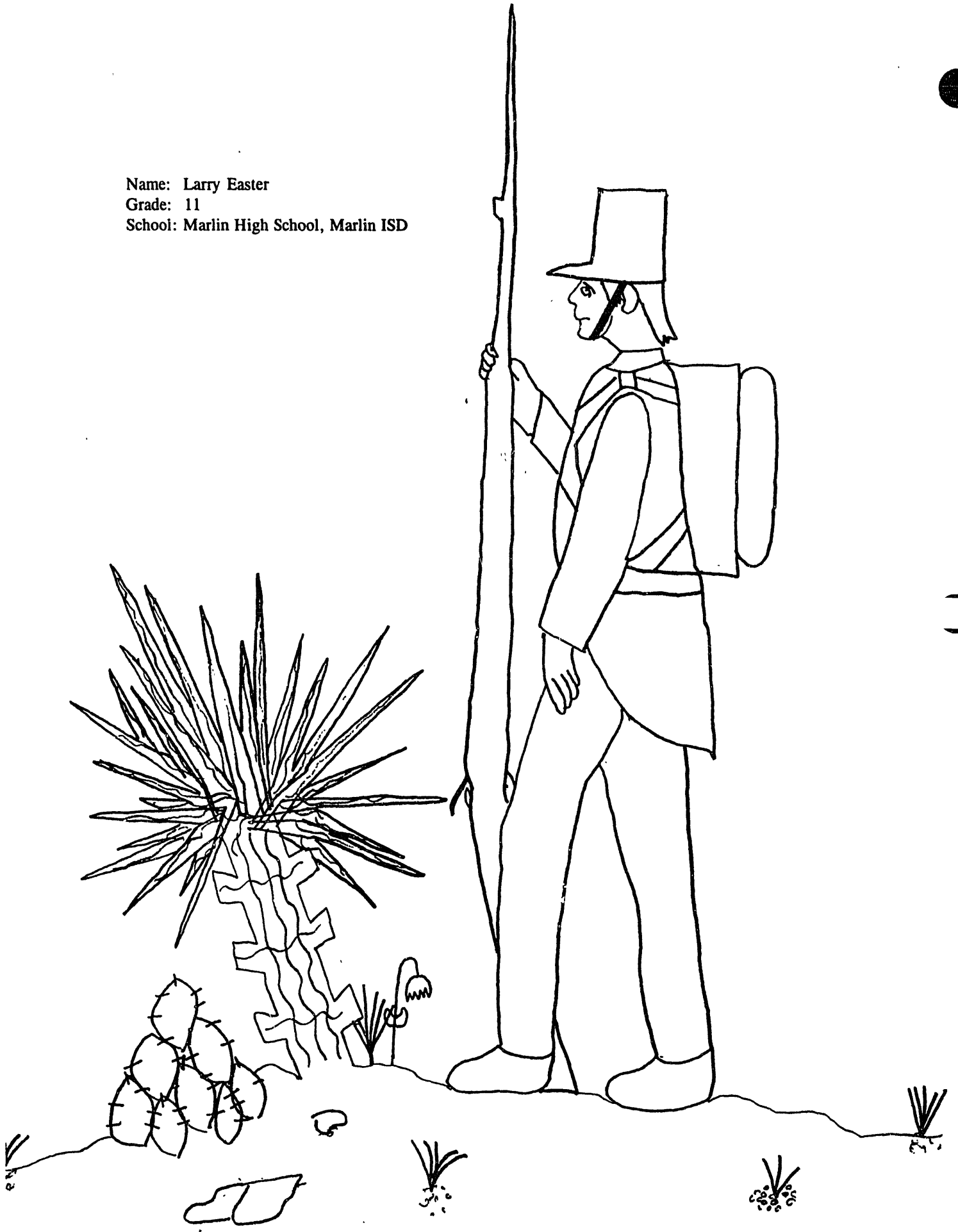
**(RQ-846).** Request from Mike Moses, Commissioner of Education, Texas Educa-

tion Agency, 1701 North Congress Avenue,  
Austin, Texas 78701-1494, regarding con-  
struction of the term "school bus" for pur-  
poses of Senate Bill 1, Acts 1995, 74th  
Legislature, Chapter 260, at 2207, et seq,  
and related questions.

TRD-9512086



Name: Larry Easter  
Grade: 11  
School: Marlin High School, Marlin ISD



# TEXAS ETHICS COMMISSION

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

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

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## Advisory Opinions Requests

**AOR-314.** The Texas Ethics Commission has been asked about the type of solicitation costs a corporation may pay under the Election Code, §253.100(b). The request letter asks about costs in connection with a golf tournament, and barbecue lunch, and a t-shirt sale.

**AOR-315.** The treasurer of a specific-purpose political committee for supporting a judge has asked whether it is permissible to contribute its remaining funds to the judge for his current campaign so that the committee may dissolve.

**AOR-316.** The Texas Ethics Commission has been asked to consider whether the Penal Code, §36.08, prohibits city employees from accepting a group discount at a day care facility that the city has designated as a preferred childcare provider. Generally, childcare facilities are regulated in some way by the city.

Issued in Austin, Texas, on September 21, 1995.

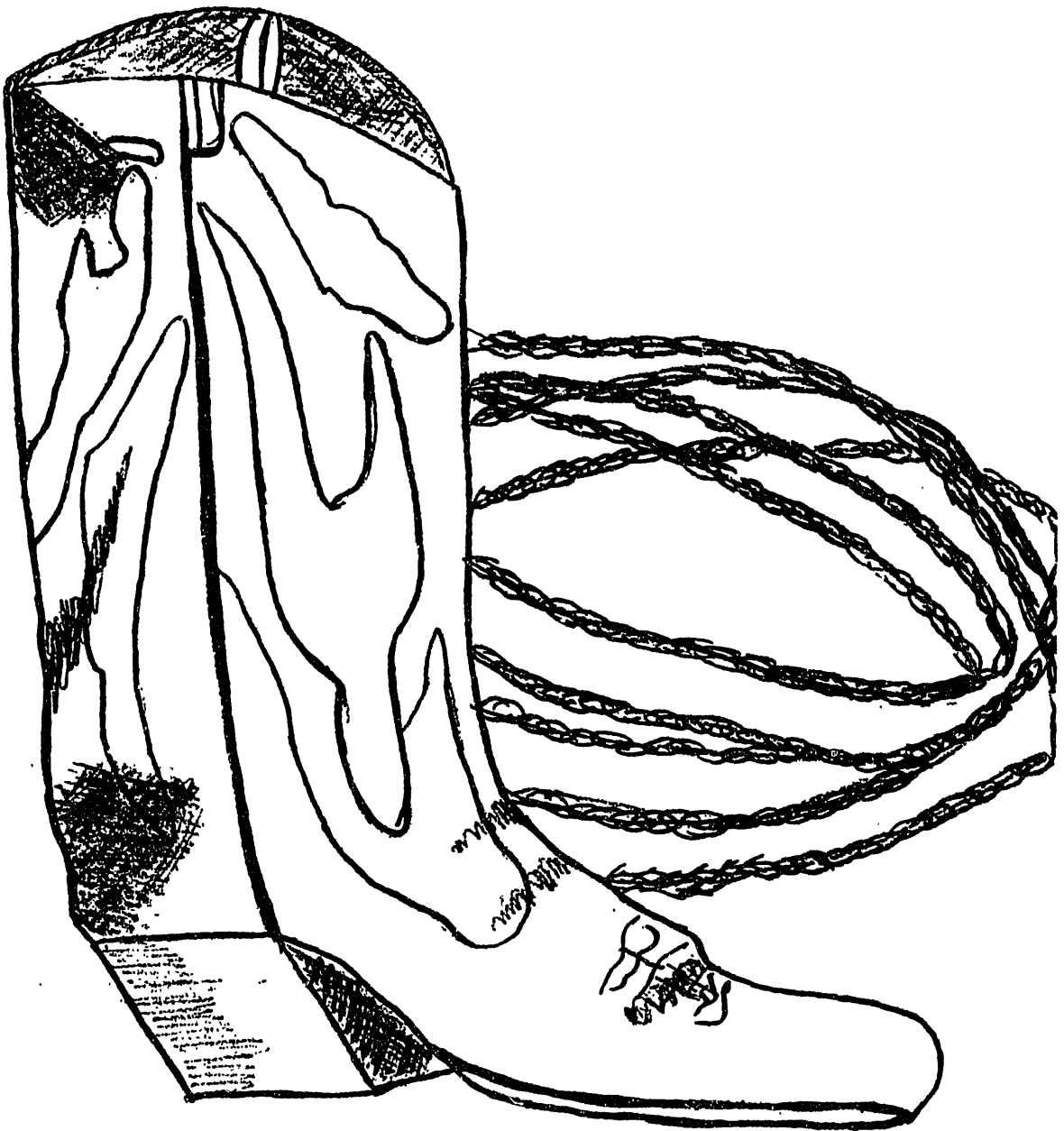
TRD-9512179

Lucia Dodson  
Executive Assistant  
Texas Ethics Commission

Filed: September 22, 1995



Name: Erin Willert  
Grade: 12  
School: Marlin High School, Marlin 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 4. AGRICULTURE

### Part I. Texas Department of Agriculture

#### Chapter 6. Boll Weevil Control

##### • 4 TAC §6.4

The Department of Agriculture (the department) adopts on an emergency basis, an amendment to §6.4, concerning the authorized cotton destruction date for the Lower Coastal Bend pest management zone.

The department is acting on a request from the Lower Coastal Bend Pest Management Zone Advisory Committee on behalf of cotton farmers in Aransas, Kleberg, Nueces, San Patricio and south and east of Highway 59 in Bee and Live Oak counties.

The current cotton destruction deadline for Aransas, Kleberg, Nueces, San Patricio and south and east of Highway 59 in Bee and Live Oak counties is September 10. A prior emergency amendment extended the deadline until September 25. The cotton destruction date for these counties will now be extended through October 1. The department believes that changing the cotton destruction date is both necessary and appropriate.

Adverse weather conditions have created a situation compelling an immediate extension of the cotton destruction date for Aransas, Kleberg, Nueces, San Patricio and south and east of Highway 59 in Bee and Live Oak counties. The unusually wet weather prior to the cotton destruction period has prevented many cotton producers from cotton destruction by the September 10 initial deadline and the September 25 extended deadline. A failure to act to extend the cotton destruction deadline could create a significant loss to

Texas cotton producers and the state's economy.

The department believes that extending the cotton destruction deadline in Aransas, Kleberg, Nueces, San Patricio and south and east of Highway 59 in Bee and Live Oak counties as requested will not result in significant pest population increasing in these counties.

The emergency amendment to §6.4(a)(2)(A) will extend the date for cotton destruction through October 1 of this year in Aransas, Kleberg, Nueces, San Patricio and south and east of Highway 59 in Bee and Live Oak counties.

The amendment is adopted on an emergency basis under Texas Agriculture Code, §74.006, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, Subchapter A; and §74.004, which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other parts, and products of host plants for boll weevil and provides the department with the authority to consider a request for a cotton destruction extension due to adverse weather conditions, and the Government Code, §2001.34, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

##### *§6.4. Authorized Planting Dates, Cotton Destruction Dates, and Prescribed Methods of Destruction.*

(a) Except as provided in subsection (c) of this section, all cotton in the pest management zones must be planted and/or mechanically destroyed by the following

authorized dates. Destruction must be accomplished by shredding and plowing out the plants to prevent further growth and to prohibit any cotton plants from remaining after the following cotton destruction dates.

(1) (No change.)

(2) Lower Coastal Bend and South Texas pest management zone.

(A) Area (1):

(i) (No change.)

(ii) cotton destruction date: on or before September 10 for Duval, Jim Wells, and Webb counties and on or before October 1 for Aransas, Kleberg, Nueces, San Patricio and south and east of Highway 59 in Bee and Live Oak counties.

(B) (No change.)

(3) (No change.)

(b)-(d) (No change.)

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

TRD-9512249

Dolores Alvarado Hibbs  
Chief Administrative Law  
Judge  
Texas Department of  
Agriculture

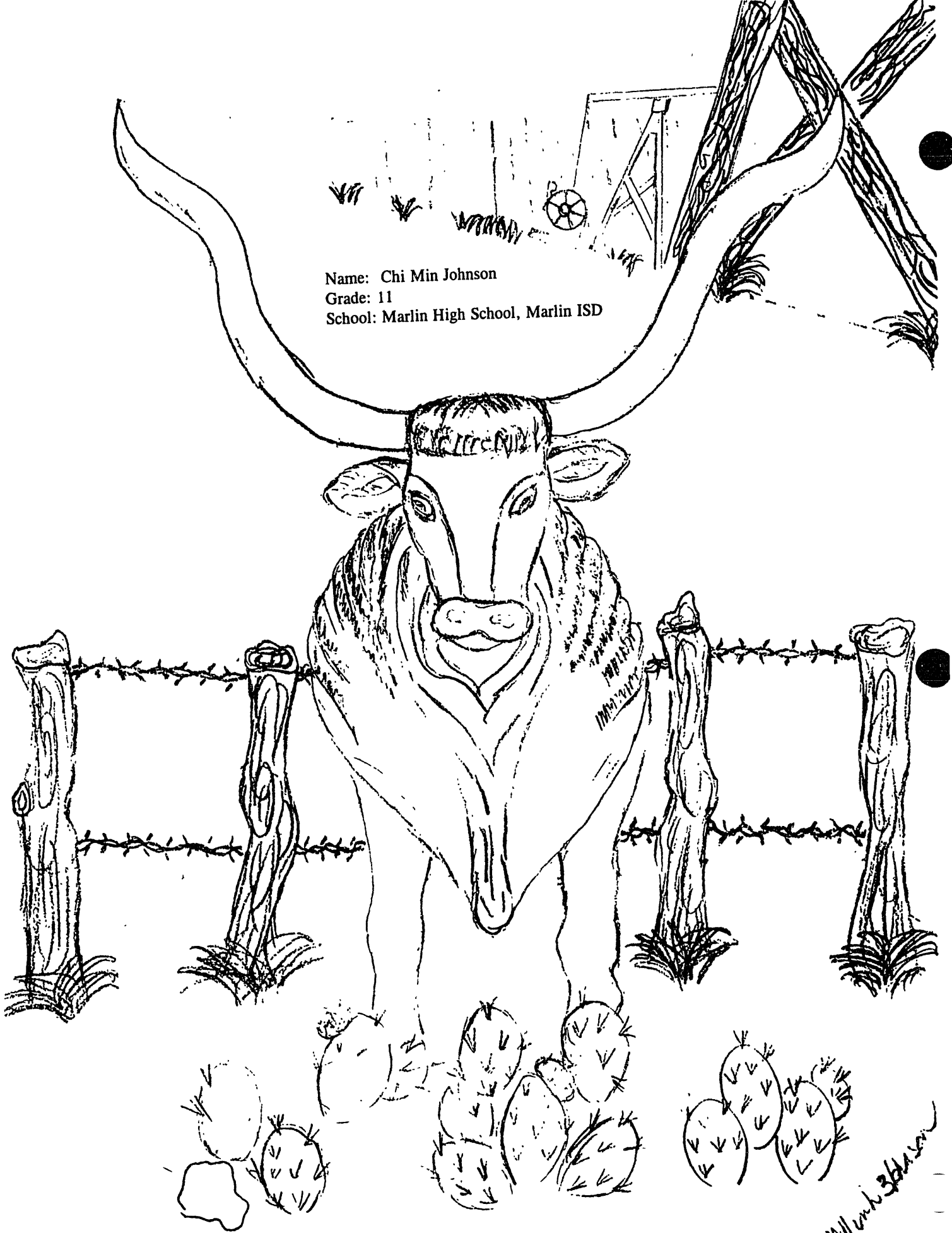
Effective date: September 25, 1995

Expiration date: October 5, 1995

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

◆ ◆ ◆

Name: Chi Min Johnson  
Grade: 11  
School: Marlin High School, Marlin ISD



7000

Chi Min Johnson

# PROPOSED RULES

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

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

## TITLE 4. AGRICULTURE

### Part I. Texas Department of Agriculture

#### Chapter 15. Consumer Services Division

##### Texas Egg Law

- 4 TAC §§15.47, 15.53, 15.55,  
15.56

The Texas Department of Agriculture (the department) proposes amendments to §§15.47, 15.53, and 15.55, and new §15.56, concerning Texas Egg Law. The proposed amendments will remove certain fee specifications from reporting requirements, and amend the chart for computation of fees for inspection of partial cases to conform to statutory requirements. The new section will establish special fees for persons licensed under the Texas Egg Law. The amendments and new section are required in order to comply with statutory changes enacted by the 74th Legislature in Senate Bill 372 and the General Appropriations Act.

Margaret Alvarez, coordinator for egg quality, has determined that for the first five-year period the amendments and the new section are in effect, there will be a decrease in state revenue in the amount of \$215,000 for each of the first five years, as a result of enforcing or administering these sections. The decrease results from the setting of inspection fees at a level to accurately reflect cost-recovery.

Mrs. Alvarez also has determined that for each year of the first five years the amendments and the new section are in effect the public benefit anticipated as a result of enforcing the sections will be to clarify the existing rules and to ensure compliance with statutory changes enacted by the 74th Legislature. The effect on both large and small businesses will be a reduction in inspection fees paid by affected parties in the egg industry. The economic cost to persons who are required to comply with the sections as proposed will be the same as the cost to small and large businesses, that is, those affected individuals in the egg industry will experience a reduction in inspection fees.

Comments on the proposal may be submitted to Margaret Alvarez, Coordinator for Egg Quality, Texas Department of Agriculture,

P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments and the new section are proposed under the Texas Agriculture Code, §132.003, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary to administer the Texas Agriculture Code, Chapter 132; the Code, §132.043, which provides the department with the authority to collect fees to implement the licensing and inspection provisions of the Texas Agriculture Code, Chapter 132; the General Appropriations Act, Acts 1995, 74th Legislature, Regular Session, Chapter 1063, Article VI, Rider 8, at 5825, which provides that the department shall collect fees which offset the direct and indirect costs of administering its regulatory activities; Texas Government Code, §316.043, which provides for circumstances under which the General Appropriations Act may override statutory amounts set for fees to be charged; and Texas Government Code, §316.045, which provides for the reduction of fees.

Texas Agriculture Code, Chapter 132, is affected by this proposal.

##### §15.47. Reports and Records.

- (a) Reporting requirements.

- (1) (No change.)

- (2) All resident dealer/wholesalers of eggs in the State of Texas must report all eggs purchased and/or produced and the total volume of eggs sold at wholesale and retail. The licensee shall list on this report all plants and/or persons from whom eggs were purchased and accurately indicate whether these eggs were purchased on a graded or ungraded basis. A fee as prescribed by §15.56 of this title (relating to Special Fees) [of \$.05 per case] on all sales of eggs on which the licensee established the first grade shall accompany this report.

- (3) The dealer/wholesaler operating in the State of Texas who obtains or purchases any eggs from a broker or the mercantile trade exchange is liable for the [\$.05 per case] fee as prescribed by §15.56 of this title (relating to Special Fees) and the required labeling of said eggs, whether

graded or ungraded. Furthermore, the Texas dealer/wholesaler shall be liable for the fee and labeling of any eggs purchased or obtained from an out-of-state packer that is not licensed with the State of Texas (whether said eggs are graded or ungraded). Any eggs of this nature received by a Texas dealer/wholesaler that do not bear a label which is in compliance with the labeling requirements of the Texas Egg Law shall be considered ungraded eggs.

- (4) (No change.)

- (5) The nonresident dealer/wholesaler shall give a complete breakdown of all sales of graded and ungraded eggs into the State of Texas, listing the individual plant or person to whom eggs were sold and indicating whether these eggs were sold on a graded or ungraded basis. Accompanying the report shall be a check or money order for the amount of the fee as prescribed by §15.56 of this title (relating to Special Fees) [based on \$.05 per case] on all eggs shipped into Texas on a graded basis.

- (6) All licensed processors in this state shall pay a fee as prescribed by §15.56 of this title (relating to Special Fees) [of \$.05 per case] on all shell eggs which they handle upon their first use or change in form of eggs processed by them.

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

- (b) (No change.)

##### §15.53. Cold Storage Requirements.

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

- (c) The person that takes first possession of these eggs after receiving them in this state shall be liable for compliance with subsections (a) and (b) of this section and also shall be liable for payment of the [\$.05 per case] fee as prescribed by §15.56(b) of this title (relating to Special Fees). Furthermore, upon receiving these eggs, the same person will be held responsible for the proper labeling of these eggs to comply with these rules and the Texas Egg Law.

§15.55. *Texas Department of Agriculture Chart for Computation of Special [Egg Inspection] Fee on Partial Cases.*

Number of Dozen—Amount

0-14 [0-6]—\$.01

15-29 [7-12]—\$.02

[13-18—\$.03]

[19-24—\$.04]

[25-30—\$.05]

§15.56. *Special Fees.*

(a) A person licensed under this chapter who first establishes the grade, size, and classification of eggs offered for sale or sold in this state shall collect a fee of three cents per case of eggs on the first sale of the eggs

(b) A processor licensed under this chapter shall pay a fee of three cents per case of eggs on the processor's first use or change in form of the eggs processed.

(c) Licensees required by this section to collect or pay a special fee shall remit the fee monthly in accordance with §15.47 of this title (relating to Reports and Records).

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 September 25, 1995.

TRD-9512248

Dolores Alvarado Hibbs  
Chief Administrative Law  
Judge  
Texas Department of  
Agriculture

Earliest possible date of adoption: October 30, 1995

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

◆ ◆ ◆  
**TITLE 13. CULTURAL  
RESOURCES**

**Part I. Texas State Library  
and Archives  
Commission**

**Chapter 1. Library  
Development**

**Grants: Electronic Access**

**• 13 TAC §1.100, §1.101**

The Texas State Library and Archives Commission proposes new §1.100 and §1.101, concerning grants and training for public library connections to the Internet. The sections proposed set forth the purpose, criteria, and procedures to award grants to public libraries and establish standards for public library Internet connections.

Lisa deGruyter, manager, Electronic Library Services, has determined that for each year

of the first five years the sections are in effect there will be a fiscal implication for local and state governments as a result of enforcing or administering the sections. In State Fiscal Year (SFY) 1996, local governments will be awarded approximately \$910,000; and in SFY 1997, approximately \$800,000. Subsequent impact will depend on legislative appropriations in succeeding years. The cost to state government of administering the sections will be approximately \$89,000 per year.

Ms. deGruyter 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 the provision of electronic library services to users of public libraries statewide. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Comments may be submitted to Lisa deGruyter, Manager, Electronic Library Services, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas 78711.

The amendments are proposed under Senate Bill 366 (Acts of the 74th Legislature -Regular Session—§9), which provides the Commission the authority to provide grants to meet specific needs of local libraries that are not adequately addressed under other law.

The Government Code, Chapter 441, Subchapter A, §441.006, is affected by the proposed sections.

*§1.100. Standards for Local Public Library Internet Access.*

(a) Definitions. The following words and terms, when used in this undesignated head, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Administrative staff—Library staff whose responsibilities include management or supervision.

(2) Bandwidth—The amount of data that can be sent through a given communications circuit per second, generally expressed as kilo bits per second (Kbps).

(3) Client—A computer system or process that requests a service of another computer system or process (a "server") according to a specified protocol.

(4) Dedicated connection—A permanent, as opposed to dialup, connection between machines established over a telephone line.

(5) Dialup connection—A temporary, as opposed to dedicated, connection between machines established over a telephone line using modems.

(6) Distributed system—A collection of computers whose distribution is transparent to the user so that the system appears as one local machine, and which usually uses a client-server organization.

(7) Domain Name Server or Domain Name System (DNS)—A general-purpose distributed, replicated, data query service used on the Internet for translating host names into Internet addresses, as specified in RFC-1034 and 1035 (DOMAIN, Domain Name System) and RFC-974 (DNS-MX, Mail Routing and the Domain System) or their current successor documents.

(8) Domain name—The common suffix in a Fully Qualified Domain Name that a group of computers share.

(9) File Transfer Protocol (FTP)—A protocol for transferring files from one computer to another over the Internet, as specified in RFC-959 or its current successor document.

(10) Format of Electronic Mail Messages (MAIL)—A format for transferring electronic mail messages from one computer to another over the Internet, as specified in RFC-822 or its current successor document.

(11) Fully qualified domain name (FQDN)—The full name of a computer system, consisting of its local host name and its domain name.

(12) Gopher—A distributed document retrieval system that started at the University of Minnesota, as defined in RFC-1432 or its most current successor document.

(13) Graphical user interface (GUI)—The use of pictures rather than just words to represent the input and output of a computer program.

(14) Host name—The unique name by which a computer is known on a network, used to identify it in electronic information interchange.

(15) Host—A computer connected to a network.

(16) Hypertext Markup Language (HTML)—A hypertext document format, using Standard Generalized Markup Language, used by the World-Wide Web.

(17) Hypertext Transfer Protocol (HTTP)—The client-server TCP/IP protocol used on the World-Wide Web for the exchange of HTML documents.

(18) Internet address—The 32-bit host address defined by the Internet Protocol in RFC-791, usually represented in dotted decimal notation.

(19) Internet Architecture Board (IAB)—A technical advisory group of the Internet Society chartered by the Internet Society Trustees to provide oversight of the architecture of the Internet and its protocols.

(20) Internet connection—A combination of hardware, software, and telecommunications services that allows a

computer to communicate with any other computer on the worldwide network of networks known as the Internet, and that adheres to the required standard protocols listed in RFC-1800 or its current successor document.

(21) Internet Protocol (IP)—A protocol for computer telecommunications as specified in RFC-791 or its current successor document.

(22) Internet provider—An organization that is authorized to provide Internet connections to other organizations.

(23) Management Information Base-II (MIB-II)—A specification of the managed objects to be defined in a internet work management system as specified in RFC-1213 or its current successor document.

(24) Network—A hardware and software computer data communication system.

(25) Protocol—A set of formal rules describing how to transmit data across a network.

(26) Public service staff—Library staff whose primary responsibilities include helping library users to find and use information or materials; pages, shelvers, circulation and clerical staff or others whose reference or reader's advisory duties are incidental are not included.

(27) Request for Comments (RFC)—A version of an Internet specification, published as part of the "Request for Comments"; (RFC) document series, the official publication channel for Internet standards documents and other publications of the Internet Engineering Steering Group, Internet Architecture Board, and Internet community.

(28) Server—A computer system or process that provides some service for other computers ("clients") connected to it via a network, according to a specified protocol.

(29) Simple Mail Transfer Protocol (SMTP)—A mail transfer protocol defining an envelope to be used in delivering messages between computers on the Internet, as specified in RFC-821 or its current successor document.

(30) Simple Network Management Protocol (SNMP)—A protocol for remote management and collection of network management information as specified in RFC-1157 or its current successor document.

(31) Technical services staff—Library staff whose primary responsibilities include selecting, cataloging, or indexing information or materials for the library collection.

(32) Telnet Protocol (TELNET)—A protocol that allows a user on one computer to login remotely to another computer over the Internet, as specified in RFC-854 and 855 or their current successor documents.

(33) Text-based—Working under a non-window-based operating system, as opposed to a graphical user interface.

(34) Transmissions Control Protocol (TCP)—A protocol for computer telecommunications as specified in RFC-793 or its current successor document.

(35) Wide Area Information Server (WAIS)—A distributed (client-server) information retrieval system that uses a protocol defined in the American National Standards Institute Z39.50.

(36) World Wide Web (WWW)—An Internet client-server hypertext distributed information retrieval system using HTTP that originated from the CERN High-Energy Physics laboratories in Geneva, Switzerland.

(b) These standards for local public library Internet access apply to all Internet connections funded in whole or in part by the Texas State Library and Archives Commission with state, federal, or other grant funds, with the exception of those funded under §1.91 of this title (relating to System Operation Grants).

(1) Internet Protocol standards. All connections must implement TCP/IP, Telnet, File Transfer Protocol, Simple Mail Transfer Protocol and Format of Electronic Mail Messages. Dedicated connections must also implement Management Information Base-II and Simple Network Management Protocol.

(2) Application standards. All new hosts must provide Internet access through a graphical HTTP/1.0 client. All existing hosts must provide Internet access through a graphical user interface (GUI) HTTP/1.0 client, if this is possible with existing network hardware and software and the addition of client software; if not, existing hosts must provide Internet access through a text-based HTTP/1.0 client.

(3) Bandwidth standards. All connections must have guaranteed availability of bandwidth.

(A) Dedicated lines must have at least 56 Kbps available to the library at all times.

(B) Dialup connections must be equipped to handle connections of at least 28.8 Kbps, regardless of the expected performance of the telephone line. Internet providers must provide equipment to handle at least 28.8 Kbps and guarantee service

equivalent to a connection on 95% of connection attempts during the period 9:00 a.m. to 9:00 p.m. (local time) daily.

(4) Addressing standards. Each Internet host must have an Internet address that is used only by the public library and its users; that is, temporary Internet addresses dynamically assigned by an Internet provider are not acceptable if they may also be assigned to other users. All Internet addresses must be resolvable to a fully qualified domain name through a Domain Name System.

(5) Access Standards. Internet hosts must be available for the use of library users during all open hours of the library location. There must be at least one host available to library users in each library location. For dedicated connections there must be at least one host available to users for every 30,000 library circulations or greater part thereof per year from that location. Library users must be able to:

(A) Search and use information sources on the Internet and the World Wide Web, including those available by telnet, gopher, HTTP, WAIS, and FTP.

(B) Obtain copies of information by electronic-mailing, downloading, and printing.

(6) All permanent public service staff must be trained to use and support library users in the use of Internet access; other permanent library staff must be trained to use networked information and services as needed to support their job tasks.

(7) All permanent public service, technical service, and administrative staff must have access to e-mail, telnet and World Wide Web, and the ability to transfer files by FTP.

(8) If the library operates a public access automated catalog that can support multiple users, it must be made available to the general public on the Internet.

#### *§1.101. Internet Assistance Grants .*

(a) Purpose. Internet assistance grants are to help Texas public libraries acquire Internet connections for the delivery of networked information.

(b) Eligibility. Public libraries that have been accredited as meeting the system membership requirements in §§1.82-1.85 of this title (relating to Minimum Standards for Accreditation of Public Libraries in the State Library System) for the state fiscal year for which the grant is awarded are eligible for Internet Assistance Grants. A public library or non-profit corporation may

apply on behalf of a group of public libraries in a cooperative project, or for funding of the public library portion of a project including other types of libraries or organizations. Grants will not be awarded to libraries which evidenced poor performance on prior state or federally funded grant projects, as measured by adherence to all fiscal and programmatic requirements.

(c) Standards requirements. All grant projects must result in Internet connections and services which meet the standards in §1.100 of this title (relating to Standards for Local Public Library Internet Access).

(d) Selection criteria. This grant program is competitive. Applications for Internet Assistance Grants will be rated according to a system which awards points based on nine criteria. These criteria are:

(1) Connections. How many new Internet connections are created.

(2) Need. Service to communities which have low median income or are isolated from educational, cultural, and information resources.

(3) Staffing. How well-prepared local staff are to use networked electronic resources in their own jobs, and to help users use electronic resources to meet their information needs.

(4) Local Commitment. Level of commitment from local governments, organizations, and individuals outside the library to building and maintaining electronic information resources and using electronic communications (for example, city and county governments, K-12 schools, community colleges, universities, non-profits, and the private sector).

(5) Cooperation. Amount of cooperation among libraries in a geographic area

(6) Cost Effectiveness. How appropriate the chosen hardware, software, and service providers are for the project, given the cost of the project.

(7) Access. How many public Internet access workstations are made available in the library, and how much dial-up access is made available to local patrons.

(8) Electronic Resources. Level of significant local electronic information sources already in place, such as local government records and library catalogs.

(9) Cost Sharing. Level of local funding available to share in the project costs

(e) Points for each criterion will be based primarily on the measures listed; raters may also consider other relevant factors in scoring each criterion. The measures and weights for the criteria are:

(1) Connections. Number of library buildings that did not have them previously for which the project will provide Internet connections meeting the Standards for Local Public Library Internet Connections. Maximum Points 15.

(2) Need. Median income according to the latest U.S. Census update available in July preceding the application for each county served by the participating libraries; percentage of the population served (the total assigned population of the participating libraries for the State Fiscal Year in which the grant is awarded) that is rural by the U.S. Census definition; average air distance of the participating libraries from the nearest city of over 100,000 population according to the latest U.S. Census estimate available on the first of the month preceding the application deadline. Maximum Points 15.

(3) Staffing and Readiness. Full-time equivalent staff with American Library Association accredited master's degrees; average number of modules of Texas State Library Small Library Management training completed (for libraries serving under 25,000 population); average number of hours continuing education completed by staff in the preceding State Fiscal Year; number of staff who have completed an Internet workshop or course, or who have a personal account; number of existing staff or public access Internet connections. Maximum Points 10.

(4) Local Commitment. Number of other organizations participating in the project; plans for building a community-wide network and the involvement of the library in them. Maximum Points 10.

(5) Cooperation. Percentage of eligible public libraries in the Local Access Transport Areas (LATA) of the participating libraries that are participating. Maximum Points 10.

(6) Cost Effectiveness. Total cost of the project per capita; estimated total operating cost per capita for the first year; estimated useful life of hardware and software. Maximum Points 10.

(7) Access. Number of public Internet access workstations per capita; number of dial-in lines per capita; population determined by total assigned population for the participating libraries as published in the latest edition of *Texas Public Library Statistics*. Maximum Points 5.

(8) Electronic Resources. Number of bibliographic entries in an automated public library access catalog which will be made available on the Internet; significant local government records or other local information that will be made available on the Internet through the project. Maximum Points 5.

(9) Cost Sharing. Percentage of the project cost available from local or other grant sources; ratio of local funding available at the time of application to the total project cash cost. Maximum Points 5.

(f) Eligible costs. Eligible costs are: Central processing units (CPUs) and associated peripherals, storage devices, and telecommunications devices necessary to support dialup access, user interfaces, file searching, and TCP/IP telecommunications services such as electronic mail, telnet, and file transfer; purchase of software necessary to support dialup access, user interfaces, file searching, and TCP/IP telecommunications services such as electronic mail, telnet, and file transfer; telecommunications line and associated equipment leasing or purchase to enable a direct permanent connection to the most appropriate Internet point-of-presence; incoming telephone lines for dialup access; equipment installation, software development and installation, and telecommunications installation; one public access host per location; indirect and audit costs; travel expenses for required staff training; hardware and software to add voice and large print display capabilities for one public access host per location.

(g) Matching requirement. Each applicant must expend an amount in cash at least equal to 50% of the amount of the grant in cost which are eligible grant costs, with the exception that additional public access hosts are eligible as matching costs. If the matching requirement is not met, as determined by audit, the local government will have to refund all or a portion of the grant. The cash match can be from a foundation grant; gifts from citizens, corporations or organizations; Friends of the Library donations; revenues from the sale of bonds or certificates of obligation; federal funds; locally appropriated funds; or a combination. State or federal funds awarded to the grantee from any other State Library and Archives program may not be used as matching funds. Required matching funds must be available at the beginning of the grant period; applicants that have matching funds available at the time of application will receive a higher funding priority.

(h) Prior expenditures. Expenditures by local applicants for consultant fees and preliminary planning costs of an approved project, made prior to the date of State Library approval, are eligible as matching funds, but only if made within the year prior to the date of the grant award contract.

(i) Training requirement. All permanent administrative, public service, and technical staff must complete the appropriate Internet training provided by the State Library.

(j) Maximum award. The maximum grant award will be no more than half of the

available funding in any given award period.

(k) Application, grant review and award process. A prospective applicant must submit an application to the State Library and Archives Commission on the forms and at the time specified by the agency.

(1) The State Library staff will review all applications for eligibility and for compliance with all criteria and instructions.

(2) A panel of three reviewers, not Texas residents, and experienced in public library service, Internet services, or both, will assign ratings to each application.

(3) Staff will compute scores, and rank each application according to the total points received.

(4) Funding recommendations to the State Library and Archives Commission will consist of the highest ranked applications, up to the limit of available funds. If available funds are insufficient to fully fund a proposal after the higher ranking proposals have been fully funded, staff will negotiate with the applicant to determine if a lesser amount would be acceptable. If the applicant does not agree to the lesser amount, the staff will negotiate with the next applicant on the ranked list. The process will be continued until all grant funds are awarded.

(5) In the unlikely event that two proposals receive identical scores and funds are insufficient for both, staff will recommend awarding funds to the applicant requesting the lesser amount of state funding. If any funds remain after an award is made to this applicant, staff will negotiate with the other applicant in question. If these negotiations are unsuccessful, staff will negotiate with the next applicant on the ranked list.

(6) Applications will be evaluated and ranked as objectively as possible. All applicants will be mailed the staff's preliminary findings and will be given an opportunity to respond before a final recommendation for funding is made to the Texas State Library and Archives Commission.

(l) Contract. Following approval of the grant awards by the State Library and Archives Commission, the staff will provide successful applicants with a final application, which is to be completed and returned to the State Library. This includes the Application for State/Federal Assistance and supporting documentation. A contract with the applicant will be issued on the basis of the information in the final application. The staff will refer any problems with the final application to the applicant. If a final application cannot be approved or a contract executed, the selection procedures will be

used to award the funds to another applicant or applicants.

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 September 25, 1995.

TRD-9512245

Raymond Hitt  
Assistant State Librarian  
Texas State Library and  
Archives Commission

Earliest possible date of adoption: October 30, 1995

For further information, please call: (512) 463-5460

## TITLE 16. ECONOMIC REGULATION

### Part II. Public Utility Commission of Texas

#### Chapter 23. Substantive Rules

##### Telephone

###### • 16 TAC §23.96

The Public Utility Commission of Texas proposes new §23.96, relating to Telephone Directories, to address directory requirements applicable to dominant certificated telecommunications utilities or their affiliates, telecommunications utilities and their affiliates, and private for-profit publishers of residential telephone directories.

As mandated by the Public Utility Regulatory Act of 1995 (PURA), §3.310, the rule provides that telecommunications utilities or their affiliates that publish telephone directories must include the names, addresses, and telephone numbers of state senators and representatives who represent all or part of the geographical area for which the directory contains listings.

Private for-profit publishers of residential telephone directories also are affected by the rule. Pursuant to PURA, §3.309, residential telephone directories published by private for-profit publishers must contain toll-free numbers and local telephone numbers for state agencies, state public services, and elected state officials who represent all or part of the geographical area for which the directory contains listings. The rule provides requirements for the inclusion of such listings in the directory and specifies the format.

The section also contains general directory requirements that are applicable to dominant certificated telecommunication utilities or their affiliates.

Patricia Ana Garcia Escobedo, assistant general counsel, has determined that for the first five-year period the section is in effect there will be an indeterminable cost to the commission to ensure that certain information provided to directory publishers is accurate. There will be no other fiscal implications for state or local government as a result of the enforcing or administering the section.

Ms. Escobedo 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 rule is more expedient access by subscribers to toll-free and local telephone numbers of state agencies, state public services and elected state officials. The economic rule requires no cost of compliance that is not required by PURA, §3.309 and §3.310. The proposed rule has no effect on small businesses.

Ms. Escobedo has determined further that for the first five years the section is in effect it is likely to have no effect on the opportunities for employment in the geographic areas of Texas affected by implementing this section.

Comments on the proposed rule (13 copies) may be submitted within 30 days to Paula Mueller, Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757. Comments should refer to Project Number 14557. The Commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the section. The Commission will consider the costs and benefits in deciding whether to adopt the section.

The Commission Staff will conduct a public hearing on this rulemaking under Government Code, §2001.029 at the Commission's offices on November 7, 1995, at 10:00 a.m.

The new section is proposed under the Public Utility Regulatory Act of 1995, §1.101, which provides the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §3.309, which authorizes the Commission to promulgate rules applicable to private for-profit publishers of directories containing residential listings; and §3.310, which requires the inclusion of listings for state representatives and state senators in the directories of telecommunications utilities or affiliates.

The following statute is affected by this rule: the Public Utility Regulatory Act of 1995, §§1.101, 3.265, 3.309, and 3.310.

##### §23.96. Telephone Directories.

(a) When used in this section, the term "private for profit publisher" shall mean a publisher of a telephone directory that contains residential listings and that is distributed to the public at minimal or no cost.

(b) This subsection applies to any dominant certificated telecommunications utility or its affiliate.

(1) Telephone directories shall be published annually, listing the names, addresses, and telephone numbers of all customers other than those who request that information be unlisted. Numbers of pay telephones need not be listed.

(2) Upon issuance, a copy of each directory shall be distributed for all customer access lines served by that directory and, if requested, one extra copy per

customer access line. A copy of each directory shall be furnished to the commission.

(3) The name of the dominant certificated telecommunications utility, an indication of the area included in the directory, and the month and the year of issue shall appear on the front cover. Information pertaining to emergency calls such as for the police and fire departments shall appear conspicuously in the front part of the directory pages.

(4) The directory shall contain instructions concerning placing local and long distance calls on the network of the dominant certificated telecommunications utility for which the directory is issued, calls to the dominant certificated telecommunications utility's repair and directory assistance services, and locations and telephone numbers of the business offices of the dominant certificated telecommunications utility as may be appropriate to the area served by the directory. It shall also contain a section setting out sample long distance rates within the long distance service area, if any, on the network of the dominant certificated telecommunications utility for which the directory is issued, applicable at the time the directory is compiled for publication, with a clear statement that the published rates are effective as of the date of compilation.

(5) Each dominant certificated telecommunications utility shall list each customer with its directory assistance within 72 hours after service connection (except those numbers excluded from listing in paragraph (1) of this subsection) in order that the directory assistance operators can provide the requested telephone numbers based on customer names and addresses.

(6) All nonassigned telephone numbers in central offices serving more than 300 customer access lines shall be intercepted unless otherwise approved by the commission.

(7) Disconnected residence telephone numbers shall not be reassigned for 30 days and disconnected business numbers shall not be reassigned, unless requested by the customer, for 30 days or the life of the directory, whichever is longer, unless no other numbers are available to provide service to new customers.

(8) If a customer's number is incorrectly listed in the directory and if the incorrect number is a working number and if the customer to whom the incorrect number is assigned requests, the number of the customer to whom the incorrect number is assigned shall be changed at no charge. If the incorrect number is not a working number and is a usable number, the customer's number shall be changed to the listed number at no charge if requested.

(9) When additions or changes in plant or changes to any other certificated telecommunications utility's operations necessitate changing telephone numbers to a group of customers, at least 30 days' written notice shall be given to all customers so affected even though the addition or changes may be coincident with a directory issue.

(10) At the customer's option the directory shall list either the customer's street address or post office box number. A charge can be imposed upon those customers who desire both listings.

(c) A telecommunications utility or an affiliate of that utility that publishes a residential or business telephone directory that is distributed to the public shall publish the name, address, and telephone number of each state senator or representative who represents all or part of the geographical area for which the directory contains listings.

(d) Any private for-profit publisher that publishes a residential telephone directory shall comply with the following requirements.

(1) A telephone directory shall contain a listing of each toll-free and local telephone number for each of the following:

(A) state agencies,

(B) state public services; and

(C) elected state officials who represent all or part of the geographical area for which the directory contains listings.

(2) The directory shall include the information required in paragraph (1) of this subsection from the most current edition of the State of Texas Telephone Directory prepared and issued by the General Services Commission of the State of Texas and those modifications to the State of Texas Telephone Directory that are available upon request from the Public Utility Commission of Texas.

(3) Private for-profit publishers shall contact the secretary of the Public Utility Commission of Texas in writing to determine which issue of the State of Texas Telephone Directory is most current and to obtain the modifications referred to in paragraph (2) of this subsection. The contact shall refer to Project Number 14606. The commission shall respond within 30 days of receiving the request.

(4) The listings required by paragraph (1) of this subsection:

(A) may be located at the front of the directory or, if not located at the

front of the directory, shall be referenced clearly on the inside page of the cover or on the first page following the cover before the main listing of residential and business telephone numbers:

(B) shall be labeled "GOVERNMENT OFFICES-STATE" in 24 point type;

(C) shall be bordered on the three unbound sides with a border that will distinguish the state listings from the other listings;

(D) need not exceed a length equivalent to two 8 1/2-inch by 11-inch pages, single-spaced in eight point type, provided that if space does not permit the listing of all local telephone numbers for those agencies and officials with more than one local telephone number, the publisher shall list one local telephone number that the caller can use to access other local telephone numbers of the same agency or official; and

(E) shall be included in the directory at no cost to the agency or official.

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 September 17, 1995.

TRD-9512136

Paula Mueller  
Secretary of the  
Commission  
Public Utility Commission  
of Texas

Earliest possible date of adoption: October 30, 1995

For further information, please call: (512) 458-0100

## Part VIII. Texas Racing Commission

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

#### Subchapter B. Individual Licenses

#### General Provisions

##### • 16 TAC §305.35

The Texas Racing Commission proposes an amendment to §305.35, concerning license fees. The amendment adds licensing categories and annual fees for chart writers, training facility employees, and training facility general managers.

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



mined that for the first five-year period the section is in effect there will be no fiscal implications for local government as a result of enforcing the section. There will be fiscal implications for state government, in that the commission will take in revenue for each license issued. However, because the commission's fee structure is set to offset the costs of administering the licensing program, the net fiscal impact is expected to be neutral.

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that occupational licensees will be licensed in the appropriate category and the commission's licensing function will be self-sufficient in terms of cost. There will be no effect on small businesses. There will be an economic cost to persons who are required to comply with the section as proposed. A person who wishes to be licensed as a chart writer, training facility employee, or training facility general manager will be required to pay an annual license fee of \$20.

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

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §5.01, which authorizes the commission to prescribe reasonable license fees for each category of license issued; and §7.05, which authorizes the commission to adopt a rule that sets a fee schedule for occupational licenses

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

§305.35. License Fees. The annual fee for an individual license is as follows:

- (1) Type of License—Fee
- (2) Admissions person—\$20
- (3) Adoption Program Personnel—\$20
- (4) Announcer—\$20
- (5) Apprentice Jockey—\$65
- (6) Association—Office Staff—\$20
- (7) Association—Other—\$50
- (8) Association Chaplain—\$20
- (9) Association Judge/Steward—\$50
- (10) Association Asst. Management Personnel—\$35
- (11) Association Management Personnel—\$50
- (12) Association Officer/Director—\$75
- (13) Association Veterinarian—\$50

- (14) Asst. Starter—\$20
- (15) Asst. Trainer—\$75
- (16) Asst. Trainer/Owner—\$75
- (17) Authorized Agent (Add Principals only)—\$10
- (18) Authorized Agent (New License)—\$10
- (19) Box Person—\$20
- (20) Cool-out—\$20
- (21) Chart Writer—\$20
- (22) Duplicate Badge—\$15
- (23) Entry Clerk—\$20
- (24) Exercise Rider—\$20
- (25) Farrier/Plater/Blacksmith—\$65
- (26) Farrier/Plater/Blacksmith's Asst.—\$20
- (27) Food Service—\$20
- (28) Groom—\$20
- (29) Jockey—\$75
- (30) Jockey Agent—\$75
- (31) Kennel Helper—\$20
- (32) Kennel Owner—\$75
- (33) Kennel Owner/Owner—\$75
- (34) Kennel Owner/Owner/Trainer—\$75
- (35) Kennel Owner/Trainer—\$75
- (36) Kennel Registration—\$50
- (37) Leadout—\$20
- (38) Maintenance—\$20
- (39) Marketing Staff—\$20
- (40) Medical Staff—\$20
- (41) Miscellaneous—\$20
- (42) Multiple Owner—\$20
- (43) Mutuel—Other—\$20
- (44) Mutuel Clerk—\$20
- (45) Official—\$20
- (46) Outrider—\$20
- (47) Owner—\$75
- (48) Owner/Trainer—\$75
- (49) Parking Attendant—\$20
- (50) Pony Person—\$20
- (51) Racing Industry Representative—\$75
- (52) Security Officer—\$20
- (53) Stable Foreman—\$20
- (54) Tattooer—\$75
- (55) Test Technician—\$20

- (56) Tooth Floater—\$75
- (57) Tote Technician—\$20
- (58) Trainer—\$75
- (59) Training Facility Employee—\$20
- (60) Training Facility General Manager/CEO—\$20
- (61) Valet—\$20
- (62) Vendor/concessionaire—\$75
- (63) Vendor/concessionaire employee—\$20
- (64) Veterinarian—\$75
- (65) Veterinarian Asst.—\$20

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 September 19, 1995.

TRD-9512052 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: October 30, 1995

For further information, please call. (612) 794-8461

◆ ◆ ◆  
• 16 TAC §305.37

The Texas Racing Commission proposes an amendment to §305.37, concerning restrictions on licensing. The amendment would permit a racing official to be licensed in another capacity, subject to the approval of the stewards or racing judges.

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

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the commission's licensing function will operate efficiently and effectively. There will be no effect on small businesses. There will be no economic cost to persons who are required to comply with the section as proposed.

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

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §3.07, which authorizes the commission to specify the authority and duties of each racing official; and §7.02, which authorizes the commission to specify the qualifications and

experience required for each category of license.

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

### §305.37. Restriction On Licensing

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

[(c) A racing official may not be licensed in any other capacity.]

(c)[(d)] An individual licensed as an owner may not be licensed as a jockey agent, nor may an individual licensed as a jockey agent be licensed as an owner

(d)[(e)] An individual licensee may not act in any capacity other than that for which he or she is licensed.

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 September 19, 1995

TRD-9512053 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: October 30, 1995

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



## Chapter 309. Operation of Racetracks

### Subchapter A. General Provisions

#### Facilities and Equipment

##### • 16 TAC §309.14

The Texas Racing Commission proposes an amendment to §309.14, concerning accessibility of racetrack facilities by disabled persons. The amendment requires each pari-mutuel racetrack to have a plan for accommodating the wagering and entertainment needs of its disabled patrons.

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

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that pari-mutuel racetracks will be safe and accessible to all patrons. There will be an effect on small businesses. The exact cost of accommodating disabled patrons will vary with each racetrack, depending on the plan proposed and implemented by the racetrack. There will be no economic cost to persons who are required to comply with the section as proposed.

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

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

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

### §309.14 Accessibility By Disabled Persons.

(a) An association shall ensure that all public areas of the association grounds are accessible by disabled persons in accordance with standards adopted for public buildings under Texas Civil Statutes, Article 9102 [State Purchasing and General Services Act, Article 7, Texas Civil Statutes, Article 601b].

(b) An association shall develop a plan for accommodating the wagering and entertainment needs of disabled persons. The plan must address all aspects of providing the association's services to disabled persons, including but not limited to the audio-visual displays of racing information, the number of betting windows designed for disabled persons, and accommodations in all areas of the racetrack. The plan must also include a time schedule for implementation. An operating association shall submit the plan to the executive secretary for approval not later than the 60th day after the effective date of this amendment. A non-operating association shall submit the plan to the executive secretary for approval on request during the normal course of construction.

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 September 19, 1995.

TRD-9512054 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: October 30, 1995

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



## Subchapter C. Greyhound Racetracks

### Operations

#### • 16 TAC §309.357

The Texas Racing Commission proposes an amendment to §309.357, concerning schooling. The amendment deletes a reference to schooling requirements for greyhounds, to avoid duplication with another commission rules.

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

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the commission's rules will avoid duplication and be internally consistent. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

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

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

### §309.357. Schooling.

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

[(d) A greyhound that has not had an official start in a period of 10 racing days must participate in an official schooling race before being entered in a race.]

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 September 19, 1995.

TRD-9512055 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: October 30, 1995

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



## Chapter 313. Officials and Rules of Horse Racing

### Subchapter A. Officials

#### Duties of Other Officials

##### • 16 TAC §313.56

The Texas Racing Commission proposes an amendment to §313.56, concerning the duties of the stable superintendent. The amendment deletes the requirement that the stable superintendent collect health certificates on horses arriving in the stable area. Although a current health certificate is required for a horse to enter the grounds of a pari-mutuel racetrack, the commission no longer requires the certificate to be filed in the racing office.

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

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the commission's rules will avoid duplication and be internally consistent. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

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

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

##### *§313.56. Stable Superintendent.*

[(a)] The stable superintendent shall supervise the systematic placement of horses in stalls. The stable superintendent shall maintain a log of all horses arriving and departing the stable area.

[(b)] The stable superintendent shall collect the health certificates of horses as they arrive on association grounds and deliver the certificates and records of arrival to the racing secretary.]

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 September 19, 1995.

TRD-9512056

Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: October 30, 1995

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

### Subchapter E. Training Facilities

##### • 16 TAC §313.504

The Texas Racing Commission proposes an amendment to §313.504, concerning the operational requirements of licensed training facilities. The amendment prohibits a training facility licensee from conducting a race at its facility or permitting its facility to be used to conduct a race. The commission currently does not regulate nonpari-mutuel races and the results of those races are not reported to the commission or to any other entity that collects performance information on race horses. As a result, a horse that has participated in nonpari-mutuel races before racing at a pari-mutuel racetrack may have much more experience and talent than that which is reflected in the officially reported past performance information published in the program. Therefore, the patrons would not receive the most accurate and complete information regarding a horse's abilities which is required for handicapping purposes. Prohibiting a training facility licensee from conducting such races which have the potential to mislead pari-mutuel patrons will remove any impression that such races are sanctioned by the Texas Racing Commission.

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

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that patrons will have accurate information regarding the experience and fitness of race horses running at pari-mutuel racetracks. There will be an effect on small businesses. Currently, some of the licensed training facilities offer nonpari-mutuel races on weekends as an additional source of revenue. A training facility licensee that wished to continue offering such races would be required to surrender or otherwise lose its training facility license and any income derived pursuant to that license. Conversely, a licensee that wished to retain its training facility license would be required to forego nonpari-mutuel racing and all income derived from that racing. The exact amount of potential revenue lost by either giving up a training facility license or foregoing nonpari-mutuel races cannot be determined, as it would depend on the operations of each licensee. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §3.021, which authorizes the commission to adopt rules regulating races and workouts at racetracks that do not offer pari-mutuel wagering; and §14.03 which authorizes the commission to adopt rules prohibiting the illegal influencing of the outcome of a race.

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

##### *§313.504. Operational Requirements.*

(a)-(g) (No change.)

(h) A training facility licensee may not:

(1) conduct a race at its facility; or

(2) allow its facility to be used for a race.

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 September 19, 1995.

TRD-9512057

Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: October 30, 1995

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

## Chapter 315. Officials and Rules for Greyhound Racing

### Subchapter B. Entries and Pre-Race Procedures

##### • 16 TAC §315.101

The Texas Racing Commission proposes an amendment to §315.101, concerning registration of greyhounds. The amendment eliminates the requirement that greyhound leases be recorded with the National Greyhound Association.

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

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the pari-mutuel greyhound racing program will oper-

ate efficiently and effectively. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

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

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

### §315.101. Registration.

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

(d) A person holding a lease or an assignment of lease for a greyhound schooled, entered, or racing on an association's grounds shall:

(1) register and record the lease or assignment with the National Greyhound Association; and

(2) provide certified copies of the record of the National Greyhound Association to the commission and the racing secretary.]

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 September 19, 1995.

TRD-9512058 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: October 30, 1995

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

### • 16 TAC §315.111

The Texas Racing Commission proposes an amendment to §315.111, concerning schooling requirements for greyhounds. The amendment clarifies the time frame for requiring a greyhound to school.

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

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that pari-mutuel

greyhound racing will be of the highest caliber, will be conducted with the utmost integrity, and will be safe for the racing greyhounds. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

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

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

### §315.111. Schooling.

(a) A greyhound must be properly schooled at least twice in the presence of the racing judges and must, in the opinion of the racing judges, be sufficiently experienced before the greyhound may be entered in a race. A greyhound that has not had an official start in ten racing days must participate in an official schooling race [started in a race in the ten-day period immediately preceding a race must be officially schooled] at its established weight [at least once] to be eligible to enter a [the] race.

(b)-(g) (No change.)

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

Issued in Austin, Texas, on September 19, 1995.

TRD-9512059 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: October 30, 1995

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

## Chapter 319. Veterinary Practices and Drug Testing

### Subchapter A. General Provisions

#### • 16 TAC §319.7

The Texas Racing Commission proposes an amendment to §319.7, concerning medication labeling. The amendment requires all medications possessed on the grounds of a pari-mutuel racetrack to include on its label the manufacturer, the active ingredients, and the expiration date.

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

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that pari-mutuel racing will be of the highest caliber, will be conducted with the utmost integrity, and will be safe for the racing animals. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.06, which authorizes the commission to adopt rules relating to all aspects of the operation of pari-mutuel racetracks; and §14.03, which authorizes the commission to adopt rules prohibiting the illegal influencing of the outcome of a race.

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

### §319.7. Medication Labelling.

(a) (No change.)

(b) The label on a product required to be labelled must contain:

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

(4) the dosage of the product; [and]

(5) the name of the person to whom the product is dispensed; and

(6) the manufacturer of the product, the active ingredients in the product, and the expiration date of the product.

(c) (No change.)

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

Issued in Austin, Texas, on September 19, 1995.

TRD-9512060 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: October 30, 1995

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

• 16 TAC §319.14

The Texas Racing Commission proposes an amendment to §319.14, concerning possession of controlled substances. The amendment adds legend drugs to the list of substances that may not be prescribed or administered solely for racing or training purposes.

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

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that pari-mutuel racing will be of the highest caliber, will be conducted with the utmost integrity, and will be safe for the racing animals. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.06, which authorizes the commission to adopt rules relating to all aspects of the operation of pari-mutuel racetracks; and §14.03, which authorizes the commission to adopt rules prohibiting the illegal influencing of the outcome of a race.

The proposed amendment implements Texas Civil Statutes, Article 179e

§319.14. Possession Of Controlled Substances.

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

(c) A person may not prescribe, provide, obtain, order, administer, possess, dispense, give or deliver a controlled substance, [or] prescription drug, or legend drug to or for a race animal solely for training or racing purposes.

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 September 19, 1995.

TRD-9512061 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: October 30, 1995

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

• 16 TAC §319.15

The Texas Racing Commission proposes new §319.15, concerning storage of certain medications. The new section requires a person possessing a vaccine, antitoxin, or immune serum to ensure the product is kept in an appropriate container to preserve the product's potency and efficacy.

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

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that pari-mutuel racing will be of the highest caliber, will be conducted with the utmost integrity; and will be safe for the racing animals. There will be no effect on small businesses. The anticipated economic cost to a person who is required to comply with the section as proposed is expected to be less than \$50.

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

The new section is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.06, which authorizes the commission to adopt rules relating to all aspects of the operation of pari-mutuel racetracks; and §14.03, which authorizes the commission to adopt rules prohibiting the illegal influencing of the outcome of a race.

The proposed new section implements Texas Civil Statutes, Article 179e

§319.15. Storage Of Certain Medications.

A person possessing a vaccine, antitoxin, or immune serum on association grounds shall ensure the product is held and transported in a temperature controlled, light-proof, and appropriately cooled container that will protect against the product's loss of potency.

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 September 19, 1995.

TRD-9512062 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: October 30, 1995

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

TITLE 22. EXAMINING BOARDS

Part XII. Board of Vocational Nurse Examiners

Chapter 237. Continuing Education

Continuing Education

• 22 TAC §237.19

The Board of Vocational Nurse Examiners proposes an amendment to §237.19, relative to relicensure process. The rule is amended to create consistency in the rules and to comply with changes in the statute.

Marjorie A. Bronk, Executive Director, has determined that for the first five-year period the rule is in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering the rule.

Mrs. Bronk also has determined that for each of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be nurses who are current in education and procedures for nursing.

Comments on the proposed amendment may be submitted to Marjorie A. Bronk, R. N., M.S.H.P., Executive Director, Board of Vocational Nurse Examiners, 9101 Burnet Road, Suite 105, Austin, Texas 78758, (512) 835-2071.

The amendment is proposed under Texas Civil Statutes, Article 4528c, §5(h), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law

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

§237.19. Relicensure Process. In addition to meeting all board requirements specified in Chapter 235 of this title (relating to Licensing), the following conditions for relicensure shall be met:

(1) Renewal of License

(A)-(B) (No change)

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

(4) Reactivation of a License [Delinquent License]

(A) A nurse whose license has been on delinquent status for less than one renewal period must provide proof of 20 hours of continuing education prior to the renewal of a license.

(B) A vocational nurse whose license has been on inactive or delinquent status for less than five years shall meet the following criteria for licensure:

(i) submit reactivation form and affidavits provided by the Board;

(ii) submit verification of employment as a licensed vocational nurse in another state or employment as a registered nurse in this state or another state within the past five years immediately prior to application;

(iii) submit evidence of successful completion of a refresher course or an agreement to supervised employment with a copy of the job description, and verification of such submitted to the Board office prior to the issuance of a license;

(iv) submit required fees. [A licensee that has been delinquent for not more than four years may be renewed by submitting evidence of successful completion of a refresher course or an agreement to supervised employment with a copy of the job description and verification of such submitted to the Board office prior to the issuance of a license.]

[(C) A nurse who has been delinquent for more than four years shall:

[(i) submit verification of employment as a licensed vocational nurse in another state or employment as a registered nurse in this state or another state within the past four years immediately prior to application, or

[(ii) rewrite and pass the national licensure examination.]

(C)[(D)] A nurse whose license [who] has been delinquent or inactive for [more than] five years or longer will be required to repeat the vocational nursing program and shall take and pass the national licensure examination unless subparagraph (B)(i)[(i)] of this paragraph is met.

[(5) Reactivation of a License

[(A) A nurse who has been on inactive status for less than one renewal period must provide proof of 20 hours of continuing education prior to the renewal of a license.

[(B) A nurse who has been on inactive status for not more than four years shall submit evidence of successful completion of a refresher course or an agreement to supervised employment with a copy of the job description and verification of such submitted to the Board office prior to the issuance of a license.

[(C) A nurse who has been on inactive status for more than four years, but less than five years, shall:

[(i) submit verification of employment as a licensed vocational nurse in another state or employment as a registered nurse in this state or another state within the past four years immediately prior to application; or

[(ii) rewrite and pass the national licensure examination.

[(D) A nurse who has been on inactive status for more than five years shall be required to repeat the vocational nursing program and shall take and pass the national licensure examination unless subparagraph (B)(i) of this paragraph is met.]

(5)[(6)] Reinstatement of a License

(A) A license that has been revoked, suspended, or voluntarily surrendered may be reinstated if authorized by the board.

(B) A nurse whose license has been suspended or revoked for more than five years shall be required to repeat the vocational nursing program and shall take and pass the national licensure examination prior to activation of their license or show evidence of practice as a licensed vocational nurse in another state or practice as a registered in this state or another state within the past five 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 21, 1995.

TRD-9512180

Marjorie A. Bronk, R.N.,  
M.S.H.P.,  
Executive Director  
Board of Vocational Nurse  
Examiners

Earliest possible date of adoption: October 30, 1995

For further information, please call: (512) 835-2071

## Chapter 239. Contested Case Procedure

### Enforcement

#### • 22 TAC §§239.11-239.13

The Board of Vocational Nurse Examiners proposes amendments to §239.11 relating to Unprofessional Conduct, §239.12 relating to Licensure of Persons With Criminal Convictions, and §239.13 relating to Licensure of Persons With a History of Psychiatric Epi-

sodes. Section 239.11 is amended to clarify the language and to eliminate excessive wording. Section 239.12 is amended to comply with the changes in the Vocational Nurse Act. Section 239.13 is amended for clarity.

Section 239.12 relating to Licensure of Persons With Criminal Convictions will become effective January 1, 1996. However, students enrolled in a vocational nursing program who graduate prior to December 31, 1996, will be reviewed under the rules in effect prior to January 1, 1996.

Marjorie A. Bronk, Executive Director, has determined that for the first five year period the rules are in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the rules.

Mrs. Bronk also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be consistency and clarity of the rules.

Comments on the proposed amendments may be submitted to Marjorie A. Bronk, R.N., M.S.H.P., Executive Director, Board of Vocational Nurse Examiners, 9101 Burnet Road, Suite 105, Austin, Texas 78758 (512) 835-2071.

The amendments are proposed under Texas Civil Statutes, Article 4528c(h), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

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

### §239.11. Unprofessional Conduct.

[(a) Unprofessional or dishonorable conduct, likely to deceive, defraud, or injure the public may include the following described acts or omissions:

(1)-(9) (No change.)

(10) practicing as a vocational nurse while the individual's ability to practice is impaired by alcohol, drugs, physical or mental disability and/or testing positive for alcohol, illicit drugs, or other substances not prescribed; [while on duty;]

(11)-(25) (No change.)

(26) failing to comply with board rules regarding continuing education, and/or knowingly providing false information regarding completion of educational programs;

(27) failing to conform to the minimal standards of acceptable prevailing practice, regardless of whether or not actual injury to any person was sustained, including but not limited to:

(A)-(G) (No change.)

(H) abandoning patients/clients by terminating responsibil-

ity for nursing care, intervention, or observation without properly notifying another licensed medical professional and ensuring the safety of patients/clients; [leaving a nursing assignment while being the only licensed professional on the premises or leaving an assignment without notifying another on duty licensed medical professional]

(I)-(K) (No change.)

(28) violating state or federal laws relative to drugs, including controlled substances and dangerous drugs; [being convicted of a crime which relates to the practice of vocational nursing. Those crimes which the board considers to be directly related to the duties and responsibilities of a licensed vocational nurse shall include, but are not limited to:

[(A) any felony or misdemeanor which involves an act of fraud, dishonesty, or deceit;

[(B) any criminal violation of the Vocational Nurse Act or other statutes regulating or pertaining to nursing or the medical profession;

[(C) any crime involving moral turpitude;

[(D) murder;

[(E) assault;

[(F) burglary;

[(G) robbery

[(H) theft;

[(I) rape or sexual abuse;

[(J) patient/client abuse;

[(K) injury to an elderly person;

[(L) child molestation, abuse, endangerment, or neglect;

[(M) driving while intoxicated, driving under the influence of alcohol or drugs, or driving while ability is impaired;

[(N) sale, distribution, or illegal possession of narcotics, controlled substances or dangerous drugs;

[(O) tampering with a governmental record;

[(P) offenses which include attempting or conspiring to commit any of the offenses in this subsection;]

(29) being convicted of a crime that relates to the practice of vocational nursing.

(A) Those crimes which the board considers to be directly related to the duties and responsibilities of a licensed vocational nurse shall include, but are not limited to:

(i) Offenses against the person;

(ii) Offenses against property;

(iii) Offenses involving fraud, dishonesty or deceit;

(iv) Offenses related to drugs/alcohol;

(v) Offenses which include attempting or conspiring to commit any of the offenses in this subsection.

(29) violating state or federal laws relative to drugs, including controlled substances and dangerous drugs.]

(B)[(b)] In determining whether a crime not listed above relates to vocational nursing, the board will consider:

(i)[(1)] the nature and seriousness of the crime;

(ii)[(2)] the relationship of the crime to the purposes for requiring a license to practice vocational nursing;

(iii)[(3)] the extent to which a license might offer opportunities to engage in further criminal activity of the same type as that in which the person was previously engaged; and

(iv)[(4)] the relationship of the crime to the ability, capacity, or fitness required to perform the duties and to discharge the responsibilities of a vocational nurse.

§239.12. *Licensure of Persons With Criminal Convictions.*

(a) Effective January 1, 1996, a person who has been convicted of a felony that relates to the duties and responsibilities of a Licensed Vocational Nurse shall be disqualified from obtaining licensure as a Licensed Vocational Nurse. The Board shall not license such a person, and shall upon conviction of a felony,

suspend or revoke the license of a person previously licensed.

(b) For the purposes of this section, a person is convicted of a felony if a court of competent jurisdiction enters an adjudication of guilt against the person on a felony offense under the laws of this or another state or the United States, regardless of whether:

(1) the sentence is subsequently probated and the person is discharged from probation;

(2) the accusation, complaint, information, or indictment against the person is dismissed and the person is released from all penalties and disabilities resulting from the offense; or

(3) the person is pardoned for the offense, unless the pardon is granted expressly for subsequent proof of innocence.

(c)[(a)] In review of a complaint alleging that the respondent/applicant has been convicted of a crime which directly relates to the duties and responsibilities of a licensed vocational nurse, the board shall consider the following evidence in determining the respondent's/applicant's present fitness to practice vocational nursing:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person at the time of commission of the crime;

(3) conduct and work activity of the person prior to and after criminal activity;

(4) evidence of rehabilitation while incarcerated or following release;

(5) notarized letters of recommendation from prosecution, law enforcement, and correctional officers, who prosecuted, arrested, or had custodial responsibility for the person; letters from the sheriff or chief of police where the person resides; and other persons having contact with the convicted person; and

(6) records of steady employment, provision of dependents, payment of all court costs, supervision, fines and restitution if ordered as a result of the person's conviction.

(d)[(b)] The burden and expense of providing and presenting the foregoing documentation to the board shall be solely at the expense of the respondent/applicant.

§239.13. *Licensure of Persons With a History of Psychiatric Episodes [Voluntary or Involuntary Psychiatric Hospitalization].*

(a) In review of a complaint alleging that the respondent/applicant has a history of [voluntary or involuntary] psychiat-

ric episodes [hospitalization], the board shall consider the following evidence in determining the respondent's/applicant's present fitness to practice vocational nursing:

(1)-(4) (No change)

(b) (No change.)

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

Issued in Austin, Texas, on August 21, 1995

TRD-9512181 Marjorie A Bronk, R.N.,  
M.S.H.P.  
Executive Director  
Board of Vocational Nurse  
Examiners

Earliest possible date of adoption: October 30, 1995

For further information, please call: (512) 835-2071

## Hearings Process

### • 22 TAC §§239.29-239.33

*(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 Board of Vocational Nurse Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Board of Vocational Nurse Examiners proposes to repeal §239.29 relating to Continuance, §239.30 relating to Computation of Time, §239.31 relating to Probation, §239.32 relating to Records Retention Schedule, and §239.33 relating to Release of Information.

These rules are being repealed to allow for the adoption of new rules in compliance with the Vocational Nurse Act as amended during the 74th Legislative Session and for renumbering purposes.

Marjorie A. Bronk, Executive Director, has determined that for the first five years period the repeals are in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the rules.

Mrs. Bronk also has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated will be a clarity of the rules and understanding of the disciplinary process, and an ability to immediately remove a licensed vocational nurse from the practice area who is an immediate danger to the public.

Comments on the proposed repeal may be submitted to Marjorie A. Bronk, R.N., M.S.H.P., Executive Director, Board of Vocational Nurse Examiners, 9101 Burnet Road, Suite 105, Austin, Texas 78758, (512) 835-2071.

The repeals are proposed under Texas Civil Statutes, Article 4528c, §5(h), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

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

§239.29. *Continuance.*

§239.30. *Computation of Time*

§239.31. *Probation.*

§239.32. *Records Retention Schedule.*

§239.33. *Release of Information.*

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

Issued in Austin, Texas, on August 21, 1995.

TRD-9512183 Marjorie A. Bronk, R.N.,  
M.S.H.P.  
Executive Director  
Board of Vocational Nurse  
Examiners

Earliest possible date of adoption: October 30, 1995

For further information, please call: (512) 835-2071

### • 22 TAC §§239.29-239.36

The Board of Vocational Nurse Examiners proposes new §239.29 relating to Continuance, §239.30 relating to Entry of Appearance; Continuance, §239.31 relating to Failure to Attend Hearing, §239.32 relating to Computation of Time, §239.33 relating to Probation, §239.34 relating to Records Retention Schedule, §239.35 relating to Release of Information and §239.36 relating to Temporary Suspensions.

The new rules are proposed for clarity, for compliance with the Vocational Nurse Act, as amended during the 74th Legislative Session, and for renumbering of certain rules.

Marjorie A. Bronk, Executive Director, has determined that for the first five year period the rules are in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the rule.

Mrs. Bronk also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rule will be a clarity and understanding of the disciplinary process and an ability to immediately remove a licensed vocational nurse from the practice area who is an immediate danger to the public.

Comments on the proposed new rules may be submitted to Marjorie A. Bronk, R.N., M.S.H.P., Executive Director, Board of Vocational Nurse Examiners, 9101 Burnet Road, Suite 105, Austin, Texas 78758, (512) 835-2071.

The new rules are proposed under Texas Civil Statutes, Article 4528c, §5(h), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and

regulations as may be necessary to carry in effect the purposes of the law.

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

§239.29. *Continuance.* A licensee who has been served with proper notice of hearing may make a motion to the State Office of Administrative Hearings for a continuance of the said hearing in writing. Said motion shall be supported by a sworn affidavit detailing the reasons for the continuance and must be received in the State Office of Administrative Hearings office no later than ten days prior to the set hearing date.

§239.30. *Entry of Appearance; Continuance.*

(a) When a contested case has been instituted, the respondent or the representative of the respondent shall enter an appearance within 15 days of the date on which the notice of hearing is provided to the respondent.

(b) For purposes of this section, a contested case shall mean any action that is referred by the Texas Board of Vocational Nurse Examiners to the state Office of Administrative Hearings.

(c) For purposes of this section, an entry of appearance shall mean the filing of a written answer or other responsive pleading.

(d) For purposes of this section, notice of hearing is provided to a respondent on the date of deposit in the United States mail of a registered, certified, or regular mail letter containing a notice of hearing, in accordance with provisions of §239.23 of this title (relating to Service of Notice).

(e) The entry of an appearance shall be filed in accordance with Interagency Cooperation Contract between the Texas Board of Vocational Nurse Examiners and the State Office of Administrative Hearings concerning procedures for contested cases before the State Office of Administrative Hearings and responsibilities of each agency, and in accordance with §155.22 of the Rules of the State Office of Administrative Hearings (relating to filings).

(f) The failure of a party to timely enter an appearance as provided in this section shall entitle the opposing party to a continuance at the time of the hearing in the contested case for such reasonable period of time as determined by the Administrative Law Judge.

(g) The notice of hearing provided to a licensee for a contested case as defined in this section shall include the following language in capital letters in bold face type: FAILURE TO ENTER AN APPEARANCE



BY FILING IN WRITING AN ANSWER OR OTHER RESPONSIVE PLEADING TO THE ALLEGATIONS CONTAINED IN THE COMPLAINT WITHIN 15 DAYS OF THE DATE THIS NOTICE WAS MAILED SHALL ENTITLE ANY OPPOSING PARTY TO A CONTINUANCE AT THE TIME OF THE HEARING FOR A TIME PERIOD SET BY THE ADMINISTRATIVE LAW JUDGE.

*§239.31. Failure to Attend Hearing; Default Judgment.*

(a) If a respondent fails to appear in person or by legal representative on the day and at the time set for hearing in a contested case as defined in §239.30 of this title (relating to Entry of Appearance; Continuance) regardless of whether an appearance has been entered, the Administrative Law Judge, upon motion by the petitioner, shall enter a default judgment in the matter adverse to the respondent who has failed to attend the hearing.

(b) For purposes of this section, default judgment shall mean the issuance of a proposal for decision against the respondent in which the factual allegations against the respondent contained in the Complaint shall be admitted as prima facie evidence, and deemed admitted as true, without any requirement for additional proof to be submitted by the petitioner.

(c) Any default judgment granted under this section will be entered on the basis of the factual allegations contained in the Complaint, and upon the proof of proper notice to the defaulting party opponent. For purposes of this section, proper notice means notice sufficient to meet the provisions of the Government Code, §§2001.051, 2001.052, and 2001.054 and §239.33 of this title (relating to Service of Notice); such notice also shall include the following language in capital letters in boldface type: **FAILURE TO APPEAR AT THE HEARING WILL RESULT IN THE ALLEGATIONS AGAINST YOU SET OUT IN THE COMPLAINT BEING ADMITTED AS TRUE.**

*§239.32. Computation of Time.*

(a) Computing time. In computing any period of time prescribed or allowed by order or directive of the agency, or by any applicable statute, unless otherwise specified, the period shall begin on the day after the act or event in controversy and conclude on the last day of such computed period, unless it be a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next business day which is neither a Saturday, Sunday, nor a legal holiday.

(b) Extension—Unless otherwise provided by statute, the time for filing any pleading, motion, or request may be extended by order of the executive director, upon written motion filed prior to the expiration of the applicable period of time for the filing of the same, showing that the need for extension is not caused by the neglect, indifference, or lack of diligence of the requesting party.

*§239.33. Probation.* In placing a person on probation whose license has been suspended, the board may impose such additional terms and conditions as it deems appropriate for the period of probation. The board shall specify the exact duration of the probationary period. Upon finding that a person placed on probation has failed to comply with the terms and conditions of the board's order, the board may take such additional disciplinary action as it deems appropriate, following notice and hearing.

*§239.34. Records Retention Schedule.* All records shall be maintained in accordance with the approved records retention schedule on file with the Texas State Library.

*§239.35. Release of Information.*

(a) All complaints, adverse reports, investigation files, and other investigative information in the possession of, received or gathered by the board or its employees or agents relating to a licensee, an application for license, or a criminal investigation or proceedings are privileged and confidential and are not subject to discovery, subpoena, or other means of legal compulsion for their release to anyone other than the board or its employees or agents involved in licensee discipline unless and until ordered by a court of competent jurisdiction after a court hearing on a motion for a protective order and/or motion to quash subpoena and any interlocutory appeal of same.

(b) After receiving a written request from a licensee who is the subject of a formal complaint initiated and filed under the Vocational Act, §10(d) or from the licensee's counsel of record, and subject to any other privileges or restrictions set forth by rule, statute, or legal precedent, and unless good cause is shown for delay, the board shall provide the licensee with access to all information in its possession that the board intends to offer into evidence in presenting its case in chief at the contested hearing on the complaint. However, the board is not required to provide board investigative reports or investigative memoranda, the identity of nontestifying complainants, attorney-client communications, attorney-work product, or other materials covered by a privilege as recognized by the Texas Rules of Civil Procedure or

the Texas Rules of Civil Evidence. The furnishing of information shall not constitute a waiver of privilege or confidentiality under this section, this Act, or other applicable law.

(c) Investigative information in the possession of the board or its employees or agents which relates to licensee discipline may be disclosed to the appropriate licensing authority in another state, the District of Columbia, or a territory or country in which the licensee is licensed or has applied for a license, or to a peer assistance program approved by the board under the Health and Safety Code, Chapter 467. If the investigative information in the possession of the board or its employees or agents indicates a crime may have been committed, the information shall be reported to the proper law enforcement agency. The board shall cooperate and assist all law enforcement agencies conducting criminal investigations of licensees by providing information which is relevant to the criminal investigation to the investigating agency. Any information disclosed by the board to an investigative agency shall remain confidential and shall not be disclosed by the investigating agency except as necessary to further the investigation.

(d) Board records are subject to disclosure in accordance with the Texas Government Code, Chapter 552—Open Records.

(e) If the board takes a final disciplinary action, against a licensee/applicant, the board shall immediately send a copy of the board's final order to the individual at his or her most recent address as shown in the investigative records of the board.

*§239.36. Temporary Suspensions.*

(a) The president of the board, with the approval of the board, shall appoint a three-member disciplinary panel consisting of members of the board for the purpose of determining whether a person's license to practice vocational nursing in this state should be temporarily suspended under this section.

(b) In the event of the recusal of a disciplinary panel member or the inability of a panel member to attend a temporary suspension proceeding, an alternate disciplinary panel member may serve on the panel if previously appointed by the president, acting president, or presiding officer of the board, and approved by the board.

(c) If the disciplinary panel determines from the evidence or information presented to it that a person licensed to practice vocational nursing in this state by his/her continuation in practice would constitute a continuing or imminent threat to the public welfare, the disciplinary panel shall temporarily suspend the license of that person.

(d) The license may be suspended under this section without notice or hearing on the Complaint, provided institution of proceedings for a hearing before the State Office of Administrative Hearings is initiated simultaneously with the temporary suspension and provided that a hearing is held as soon as can be accomplished under the Administrative Procedure Act and Vocational Nurse Act.

(e) If the disciplinary panel issues a Temporary Suspension Order, the matter shall be docketed for a final hearing before the State Office of Administrative Hearings within 91 days of the date of the Temporary Suspension Order.

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 21, 1995.

TRD-9512182

Marjorie A Bronk, R.N.,  
M.S.H.P.  
Executive Director  
Board of Vocational Nurse  
Examiners

Earliest possible date of adoption: October 30, 1995

For further information, please call (512) 835-2071

## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 157. Emergency Medical Care

The Texas Department of Health (department) proposes amendments to §§157.2, 157.11, 157.17, 157.18, 157.22, 157.41, 157.44, 157.46, 157.51, and 157.61; the repeal of §157.15; and new §157.23 and §157.24, concerning EMS personnel and provider certification

Specifically, §157.2 adds two new definitions and amends seven others to clarify the intent of the rules. Section 157.11 increases provider fees; adjusts staffing requirements to include provisional certificants; and restricts firearms on ambulances. Section 157.17 and §157.18 add fees consistent with provider licensure. Section 157.22 revises a reference in accordance with rule changes. Section 157.41 adds skill requirements for EMTs which will be mandatory by 1996; allows for the acceptance of the national registry examination in lieu of the state examination for initial applicants; removes the requirement for a passing grade on each critical subscale in favor of an overall passing grade on the examination and describes requirements for provisional certification and outlines process for surrendering a certification. Section 157.44 deletes a reference to a repealed rule. Section 157.46 removes the requirement for

a passing grade on each critical subscale in favor of an overall passing grade on the examination. Section 157.51 adds provisional certificants and includes loss of certification for failure to pay child support. Section 157.61 provides for an increase in Coordinator certification fee. Section 157.15 is being repealed and replaced with §157.23 and §157.24. New §157.23 and §157.24 revise the requirements for air ambulance providers.

The amendments, repeal, and new sections are needed to clarify existing certification and licensing requirements and to address current educational standards

Gene Weatherall, Bureau Chief, Bureau of Emergency Management has determined that for the first five-year period the sections are in effect there will be fiscal implications to state and local government. Revenues for the first five-year period are expected to total \$345,000. Fee increases will help to offset the current cost to state government. Existing fees cover only 28% of current costs. The additional revenue from these revisions together with other legislatively mandated fees, will increase that percentage to 34%. There will be a minimal impact on local government, as a result of an increase in vehicle and coordinator fees as specified in §157.61.

Mr. Weatherall also has determined that for each year of the first five years the sections are in effect, the public will benefit from increased educational standards for EMTs. The cost to small business will be less than \$150 a year to pay for the course coordinator's certification. The cost to persons who are required to comply with the sections (course coordinators who receive compensation) will be \$50 every other year. There will be no impact on local employment.

Comments on the proposed rules may be submitted to Gene Weatherall, Chief, Bureau of Emergency Management, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6700. Comments will be accepted for 30 days after publication of these rules in the *Texas Register*. A public hearing will be held Wednesday, October 11, 1995, at 10.00 a.m. in K-100, Lecture Hall, Texas Department of Health, 1100 West 49th Street, Austin, Texas.

#### Emergency Medical Services-

##### Part A

##### • 25 TAC §157.2

The amendment is proposed under Health and Safety Code, Chapter 773, which provides the Board of Health with the authority to adopt rules to implement the Emergency Medical Services Act; and §12.001, which provides the Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Board of Health, the Department of Health, and the Commissioner of Health.

The codes and/or articles affected are Health and Safety Code, Chapter 773, §§773.045, 773.047, 773.055, 773.056, 773.057, 773.0571, and 773.061; and Health and Safety Code, §12.001.

§157.2. *Definitions* The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

**Air ambulance provider**—A person who uses/maintains fixed-wing or rotor-wing air ambulance aircraft, equipped and staffed to provide a medical care environment on-board appropriate to the patient's needs. The term air ambulance provider is not synonymous with and does not refer to the Federal Aviation Administration (FAA) air carrier certificate holder unless they also maintain and control the medical aspects that are consistent with EMS provider licensure.

**Advanced life support (ALS)**—Emergency prehospital or interfacility care that uses invasive medical acts. The provision of advanced life support shall be under the medical supervision and control of a licensed physician.

**Basic life support (BLS)**—Emergency prehospital or interfacility care that uses noninvasive medical acts. The provision of basic life support may be under the medical supervision and control of a licensed physician

**Emergency medical services volunteer**—Emergency medical services personnel who provide emergency prehospital or interfacility care without remuneration, except for reimbursement for expenses.

**Emergency medical technician (EMT)**—An individual who is certified by the department as minimally proficient to perform emergency prehospital or interfacility care that is necessary for basic life support and that includes the control of hemorrhaging and cardiopulmonary resuscitation.

**Emergency medical technician-intermediate (EMT-I)**—An individual who is certified by the department as minimally proficient in performing skills required to provide emergency prehospital or interfacility care by initiating under medical supervision certain procedures, including intravenous therapy and endotracheal or esophageal intubation or both.

**Emergency medical technician-paramedic (EMT-P)**—An individual who is certified by the department as minimally proficient to provide emergency prehospital or interfacility care by providing advanced life support that includes initiation under medical supervision of certain procedures, including intravenous therapy, endotracheal or esophageal intubation or both, electrical cardiac defibrillation or cardioversion, and drug therapy.

**Interfacility care**—Care provided while transporting a patient between medical facilities.

**Mobile intensive care unit (MICU)**—A vehicle that is designed for transporting the sick or injured and that meets the requirements of the advanced life support vehicle and has sufficient equip-

ment and supplies to provide cardiac monitoring, defibrillation, cardioversion, drug therapy, and two-way radio or cellular phone communication.

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 September 22, 1995.

TRD-9512187

Susan K. Steeg  
General Counsel  
Texas Department of  
Health

Earliest possible date of adoption: October 30, 1995

For further information, please call: (512) 458-7736

### Emergency Medical Services Provider Licenses

#### • 25 TAC §§157.11, 157.17, 157.18, 157.22-157.24

The amendments and new sections are proposed under Health and Safety Code, Chapter 773, which provides the Board of Health with the authority to adopt rules to implement the Emergency Medical Services Act; and §12.001, which provides the Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Board of Health, the Department of Health, and the Commissioner of Health.

The codes and/or articles affected are Health and Safety Code, Chapter 773, §§773.045, 773.047, 773.055, 773.056, 773.057, 773.0571, and 773.061, and Health and Safety Code §12.001.

#### *§157.11. Requirements for An EMS Provider License.*

(a) (No change.)

(b) License renewal process. The renewal process shall be complete prior to the expiration of the current license.

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

(3) Vehicle inspections for renewal of a license as described in subsection (e) of this section may be waived if the renewal applicant:

(A) (No change.)

(B) has not been found in violation of requirements of this section or §157.12 of this title (relating to Basic Life Support Level Requirements), §157.13 of this title (relating to Advanced Life Support Level Requirements), §157.14 of this title (relating to Mobile Intensive Care Level Requirements), §157.23 of this title (relating to Rotor-wing Air Ambulance Provider Licensure); or §157.24 of this title

(relating to Fixed-wing Air Ambulance Provider Licensure) [or §157.15 of this title (relating to Requirements for a Specialized Vehicle License)] during scheduled or unscheduled spot inspections conducted by the department during the previous license period; or

(C) (No change.)

(c) License fees.

(1) Nonrefundable fees shall be \$150 [\$100] for each EMS patient transport vehicle, not including reserve vehicles[, or a maximum of \$2,000 during the two-year registration period]; unless:

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

(2) If a license is issued for less than a two-year period under subsection (h) of this section, the following nonrefundable fees per vehicle shall apply:

(A) \$150 [\$100] if the license is valid for 13-24 months; or

(B) \$75 [\$50] if the license is valid for less than 13 months.

(3) If the EMS provider has met the maximum \$2,000 fee during a license period, no fee shall be required for additional vehicles added during the license period.]

(3)[(4)] A provider who has a check returned to the department for "insufficient funds" shall be subject to revocation of the EMS provider license and this may be used as grounds for nonrenewal of the EMS provider license.

(d) Provider license requirements.

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

(4) Personnel provisional certification. If a provider chooses to recognize provisional certification as described in §157.41(m) of this title (relating to Certification), the individual may staff a vehicle within the parameters of provisional certification. If the provider has a medical director, the medical director's concurrence is also required.

(e) Vehicle inspection.

(1) Before the issuance of a license to an initial applicant, the applicant's vehicle(s) shall be inspected by the department. Each vehicle shall have:

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

(D) a current motor vehicle certificate of inspection prior to the department's inspection.

(2) The inspection shall include:

(A) visual and physical inspection of each vehicle and of the equipment on each vehicle for the purpose of determining compliance with the vehicle and equipment specifications as described in this section, §157.12 of this title, §157.13 of this title, §157.14 of this title, §157.23 of this title or §157.24 of this title [or §157.15 of this title]; and

(B) (No change.)

(f) (No change.)

(g) Provisional license.

(1) If any part of the provider licensure process is incomplete, a provider may apply for a provisional license by signing a provisional licensure form and submitting a nonrefundable fee of \$25. This fee is in addition to the fee in subsection (c) of this section. A 60-day provisional license will be issued if the department finds: [The department may issue a 60-day provisional license if any part of the application process is incomplete; and]

(A) [it finds] that the public interest and the community needs would be served;

(B)-(E) (No change.)

(2) A second 60-day provisional license may be issued if:

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

(C) a provisional licensure form is signed and submitted with a \$25 nonrefundable fee.

(h)-(l) (No change.)

(m) Responsibilities of the EMS provider. During the license period the provider's responsibility shall include:

(1) notification of the department if a vehicle is added with submission of the nonrefundable prorated license fee, if applicable. The added vehicle shall be in compliance with §157.12 of this title, §157.13 of this title, §157.14 of this title, §157.23 of this title or §157.24 of this title [or §157.15 of this title];

(2)-(15) (No change.)

(16) maintaining compliance with all state motor vehicle laws and regulations; [and]

(17) written notification of the department within 30 days of change in official business address; and

(18) assuring that no firearms are taken on board vehicles by staff except by licensed peace officers acting in that official capacity.

*§157.17. Delegation of Vehicle Inspection.*

(a) (No change.)

(b) The requirements for delegation of inspections are as follows:

(1) (No change.)

(2) The department may delegate to the municipality or county the authority to inspect EMS vehicles in accordance with the Health and Safety Code, §773.057 and these sections upon the execution of a contract or binding agreement which includes, but is not limited to, the following provisions:

(A)-(D) (No change.)

(E) The municipality or county may collect the fee for an EMS provider license as required by Health and Safety Code, §773.057, and shall keep accurate records of the collection and deposit of such fees. The fee for an EMS provider license is \$150 [\$100] per vehicle [or a maximum of \$2,000 for a fleet] The cost of inspection is \$25 per vehicle [or a maximum of \$500 for a fleet]. The municipality or county shall retain 25% of the \$150 [\$100 to \$2,000 fee collected] and send the remaining fee [75%] to the department with the EMS provider license application

(F)-(H) (No change.)

(c) (No change.)

*§157.18. Unannounced Inspections and Visits.*

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

(f) An EMS provider shall pay a nonrefundable fee of \$25 to the department if reinspection is necessary to determine compliance following a noted violation or deficiency.

(g)[(f)] Unannounced inspections may not be delegated to another agent.

*§157.22. Criteria for Denial of a Provider License.*

(a) A license may be denied an applicant for, but not limited to, the following reasons:

(1) (No change)

(2) failure to meet vehicle and/or equipment license requirements in accordance with §157.12 of this title (relating to Basic Life Support Vehicle License

Requirements); §157.13 of this title (relating to Advanced Life Support Vehicle License Requirements); §157.14 of this title (relating to Mobile Intensive Care Unit License Requirements); §157.23 of this title (relating to Rotor-wing Air Ambulance Provider Licensure); or §157.24 of this title (relating to Fixed-wing Air Ambulance Provider Licensure) [or §157.15 of this title (relating to Requirements for a Specialized Vehicle License)];

(3)-(9) (No change.)

(b) (No change.)

*§157.23. Rotor-wing Air Ambulance Provider Licensure.*

(a) Licensure as a helicopter air ambulance provider shall be at the mobile intensive care level and only be granted to a person or entity that directs and controls the integrated activities of both the medical and aviation components. Although the aircraft operator is directly responsible to the Federal Aviation Administration (FAA) for the operation of the aircraft, typically the organization in charge of the medical functions directs the combined efforts of the aviation and medical components during patient transport operations.

(b) When being used as an ambulance, the helicopter shall:

(1) be configured so that the medical personnel have adequate access to the patient in order to begin and maintain basic and advanced life support treatment;

(2) have an entry that allows loading and unloading of a patient without excessive maneuvering (no more than 45 degrees about the lateral axis and 30 degrees about the longitudinal axis); and does not compromise functioning of monitoring systems, intravenous lines, or manual or mechanical ventilation;

(3) have a supplemental lighting system in the event standard lighting is insufficient for patient care that includes:

(A) a self-contained lighting system powered by a battery pack or a portable light with a battery source; and

(B) a means to protect the pilot's night adaptation vision. (Use of red lighting or low intensity lighting in the patient care area is acceptable if not able to isolate the patient care area);

(4) have an electric power outlet with an inverter or appropriate power source of sufficient output to meet the requirements of the complete specialized equipment package without compromising the operation of any electrical aircraft equipment;

(5) have protection of the pilot's flight controls, throttles and radios from any intended or accidental interference by the patient, air medical personnel or equipment and supplies; and

(6) have an internal medical configuration located so that air medical personnel can provide patient care consistent with the scope of care of the air medical service, to include:

(A) the space necessary to ensure the patient's airway is maintained and to provide adequate ventilatory support from the secured, seat-belted position of the air medical personnel;

(B) those aircraft with gaseous oxygen systems have equipment installed so that medical personnel can determine if oxygen is on by in-line pressure gauges mounted in the patient care area. Aircraft using liquid or gaseous oxygen should have equipment installed:

(i) with each gas outlet clearly marked for identification;

(ii) with oxygen flow capable of being stopped at or near the oxygen source from inside the aircraft; and

(iii) so that the measurement of the liter flow and quantity of oxygen remaining is accessible to air medical personnel while in flight. All flow meters and outlets must be padded, flush mounted, or so located as to prevent injury to air medical personnel; or there shall be an operational policy stating that attendants wear helmets;

(C) hangers/hooks available to secure IV solutions in place or a mechanism to provide high flow fluids if needed:

(i) all IV hooks shall be padded, flush mounted, or so located as to prevent head trauma to the air medical personnel in the event of a hard landing or emergency with the aircraft; or an operational policy stating that attendants wear helmets; and

(ii) glass containers shall not be used unless required by medication specifications and properly vented;

(D) provision for medication which allows for protection from extreme temperatures if it becomes environmentally necessary; and

(E) secure positioning of cardiac monitors, defibrillators, and external pacers so that displays are visible to medical personnel.

(c) An air ambulance provider shall meet the requirements of emergency medical service (EMS) providers as in §157.11(a)(1)(A)-(E) of this title (Relating to Requirements for An EMS Provider License) and in addition shall:

(1) submit proof that the rotor-wing aircraft operator carries bodily injury and property damage insurance with a company licensed to do business in Texas, to secure payment for any loss or damage resulting from any occurrence arising out of or caused by the operation or use of any of the certificate holder's aircraft. Coverage amounts shall insure that:

(A) each aircraft shall be insured for the minimum amount of \$1 million for injuries to, or death of, any one person arising out of any one incident or accident;

(B) the minimum amount of \$3 million for injuries to, or death of, more than one person in any one accident; and

(C) the minimum amount of \$500,000 for damage to property arising from any one accident;

(2) submit proof that they carry professional liability coverage in the minimum amount of \$500,000 per occurrence, with a company licensed to do business in Texas, to secure payment for any loss or damage resulting from any occurrence arising out of or caused by the care or lack of care of a patient;

(3) submit a list of all aircraft with the registration number or "N" number for the helicopters in the possession of the provider. The license fee as required in §157.11(b) of this title shall be based on the number of helicopter aircraft;

(4) submit a letter of agreement that all helicopters shall meet the specifications of subsection (b) of this section, if the aircraft is leased from a pool. The license fee shall be based on each complete set of equipment; and

(5) allow visual and physical inspection of each aircraft and of the equipment to be used on each vehicle for the purpose of determining compliance with the vehicle and equipment specifications within this section.

(d) The air ambulance provider shall designate or employ a medical director who shall meet the following qualifications:

(1) be a physician currently licensed in the state of Texas and in practice. A waiver to this requirement may be granted to providers based in New Mexico, Oklahoma, Arkansas, and Louisiana who respond in Texas and whose medical director is licensed in his/her respective state;

(2) have knowledge and experience consistent with the transport of patients by air;

(3) be knowledgeable in aeromedical physiology, stresses of flight, aircraft safety, patient care, and resource limitations of the aircraft, medical staff and equipment; and

(4) have access to consult with medical specialists for patient(s) whose illness and care needs are outside his/her area of practice

(e) The physician shall fulfill the following responsibilities:

(1) ensure that there is a comprehensive plan/policy to address selection of appropriate aircraft, staffing and equipment;

(2) be involved in the selection, hiring, training and continuing education of all medical personnel;

(3) be responsible for overseeing the development and maintenance of a continuous quality improvement program;

(4) ensure that there is a plan to provide direction of patient care to the air medical personnel during transport. The system shall include on-line (radio/telephone) medical control, and/or an appropriate system for off-line medical control such as written guidelines, protocols, procedures, patient specific written orders or standing orders;

(5) participate in any administrative decision making processes that affects patient care;

(6) ensure that there is an adequate method for on-line medical control, and that there is a well defined plan or procedure and resources in place to allow off-line medical control; and

(7) oversee the review, revision and validation of written medical policies and protocols annually.

(f) There shall be two Texas licensed/certified personnel on board the helicopter when in service. A waiver to the Texas license/certification may be granted for personnel employed by providers in New Mexico, Oklahoma, Arkansas, and Louisiana who respond in Texas and are licensed in their respective state. Staffing of vehicles shall be as follows:

(1) when responding to an emergency scene, at least one of the personnel shall be a paramedic;

(2) when responding for an inter-facility transfer, at least one of the personnel performing patient care duties shall be a certified paramedic, registered nurse or physician. The qualifications and numbers of air medical personnel shall be appropriate to patient care needs;

(3) when responding as in paragraphs (1) and (2) of this subsection, the second person may be a paramedic, registered nurse, or a physician; and

(4) air medical personnel shall not be assigned or assume the cockpit duties of the flight crew members concurrent with patient care duties and responsibilities.

(g) Documentation of successful completion of training specific to the helicopter transport environment in general and the licensee's operation specifically shall be required. The curriculum shall be consistent with the Department of Transportation (DOT) Air Medical Crew-National Standard Curriculum or equivalent program and each attendant's qualifications shall be documented.

(h) Medical supplies and equipment shall be consistent with the service's scope of care as defined in the protocols/standing orders. Medical equipment shall be functional without interfering with the avionics nor should avionics interfere with the function of the medical equipment. Additionally, the following equipment, clean and in working order, must be on the aircraft or immediately available for all providers:

(1) one or more stretchers capable of being secured in the aircraft which meet the following criteria:

(A) can accommodate an adult, six feet tall, weighing 212 pounds. There shall be restraining devices or additional appliances available to provide adequate restraint of all patients including those under 60 pounds or 36 inches in height;

(B) shall have the head of the primary stretcher capable of being elevated up to 30 degrees. The elevating section shall not interfere with or require that the patient or stretcher securing straps and hardware be removed or loosened;

(C) shall be sturdy and rigid enough that it can support cardiopulmonary resuscitation. If a backboard or equivalent device is required to achieve this, such device will be readily available;

(D) shall have a pad or mattress impervious to moisture and easily cleaned and disinfected according to Occupational Safety and Health Administration (OSHA) bloodborne pathogen requirements; and

(E) shall have a supply of linen for each patient;

(2) adequate amounts of oxygen (for anticipated liter flow and length of

flight with an emergency reserve) available for every mission;

(3) one portable oxygen tank;

(4) a back-up source of oxygen (of sufficient quantity to get safely to a facility for replacements). Back-up source may be the required portable tank if the tank is accessible in the patient care area during flight;

(5) airway adjuncts as follows:

(A) oropharyngeal airways in at least five assorted sizes, including adult, child, and infant; and

(B) nasopharyngeal airways in at least three sizes with water soluble lubricant;

(6) at least one suction unit which is portable (bulb syringes or foot pump not acceptable);

(7) the following items in amounts and sizes as specified on a list signed by the medical director:

(A) intravenous solutions;

(B) intravenous catheters;

(C) endotracheal tubes;

(D) medications;

(E) any specialized equipment required in medical treatment protocols/standing orders;

(F) pressure bag;

(G) tourniquets, tape, dressings; and

(H) container appropriate to contain used sharp devices (needles, scalpels) which meets OSHA requirements;

(8) assessment equipment as follows:

(A) equipment suitable to determine blood pressure of the adult, pediatric and infant patient(s) during flight;

(B) stethoscope;

(C) penlight/flashlight;

(D) heavy duty bandage scissors;

(E) pulse oximeter;

(F) external cardiac pacing device; and

(G) IV infusion pump capable of strict mechanical control of an IV infusion drip rate. Passive devices such as dial-a-flow are not acceptable;

(9) bandages and dressings as follows:

(A) sterile dressings such as 4x4's, ABD pads;

(B) bandages such as Kerlix, Kling; and

(C) tape in various sizes;

(10) container(s) and methods to collect, contain, and dispose of body fluids such as emesis, oral secretions, and blood consistent with OSHA bloodborne pathogen requirements;

(11) infection control equipment. The licensee shall have a sufficient quantity of the following supplies for all air medical personnel, and each flight crew member, and all ground personnel with incidental exposure risks according to OSHA requirements which includes but is not limited to:

(A) protective gloves;

(B) protective gowns;

(C) protective eyewear;

(D) protective face masks;

(E) an approved bio-hazardous waste plastic bag or impervious container to receive and dispose of used supplies; and

(F) handwashing capabilities or antiviral towelettes;

(12) an adequate trash disposal system exclusive of bio-hazardous waste control provisions;

(13) security of medications, fluids, and controlled substances shall be maintained by each air ambulance licensee in compliance with local, state, and federal drug laws;

(14) cardiac monitor defibrillator-DC battery powered portable monitor/defibrillator with paper printout, accessories and supplies, with sufficient

power supply to meet demands of the mission; and

(15) quantity and type of drugs and specialized equipment as specified on the medical director's list.

(i) The air ambulance provider who receives and maintains certification from a national accrediting organization approved by the department and who adheres to Texas staffing requirements shall be considered to have met the requirements of this section. They shall submit to the department a copy of the self study for accreditation and a copy of the formal accreditation approval. Copies of any updates submitted to the accrediting organization as well as any correspondence from the organization affecting the provider's accreditation should also be submitted to the department.

(j) An air ambulance provider who meets the requirements of this section shall be issued a license valid for a period of two years; except that the department may issue an initial license for less than two years in order to conform expiration dates to existing schedules for a locality. An initial license shall be valid upon the date of issuance. A renewed license shall be valid on the day after the expiration of the previous license. A license is not transferable from one EMS provider to another.

(k) A provider from New Mexico, Oklahoma, Arkansas, or Louisiana may apply for reciprocal issuance of a provider license. An administrative fee of \$250 shall accompany the application in addition to the licensing fee in §157.11(c) of this title.

(1) The department shall notify the EMS provider 180 days before the expiration date of the provider license. If a provider does not receive notice of expiration from the department, it is the responsibility of the provider to notify the department and request a license renewal application. Failure to apply for renewal shall result in expiration of the license. Continuing to operate without a license may result in administrative penalties. A completed application shall be submitted at least 60 days before the expiration date of the current license.

(2) The license renewal applicant shall submit:

(A) the completed application and the nonrefundable fee as provided in §157.11(b) of this title;

(B) evidence of compliance with requirements for a provider license as delineated in §157.11(a)(1)(A)-(E) of this title, or evidence of accreditation as in subsection (h) of this section; and

(C) vehicle inspections for renewal of a license may be waived if the renewal applicant:

(i) provides evidence of compliance with requirements of this section;

(ii) has not been found in violation of requirements of this section during scheduled or unscheduled spot inspections conducted by the department during the previous license period; or

(iii) has not been found in violation of the Health and Safety Code, Chapter 773, during the previous license period.

(3) The air ambulance provider shall meet the responsibilities required in §157.11(m) of this title.

(1) An air ambulance provider who has a check returned to the department for insufficient funds shall be subject to revocation of the provider license and this may be used as grounds for nonrenewal of the EMS provider license.

#### *§157.24. Fixed-wing Air Ambulance Provider Licensure*

(a) If an air ambulance provider advertises in Texas and operates an air ambulance service, the provider shall be required to have a Texas license.

(b) Licensure as a fixed-wing air ambulance provider shall be at the mobile intensive care level and shall only be granted to a person or entity that directs and controls the integrated activities of both the medical and aviation components. Although the aircraft operator is directly responsible to the Federal Aviation Administration (FAA) for the operation of the aircraft, one organization, typically the one in charge of the medical functions, directs the combined efforts of the aviation and medical components during patient transport operations.

(c) When being used as an ambulance, a fixed wing aircraft shall:

(1) be multi-engine;

(2) maintain a cabin altitude consistent with patient diagnosis, condition, and destination;

(3) be equipped for instrument flight rules (IFR) flight;

(4) have a door large enough to allow a patient on a stretcher to be enplaned without excessive maneuvering or tipping of the patient which compromises the function of monitoring devices, intravenous (IV) lines or ventilation equipment;

(5) be designed or modified to accommodate at least one stretcher patient;

(6) have a lighting system which can provide adequate intensity to illuminate the patient care area and an adequate method (curtain, distance) to limit the cabin light from entering the cockpit and impeding cockpit crew vision during night operations;

(7) have an environmental system (heating and cooling) capable of maintaining a comfortable temperature at all times;

(8) have an interior cabin configuration large enough to accommodate the number of air medical personnel needed to provide care to the patient, as well as an adult stretcher in the cabin area with access to the patient. The configuration shall not impede the normal or emergency evacuation routes;

(9) have an electrical system capable of servicing the power needs of electrically powered on-board patient care equipment;

(10) have all installed and carry-on equipment secured using FAA-approved devices and methods;

(11) have sufficient space in the cabin area where the patient stretcher is installed so that equipment can be stored and secured with FAA-approved devices in such a manner that it is accessible to the air medical personnel; and

(12) have two fire extinguishers approved for aircraft use. Each shall be fully charged with valid inspection certification and capable of extinguishing type A, B, or C fires. One extinguisher shall be accessible to the cockpit crew and one shall be in the cabin area accessible to the medical crew member.

(d) An operator of aircraft in an air ambulance program shall be FAA certified as an air taxi and commercial operator (ACTO) with operation specifications allowing air ambulance operations.

(e) The fixed-wing air ambulance provider shall meet the requirements of emergency medical service (EMS) providers as in §157.11(a)(1)(A)-(E) of this title (relating to Requirements for an EMS Provider License) and shall also:

(1) submit proof that the fixed-wing aircraft operator carries bodily injury and property damage insurance with a company licensed to do business in the State of Texas, to secure payment for any loss or damage resulting from any occurrence arising out of or caused by the operation or use of any of the certificate holder's aircraft. Coverage amounts shall insure that:

(A) each aircraft shall be insured for the minimum amount of \$1 million for injuries to, or death of, any one

person arising out of any one incident or accident;

(B) the minimum amount of \$3 million for injuries to, or death of, more than one person in any one accident; and

(C) for the minimum amount of \$500,000 for damage to property arising from any one accident;

(2) submit proof that the provider carries professional liability coverage in the minimum amount of \$500,000 per occurrence, with a company licensed to do business in Texas, in order to secure payment for any loss or damage resulting from any occurrence arising out of or caused by the care or lack of care of a patient,

(3) submit a list of all aircraft with the registration number or "N" number for the fixed-wing aircraft in the possession of the provider. The license fee as required in §157.11(b) of this title shall be based on the number of fixed-wing aircraft;

(4) submit a letter of agreement that all fixed-wing aircraft shall meet the specifications of (b) of this section, if the aircraft is leased from a pool. The license fee as required in §157.11(b) of this title shall be based on each complete set of equipment; and

(5) allow visual and physical inspection of each aircraft and of the equipment on each vehicle for the purpose of determining compliance with the vehicle and equipment specifications within this section.

(f) The air ambulance provider shall designate or employ a medical director who shall meet the following qualifications:

(1) be a physician currently licensed in the State of Texas and in practice. Physicians employed by providers who are based in another state, do not need Texas licensure but shall be licensed in their respective state;

(2) have knowledge and experience consistent with the transport of patients by air;

(3) be knowledgeable in aeromedical physiology, stresses of flight, aircraft safety, patient care, and resource limitations of the aircraft, medical staff and equipment; and

(4) have access to consult with medical specialists for patient(s) whose illness and care needs are outside his/her area of practice.

(g) The physician shall fulfill the following responsibilities:

(1) ensure that there is a comprehensive plan/policy to address selection

of appropriate aircraft, staffing and equipment;

(2) be involved in the selection, hiring, training and continuing education of all medical personnel;

(3) be responsible for overseeing the development and maintenance of a continuous quality improvement program;

(4) ensure that there is a plan to provide direction of patient care to the air medical personnel during transport. The system shall include on-line (radio/telephone) medical control, and/or an appropriate system for off-line medical control such as written guidelines, protocols, procedures, patient specific written orders or standing orders;

(5) participate in decision making processes that affect patient care;

(6) ensure that there is an adequate method for on-line medical control, and that there is a well defined plan or procedure and resources in place to allow off-line medical control; and

(7) oversee the review, revision and validation of written policies and protocols annually to include a policy defining the specific instances in which a patient could be accompanied by only one attendant.

(h) There shall be at least one licensed/certified paramedic, registered nurse, or physician on board an air ambulance to perform patient care duties on that air ambulance. The qualifications and numbers of air medical personnel shall be appropriate to patient care needs. Personnel employed by providers who are based in another state, do not need Texas certification/licensure but shall be certified/licensed in their respective state.

(1) Documentation of successful completion of training specific to the fixed-wing transport environment in general and the licensee's operation specifically shall be required. The curriculum shall be consistent with the Department of Transportation (DOT) Air Medical Crew-National Standard Curriculum, or equivalent program.

(2) Each attendant's qualifications shall be documented.

(3) Air medical personnel shall not be assigned or assume the cockpit duties of the flight crew members concurrent with patient care duties and responsibilities.

(4) The aircraft shall be operated by a pilot or pilots certified in accordance with applicable FARs.

(i) Each fixed-wing air ambulance shall carry the following equipment:

(1) one or more stretchers installed in the aircraft cabin which meet the following criteria:

(A) can accommodate an adult, six feet tall, weighing 212 pounds. There shall be restraining devices or additional appliances available to provide adequate restraint of all patients including those under 60 pounds or 36 inches in height;

(B) the head of each stretcher shall be capable of being elevated up to 45 degrees. The elevating section must hinge at or near the patient's hips and shall not interfere with or require that the patient or stretcher securing straps and hardware be removed or loosened;

(C) each stretcher shall be positioned in the cabin to allow the air medical personnel clear view of the patient and shall ensure that medical personnel always have access to the patient's head and upper body for airway control procedures as well as sufficient space over the area where the patients chest is to adequately perform closed chest compression or abdominal thrusts on the patient;

(D) a pad or mattress impervious to moisture and easily cleaned and disinfected according to Occupation Safety and Health Administration (OSHA) bloodborne pathogen requirements;

(E) a device to make the stretcher surface rigid enough if the surface of the stretcher under the patient's torso is not firm enough to support adequate chest compressions; and

(F) shall have a supply of linen for each patient;

(2) an adequate and manually-controlled supply of gaseous or liquid medical oxygen, attachments for humidification, and a variable flow regulator for each patient;

(A) a humidifier, if used, shall be a sterile, disposable, one-time usage item;

(B) the licensee shall have and demonstrate the method used to calculate the volume of oxygen required to provide sufficient oxygen for the patients needs for the duration of the transport;

(C) the licensee shall have a plan to provide the calculated volume of oxygen plus a reserve equal 1,000 liters or the volume required to reach an appropriate airport, whichever is longer;

(D) all necessary regulators, gauges and accessories shall be present and in good working order;

(E) the oxygen system shall be securely fastened to the airframe using FAA-approved restraining devices;

(i) a separate emergency backup supply of oxygen of not less than 20 cubic feet with regulator and flow meter;

(ii) one adult, one pediatric size non-rebreathing mask, one adult size nasal cannula and necessary connective tubings and appliances.

(3) an electrically-powered suction apparatus with wide bore tubing, a large reservoir and various sizes suction catheters. The suction system may be built into the aircraft or provided with a portable unit. Backup suction is required and can be a manually operated device. (Bulb syringe not acceptable);

(4) hand operated bag-valve-mask ventilators of adult, pediatric and infant sizes with clear masks in adult, pediatric and infant sizes. It shall be capable of use with a supplemental oxygen supply and have an oxygen reservoir;

(5) airway adjuncts as follows:

(A) oropharyngeal airways in at least five assorted sizes, including adult, child and infant; and

(B) nasopharyngeal airways in at least three sizes with water soluble lubricant;

(6) assessment equipment as follows:

(A) equipment suitable to determine blood pressure of the adult, pediatric and infant patient(s) during flight;

(B) stethoscope;

(C) penlight/flashlight;

(D) heavy duty bandage scissors; and

(E) pulse oximeter;

(7) bandages and dressings as follows:

(A) sterile dressings such as 4x4's, ABD pads;

(B) bandages such as Kerlix, Kling; and



(C) tape in various sizes.

(8) container(s) and methods to collect, contain, and dispose of body fluids such as emesis, oral secretions, and blood consistent with OSHA bloodborne pathogen requirements;

(9) urinal and bedpan with toilet tissue;

(10) infection control equipment. The licensee shall have a sufficient quantity of the following supplies for all air medical personnel, each flight crew member, and all ground personnel with incidental exposure risks according to OSHA requirements which includes but is not limited to:

(A) protective gloves;

(B) protective gowns;

(C) protective eyewear;

(D) protective face masks;

(E) an approved bio-hazardous waste plastic bag or impervious container to receive and dispose of used supplies; and

(F) handwashing capabilities or antiviral towelettes.

(11) an adequate trash disposal system exclusive of bio-hazardous waste control provisions;

(12) the following additional equipment in amounts and sizes specified by the medical director is required for an air ambulance provider to function at the advanced level:

(A) advanced airway management equipment appropriate to the patient's needs;

(B) sterile crystalloid solutions in plastic containers, IV catheters, and administration tubing sets;

(C) hanger for IV solutions;

(D) pressure bag;

(E) tourniquets, tape, dressings;

(F) container appropriate to contain used sharp devices, needles, scalpels which meets OSHA requirements;

(G) a list signed by medical director defining quantities and types of drugs to be carried; and

(H) any specialized equipment required in medical treatment protocols/standing orders.

(13) cardiac monitor defibrillator-DC battery powered portable monitor/defibrillator with paper printout, accessories and supplies, with sufficient power supply to meet demands of the mission; and

(14) survival kit which shall include, but not be limited to, the following items which are appropriate to the terrain and environments the provider operates over:

(A) instruction manual;

(B) water;

(C) shelter-space blanket;

(D) knife;

(E) signaling devices;

(F) compass; and

(G) fire starting items.

(j) A system for security of medications, fluids, and controlled substances shall be maintained by each air ambulance licensee in compliance with local, state, and federal drug laws.

(k) The air ambulance provider shall own the following equipment or shall have a written lease agreement explaining the availability of the equipment for use when the patient's condition indicates the need:

(1) external cardiac pacing device;

(2) IV infusion pump capable of strict mechanical control of an IV infusion drip rate. Passive devices such as dial-a-flow are not acceptable; and

(3) a mechanical ventilator that can deliver up to 100% oxygen concentration at pressures, rates and volumes appropriate for the size of the patient.

(l) The air ambulance provider who receives and maintains certification from a national accrediting organization approved by the department and who adheres to Texas staffing requirements shall be considered to have met the requirements of this

section. They shall submit to the department a copy of the self study for accreditation and a copy of the formal accreditation approval. Copies of any updates submitted to the accrediting organization as well as any correspondence from the organization affecting the provider's accreditation shall also be submitted to the department.

(m) An air ambulance provider who meets the requirements of this section shall be issued a license valid for a period of two years; except that the department may issue an initial license for less than two years in order to conform expiration dates to existing schedules for a locality. An initial license shall be valid upon the date of issuance. A renewed license shall be valid on the day after the expiration of the previous license. A license is not transferable from one EMS provider to another.

(n) The license renewal process shall be complete prior to the expiration of the current license.

(1) The department shall notify the EMS provider 180 days before the expiration date of the provider license. If a provider does not receive notice of expiration from the department, it is the responsibility of the provider to notify the department and request a license renewal application. Failure to apply for renewal shall result in expiration of the license. Continuing to operate without a license may result in administrative penalties. A completed application shall be submitted at least 60 days before the expiration date of the current license.

(2) The license renewal applicant shall submit:

(A) the completed application and the nonrefundable fee as provided in §157.11(b) of this title;

(B) evidence of compliance with requirements for a provider license as delineated in §157.11(a)(1)(A)-(E) of this title, or evidence of accreditation as in subsection (i) of this section; and

(C) vehicle inspections for renewal of a license which may be waived if the renewal applicant:

(i) provides evidence of compliance with requirements in this section; and

(ii) has not been found in violation of requirements of this section during scheduled or unscheduled spot inspections conducted by the department during the previous license period; and/or

(iii) has not been found in violation of the Health and Safety Code, Chapter 773 of during the previous license period.

(3) The air ambulance provider shall meet the responsibilities required in §157.11(m) of this title.

(o) An air ambulance provider who has a check returned to the department for insufficient funds shall be subject to revocation of the provider license and this may be used as grounds for nonrenewal of the EMS provider license.

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

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

TRD-9512188

Susan K. Steeg  
General Counsel  
Texas Department of  
Health

Earliest possible date of adoption: October 30, 1995

For further information, please call: (512) 458-7736

◆ ◆ ◆  
• 25 TAC §157.15

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

The repeal is proposed under Health and Safety Code, Chapter 773 which provides the Board of Health with the authority to adopt rules to implement the Emergency Medical Services Act; and §12.001, which provides the Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Board of Health, the Department of Health, and the Commissioner of Health.

The codes and/or articles affected are: Health and Safety Code, Chapter 773, including §§773.003, 773.011, 773.041, 773.045, 773.050, 773.054, 773.055, 773.056, 773.057, 773.0571, 773.061, and 773.062, and Health and Safety Code §12.001.

§157.15. Requirements for a Specialized Vehicle License.

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

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

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Susan K. Steeg  
General Counsel  
Texas Department of  
Health

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For further information, please call: (512) 458-7736

## EMS Personnel Certification

### • 25 TAC §§157.41, 157.44, 157.46, 157.51

The amendments are proposed under Health and Safety Code, Chapter 773, which provides the Board of Health with the authority to adopt rules to implement the Emergency Medical Services Act; and §12.001, which provides the Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Board of Health, the Department of Health, and the Commissioner of Health.

The codes and/or articles affected are Health and Safety Code, Chapter 773, §§773.045, 773.047, 773.055, 773.056, 773.057, 773.0571, and 773.061, and Health and Safety Code §12.001.

#### §157.41. Certification.

(a) A candidate for certification shall:

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

(3) complete the application for certification [examination];

(4) (No change.)

(5) have documented evidence from a state certified skills examiner using state skills criteria of skills proficiency as follows.

(A) The ECA [and EMT] skills proficiency verification shall consist of.

(i)-(vi) (No change.)

(B) The EMT skills proficiency verification shall consist of the skills verification requirements for the ECA in subparagraph (A) of this paragraph. In addition, after September 1, 1996, the student shall demonstrate proficiency in the following skills:

(i) automated external defibrillation;

(ii) pneumatic antishock garment;

(iii) epinephrine auto-injector;

(iv) inhaler bronchodilators; and

(v) administration of oral nitroglycerin, oral glucose, activated charcoal, and aspirin.

(C)[(B)] The EMT-I skills proficiency verification shall consist of the skills verification requirements for ECA and EMT in subparagraph (A) of this paragraph. In addition, the student shall demonstrate proficiency in the following skills:

(i) peripheral venipuncture for fluid administration;

(ii) utilization of the pneumatic antishock garment; and

(iii) utilization of an endotracheal tube (infant and adult) and an esophageal intubation device for airway control.

(D)[(C)] The EMT-P skills proficiency verification shall consist of the skills verification requirements for an ECA, EMT, and EMT-I in subparagraphs (A) and (B) of this paragraph. In addition, the student shall demonstrate proficiency in the following skills:

(i) emergency drug administration;

(ii) defibrillation and cardioversion; and

(iii) megacode (possession of a valid Advanced Cardiac Life Support (ACLS) card issued within the inclusive dates of the paramedic or paramedic completion course or documentation issued by the course medical director based upon scenarios submitted with the course approval documents shall fulfill megacode proficiency requirements);

(6) achieve a passing grade of 70 on the department's certification examination or the National Registry examination [and, in addition, achieve a passing grade of 70 on the critical components of the examination].

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

(f) A candidate shall be eligible to reapply for certification for up to one year [two years] following the course completion date, if:

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

(g) A candidate who does not meet the requirements for certification within the one-year [two-year] period following the course completion date shall be required to complete an entire EMS training course as described in §157.33-157.35 of this title (relating to EMS Training Program and Course Approval) to be eligible to apply for certification.

(h)-(i) (No change.)

[(j) EMS personnel shall perform emergency care procedures only as authorized by the Medical Practices Act, Texas Civil Statutes, Article 4495b, and rules adopted thereunder in 22 TAC §§193.1-193.5 concerning Standing Delegation/Orders and 22 TAC §§197.1-197.6 concerning Emergency Medical Service. However, where conflicts may occur this chapter shall prevail.]

(j)[(k)] The completion of a course at a higher level of certification shall satisfy the course requirement for a lower level of certification, and the individual may apply for certification by:

(1) submitting an application and applicable fee, if any, as required in subsection (a)(3) and (4) of this section; and

(2) meeting the skills proficiency verification and examination requirements of this section within 180 days of the course completion date; or

(3) meeting the requirements of subsection (e) of this section.

(k)[(l)] An individual [Individuals] who successfully completes [complete] certification requirements for a higher level is [are] deemed to be certified only at that level.

(l)[(m)] An individual who is certified as an EMT-I or EMT-P may voluntarily be certified at a lower level of certification by:

(1) submitting an application for certification and the applicable fee, if any, as required in subsection (a) (3) and (4) of this section;

(2) completing the requirements of §157.38 of this title (relating to Continuing Education) for the level of certification requested according to the two-year reporting cycle which is applicable;

(3) completing skills proficiency verification as required in subsection (a)(5) of this section;

(4) achieving a passing grade on the department's written examinations as required in subsection (a)(6) of this section; and

(5) returning the wallet-size certificate for the EMT-I or EMT-P level of certification to the department.

(m) An individual who has successfully completed an EMS course as in §§157.32-157.35 of this title, may have provisional certification for 180 days or until permanent certification status is achieved, whichever comes sooner, if the individual is employed by or volunteers for an EMS provider. The EMS provider is not required to recognize provisional certification. While on provisional status:

(1) an individual may serve as the second staff person on the ambulance as long as there is a person with full status certification of equal or higher level working with the individual; and

(2) if the individual fails an examination, the individual will automatically lose provisional certification status until such time as the individual successfully passes the examination and receive full status certification.

(n) An individual who wishes to surrender his or her certification prior to the expiration of the certificate may do so by:

(1) completing a Surrender of Certificate statement;

(2) acknowledging that the surrender is a "no contest" plea, in the event that a disciplinary action is pending or reasonably imminent; and

(3) identifying the reason for the surrender. When the reason is an inability to perform the functions of the applicable certificate level, the certificant shall identify the reason for the inability.

(o) To regain certification following the surrender of a certificate, the individual shall:

(1) petition the department in writing for approval to reapply for certification and provide evidence of present fitness; and

(2) meet the maximum re-entry requirements as in §157.45(f) of this title (relating to Recertification), if within two years of surrender; or

(3) meet initial certification requirements as in this section, if two or more years after surrender.

*§157.44. Certification of Persons With Criminal Backgrounds to be Emergency Medical Services Personnel.*

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

(d) Procedures for decertifying, suspending, or denying a certificate to persons with criminal backgrounds.

(1) If the department's Bureau of Emergency Management (bureau) proposes to decertify, suspend, or deny a certificate, based on the criteria in subsection (b) of this section, the bureau shall notify the individual at his or her last known address as shown in the bureau's records, by registered or certified mail. The notice shall specify the facts or conduct alleged to warrant the intended action. [If the proposed action is to decertify or suspend a certificate, the procedural requirements of §157.52 of this title (relating to Procedures for Decertification and Suspension of a Certificate) shall be applicable.]

(2)-(6) (No change.)

*§157.46. Certification by Reciprocity for EMS Personnel.*

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

(d) Prior to or within 90 days of the expiration of the one year certificate, the certificant shall be required to:

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

(4) achieve a passing grade of 70 on the department's certification examination[, and in addition, achieve a passing grade of 70 on the critical components of the examination].

(e)-(i) (No change.)

(j) A candidate from outside the United States may become certified in Texas by:

(1) submitting a personnel application and nonrefundable administrative fee of \$150 [\$200] which includes the certification fee as in §157.41(a)(4) of this title;

(2)-(6) (No change.)

(k) (No change.)

*§157.51. Criteria for Emergency Suspension, Suspension, Probation, and Decertification of an EMS Certificate.*

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

(f) Provisional certification. A person who is employed by or volunteers for an EMS provider under provisional certification, as described in §157.41(m) of this title (relating to Certification), shall be subject to all the sanctions described in this section.

(g)[(f)] Reapplication. Two years after the decertification, an individual may petition the department in writing for reapplication for certification. The department shall evaluate the petition and may allow an application for certification to be submitted. However, the department may deny the application if the reason for decertification continues to exist. If the application is allowed, the individual shall be required to meet the requirements for certification as described in §157.41 of this title [(relating to Certification)].

(h)[(g)] Expiration of a certificate during suspension. An individual whose certificate expires during the period of suspension may apply for recertification on the day following the expiration of the suspension. The individual shall meet the requirements for late recertification as described in §157.45 of this title (relating to Recertification).

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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Susan K. Steeg  
General Counsel  
Texas Department of  
Health

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For further information, please call: (512) 458-7736

Emergency Medical Services  
Course Coordinator, Program  
Instructor and Examiner  
Certification

• 25 TAC §157.61

The amendment is proposed under Health and Safety Code, Chapter 773, which provides the Board of Health with the authority to adopt rules to implement the Emergency Medical Services Act; and §12.001, which provides the Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Board of Health, the Department of Health, and the Commissioner of Health.

The codes and/or articles affected are Health and Safety Code, Chapter 773, §§773.045, 773.047, 773.055, 773.056, 773.057, 773.0571, and 773.061, and Health and Safety Code §12.001.

§157.61. Course Coordinator Certification

(a) (No change.)

(b) Certification. A course coordinator candidate shall:

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

(3) complete the application for course coordinator certification and include the following.

(A) a nonrefundable fee of \$50 [\$25]; except a fee shall not be required if compensation is not received for coordinating training courses or programs;

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

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

(c) Period of certification. After verification by the department of the information submitted by the candidate, the candidate who meets the requirements of subsection (b) of this section shall be certified as a course coordinator for two years commencing on the date of issuance of the certificate, except that the department may issue an initial certificate for less than two years in order to conform to two-year continuing education reporting and personnel certification expiration dates. The fee for this first certification period will be \$25 [\$12.50] per year. Any portion of a year will be counted as a full year.

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

(f) Recertification.

(1) To be eligible for recertification the course coordinator shall:

(A)-(D) (No change.)

(E) submit the application for recertification and a nonrefundable fee of \$50 [\$25]; except a fee shall not be

required if compensation is not received for coordinating a training course or program;

(F)-(G) (No change.)

(2) (No change.)

(g) (No change.)

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

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TRD-9512192

Susan K Steeg  
General Counsel  
Texas Department of  
Health

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For further information, please call: (512) 458-7736

◆ ◆ ◆  
**TITLE 28. INSURANCE**

**Part I. Texas Department  
of Insurance**

**Chapter 7. Corporate and  
Financial Regulation**

**Subchapter A. Examination  
and Corporate Custodian and  
Tax**

• 28 TAC §7.65

*(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 §7.65, concerning the annual statement blanks, instructions, and other forms used by insurers and certain other entities regulated by the Texas Department of Insurance to report their financial condition and business operations and activities for calendar year 1986. The repeal of this section is necessary to eliminate unnecessary provisions and to enable the Texas Department of Insurance simultaneously to adopt new §7.65, which replaces the repealed section with other provisions concerning the filing requirements for annual and quarterly statements and other reporting forms for calendar year 1995 and 1996. Notification of the proposed new section which replaces this repealed section appears elsewhere in this issue of the *Texas Register*.

Jose Montemayor, associate commissioner for the financial program, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for the state or local government as a result of enacting or administering the repeal. There will be no effect on local employment or local economy.

Mr. Montemayor also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be more efficient administrative regulation of insurance. There will be no effect on small business. 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 proposal in the *Texas Register* to the Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Betty Patterson, Director-Financial Monitoring Activity, Mail Code 303-1A, P.O. Box 149099, Austin, Texas 78714-9099. Request for a public hearing on this proposal should be submitted separately to the Office of the Chief Clerk.

The repeal is proposed under the Insurance Code, Articles 1.11, 1.10, 3.07, 3.20-1, 3.27-2, 6.11, 6.12, 8.07, 8.08, 8.21, 8.24, 9.22, 9.47, 10.30, 11.06, 11.19, 14.15, 14.39, 15.15, 15.16, 16.18, 16.24, 17.22, 17.25, 18.12, 19.08, 20.02, 20A.10, 20A.22, 21.39, 21.43, 21.54, 22.06, 23.02, 23.26, 1.03A; and Texas Government Code, §§2001.004-2001.038. The Insurance Code, Article 1.11 authorizes the commissioner to make changes in the forms of the annual statements required of insurance companies of any kind, as shall seem best adapted to elicit a true exhibit of their condition and methods of transacting business, and requires certain insurers to make filings with the National Association of Insurance Commissioners. Article 1.10(9), requires the department to furnish the statement blanks and other reporting forms necessary for companies to comply with the filing requirements. Articles 3.07, 3.20-1, 3.27-2, 6.11, 6.12, 8.07, 8.08, 8.21, 8.24, 9.22, 9.47, 10.30, 11.06, 11.19, 14.15, 14.39, 15.15, 15.16, 16.18, 16.24, 17.22, 17.25, 18.12, 19.08, 20.02, 20A.10, 20A.22, 21.54, 22.06, 23.02, and 23.26, require the filing of financial reports and other information by insurers and other regulated entities, and specify particular rule-making authority of the commissioner relating to those insurers and other regulated entities. Article 21.39 requires insurers to establish adequate reserves and provides for the adoption of each current formula for establishing reserves applicable to each line of insurance. Article 21.43 provides the conditions under which foreign insurers are permitted to do business in this state and requires foreign insurers to comply with the provisions of the Insurance Code. Article 1.03A authorizes the commissioner to adopt rules for the conduct and execution of the duties and functions of the department only as authorized by statute for general and uniform application. Texas Government Code, §§2001.004-2001.038, authorize and require each state agency to adopt rules of practice setting forth the nature and requirement of available procedures, and prescribe the procedures for adoption of rules by a state administrative agency.

The following articles of the Insurance Code are affected by the repeal of this section: Articles 1.11, 1.10, 3.07, 3.20-1, 3.27-2, 6.11,

6.12, 8.07, 8.08, 8.21, 8.24, 9.22, 9.47, 10.30, 11.06, 11.19, 14.15, 14.39, 15.15, 15.16, 16.18, 16.24, 17.22, 17.25, 18.12, 19.08, 20.02, 20A.10, 20A.22, 21.39, 21.43, 21.54, 22.06, 23.02, and 23.26.

*§7.65. Annual Statement Blanks, Instructions, and Other Forms, 1986 Operations.*

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 September 22, 1995.

TRD-9512215      Alicia M. Fechtel  
General Counsel and Chief  
Clerk  
Texas Department of  
Insurance

Earliest possible date of adoption: October 30, 1995

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

◆      ◆      ◆  
**Subchapter A. Examination  
and Financial Analysis**

• **28 TAC §7.65**

The Texas Department of Insurance proposes new §7.65, concerning annual and quarterly statement blanks, other reporting forms, diskettes and instructions to be used by insurers and certain other entities regulated by the Texas Department of Insurance when reporting their financial condition and business operations and activities, and the requirement to file such completed statement blanks and other reporting forms, including diskettes. These statement blanks, other reporting forms, and diskettes are required for reporting, in 1996, the financial condition and business operations and activities conducted during the 1995 and 1996 calendar years. The proposal of new §7.65 is simultaneous with the proposed repeal of present §7.65, concerning the 1986 annual statement filings. Notice of the proposed repeal appears elsewhere in this issue of the *Texas Register*. The new section defines terms relevant to the statement blanks and reporting forms; provides the dates by which certain reports are to be filed; and adopts by reference the annual and quarterly statement blanks, other reporting forms, and instructions for reporting the financial condition and business operations and activities; and requires insurance companies and certain other regulated entities to file such annual and quarterly statements and other reporting forms with the department and/or the National Association of Insurance Commissioners as directed. The department has filed with the Office of the Secretary of State, *Texas Register* Division, copies of the annual and quarterly statement blanks, other reporting forms, and manuals proposed for adoption by reference. Other copies are available for inspection in the office of the Financial Monitoring Activity of the Texas Department of Insurance, William P. Hobby State Office Building, 333 Guadalupe, Building 3, Third Floor, Austin, Texas.

Jose Montemayor, associate commissioner for the financial program, has determined that there will be fiscal implications as a result of enforcing or administering the section. The effect on state government for the first five-year period the section is in effect will be fees paid by the state government to the National Association of Insurance Commissioners for filing requirements of the section when those fees are not paid by such insurers. There will be no effect on local government for the first five-year period the section is in effect. For small businesses and larger businesses, the cost of compliance with the section will be the administrative expense in completing the statement blanks, other reporting forms, and diskette filings. The cost of completing the diskette filings depends on the method of compliance selected by the regulated entity. If a regulated entity purchases electronic data processing equipment and prepares diskettes internally, the anticipated maximum cost of compliance would be \$7,500 for the first year, and \$1,200 for each of the next four years. If a regulated entity engages an independent consultant or vendor to prepare diskettes adequate to comply with the requirements of the section, the anticipated possible economic cost of compliance would be between \$600 and \$3,500 for each year of the first five years that the proposed section is in effect, with the exact cost depending on the fee schedule of the independent consultant or vendor engaged by the regulated entity. On the basis of cost per hour of labor, there is no expected difference in cost of compliance between small businesses and larger businesses affected by the section.

Mr. Montemayor 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 are the ability of the department to provide financial information to the public and other regulatory bodies as requested, and to monitor the financial condition of insurers and other regulated entities licensed in Texas to better assure financial solvency. The anticipated economic cost to insurers and other regulated entities required to comply with the proposed section will be the administrative expense in completing the statement blanks, other reporting forms, and diskette filings. The cost will depend on each company's record-keeping practices, type of operations, and the method of complying with diskette filing requirements selected by the regulated entity as described in the Fiscal Note.

Comments on the proposal, to be considered by the commissioner of insurance, must be submitted in writing within 30 days after publication of the proposed section in the *Texas Register* to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Betty Patterson, Director-Financial Monitoring Activity, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149099, Austin, Texas 78714-9099. Request for a public hearing on this proposal should be submitted separately to the Office of the Chief Clerk.

The new section is proposed under the Insurance Code, Articles 1.11, 1.10, 3.07,

3.20-1, 3.27-2, 6.11, 6.12, 8.07, 8.08, 8.21, 8.24, 9.22, 9.47, 10.30, 11.06, 11.19, 14.15, 14.39, 15.15, 15.16, 16.18, 16.24, 17.22, 17.25, 18.12, 19.08, 20.02, 20A.10, 20A.22, 21.39, 21.43, 21.54, 22.06, 23.02, 23.26, 1.03A, and 21.52F; and Texas Government Code, §§2001.004-2001.038. The Insurance Code, Article 1.11 authorizes the commissioner to make changes in the forms of the annual statements required of insurance companies of any kind, as shall seem best adapted to elicit a true exhibit of their condition and methods of transacting business, and requires certain insurers to make filings with the National Association of Insurance Commissioners. Article 1.10(9), requires the department to furnish the statement blanks and other reporting forms necessary for companies to comply with the filing requirements. Articles 3.07, 3.20-1, 3.27-2, 6.11, 6.12, 8.07, 8.08, 8.21, 8.24, 9.22, 9.47, 10.30, 11.06, 11.19, 14.15, 14.39, 15.15, 15.16, 16.18, 16.24, 17.22, 17.25, 18.12, 19.08, 20.02, 20A.10, 20A.22, 21.39, 21.43, 21.54, 22.06, 23.02, and 23.26, require the filing of financial reports and other information by insurers and other regulated entities, and specify particular rule-making authority of the commissioner relating to those insurers and other regulated entities. Article 21.39 requires insurers to establish adequate reserves and provides for the adoption of each current formula for establishing reserves applicable to each line of insurance. Article 21.43 provides the conditions under which foreign insurers are permitted to do business in this state and requires foreign insurers to comply with the provisions of the Insurance Code. Article 1.03A provides that the commissioner may adopt rules for the conduct and execution of the duties and functions of the department as authorized by statute for general and uniform application. The proposed section affects the filing of the annual statement, other reporting forms, and diskettes to elicit the financial condition of insurers under the Insurance Code, Article 1.11.

The following articles of the Insurance Code will be affected by this proposed section: Articles 1.11, 1.10, 3.07, 3.20-1, 3.27-2, 6.11, 6.12, 8.07, 8.08, 8.21, 8.24, 9.22, 9.47, 10.30, 11.06, 11.19, 14.15, 14.39, 15.15, 15.16, 16.18, 16.24, 17.22, 17.25, 18.12, 19.08, 20.02, 20A.10, 20A.22, 21.39, 21.43, 21.54, 22.06, 23.02, and 23.26.

*§7.65. Requirements for filing the 1995 Annual and 1996 Quarterly Statements, Other Reporting Forms, and Diskettes.*

(a) Scope. This section provides insurers and other regulated entities with the filing requirements for the 1995 annual statement, 1996 quarterly statements, other reporting forms, and diskettes necessary to report information concerning the financial condition and business operations and activities of insurers. This section applies to all insurers and other regulated entities authorized to do the business of insurance in this state and includes, but is not limited to, life insurers; accident insurers; life and accident insurers; life and health insurers; accident and health insurers; life, accident and health

insurers; mutual life insurers; stipulated premium insurers; group hospital service corporations; fire insurers; fire and marine insurers; general casualty insurers; fire and casualty insurers; mutual insurers other than life; county mutual insurers; Lloyd's plans; reciprocal and inter-insurance exchanges; domestic risk retention groups; domestic joint underwriting associations, title insurers; fraternal benefit societies; local mutual aid associations; statewide mutual assessment companies; mutual burial associations, exempt associations; farm mutual insurers; health maintenance organizations; nonprofit health corporations; and nonprofit legal services corporations. The commissioner of insurance adopts by reference the 1995 annual and 1996 quarterly statement blanks, instruction manuals, and other reporting forms specified in this section. The annual and quarterly statement blanks and other reporting forms are available from the Texas Department of Insurance, Financial Monitoring Activity, Mail Code 303-1A, P.O. Box 149099, Austin, Texas 78714-9099. Insurers and other regulated entities shall properly report to the Texas Department of Insurance and the National Association of Insurance Commissioners (NAIC), using the appropriate annual and quarterly statement blanks, other reporting forms and machine-readable diskettes and following the applicable instructions as outlined in subsections (c)-(l) of this section.

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

(1) Association edition—Blanks and forms promulgated by the National Association of Insurance Commissioners.

(2) Commissioner—The commissioner of insurance appointed under the Insurance Code, Article 1.09.

(3) Department—The Texas Department of Insurance.

(4) Insurer—A person or business entity legally organized in and authorized by its domiciliary jurisdiction to do the business of insurance.

(5) NAIC—The National Association of Insurance Commissioners.

(6) Texas edition—Blanks and forms promulgated by the commissioner of insurance.

(c) Filing requirements for life, accident and health insurers. Each life, life and accident, life and health, accident and health, mutual life, or life, accident and health insurance company, stipulated premium insurance company, and group hospital services corporation shall complete and file the following blanks, forms, and diskettes for the 1995 calendar year and the first three quarters of the 1996 calendar year.

The forms, reports and diskettes identified in paragraphs (1)(A)-(N); (2)(A)-(C); and (3)(A) of this subsection shall be completed in accordance with the current NAIC Annual Statement Instructions, Life, Accident and Health, except as provided by paragraph (4) of this subsection. The diskettes identified in paragraph (3)(B) and (C) shall be completed in accordance with the current NAIC Annual Statement Diskette Filing Specifications-Life/Health, except as provided by paragraph (4) of this subsection.

(1) Reports to be filed with the department and the NAIC include the following:

(A) Annual Statement (association edition, Form 1 or Form 11, with a blue colored cover made of minimum 65-pound paper), either the 12 inch x 19 inch size, 11 inch x 17 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before March 1, 1996 (stipulated premium insurance companies, April 1, 1996);

(B) Annual Statement of the Separate Accounts (association edition, Form 1-S, with a green colored cover made of minimum 65-pound paper) (required of companies maintaining separate accounts), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before March 1, 1996 (stipulated premium insurance companies, April 1, 1996);

(C) Trusteed Surplus Statement (association edition, Life, Accident and Health Supplement) (required of the U. S. branch of an alien insurer), 9 inch x 14 inch size to be filed on or before March 1, May 15, August 15, and November 15, 1996;

(D) Management's Discussion and Analysis (a narrative document setting forth information which enables regulators to enhance their understanding of the insurer's financial position, results of operations, changes in capital and surplus accounts and cash flow), to be filed on or before April 1, 1996 (stipulated premium insurance companies, May 1, 1996);

(E) Long-Term Care Insurance Exhibit (association edition) (required of companies writing long-term care business), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before March 1, 1996 (stipulated premium insurance companies, April 1, 1996), in addition to the Long-Term Care Experience Reporting Forms included in the annual statement required by subparagraph (A) of this paragraph;

(F) Schedule DS (association edition) (required of companies that have included equity in the undistributed income of consolidated subsidiaries in its net gain/(loss) from operations), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before March 1, 1996 (stipulated premium insurance companies, April 1, 1996);

(G) Credit Insurance Experience Exhibit (association edition) (required of companies writing credit business), 9 inch x 14 inch size, to be filed on or before April 1, 1996;

(H) Interest Sensitive Life Insurance Products Report (association edition) (required of companies writing interest sensitive products), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before April 1, 1996 (stipulated premium insurance companies, May 1, 1996);

(I) Life, Health and Annuity Guaranty Association Model Act Assessment Base Reconciliation Exhibit (association edition), 9 inch x 14 inch size, to be filed on or before April 1, 1996;

(J) Adjustments to the Life, Health and Annuity Guaranty Association Model Act Assessment Base Reconciliation Exhibit (association edition), 9 inch x 14 inch size, to be filed on or before April 1, 1996;

(K) Life and Accident and Health Quarterly Statement (association edition) (required of companies filing Form 1), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before May 15, August 15, and November 15, 1996. However, a Texas stipulated premium insurance company, unless specifically requested to do so by the department, is not required to file quarterly statements with the department or the NAIC if it meets all three of the following conditions:

(i) it is authorized to write only life insurance on its certificate of authority;

(ii) it collected premiums in the prior calendar year of less than \$1 million; and

(iii) it had a profit from operations in the prior two calendar years;

(L) Certificate of Compliance with All Required Reporting Requirements of the Securities Valuation Office of

the NAIC (required of all companies to certify that the requirements of the Securities Valuation Office (SVO) have been met in a timely fashion), to be attached to each annual and quarterly statement required by subparagraphs (A) and (K) of this paragraph;

(M) Actuarial Opinion (the statement of a qualified actuary, setting forth his or her opinion relating to policy reserves and other actuarial items; required of all companies), to be attached to the annual statement required by subparagraph (A) of this paragraph; and

(N) Combined Life, Accident and Health Annual Statement (association edition, Form 1 or Form 11, with a blue colored cover made of minimum 65-pound paper), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before May 1, 1996.

(2) Reports to be filed only with the department:

(A) Schedule SIS, Stockholder Information Supplement (association edition) (required of domestic stock companies which have 100 or more stockholders), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before March 1, 1996;

(B) Accident and Health Policy Experience Exhibit (association edition) (required of companies writing accident and/or health business), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before May 1, 1996;

(C) Supplemental Compensation Exhibit (association edition) 9 inch x 14 inch size, (required of Texas domestic companies only), to be filed on or before March 1, 1996 (stipulated premium companies, April 1, 1996);

(D) Annual Statement (Texas edition, with a green colored cover made of minimum 65-pound paper) (required of companies writing prepaid legal business in 1995), 8 1/2 inch x 14 inch size, to be filed on or before March 1, 1996;

(E) Affidavit in Lieu of Annual Statement (Texas edition, green) (required of companies authorized to write prepaid legal business that did not write such business in 1995), to be filed on or before March 1, 1996;

(F) Texas Overhead Assessment Form (required of Texas domestic companies only), to be filed on or before March 1, 1996 (stipulated premium insurance companies, April 1, 1996);

(G) Analysis of Surplus, for life, accident and health insurers, to be filed on or before March 1, 1996 (stipulated premium insurance companies, April 1, 1996); and

(H) Supplemental Investment Income Exhibit (shows percent of net investment income by type of investment, as an attachment to page ten of the annual statement as required by paragraph (1)(A) of this subsection), to be filed on or before March 1, 1996 (stipulated premium companies, April 1, 1996).

(3) Reports and diskettes to be filed only with the NAIC:

(A) Officers and Directors Information (association edition) (required of companies upon their initial filing with the NAIC and to report any changes in previously filed information), to be filed on or before March 1, 1996 (stipulated premium insurance companies, April 1, 1996);

(B) machine-readable diskettes containing computerized annual statement data (required of companies filing annual statement Form 1), to be filed on or before March 1, 1996 (stipulated premium insurance companies, April 1, 1996);

(C) machine-readable diskettes containing computerized quarterly statement data (required of companies filing annual statement Form 1), to be filed on or before May 15, August 15, and November 15, 1996. However, a Texas stipulated premium insurance company, unless specifically requested to do so by the department, is not required to file diskettes with the NAIC if it meets all three of the following conditions:

(i) it is authorized to write only life insurance on its certificate of authority;

(ii) it collected premiums in the prior calendar year of less than \$1 million; and

(iii) it had a profit from operations in the prior two calendar years; and

(4) The following provisions shall apply to the filings required in paragraphs (1)-(3) of this subsection.

(A) Since Texas domestic companies have historically not been required to establish Asset Valuation Reserve (AVR) or Interest Maintenance Reserve (IMR), they are not required at the present time to establish an Asset Valuation Reserve (AVR) or Interest Maintenance Reserve (IMR) unless the company is licensed in a state that requires an AVR or IMR, in which case the reserve must be calculated in accordance with the instructions established by the NAIC.

(B) The statement of actuarial opinion should follow the guidelines and standards for statements of actuarial opinion prescribed by regulation authorized by Section 3, Actuarial opinion of Reserves of the Standard Valuation Law as amended by the NAIC in December 1990, unless exempted. For those companies who are exempted from such regulation, instructions 1-12, established by the NAIC, must be applied.

(C) In the event of a conflict between the Insurance Code, any currently existing departmental rule, form, or instruction, or any specific requirement of this subsection and the NAIC manuals listed in this subsection, then and in that event, the Insurance Code, the department's promulgated rule, form, or instruction, or the specific requirement of this subsection shall take precedence and in all respects control. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any department rule or the Insurance Code.

(d) Requirements for property and casualty insurers. Each fire, fire and marine, general casualty, fire and casualty, county mutual insurance company, mutual insurance company other than life, Lloyd's plan, reciprocal or inter-insurance exchange, domestic risk retention group, life insurance company that is licensed to write workers' compensation, any farm mutual insurance company that filed on a Form 2 for the 1994 calendar year or had gross written premiums as of December 31, 1995 in excess of \$5 million, any Mexican non-life insurer licensed under any Article of the Insurance Code other than or in addition to Article 8.24, and domestic joint underwriting associations shall complete and file the following blanks, forms, and diskettes for the 1995 calendar year and the first three quarters of the 1996 calendar year. The forms, reports, and diskettes identified in paragraphs (1) (A)-(L); (2)(A)-(C); and (3)(A) of this subsection shall be completed in accordance with the current NAIC Annual Statement Instructions, Property and Casualty, except as provided by paragraph (4) of this section. The diskettes identified in paragraph (3)(B) and (C) of this subsection shall be completed in accordance with

the current NAIC Annual Statement Diskette Filing Specifications-Property/Casualty, except as provided by paragraph (4) of this subsection.

(1) Reports to be filed with the department and the NAIC:

(A) Annual Statement (association edition, Form 2, with a yellow colored cover made of minimum 65-pound paper), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before March 1, 1996;

(B) Trusteed Surplus Statement (association edition, Property and Casualty Supplement) (required of the U. S. branch of an alien insurer), 9 inch x 14 inch size to be filed on or before March 1, May 15, August 15, and November 15, 1996;

(C) Management's Discussion and Analysis (a narrative document setting forth information which enables regulators to enhance their understanding of the insurer's financial position, results of operations, changes in capital and surplus accounts and cash flow), to be filed on or before April 1, 1996;

(D) Long-Term Care Experience Reporting Forms (association edition) (required of companies writing long-term care business), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before May 1, 1996;

(E) Financial Guaranty Insurance Exhibit (association edition) (required of companies writing financial guaranty business), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before March 1, 1996;

(F) Supplement "A" to Schedule T, Exhibit of Medical Malpractice Premiums Written (association edition) (required of companies writing medical malpractice business), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before March 1, 1996;

(G) Insurance Expense Exhibit (association edition), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed in duplicate on or before April 1, 1996;

(H) Credit Insurance Experience Exhibit (association edition) (required of companies writing credit accident and/or

health business), 9 inch x 14 inch size, to be filed on or before April 1, 1996;

(I) Property and Casualty Quarterly Statement (association edition), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before May 15, August 15, and November 15, 1996;

(J) Certificate of Compliance with All Required Reporting Requirements of the Securities Valuation Office of the NAIC (required of all companies to certify that the requirements of the Securities Valuation Office (SVO) have been met in a timely fashion), to be attached to each annual and quarterly statement required by paragraph (1)(A) and (J) of this subsection;

(K) Actuarial Opinion (the statement of a qualified actuary, setting forth his or her opinion relating to policy reserves and other actuarial items; required of all companies), to be attached to the annual statement required by paragraph (1)(A) of this subsection; and

(L) Combined Property/Casualty Annual Statement (association edition, Form 2, with a yellow colored cover made of minimum 65-pound paper), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before May 1, 1996, including the Insurance Expense Exhibit.

(2) Reports to be filed only with the department:

(A) Schedule SIS, Stockholder Information Supplement (association edition) (required of domestic stock companies which have 100 or more stockholders), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before March 1, 1996;

(B) Accident and Health Policy Experience Exhibit (association edition) (required of companies writing accident and/or health business), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before May 1, 1996;

(C) Supplemental Compensation Exhibit (association edition) 9 inch x 14 inch size, (required of Texas domestic companies only), to be filed on or before March 1, 1996;

(D) Supplemental Investment Income Exhibit (shows percent of net investment income by type of investment, as

an attachment to page six of the annual statement as required by paragraph (1)(A) of this subsection), to be filed on or before March 1, 1996;

(E) Annual Statement (Texas edition, with a green colored cover made of minimum 65-pound paper) (required of companies writing prepaid legal business), 8 1/2 inch x 14 inch size, to be filed on or before March 1, 1996;

(F) Affidavit in Lieu of Annual Statement (Texas edition, green) (required of companies authorized to write prepaid legal business that did not write such business in 1995), to be filed on or before March 1, 1996;

(G) Texas Overhead Assessment Form (required of Texas domestic companies only), to be filed on or before March 1, 1996;

(H) Analysis of Surplus, for property and casualty insurers (required of all licensed companies, except Texas domestic county mutual companies), to be filed on or before March 1, 1996;

(I) Supplement for County Mutuals (required of Texas domestic county mutual companies, as an attachment to page 17 of the annual statement as required by paragraph (1)(A) of this subsection), to be filed on or before March 1, 1996;

(J) Texas Supplemental A for County Mutuals (required of Texas domestic county mutual companies, as an attachment to page eight of the annual statement as required by paragraph (1)(A) of this subsection), to be filed on or before March 1, 1996; and

(K) Form ALT/P/WC, Application for Alternative Excess Statutory Over Statement Reserves for Workers' Compensation (required of deductible plan workers' compensation writers if applying for an alternative basis of calculating the excess statutory over statement reserves for workers' compensation business), to be filed on or before January 31, 1996.

(3) Reports and diskettes to be filed only with the NAIC:

(A) Officers and Directors Information (association edition) (required of companies upon their initial filing with the NAIC and to report any changes in previously filed information), to be filed on or before March 1, 1996;



(B) machine-readable diskettes containing computerized annual statement data, to be filed on or before March 1, 1996;

(C) machine-readable diskettes containing computerized quarterly statement data, to be filed on or before May 15, August 15, and November 15, 1996; and

(4) The following provisions shall apply to all filings required by paragraphs (1)-(3) of this subsection.

(A) No loss reserve discounts, other than as respects fixed and determinable payments such as those emanating from workers' compensation tabular indemnity reserves and long-term disability claims for which specific segregated investments have been established, shall be allowed; provided, however, any company that claimed loss reserve discounts, other than as respects fixed and determinable payments such as those emanating from workers' compensation tabular indemnity reserves and long-term disability claims, as of December 31, 1991, shall be allowed to claim such reserve discounts at the applicable percentage. The applicable percentage for claiming such loss reserve discounts shall be 100% for 1992, 75% for 1993, 50% for 1994, 25% for 1995, 0% for 1996 and subsequent years. In no event shall the dollar amount of discounts, other than as respects fixed and determinable payments such as those emanating from workers' compensation tabular indemnity reserves and long-term disability claims, claimed as of December 31, 1991, and subject to the applicable percentage, be increased as of December 31, 1992 and thereafter. The commissioner shall have the authority to determine the appropriateness of, and may disapprove, discounts taken as respects fixed and determinable payments such as those emanating from workers' compensation tabular indemnity reserves and long-term disability claims.

(B) The commissioner shall have the authority to determine the appropriateness of, and may disapprove, anticipated salvage and subrogation.

(C) Since workers' compensation legislation enacted by the 71st Texas Legislature, effective January 1, 1991, has effected the pricing and loss ratios for workers' compensation business written in the State of Texas, some insurers may be exempt from establishing the entire excess of statutory reserves over statement reserves, also known as the Schedule P penalty reserve, as would otherwise be required by the NAIC Annual Statement Instruc-

tions, Property and Casualty. Specifically, Texas domestic insurers that wrote workers' compensation in Texas, but no state other than Texas, in years 1993, 1994, and 1995 and whose loss experience prior to 1993 would require the establishment of a Schedule P penalty reserve using a loss ratio greater than 65% may calculate the reserve based on a loss ratio of 65%. The exemption herein described shall only be for the 1995 annual and 1996 interim financial statements. Reserving in this manner is intended to be consistent with the regulatory desire to attain competitive rates for workers' compensation written in Texas.

(D) Insurers meeting certain eligibility criteria and not claiming the exemption provided in subparagraph (C) of this paragraph may apply for approval of an alternative basis of calculating the Excess of Statutory Over Statement Reserve, also known as the Schedule P penalty reserve, for workers' compensation business. The application for an alternative basis for calculating this reserve applies only to workers' compensation business written pursuant to deductible plans authorized by Texas Insurance Code, Article 5.55C.

(i) Eligibility is generally available to insurers that are domiciled or commercially domiciled in Texas and that demonstrate that their standard premium, prior to application of deductible credits, written pursuant to deductible plans was at least 80% of total standard premium for all workers' compensation business for each of the years for which an alternative calculation is requested.

(ii) To apply for an alternative basis of calculating the penalty reserve, an eligible insurer must complete Form ALT/P/WC, Application for Alternative Excess of Statutory Over Statement Reserve for Worker's Compensation. Forms may be obtained by writing the Financial Monitoring Activity of the Department of Insurance, MC 303-1A, P.O. Box 149099, Austin, Texas 78714-9099, or calling (512) 322-5002. Completed applications must be filed with the department on or before January 31, 1996.

(iii) The Texas Department of Insurance may grant an exception or alternative to requiring the full Schedule P penalty reserve for workers' compensation business upon finding such treatment is warranted based on the insurer's application. Insurers that do not obtain the prior written approval of the department for an alternative basis of calculating the Schedule P penalty reserve as provided in the subparagraph shall calculate the penalty reserve in accordance with the current NAIC Annual Statement Instruction, Property and Casualty.

(E) In the event of a conflict between the Insurance Code, any currently existing departmental rule, form, or instruction, or any specific requirement of this section and the NAIC manuals listed in this subsection, then and in that event, the Insurance Code, the department's promulgated rule, form, or instruction, or the specific requirement of this section shall take precedence and in all respects control. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any department rule or the Insurance Code.

(e) Requirements for fraternal benefit societies. Each fraternal benefit society shall complete and file the following blanks, forms, and diskettes for the 1995 calendar year and the first three quarters of the 1996 calendar year. The forms, reports, and diskettes identified in paragraphs (1) (A)-(H); (2)(A)-(C) and (H); and (3)(A) of this subsection shall be completed in accordance with the current NAIC Annual Statement Instructions, Fraternal, except as provided by paragraph (4) of this subsection. The diskettes identified in paragraph (3)(B) of this subsection shall be completed in accordance with the current NAIC Annual Statement Diskette Filing Specifications-Fraternal, except as provided by paragraph (4) of this subsection.

(1) Reports to be filed with the department and the NAIC:

(A) Annual Statement (association edition, Form 4, with a brown colored cover made of minimum 65-pound paper), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before March 1, 1996;

(B) Annual Statement of the Separate Accounts (association edition, Form 1-S, with a green colored cover made of minimum 65-pound paper) (required of companies maintaining separate accounts), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before March 1, 1996,

(C) Trusteed Surplus Statement (association edition, Fraternal Supplement) (required of the U. S. branch of an alien insurer), 9 inch x 14 inch size to be filed on or before March 1, May 15, August 15, and November 15, 1996;

(D) Management's Discussion and Analysis (a narrative document setting forth information which enables regulators to enhance their understanding of the insurer's financial position, results of operations, changes in capital and surplus accounts and cash flow), to be filed on or before April 1, 1996;

(E) Long-Term Care Insurance Exhibit (association edition) (required of companies writing long-term care business), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before March 1, 1996, in addition to the Long-Term Care Experience Reporting Forms included in the annual statement required in paragraph (1)(A) of this subsection;

(F) Interest Sensitive Life Insurance Products Report (association edition) (required of companies writing interest sensitive products), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before April 1, 1996;

(G) Certificate of Compliance with All Required Reporting Requirements of the Securities Valuation Office of the NAIC (required of all companies to certify that the requirements of the Securities Valuation Office (SVO) have been met in a timely fashion, to be attached to each annual statement required by paragraph (1)(A) of this subsection; and

(H) Actuarial Opinion (the statement of a qualified actuary, setting forth his or her opinion relating to policy reserves and other actuarial items; to be filed by all companies), to be attached to the annual statement required by paragraph (1)(A) of this subsection.

(2) Reports to be filed only with the department:

(A) Accident and Health Policy Experience Exhibit (association edition) (required of companies writing accident and/or health business), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before May 1, 1996;

(B) Supplemental Compensation Exhibit (association edition) 9 inch x 14 inch size, (required of Texas domestic companies only), to be filed on or before March 1, 1996;

(C) Fraternal Quarterly Statement (association edition), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before May 15, August 15, and November 15, 1996;

(D) Texas Overhead Assessment Form (required of Texas domestic companies only), to be filed on or before March 1, 1996;

(E) Analysis of Surplus, for fraternal benefit societies, to be filed on or before March 1, 1996;

(F) Fraternal Benefit Societies-Supplement to Valuation Report, to be filed on or before June 30, 1996;

(G) Supplemental Investment Income Exhibit (shows percent of net investment income by type of investment, as an attachment to page nine of the annual statement as required by paragraph (1)(A) of this subsection), to be filed on or before March 1, 1996; and

(H) Certificate of Compliance with All Required Reporting Requirements of the Securities Valuation Office of the NAIC (required of all companies to certify that the requirements of the Securities Valuation Office (SVO) have been met in a timely fashion), to be attached to each quarterly statement required by subparagraph (C) of this paragraph.

(3) Reports and diskettes to be filed only with the NAIC:

(A) Officers and Directors Information (association edition) (required of companies upon their initial filing with the NAIC and to report any changes in previously filed information), to be filed on or before March 1, 1996; and

(B) machine-readable diskettes containing computerized annual statement data, to be filed on or before March 1, 1996.

(4) The following provisions shall apply to the filings required in paragraphs (1)-(3) of this subsection.

(A) Since Texas domestic companies have historically not been required to establish Asset Valuation Reserve (AVR) or Interest Maintenance Reserve (IMR), they are not required at the present time to establish an Asset Valuation Reserve (AVR) or Interest Maintenance Reserve (IMR) unless the company is licensed in a state that requires an AVR or IMR, in which case the reserve must be calculated in accordance with the instructions established by the NAIC.

(B) Since fraternal are exempted in Texas from the requirements of Section 3 Actuarial Opinion of Reserves of the Standard Valuation Law as amended by the NAIC in December 1990, the statement of actuarial opinion for fraternal should follow instructions 1-12, established by the NAIC.

(C) In the event of a conflict between the Insurance Code, any currently existing departmental rule, form, or instruction, or any specific requirement of this subsection and the NAIC manuals listed in this subsection, then and in that event, the Insurance Code, the department's promulgated rule, form, or instruction, or the specific requirement of this subsection shall take precedence and in all respects control. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any department rule or the Insurance Code.

(f) Requirements for title insurers. Each title insurance company shall complete and file the following blanks and forms for the 1995 calendar year and the first three quarters of the 1996 calendar year. The reports and forms identified in paragraphs (1)(A)-(F); (2)(A), (B), and (F); and (3) of this subsection shall be completed in accordance with the current NAIC Annual Statement Instructions, Title, except as otherwise provided by this section. In the event of a conflict between the Insurance Code, any currently existing departmental rule, form, or instruction, or any specific requirement of this subsection and the NAIC manuals listed in this subsection, then and in that event, the Insurance Code, the department's promulgated rule, form, or instruction, or the specific requirement of this subsection shall take precedence and in all respects control. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any department rule or the Insurance Code.

(1) Reports to be filed with the department and the NAIC:

(A) Annual Statement (association edition, Form 9, with a salmon colored cover made of minimum 65-pound paper), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before March 1, 1996;

(B) Management's Discussion and Analysis (a narrative document setting forth information which enables regulators to enhance their understanding of the insurer's financial position, results of operations, changes in capital and surplus accounts and cash flow), to be filed on or before April 1, 1996;

(C) Supplemental Title Operating Expense Exhibit (association edition), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before April 1, 1996;

(D) Supplemental Schedule of Business Written by Agency (association edition), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before April 1, 1996;

(E) Supplemental Schedule of Aging Analysis of Security Deposits Held For Others By Company's Agents and Representatives (association edition), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before April 1, 1996; and

(F) Certificate of Compliance With All Required Reporting Requirements of the Securities Valuation Office of the NAIC (required of all companies to certify that the requirements of the Securities Valuation Office (SVO) have been met in a timely fashion), to be attached to each annual and quarterly statement required by subparagraph (A) of this paragraph and paragraph (2)(B) of this subsection.

(2) Reports to be filed only with the department:

(A) Supplemental Compensation Exhibit (association edition), 9 inch x 14 inch size, (required of Texas domestic companies only), to be filed on or before March 1, 1996;

(B) Title Quarterly Statement (association edition), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before May 15, August 15, and November 15, 1996;

(C) Texas Overhead Assessment Form (required of Texas domestic companies only), to be filed on or before March 1, 1996;

(D) Analysis of Surplus, for title insurers, to be filed on or before March 1, 1996;

(E) Supplemental Investment Income Exhibit (shows percent of net investment income by type of investment, as an attachment to page five of the annual statement as required in paragraph (1)(A) of this subsection), to be filed on or before March 1, 1996; and

(F) Schedule SIS, Stockholder Information Supplement (association edition) (required of domestic stock companies which have 100 or more stockholders), either the 12 inch x 19 inch size, 11 inch x 17 inch size, or 9 inch x 14 inch size, to be filed on or before March 1, 1996.

(3) Reports to be filed only with the NAIC. Officers and Directors Information (association edition) (required of companies upon their initial filing with the NAIC and to report any changes in previously filed information), to be filed on or before March 1, 1996.

(g) Requirements for health maintenance organizations. Each health maintenance organization and nonprofit health corporation shall complete and file the following blanks and forms for the 1995 calendar year and the first three quarters of the 1996 calendar year with the department only. The forms or reports identified in paragraphs (1)-(5) of this subsection shall be completed in accordance with the current NAIC Annual Statements Instructions, Health Maintenance Organizations, except as otherwise provided by this section. In the event of a conflict between the Insurance Code, any currently existing departmental rule, form, or instruction, or any specific requirement of this subsection and the NAIC manuals listed in this subsection, then and in that event, the Insurance Code, the department's promulgated rule, form, or instruction, or the specific requirement of this subsection shall take precedence and in all respects control. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any department rule or the Insurance Code.

(1) Annual Statement (association edition, HMO with an orange colored cover made of minimum 65-pound paper), 8 1/2 inch x 14 inch size, to be filed on or before March 1, 1996;

(2) Management's Discussion and Analysis, (a narrative document setting forth information which enables regulators to enhance their understanding of the insurer's financial position, results of operations, changes in capital and surplus accounts and cash flow), to be filed on or before April 1, 1996;

(3) Actuarial Opinion (the statement of a qualified actuary, setting forth his or her opinion relating to policy reserves and other actuarial items; to be filed by all health maintenance organizations), to be attached to the annual statement required by paragraph (1)(A) of this subsection;

(4) Supplemental Compensation Exhibit (association edition), 9 inch x 14 inch size, (required of Texas domestic companies only), to be filed on or before March 1, 1996;

(5) HMO Quarterly Statement (association edition), 8 1/2 inch x 14 inch size, to be filed on or before May 15, August 15 and November 15, 1996;

(6) HMO Supplement, 8 1/2 inch x 14 inch size, to be filed on or before March 1, 1996;

(7) Texas Overhead Assessment Form (required of Texas domestic companies only), to be filed on or before March 1, 1996;

(8) Exhibit Z, 8 1/2 inch x 14 inch size, to be filed on or before May 15, August 15, and November 15, 1996;

(9) Department formatted diskettes containing annual statement data (diskettes provided by the department for entering of health maintenance organization or nonprofit health corporation financial statement data), to be completed according to the instructions provided by the Department and filed with the Department on or before March 1, 1996; and

(10) Department formatted diskettes containing quarterly statement data (diskettes provided by the department for entering of health maintenance organization or nonprofit health corporation financial statement data), to be completed according to the instructions provided by the Department and filed with the Department on or before May 15, August 15, and November 15, 1996.

(h) Requirements for farm mutual insurers not subject to the provisions of subsection (d) of this section. Each farm mutual insurance company shall file the following completed blanks and forms for the 1995 calendar year with the department only:

(1) Annual statement (Texas edition, with a tan colored cover made of minimum 65-pound paper), 8 1/2 inch x 14 inch size, to be filed on or before March 1, 1996;

(2) Texas Overhead Assessment Form, to be filed on or before March 1, 1996;

(3) Actuarial Opinion (the statement of a qualified actuary, setting forth his or her opinion relating to policy reserves and other actuarial items), to be attached to the annual statement required by paragraph (1) of this subsection, unless otherwise exempted.

(i) Requirements for mutual assessment companies, mutual aid and mutual burial associations, and exempt companies. Each statewide mutual assessment company, local mutual aid association, local mutual burial association, and exempt company shall file the following completed blanks and forms for the 1995 calendar year with the department only:

(1) Annual Statement (Texas edition, with an orange colored cover made of minimum 65-pound paper), 8 1/2 inch x 14 inch size, to be filed on or before April 1, 1996, provided, however, exempt companies are not required to complete lines 22, 23, 24, 25, and 26 on page 3, the special

instructions at the bottom of page 3, and pages 4, 5, 6, and 7. All other pages are required;

(2) Texas Overhead Assessment Form, to be filed on or before April 1, 1996;

(3) Release of Contribution Form, to be filed on or before April 1, 1996;

(4) 3 1/2% Chamberlain Reserve Table (Reserve Valuation), to be filed on or before April 1, 1996;

(5) Reserve Summary (1956 Chamberlain Table 3 1/2%), to be filed on or before April 1, 1996;

(6) Inventory of Insurance in Force by Age of Issue or Reserving Year, to be filed on or before April 1, 1996; and

(7) Summary of Inventory of Insurance In Force by Age and Calculation of Net Premiums, to be filed on or before April 1, 1996.

(j) Requirements for nonprofit legal service corporations. Each nonprofit legal service corporation shall file the following completed blanks and forms for the 1995 calendar year only with the department only;

(1) Annual Statement (Texas edition, with a green colored cover made of minimum 65-pound paper), 8 1/2 inch x 14 inch size, to be filed on or before March 1, 1996; and

(2) Texas Overhead Assessment Form, to be filed on or before March 1, 1996.

(k) Requirements for Mexican casualty companies. Each Mexican casualty company doing business as authorized by a Certificate of Authority issued under Texas Insurance Code, Article 8.24, shall complete and file the following blanks and forms for the 1995 calendar year with the department only. All submissions shall be printed or typed in English and all monetary values shall be clearly designated in United States dollars. The form identified in paragraph (1) of this subsection shall be completed in accordance with the current NAIC Annual Statement Instructions, Property and Casualty, except as provided by this section. An actuarial opinion is not required. In the event of a conflict between the Insurance Code, any currently existing departmental rule, form, or instruction, or any specific requirement of this subsection and the NAIC manuals listed in this subsection, then and in that event, the Insurance Code, the department's promulgated rule, form, or instruction, or the specific requirement of this subsection shall take precedence and in all respects control. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any department

rule or the Insurance Code. The blanks or forms are as follows:

(1) Annual Statement (association edition, Form 2, with a yellow colored cover made of minimum 65-pound paper), 12 inch x 19 inch size, provided, however, only pages 1-4, 15, 20, and 137 are required to be completed, to be filed on or before March 1, 1996;

(2) A copy of the balance sheet and the statement of profit and loss from the Mexican financial statement (printed or typed in English), to be filed on or before March 1, 1996;

(3) A copy of the official documents issued by the COMISION NACIONAL DE SEGUROS Y FIANZAS approving the current year's annual statement, to be filed on or before June 30, 1996; and

(4) A copy of the current license to operate in the Republic of Mexico, to be filed on or before March 1, 1996.

(l) Other financial reports. Nothing in this section prohibits the department from requiring any insurer or other regulated entity from filing other financial reports with the department.

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

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

TRD-8512214

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

Earliest possible date of adoption: October 30, 1995

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

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### Part II. Texas Parks and Wildlife Department

#### Chapter 52. Wildlife and Fisheries

##### Stocking Policy

- 31 TAC §§52.101, 52.103-52.105, 52.201, 52.202, 52.301, 52.401

The Texas Parks and Wildlife Department proposes amendments to §§52.101, 52.103-52.105, 52.201, 52.202, 52.301, and 52.401, concerning the fish and wildlife stocking policy. The proposed amendments conform stocking policy regulations with new

rules concerning the trapping, transporting, and transplanting of game animals and game birds that were mandated by House Bill 1964, enacted during the 74th Legislature, and incorporate non-substantive changes for clarification purposes.

The proposed amendments establish an authorization for private individuals to engage in wildlife stocking operations for valid management purposes; grant the executive director the power to authorize such activities; set forth the terms and conditions under which stocking activities may be authorized; and add language for clarification purposes.

The proposed amendments are necessary to conform regulations to the provisions of House Bill 1964, Acts of the 74th Legislature, 1995, and to simplify, reorganize, and clarify regulatory policy.

Bob Klepac, budget officer, has determined that for the first five years the rules as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules as proposed.

Mr. Klepac also has determined that for the first five years the rules as proposed are in effect, the anticipated public benefit as a result of enforcing or administering the rules will be the conformance of regulatory policy with statutory law and the simplification and clarification of regulations.

There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the rules as proposed. The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, §2001.022, as this agency has determined that the rules as proposed will not impact local economies.

Comments on the proposed rules may be submitted to Bryan Richards, Assistant Up-land Wildlife Ecology Program Leader, Wildlife Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744, (512) 389-4777 or 1-800-792-1112, extension 4777.

The amendments are proposed under Parks and Wildlife Code, §§1.012, 12.001, 12.013-12.015 and 68.015, which provides the Parks and Wildlife Commission with the authority to promulgate regulations governing the stocking of wildlife in the state.

The proposed amendments affect Parks and Wildlife Code, §§1.012, 12.001, 12.013-12.015 and 68.015, and Parks and Wildlife Code, Chapter 43.

§52.101. *Purpose and Scope.* The sections under this undesignated head [These sections] constitute the policy of the commission [department] concerning stocking of fish and wildlife. All stockings made or authorized by the department shall be consistent with this policy.

§52.103. *Goals.* It is the goal of the department to pursue a stocking program, including the taking, transporting and

releasing of fish and wildlife, in its management effort to ensure an ample supply of these resources for public enjoyment. The department also may authorize individuals, where appropriate and when approved by the department, to capture, transport and release wildlife.

*§52.104. Policy of the Department.*

(a) All stockings shall be for either investigation, propagation, distribution, scientific, [or] educational or other valid management purposes.

(b) Departmental [The] stocking of fish and wildlife on public lands and in public waters shall be consistent with the Annual Operational Plan.

(c) The department may take fish and wildlife or authorize the taking of wildlife by individuals from private and public lands only with landowner consent.

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

*§52.105. Powers and Duties of the Executive Director.*

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

(f) The executive director may delegate the duties contained in this section to department staff.

*§52.201. Departmental Stocking under Federal Funding Guidelines.* Wildlife stockings which meet conditions required for funding under the Pittman-Robertson Federal Aid in Wildlife Restoration Program may be approved by the executive director. Conditions published in the most recent edition of the Federal Aid in Fish and Wildlife Restoration Manual will apply.

*§52.202. Conditions for Stockings Made or Authorized by the Department [Stocking].*

(a) If warranted, the [The] areas into which a species is introduced will be under the control of the department for a period sufficient to establish the species. Control may be achieved by written permission granted by the landowner that contains specific mention of the species to be introduced.

(b) Sufficient area around the release site may [will] be closed to the taking of the introduced species until the restoration objective is achieved. [Release for immediate taking is not approvable.]

(c) The areas shall [must] have suitable natural habitat capable of sustaining the animals stocked [but inadequate breeding stock].

(d) Other protected animal populations which interfere during the period of establishment may [can] be temporarily

suppressed only with department approval.

[(e) The introduction of exotic species will be allowed only when a favorable biological opinion is issued by the director of the U.S. Fish and Wildlife Service.]

[(f)] No adverse impacts will result on a federally listed threatened or endangered species or its critical habitat.

*§52.301. Non Federally Funded Departmental Stocking*

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

*§52.401. Fish Stocking in Private Waters.*

(a) Policy. Fish reared in department hatcheries may be stocked in private water only for the [scientific or educational] purposes specified in §52.104(a) of this title (relating to Policy of the Department).

(b) (No change.)

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

Issued in Austin, Texas, on September 20, 1995.

TRD-9512078

Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife  
Department

Proposed date of adoption: November 2, 1995

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

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**Chapter 53. Finance**

The Texas Parks and Wildlife Commission proposes repeal of §§53.1-53.4 and new §§53.31-53.33, concerning selling price of departmental information. Repeal of §§53.1-53.4 and recodification as §§53.31-53.33 represents reorganization and simplification certain sections of 31 TAC Chapter 53, concerning Finance. The new rules as proposed represent no substantive change from existing TAC §§53.1, 53.2, and 53.4. Existing §53.3, concerning obsolete stamps and decals will also be recodified in §§53.11-53.15 in a separate proposal.

Dr. Bill Harvey, Regulatory Coordinator, has determined that for the first five years that the rules are in effect there will be minimal fiscal implications to state and local governments as a result of the repeal of these sections.

Dr. Harvey also has determined that for each of the first five years the rules are proposed are in effect the public benefits anticipated as a result of the repeal as proposed will be simplification and consistency in regulations concerning selling price of departmental information. There will be minimal effects for small businesses. It is anticipated there will be no

fiscal implications to persons as a result of the repeal as proposed.

The Department has not filed a local employment impact statement with the Texas Employment Commission as it has been determined there are only minimal fiscal implications to small business.

Comments on rules as proposed may be submitted to Merrill King, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4718 or 1-800-792-1112, extension 4718

**Selling Price of Departmental Information**

• 31 TAC §§53.1-53.4

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

The repeals are proposed under authority of Parks and Wildlife Code, §12.006, which provides the Parks and Wildlife Commission with authority to sell information and Parks and Wildlife Code, §11.027, which provides the Parks and Wildlife Commission with authority to set fees for administration of department programs.

Parks and Wildlife Code, §11.027 and §12.006 are affected by the proposed repeals.

*§53.1. Sales Price Establishment and Adjustment.*

*§53.2. Magazine and Audio-Visual Products, Publications, and Services.*

*§53.3. Obsolete Stamps and Decals.*

*§53.4. Fee Exempt Informational Materials.*

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

Issued in Austin, Texas, on September 21, 1995.

TRD-9512116

Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife  
Department

Proposed date of adoption: November 2, 1995

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

◆ ◆ ◆  
• 31 TAC §§53.31-53.33

The new rules are proposed under authority of Parks and Wildlife Code, §11.027, which provides the Parks and Wildlife Commission with authority to set fees for administration of department programs.

Parks and Wildlife Code, §11.027 and §12.006 are affected by the proposed new rules.

*§53.31. Sales Price Establishment and Adjustment.*

(a) All reasonable items of expense involved in the creation and delivery of departmental information are included in determining the selling price.

(b) Selling prices may be established for any newly developed informational services and products. Sales prices shall recover development and distribution costs but shall not exceed industry standards for like products and services.

(c) The selling price of an item may be adjusted annually by the executive director to offset a change in the production cost, salary cost, material and equipment cost, and any other incidental cost to the item being sold, or because of changes in the average industry sales price of like items.

(d) Rate waivers or discounts are authorized in exchange for equivalent benefits or services received by the Texas Parks and Wildlife Department.

(e) Usage contract guidelines for items may be established with restrictions or procedures deemed necessary to protect the interests of the State of Texas and the Texas Parks and Wildlife Department.

*§53.32. Magazine and Audio-Visual Products, Publications, and Services.* The Texas Parks and Wildlife Department will sell or contract to sell magazine subscriptions and advertising space, photographic prints, slides, video, and other related informational products, for private, public, and commercial use.

*§53.33. Fee Exempt Informational Materials.* Any item enumerated to be distributed without a fee will be furnished in a reasonable amount to each qualified requestor. Examples of such fee exempt distributed material is as follows.

(1) A teacher's packet is furnished without a fee to any teacher in Texas, but a packet requested by an out-of-state teacher is sold for \$1.00 each, plus postage.

(2) A technical bulletin is furnished without a fee only to a scientific organization and to departmental personnel who are concerned with the specific subject matter of each bulletin.

(3) Information may be furnished without a fee to scientific personnel, a scientific organization, departmental personnel, and any agency, organization, or the public with the prior approval of the executive director.

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

Issued in Austin, Texas, on September 21, 1995.

TRD-9512117

Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife  
Department

Proposed date of adoption: November 2, 1995

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

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**License Fees and Boat and Motor Fees**

The Texas Parks and Wildlife Commission proposes the repeal of §53.7 and §53.8, an amendment to §53.10, and new §§53.1-53.8, concerning License Fees. Proposed new §§53.1-53.8 reorganize and simplify current regulations which set the fees for approximately 100 different fees, licenses and stamps. Proposed new §53.1 provides procedures for license issuance, possession and exemptions and the fees for license issuance. House Bill 2216, enacted by the 74th Texas Legislature, provided new means through which persons could acquire and possess licenses and stamps. The proposed new rules simplify the means through which individuals may purchase and possess licenses and stamps. New §53.2 proposes fees for combination hunting and fishing licenses, various license packages and for conservation permits. The fee for the resident combination hunting and fishing license is proposed at \$32; resident super combination hunting and fishing license is proposed at \$49; and the conservation permit is proposed at a price consistent with the combination hunting and fishing license. New §53.3 proposes fees for recreational hunting and fishing licenses, stamps and tags. Resident hunting and resident fishing licenses are proposed at \$19; special resident hunting and special resident fishing licenses are proposed at \$6-9. New §53.4 proposes fees for commercial hunting or trapping licenses and permits, new §53.5 proposes fees for public hunting lands permits, new §53.6 proposes fees for commercial fishing licenses and tags, proposed new §53.7 sets fees for business licenses and permits, and proposed new §53.8 sets fees for miscellaneous wildlife licenses and permits. The proposed amendment to §53.10 sets fees for vessel and motor fees. Fees for different classes of vessels are proposed at: class A-\$25; class 1-\$40; class 2-\$55; class 3-\$70. Fees for several vessel titling activities are also included in proposed amendments to §53.10.

Jayna Burgdorf, Chief Financial Officer, has determined that for the first five years that the rules are in effect the fiscal implications to state government will be an estimated increase in revenue of \$14,299,663. There will be minimal fiscal implications to local governments as a result of the repeal and adoption of the regulations as proposed.

Ms. Burgdorf also has determined that for each of the first five years the rules are proposed are in effect the public benefits anticipated as a result of the amendment and new rules as proposed will be simplification and consistency in regulations concerning fees and increased revenue to continue department conservation programs. There are minimal anticipated fiscal implications for small businesses. The anticipated economic cost to persons required to comply with the rules as proposed will be dependent upon the level of increase in proposed fees.

The Department has not filed a local employment impact statement with the Texas Employment Commission as it has been determined there are only minimal fiscal implications to small business.

Comments on the repeals and rules as proposed may be submitted to Merrill King, Chief Financial Office, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744; (512) 389-4718 or 1-800-792-1112, extension 4718.

◆ ◆ ◆  
• 31 TAC §53.7, §53.8

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

The repeals are proposed under authority of Parks and Wildlife Code, §§46.002, 46.004, and 11.027, which provides the Parks and Wildlife Commission with authority to set fees for administration of department programs.

Parks and Wildlife Code, §§46.002, 46.004, and 11.027 are affected by the proposed rules.

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*§53.7. License Exemptions.*

*§53.8. License Fees Set by Commission.*

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

Issued in Austin, Texas, on September 21, 1995.

TRD-9512121

Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife  
Department

Proposed date of adoption: November 2, 1995

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

◆ ◆ ◆  
• 31 TAC §§53.1-53.8 53.10

The amendment and new rules are proposed under authority of Parks and Wildlife Code, §11.027 and §11.021, which provide authority to set fees for administration of department programs; §31.026, which provides authority to set fees for license of certain vessels; §§42.012-42.017, which provide authority to set fees for resident hunting licenses, resi-

dent lifetime hunting licenses, all nonresident hunting licenses and duplicate hunting licenses; §43.012, which provides authority to set fees for white-winged dove stamps; §43.044, which provides authority to set fees for commercial hunting licenses, wildlife management associations and private bird hunting areas; §43.0722 and §43.0764, which provides authority, respectively, to set fees for private bird hunting area licenses and field trial permits; §43.202, which provides authority to set fees for archery hunting stamps; §43.252, which provides authority to set the fee for turkey stamps; §43.303, which provides authority to set the fees for waterfowl stamps; §43.355, which provides authority to set the fees for scientific breeder's permits; §43.403, which provides authority to set the fee for saltwater fishing stamps; §43.503, which provides authority to set the freshwater trout stamp; §43.522, which provides authority to set the fee for conservation permits; §43.582, which provides authority for the muzzleloading hunting stamp fee; §44.003, which provides authority to set the fee for game breeder's licenses; §45.003, which provides authority to set the fee for commercial game breeder's licenses; §§46.004-46.006, which provide the authority to set fees for resident fishing licenses, resident lifetime fishing licenses, all nonresident fishing licenses and duplicate fishing licenses; §46.005, which provides authority for tarpon and duplicate tarpon tags; §46.104, which provides Commission authority to set the fee for the Lake Texoma fishing license; §§47.002 et seq, which provide authority to set fees for commercial fishing licenses and fish dealer's licenses, retail fish dealer's license, retail fish dealer's truck license, wholesale fish dealer's license, wholesale fish dealer's truck license, bait dealer's license; §47.031, which provides authority to set fees for license transfers for resident and nonresident commercial fishing boat licenses; §§49.003 et seq, which provide the authority to set fees for falconry permits; §50.001, which provides authority to set the fees for combination hunting and fishing license and stamp packages; §50.002, which provides authority to set fees for combination hunting and fishing licenses; §65.007, which provides authority to set fees for recreational and commercial alligator licenses and permits; §66.017, which provides authority to set the fee for finfish import license transfer; §66.018, which provides authority to set crab trap tag fees; §66.206, which provides authority to set fees for saltwater troline tags, §71.009, which provides authority to set fees related to furbearing animal licenses and permits; §76.104, which provides authority to set license fees for commercial oyster licenses and permits; §76.1031, which provides authority to set transfer fees for commercial oyster licenses and duplicate license plants; §§77.031-77.0351, which provide authority for setting fees for commercial shrimping activities, including §77.033 (commercial bait-shrimp boat license), §77.035 (commercial gulf shrimp boat license), §77.037 (shrimp boat license transfers), §77.043 (bait shrimp dealer's license), §77.048 (individual bait-shrimp trawl license); and §§78.002-78.0032, which provide authority to set fees for resident and nonresident commercial mussel and

clam fisherman's license and resident shell buyers licenses

Parks and Wildlife Code, §11.027, §11.0271, §31.026, §§42.012-42.017, §43.012 §43.044, §43.0722, §43.0764, §43.202, §43.252, §43.303, §43.355, §43.403, §43.503, §43.522, §43.582, §44.003, §45.003, §§46.004-46.006, §46.005, §46.104, §§47.002 et seq, §47.031, §§49.003 et seq, §50.001, §50.002, §65.007, §66.017, §66.018, §66.206, §71.009, §76.104, §76.1031, §§77.031-77.0351, §77.037, §77.043, §77.048, and §§78.002-78.0032 are affected by the proposed rules.

### §53.1. License Issuance Procedures, Fees, Possession and Exemption Rules.

#### (a) Hunting license possession.

(1) No person may hunt deer or turkey in this state without having a valid hunting license in immediate possession.

(2) No person may hunt species other than deer or turkey in this state without having a valid hunting license in immediate possession unless the person has acquired a license by telephone and has a valid authorization number in his possession. Authorization numbers shall only be valid for 14 days from date of purchase.

#### (b) Fishing license possession.

(1) No person may fish in this state without having a valid fishing license in immediate possession unless that person is exempt from holding a fishing license or has acquired a license by telephone and has a valid authorization number in possession. Authorization numbers shall only be valid for 14 days from date of purchase.

(2) No person may catch and retain a red drum twenty-eight inches or more in length in this state without having a valid fishing license and red drum tag in immediate possession.

#### (c) Issuance of licenses and stamps by telephone.

(1) A person may acquire recreational hunting and/or fishing licenses by telephone from the department or its designated representatives by agreeing to pay a \$3.00 convenience fee per license in addition to the normal license fee.

(2) A person may acquire recreational hunting and/or fishing stamps by telephone from the department or its designated representatives by agreeing to pay a \$3.00 convenience fee per stamp order in addition to the normal stamp fee(s). This fee shall not be charged if a license is acquired during the same transaction.

(d) The following categories of persons are exempt from fishing license requirements and fees for the license years beginning September 1, 1995 and thereafter:

(1) residents under 17 years of age,

(2) non-residents under 17 years of age;

(3) non-residents 65 years of age or older from Kansas and Louisiana;

(4) non-residents 64 years of age or older from Oklahoma; and

(5) residents whose birth date is before September 1, 1930.

(e) Effective September 1, 1996 and thereafter, an administrative fee of \$1.00 shall be charged for replacement of lost or destroyed licenses, stamps, or permits. This fee shall not be charged for items which have a fee for duplicates otherwise prescribed by rule or statute.

### §53.2. Combination Hunting and Fishing Licenses, Packages, and Conservation Permits.

(a) Combination hunting and fishing licenses. The following license fee amounts are effective for the license year beginning September 1, 1995:

(1) resident combination hunting and fishing (type 100)-\$25;

(2) duplicate resident combination hunting and fishing (type 130)-\$6.00;

(3) lifetime resident combination hunting and fishing (type 990)-\$800;

(b) Combination hunting and fishing licenses. The following license fee amounts are effective for the license year beginning September 1, 1996, and thereafter:

(1) resident combination hunting and fishing (type 100)-\$32;

(2) duplicate combination hunting and fishing (type 130)-\$6.00;

(3) lifetime resident combination hunting and fishing (type 990)-\$1,000;

(c) Combination license packages. The following license fee amounts are effective for the license year beginning September 1, 1996, and thereafter:

(1) resident super combination hunting and fishing (package includes combination hunting and fishing license plus the privileges associated with the following stamps: turkey, white-winged dove, archery hunting, state waterfowl, muzzleloader hunting, saltwater sportfishing, and freshwater trout) -\$49; and

(2) all purpose resident combination hunting and fishing (package includes combination hunting and fishing license; the privileges associated with the following stamps: turkey, white-winged dove, archery hunting, state waterfowl,

muzzleloader hunting, saltwater sportfishing, and freshwater trout; conservation permit; and annual public hunting permit)-\$100.

(d) Conservation permits (type 192).

(1) The fee amount effective for the permit year beginning September 1, 1995, is \$25; and

(2) The fee amount effective for the permit year beginning September 1, 1996, and thereafter is \$32.

*§53.3. Other Recreational Hunting and Fishing Licenses, Stamps, and Tags.*

(a) Hunting licenses. The following license fee amounts are effective for the license year beginning September 1, 1995:

(1) resident hunting (type 101)-\$13;

(2) lifetime resident hunting (type 991)-\$500;

(3) special resident hunting (type 102)-\$6.00. Nonresident hunters who are under 17 years of age on the date of license purchase are designated as residents and may purchase a special resident hunting license;

(4) duplicate hunting (type 103)-\$6.00;

(5) general nonresident hunting (type 105)-\$250;

(6) nonresident special hunting (type 107)-\$100;

(7) nonresident five-day special hunting (type 157)-\$35;

(8) nonresident spring turkey hunting (type 118)-\$100; and

(9) nonresident banded bird hunting (type 120)-\$10;

(b) Hunting licenses. The following license fee amounts are effective for the license year beginning September 1, 1996, and thereafter:

(1) resident hunting (type 101)-\$19;

(2) lifetime resident hunting (type 991)-\$600;

(3) special resident hunting (type 102)-\$9.00. Nonresident hunters who are under 17 years of age on the date of license purchase are designated as residents and may purchase a special resident hunting license;

(4) duplicate hunting (type 103)-\$6.00;

(5) general nonresident hunting (type 105)-\$250;

(6) nonresident special hunting (type 107)-\$100;

(7) nonresident five-day special hunting (type 157)-\$35;

(8) nonresident spring turkey hunting (type 118)-\$100; and

(9) nonresident banded bird hunting (type 120)-\$10.

(c) Hunting stamps. The following stamp fee amounts are effective for the stamp year beginning September 1, 1995; and thereafter:

(1) turkey (type 119)-\$5.00;

(2) white-winged dove (type 126)-\$7.00;

(3) archery hunting (type 135)-\$7.00;

(4) waterfowl (type 139)-\$7.00; and

(5) muzzleloader hunting (type 187)-\$10.

(d) Fishing licenses. The following license fee amounts are effective for the license year beginning September 1, 1995:

(1) resident fishing (type 201)-\$13;

(2) lifetime resident fishing (type 992)-\$400;

(3) special resident fishing (type 203)-\$6.00;

(4) temporary (14-day) resident sportfishing (type 210)-\$10;

(5) nonresident fishing (type 205)-\$30;

(6) temporary (5-day) nonresident fishing (type 207)-\$20;

(7) fishing duplicate (type 206)-\$6.00; and

(8) Lake Texoma fishing (type 208)-\$7.50.

(e) Fishing licenses. The following license fee amounts are effective for the license year beginning September 1, 1996, and thereafter:

(1) resident fishing (type 201)-\$19;

(2) lifetime resident fishing (type 992)-\$600;

(3) special resident fishing (type 203)-\$6.00-\$9.00;

(4) temporary (14-day) resident sportfishing (type 210)-\$12;

(5) temporary (3-day) resident sportfishing-\$8.00;

(6) nonresident fishing (type 205)-\$30;

(7) temporary (5-day) nonresident fishing (type 207)-\$20;

(8) fishing duplicate (type 206)-\$6.00; and

(9) Lake Texoma fishing (type 208)-\$7.50.

(f) Fishing stamps. The following stamp fee amounts are effective for the license year beginning September 1, 1995, and thereafter:

(1) saltwater sportfishing (type 211)-\$7.00; and

(2) freshwater trout (type 212)-\$7.00.

(g) Fishing tags. The following tag fee amounts are effective for the license year beginning September 1, 1995, and thereafter:

(1) tarpon tag (type 215)-\$100;

(2) duplicate tarpon tag (type 230)-\$25; and

(3) individual bait-shrimp trawl tag (type 334)-\$23.

(h) Collector's edition stamp package.

(1) A collectors edition stamp package shall consist of one of each of the following stamps:

(A) turkey stamp;

(B) white-winged dove stamp;

(C) nongame stamp;

(D) archery hunting stamp;

(E) state waterfowl stamp;

(F) muzzleloader hunting stamp;

(G) saltwater sportfishing stamp; and

(H) freshwater trout stamp.

(2) stamps in the package will not be valid for hunting or fishing.

(3) fee for the package shall be \$7.00 effective September 1, 1996 and thereafter.

*§53.4. Commercial hunting/trapping licenses and permits.*

(a) Commercial hunting licenses and permits. The following license fee



amounts are effective for the license year beginning September 1, 1995:

(1) hunting lease (less than 500 acres) (type 132)-\$25;

(2) hunting lease (more than 500 acres and less than 1,000 acres) (type 133)-\$50;

(3) hunting lease (1,000 acres or more) (type 134)-\$75;

(4) private bird hunting area (type 152)-\$60;

(5) field trial permit (type 156)-\$50;

(6) hunting cooperative (less than 10,000 acres) (types 182 and 185)-\$60 plus \$5.00 per participating landowner;

(7) hunting cooperative (between 10,000 and 50,000 acres) (types 183 and 185)-\$120 plus \$5.00 per participating landowner;

(8) hunting cooperative (over 50,000 acres) (types 184 and 185)-\$240 plus \$5.00 per participating landowner;

(9) wildlife management association area hunting lease license (less than 10,000 acres) (types 195 and 198)-\$30 plus \$5.00 per participating landowner;

(10) wildlife management association area hunting lease license (between 10,000 and 50,000 acres) (types 196 and 198)-\$60 plus \$5.00 per participating landowner;

(11) wildlife management association area hunting lease license (over 50,000 acres) (types 197 and 198)-\$120 plus \$5.00 per participating landowner; and

(12) antlerless deer control permit (type 179)-\$300 (fee also prescribed in §65.26 of this title (relating to Antlerless and Spike-Buck Deer Harvest Systems)).

(b) Commercial hunting licenses and permits. The following license fee amounts are effective for the license year beginning September 1, 1996, and thereafter:

(1) hunting lease (less than 500 acres) (type 132)-\$50;

(2) hunting lease (more than 500 acres and less than 1,000 acres) (type 133)-\$100;

(3) hunting lease (1,000 acres or more) (type 134)-\$200;

(4) private bird hunting area (type 152)-\$60;

(5) field trial permit (type 156)-\$50;

(6) hunting cooperative (less than 10,000 acres) (types 182 and 185)

- \$60 plus \$5.00 per participating landowner;

(7) hunting cooperative (between 10,000 and 50,000 acres) (types 183 and 185)-\$120 plus \$5.00 per participating landowner;

(8) hunting cooperative (over 50,000 acres) (types 184 and 185)-\$240 plus \$5.00 per participating landowner;

(9) wildlife management association area hunting lease license (less than 10,000 acres) (types 195 and 198)-\$30 plus \$5.00 per participating landowner;

(10) wildlife management association area hunting lease license (between 10,000 and 50,000 acres) (types 196 and 198)-\$60 plus \$5.00 per participating landowner;

(11) wildlife management association area hunting lease license (over 50,000 acres) (types 197 and 198)-\$120 plus \$5.00 per participating landowner; and

(12) antlerless deer control permit (type 179)-\$300 (fee also prescribed in §65.26).

(c) Furbearing animal licenses and permits. The following license fee amounts are effective for the license year beginning September 1, 1995, and thereafter (fees also prescribed in §65.373 of this title (relating to License Fees)):

(1) resident trapper's (type 106)-\$15;

(2) nonresident trapper's (type 115)-\$250;

(3) resident retail fur buyer's (type 108)-\$75;

(4) resident wholesale fur dealer's (type 109)-\$150;

(5) furbearing animal propagation permit (type 113)-\$75;

(6) nonresident retail fur buyer's (type 140)-\$300; and

(7) nonresident wholesale fur dealer's (type 141)-\$500.

(d) Alligator licenses, permits, stamps, and tags. The following fee amounts are effective for the license year beginning September 1, 1995, and thereafter (fees also prescribed in §65.354 of this title (relating to Licenses, Permit, and Fees)):

(1) resident alligator hunter's (type 142)-\$35;

(2) nonresident alligator hunter's (type 143)-\$300;

(3) resident alligator buyer's license (type 144)-\$200;

(4) nonresident alligator buyer's license (type 145)-\$650;

(5) alligator import permit (type 148)-\$25;

(6) alligator farmer permit (type 149)-\$200;

(7) alligator nest stamp (type 158)-\$50;

(8) wild caught alligator hide tag (type 131)-\$10;

(9) farm raised alligator hide tag (type 180)-\$4.00; and

(10) commercial wildlife management area alligator hide tag (type 181)-\$120 (fee also prescribed in §65.192 and §65.354 of this title (relating to General Rules and Regulations; Licenses, Permits, and Fees)).

### §53.5. Public Land Hunting Permits and Fees.

(a) Hunting permits. The following permit fee amounts are effective for the permit year beginning September 1, 1995 (fees also prescribed in §65.194 of this title (relating to Permit Required and Fees)):

(1) annual public hunting (type 173)-\$35;

(2) duplicate annual public hunting (type 174)-\$10;

(3) limited public use (type 175)-\$10; and

(4) duplicate limited public use (type 176)-\$5.00.

(b) Hunting permits. The following permit fee amounts are effective for the permit year beginning September 1, 1996, and thereafter (fees also prescribed in §65.194):

(1) annual public hunting (type 173)-\$40;

(2) duplicate annual public hunting (type 174)-\$10;

(3) limited public use (type 175)-\$10; and

(4) duplicate limited public use (type 176)-\$5.00.

(c) Special and regular permits. The following permit fee amounts are effective for the permit year beginning September 1, 1995, and thereafter (fees also prescribed in §65.194):

(1) deer-\$50;

(2) deer-extended period-\$100;

(3) exotic mammal-no charge;

(4) designated exotic mammal-no charge;

(5) desert bighorn sheep—no charge;

(6) pronghorn antelope—\$50;

(7) alligator—\$50;

(8) javelina—\$25;

(9) turkey—\$25;

(10) coyote—\$25;

(11) white-winged dove—\$12;

(12) squirrel—\$6.00;

(13) quail—\$6.00;

(14) mourning dove—\$6.00;

(15) woodcock—\$6.00;

(16) waterfowl—\$6.00;

(17) rails—\$6.00;

(18) gallinules—\$6.00; and

(19) snipe—\$6.00.

(d) Application fee (fees also prescribed in §65.194). The non-refundable application fee for individuals applying for computer-selected participant hunting opportunities is \$4.00 per applicant (except no charge for applicants under 17 years of age) effective September 1, 1995, and thereafter.

#### §53.6. Commercial Fishing Licenses and Tags.

##### (a) Shrimping licenses.

(1) Licenses. The following license fee amounts are effective for the license year beginning September 1, 1995, and thereafter:

(A) resident commercial gulf shrimp boat (type 330)—\$275;

(B) resident commercial bay shrimp boat (type 336)—\$195;

(C) resident commercial bait-shrimp boat (type 337)—\$195;

(D) resident commercial shrimp boat captain's (type 333)—\$25;

(E) nonresident commercial gulf shrimp boat (type 430)—\$1,025;

(F) nonresident commercial bay shrimp boat (type 436)—\$525;

(G) nonresident commercial bait-shrimp boat (type 437)—\$525; and

(H) nonresident commercial shrimp boat captain's (type 433)—\$100.

##### (2) License transfers:

(A) resident commercial gulf shrimp boat license transfer (type 383)—\$5.00;

(B) resident commercial bay shrimp boat license transfer (type 366)—\$195;

(C) resident commercial bait-shrimp boat license transfer (type 367)—\$195;

(D) nonresident commercial gulf shrimp boat license transfer (type 483)—\$5.00;

(E) nonresident commercial bay shrimp boat license transfer (type 466)—\$195; and

(F) nonresident commercial bait-shrimp boat license transfer (type 467)—\$195.

##### (3) Duplicate License plates:

(A) resident commercial gulf shrimp boat (type 390)—\$5.00;

(B) resident commercial bay shrimp boat (type 396)—\$5.00;

(C) resident commercial bait-shrimp boat (type 397)—\$5.00;

(D) nonresident commercial gulf shrimp boat (type 490)—\$5.00;

(E) nonresident commercial bay shrimp boat (type 496)—\$5.00; and

(F) nonresident commercial bait-shrimp boat (type 497)—\$5.00.

##### (b) Oystering licenses.

(1) Licenses. The following license fee amounts are effective for the license year beginning September 1, 1995, and thereafter:

(A) resident commercial oyster boat (type 306)—\$350;

(B) resident sport oyster boat (type 328)—\$10;

(C) resident commercial oyster captain's (type 309)—\$25;

(D) resident commercial oyster fisherman's (type 370)—\$100;

(E) nonresident commercial oyster boat (type 406)—\$1,400;

(F) nonresident sport oyster boat (type 428)—\$10;

(G) nonresident commercial oyster boat captain's (type 409)—\$100; and

(H) nonresident commercial oyster fisherman's (type 470)—\$250.

(2) License transfers. The following license transfer fee amounts are effective for the license year beginning September 1, 1995, and thereafter:

(A) resident commercial oyster boat transfer (type 386)—\$5.00; and

(B) nonresident commercial oyster boat transfer (type 486)—\$5.00.

(3) Duplicate License plates. The following duplicate license plate fee amounts are effective for the license year beginning September 1, 1995, and thereafter:

(A) resident commercial oyster boat (type 395)—\$5.00; and

(B) nonresident commercial oyster boat (type 495)—\$5.00.

(c) General, finfish, menhaden, mussel, clam, and miscellaneous licenses and permits.

(1) Licenses and permits. The following license fee amounts are effective for the license year beginning September 1, 1995, and thereafter:

(A) resident commercial fishing boat (type 304)—\$15;

(B) commercial fishing boat (menhaden only) (type 325)—\$3,500;

(C) resident general commercial fisherman's (type 372)—\$20;

(D) resident commercial finfish fisherman's (type 371)—\$75;

(E) resident commercial mussel and clam fisherman's (type 320)—\$30;

(F) resident shell buyer's (type 324)-\$100;

(G) nonresident commercial fishing boat (type 404)-\$60;

(H) nonresident general commercial fisherman's (type 340)-\$150;

(I) nonresident commercial finfish fisherman's (type 361)-\$150;

(J) nonresident commercial mussel and clam fisherman's (type 420)-\$800;

(K) nonresident shell buyer's (type 424)-\$1,500;

(L) menhaden fish plant permit (type 326)-\$150; and

(M) mussel dredge fee (type 323)-\$30.

(2) License transfers. The following license transfer fee amounts are effective for the license year beginning September 1, 1995, and thereafter:

(A) resident commercial fishing boat license transfer (type 384)-\$5.00; and

(B) nonresident commercial fishing boat license transfer (type 484)-\$5.00.

(3) Duplicate license plates. The following duplicate license plate fee amounts are effective for the license year beginning September 1, 1995, and thereafter:

(A) resident commercial fishing boat (type 394)-\$5.00; and

(B) nonresident commercial fishing boat (494)-\$5.00.

**§53.7. Business Licenses and Permits.** Fish, bait, and shrimp licenses and tags.

(1) Licenses. The following license fee amounts are effective for the license year beginning September 1, 1995, and thereafter:

(A) retail fish dealer's (type 302)-\$46;

(B) retail fish dealer's truck (type 316)-\$86;

(C) wholesale fish dealer's (type 314)-\$525;

(D) wholesale fish dealer's truck (type 315)-\$325;

(E) bait dealer's (type 312)-\$30;

(F) shrimp house operator's (type 332)-\$425;

(G) bait shrimp dealer's (type 335)-\$115;

(H) finfish import (type 380)-\$75; and

(I) fishing guide (type 310)-\$75.

(2) License transfers. The following license fee amounts are effective for the license year beginning September 1, 1995, and thereafter:

(A) retail fish dealer's license transfer (type 382)-\$5.00;

(B) retail fish dealer's truck license transfer (type 388)-\$5.00;

(C) wholesale fish dealer's license transfer (type 382)-\$5.00;

(D) wholesale fish dealer's truck license transfer (type 388)-\$5.00;

(E) bait dealer's license transfer (type 387)-\$5.00;

(F) shrimp house operator's license transfer (type 389)-\$5.00;

(G) bait shrimp dealer's license transfer (type 385)-\$5.00;

(H) finfish import license transfer (type 381)-\$5.00;

(4) Tags. The following tag fee amounts are effective for the license year beginning September 1, 1995, and thereafter:

(A) saltwater trotline tag (type 307)-\$3.00; and

(B) commercial crab trap tag (type 305)-\$1.50.

**§53.8. Miscellaneous Wildlife Licenses and Permits.**

(a) Deer breeding and related permits. The following permit application processing fee amounts are effective beginning December 1, 1995, and thereafter. Permit application processing fees (fees also prescribed in §65.604 of this title (relating to Inspections).

(1) scientific breeder's (type 112)-\$150;

(2) deer purchase (type 170)-\$25; and

(3) deer transport (type 171)-\$25.

(b) Game bird and animal breeding licenses. The following fee amounts are effective for the license year beginning September 1, 1995, and thereafter:

(1) game breeder's (type 110)-\$15;

(2) class 1 commercial game bird breeder's (type 116)-\$150; and

(3) class 2 commercial game bird breeder's (type 127)-\$15.

(c) Falconry permits. The following permit fee amounts are effective for the license year beginning September 1, 1995, and thereafter:

(1) apprentice falconer's (type 121)-\$50;

(2) general falconer's (type 122)-\$100;

(3) master falconer's (type 123)-\$150;

(4) falconer's renewal (type 124)-\$50; and

(5) nonresident 5-day falconer's (type 125)-\$20.

(d) Trap, transport and transplant permit. The following fees (also prescribed in §65.107 of this title (relating to Permit Applications and Fees)) are effective December 1, 1995 and thereafter:

(1) nonrefundable application processing fee-\$150; and

(2) nonrefundable application processing fee for amendment to existing permit-\$25.

(e) Urban white-tailed deer removal permit. The following fees (also prescribed in §65.107) are effective December 1, 1995 and thereafter:

(1) nonrefundable application processing fee-\$150; and

(2) nonrefundable application processing fee for amendment to existing permit-\$25.

§53.10. Vessel and Motor Fees Set by Commission.

(a) The following vessel and motor fee amounts are effective from September 1, 1993 -December 31, 1995:

- (1) expedited "quick" title to a vessel-\$15;
- (2) expedited "quick" title to a motor-\$15;
- (3) livery vessel-\$9.00;
- (4) vessel-Class A-\$18;
- (5) vessel-Class 1-\$27;
- (6) vessel-Class 2-\$36;
- (7) vessel-Class 3-\$45;
- (8) vessel-transfer of ownership-\$3.00;
- (9) vessel-duplicate certificate of number-\$3.00;
- (10) vessel-duplicate decals-\$3.00;
- (11) vessel-state assigned HIN-\$3.00;
- (12) marine dealer/manufacture number-\$65; and
- (13) certificate of title-\$10.

(b) The following vessel and motor fee amounts are effective January 1, 1996, and thereafter:

- (1) expedited "quick" title to a vessel-\$25;
- (2) expedited "quick" title to a motor-\$25;
- (3) livery vessel-\$15;
- (4) vessel-Class A-\$25;
- (5) vessel-Class 1-\$40;
- (6) vessel-Class 2-\$55;
- (7) vessel-Class 3-\$70;
- (8) vessel-transfer of ownership-\$5.00;
- (9) vessel-duplicate certificate of number-\$5.00;
- (10) vessel-duplicate decals-\$5.00;
- (11) vessel-state assigned HIN-\$5.00;
- (12) marine dealer/manufacture number-\$130; and
- (13) certificate of title-\$15.

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

Issued in Austin, Texas, on September 21, 1995.

TRD-9512122

Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife  
Department

Proposed date of adoption: November 2, 1995

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

Stamps

• 31 TAC §§53.14-53.16

The Texas Parks and Wildlife Department proposes an amendment to §53.15, and new §53.14, §53.16, concerning stamps issued by the department. Passage of House Bill 2216 provides a mechanism through which individuals are able to purchase a "paperless" stamp. New §53.14 provides the means through which individuals may purchase a stamp by telephone and receive an authorization number in place of an actual paper stamp. Proposed amendment of §53.15 proposes hunting and fishing stamp exemptions for lifetime license purchasers and special resident hunting license purchasers under 17 years of age. Proposed new §53.16 provides mechanisms for the sale of obsolete stamps and decals.

Dr. Bill Harvey, Regulatory Coordinator, has determined that for the first five-year period the rules will be in effect the fiscal implications to state government as a result of enforcing or administering the rule will be an estimated decrease of \$350,000 to \$500,000 for fiscal year 1997 and each fiscal year thereafter. There will be no fiscal implications for local governments.

Jim Dickinson, Chief of Staff, has determined that for each year of the first five years the rules as proposed are in effect the anticipated public benefit will be that procurement and possession of hunting and fishing stamps will be simplified. Further, all rules concerning stamps will be unified in a single section of the TAC. There will be minimal effect on small businesses. The anticipated economic cost to persons required to comply with the rules as proposed will be that certain classes of residents and non-residents will no longer be required to purchase stamps associated with several hunting and fishing activities. As a result, the overall cost for these groups to participate in specific hunting and fishing activities will decline.

The Department has not filed a local employment impact statement with the Texas Employment Commission in compliance with the Administrative Procedure Act, Government Code, §2001.022, as this agency has determined that the rules as proposed will not impact local economics.

Public comment is invited and may be submitted to Merrill King, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4718 or 1-800-792-1112, extension 4718.

The amendment and new rules are proposed under the authority of the Parks and Wildlife Code Chapter 11 and Chapter 43, which provide the Texas Parks and Wildlife Commission with the authority to set fees and stamp possession requirements.

Parks and Wildlife Code, §§11.027, 43.011, 43.201, 43.251, 43.302, 43.402 and 43.502 is affected by the proposed new rules and amendment.

§53.14. Stamp Purchaser Identification and Possession Requirements.

(a) A person may hunt without a required state hunting stamp in immediate possession if the person has acquired a stamp by telephone and has a valid authorization number in possession. Authorization numbers shall only be valid for 14 days from purchase date.

(b) A person may fish without a required fishing stamp in immediate possession if the person has acquired a stamp by telephone and has a valid authorization number in possession. Authorization numbers shall only be valid for 14 days from purchase date.

(c) A state hunting or fishing stamp issued in an automated manner to a person using the stamp is valid for hunting or fishing purposes without the user's signature on its face.

§53.15. Stamp Exemptions.

(a) The commission grants the director authority to exempt persons participating in any event organized for the primary purpose of promoting participation in fishing or hunting activities from the requirement to purchase or possess the following stamps:

- (1)-(3) (No change.)
- (4) state waterfowl stamp;
- (5)-(7) (No change.)

(b) (No change.)

(c) Special resident hunting license holders who are under 17 years of age on the date of license purchase and all lifetime resident hunting license holders are exempt from requirements from acquisition and possession of the following stamps:

- (1) white-winged dove stamp;
- (2) turkey stamp;
- (3) archery hunting stamp;
- (4) state waterfowl stamp; and
- (5) muzzleloader hunting stamp.

(d) All lifetime resident combination hunting and fishing license holders are exempt from requirements from ac-

acquisition and possession of the following stamps:

- (1) white-winged dove stamp;
- (2) turkey stamp;
- (3) archery hunting stamp;
- (4) state waterfowl stamp;
- (5) saltwater sportfishing stamp;
- (6) freshwater trout stamp;
- (7) muzzleloader hunting stamp.

(e) All lifetime resident fishing license holders are exempt from requirements for acquisition and possession of the following stamps:

- (1) saltwater sportfishing stamp; and
- (2) freshwater trout stamp.

#### §53.16. Obsolete Stamps and Decals.

(a) Except for Nongame and Endangered Species Stamps, obsolete stamps and decals shall be sold for informational purposes at face value, plus a processing charge sufficient to recover shipment, postage, and sales tax.

(b) Except for Nongame and Endangered Species stamps, stamps and decals shall remain on sale for a maximum of one fiscal year after expiration. During the second year, obsolete stamps and decals, other than the Nongame and Endangered Species stamp, shall be sold only by book or sheet.

(c) Previous issues of Nongame and Endangered Species stamps may be made available for sale at \$10 for individual stamps or decals, and \$75 or less for a complete set of the 11 stamps issued from 1985 through 1995. The Department may sell a limited number of collector's sets of the 11 stamps issued from 1985 through 1995, framed and mounted, for \$300 or less per set. The Department may add to this price a processing charge sufficient to recover shipment, postage, and sales tax. The Department may give away earlier issues of decals and use previously issued stamps in merchandise items that are offered for sale or as promotional items.

(d) The executive director may maintain a limited number of stamps and decals of each type and year.

(e) All other obsolete stamps and decals shall be destroyed.

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

Issued in Austin, Texas, on September 21, 1995.

TRD-9512115

Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife  
Department

Proposed date of adoption: November 2, 1995

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

### Chapter 57. Fisheries

The Texas Parks and Wildlife Department proposes the repeal of §§57.64-57.67, and 57.69, an amendment to §57.62, and new §§57.64-57.67, 57.81, 57.83, 57.85, 57.87, 57.89 and 57.91, concerning permits for the disturbance or removal of marl, sand, and gravel in the public waters of the state.

House Bill 1823, enacted by the 74th Legislature, authorizes the commission to establish conditions under which certain activities involving the disturbance or removal of marl, sand, and gravel in the public waters of the state may be authorized without the requirement of an individual permit. The intent of the legislation is to provide a less burdensome regulatory regime for activities considered to be minimal in scope, duration and impact. Under the present regulations, such projects must complete the full application process for an individual permit. The proposed rules create a general permit that would allow certain activities, under specific conditions, to be authorized following notification to the department and the public. Under the proposed rules, the department would have 30 days from the date of notification to require an individual permit for any proposed activity. The repeals, amendment, and new sections are necessary to expedite permit applications for activities that are minimal in scope, duration, and impact. The amendment to 57.62, concerning Definitions, adds a definition for general permits. The new sections create the general permit; specify the activities that may be authorized under a general permit; establish the conditions that must be met to receive a general permit authorization; provide for notification and reporting requirements; set forth best management practices; set fees; and specify activities that are exempt from permit and payment requirements.

Catherine Livingston, Staff Attorney, has determined that for the first five years the repeals and rules as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules as proposed.

Ms. Livingston also has determined that for the first five years the repeals and rules as proposed are in effect, the anticipated public benefit as a result of enforcing or administering the rules will be the streamlining and simplification of regulations. There will be no effect on small businesses. The anticipated economic cost to persons required to comply with the rules as proposed will be the cost of the processing fee.

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

Comments on the repeals and proposed rules may be submitted to Paul Shinkawa, Resource Protection Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744, (512) 389-4433 or 1-800-792-1112, extension 4433.

### Issuance of Marl, Sand, and Gravel Permits

#### • 31 TAC §§57.64-57.67, 57.69

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

The repeals are proposed under Parks and Wildlife Code, Chapter 86, which provides the Parks and Wildlife Commission with the authority to regulate the disturbance or removal of marl, sand, and gravel in the public waters of this state.

The repeals, amendment, and new rules affect Parks and Wildlife Code, Chapter 86, and implement House Bill 1823, Acts of the 74th Legislature, 1995.

§57.64. Notice Requirements.

§57.65. Permit Application Procedure.

§57.66. Designation of Hearing Officer.

§57.67. Hearing Procedures.

§57.69. Findings of Fact.

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

Issued in Austin, Texas, on September 21, 1995.

TRD-9512118

Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife  
Department

Proposed date of adoption: November 2, 1995

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

#### • 31 TAC §§57.62, 57.64-57.67, 57.81, 57.83, 57.85, 57.87, 57.89, 57.91

The amendment and new rules are proposed under Parks and Wildlife Code, Chapter 86, which provides the Parks and Wildlife Commission with the authority to regulate the dis-

turbance or removal of marl, sand, and gravel in the public waters of this state.

The amendment and new rules affect Parks and Wildlife Code, Chapter 86, and implementation House Bill 1823, Acts of the 74th Legislature, 1995.

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

**General permit**—An authorization to disturb or remove marl, sand, and gravel from the public waters of the state under conditions that qualify such activity as insignificant.

**Individual permit**—An authorization to disturb or remove marl, sand, and gravel from the public waters of the state for any proposed activity that does not qualify for a general permit.

**§57.64. Permit Required.** The disturbance of marl, sand, and gravel under the management and protection of the commission must be authorized under the terms and conditions of either an individual or a general permit. The department may require an individual permit for any proposed activity not exempt under §57.91 of this title (relating to Exemptions).

**§57.65. Application Procedures: Individual Permit.**

(a) The application for an individual permit shall set forth the proposed location, quantities, kinds of materials to be removed, equipment to be used, period of time, names of alongshore property owners on both sides of the waterway for one-half mile both upstream and downstream of the proposed operation, and other information as may be required.

(b) Within 30 days of receipt of an administratively complete application, the department shall:

(1) set a time and place for a public comment hearing to receive public comment on the application;

(2) publish notice of the public comment hearing in the *Texas Register* at least 20 days prior to the hearing date;

(3) mail a copy of the notice to all alongshore property owners as listed in the application and to any person who has made a written request for forwarding of this information, and shall notify the applicant;

(4) send a copy of the notice to the daily newspaper of greatest circulation in the county or counties to be affected by the issuance of the permit, with a request that the notice be published for three consecutive days; and

(5) send a copy of the notice to the daily or weekly local newspaper, where available, in the community nearest the proposed location, with a request that the notice be published for one day.

(c) The public notice shall set forth in full any trade or corporate name used by the applicant. The applicant shall be responsible for prompt and full payment for all newspaper notice required.

(d) A completed publisher's affidavit for all required newspaper notice shall be required prior to permit issuance.

(e) The department shall set a 30-day public comment period to begin on the date of publication in the *Texas Register* or the newspaper(s), whichever is later. All relevant public comment shall be presented to the executive director or the commission at the time the permit application is presented for decision.

**§57.66. Public Comment Hearing Procedures.** The director or other authorized employee shall preside and hear relevant public comment offered by the applicant or any other interested person. Public comment may be presented orally or in writing.

**§57.67. Contested Case Hearings.**

(a) A written request for a contested case hearing from an applicant or a person with a justiciable interest must be received prior to the close of the public comment period and shall be referred to the Office of Administrative Hearings (OAH) within 45 days after the close of the public comment period. Proposed activities shall not commence or continue after the date on which an application is referred to the OAH until a valid permit is issued.

(b) Contested cases shall be conducted pursuant to §§51.21-51.57 of this title (relating to Practice and Procedure in Contested Cases).

(c) The applicant shall be responsible for all hearing costs to the State Office of Administrative Hearings, transcript costs and court reporting costs and no permit may be issued pursuant to this section before full payment of all proper costs have been made to the department by the applicant.

**§57.81. General Permit.**

(a) The disturbance or removal of marl, sand, and gravel under the management and protection of the commission may be authorized under the terms and conditions of a general permit as set forth in this chapter. Activities that do not qualify for authorization under a general permit must be authorized under an individual permit issued pursuant to §57.65 of this title (relating to Permit Application Procedure). At

the discretion of the executive director, the department may require an individual permit for the activities listed in subsection (b) of this section if the proposed activity may have significant adverse effects on a natural resource of the state as set forth in Parks and Wildlife Code, §86.004.

(b) The following activities may be authorized under a general permit:

(1) pipeline construction;

(2) pipeline maintenance; and

(3) other activities that necessitate the disturbance or removal of less than 50 cubic yards of marl, sand, and gravel under the management and protection of the commission.

**§57.83. Conditions.** A general permit may be authorized for an activity listed in §57.81(b) of this title (relating to General Permit), provided that the proposed activity:

(1) will have no significant adverse effects on a natural resource of the state as set forth in Parks and Wildlife Code, §86.004;

(2) is minimal in scope and duration; and

(3) will be conducted in compliance with the best management practices set forth in §57.87 of this title (relating to Best Management Practices).

**§57.85. Notification and Reporting.**

(a) Notification to the department.

(1) At least 30 days prior to the commencement of the proposed activity, the applicant shall notify the department of the proposed activity by certified mail, return receipt requested. The letter shall, at a minimum, include:

(A) the name, address, and telephone number of the applicant;

(B) a description of the proposed activity or a plan of the proposed project;

(C) the size of the pipeline or cable, the width of the proposed trench, and the width of the right-of-way to be disturbed;

(D) a vicinity map showing the location of the proposed activity;

(E) the estimated amount of marl, sand, and gravel to be disturbed or removed and a description of its intended final disposal area; and

(F) the date that the proposed activity will begin; and

(G) a statement disclosing whether or not any species listed as state or federal threatened or endangered species might be affected by, or found in the vicinity of, the proposed project

(2) An activity is authorized if there is no response from the department within 30 days from the date of notification. A written confirmation of authorization may be obtained from the department, if requested.

(b) Public notice. Simultaneous with the notification to the department required by subsection (a) of this section, the applicant must give public notice by publication for one day in the daily newspaper of greatest circulation in the county or counties to be affected by the issuance of the permit, and a copy of the notice shall be posted at the county courthouse(s) in the affected county or counties. Such notice shall describe the proposed activity, specify the location of the proposed activity, specify the date that operations are to begin, and contain language informing the public that written comments may be sent to the executive director at 4200 Smith School Road, Austin, Texas 78744 or by calling 1-800-792-1112

(c) Waiver of notice requirement. The notification requirements of this subsection and subsection (a) of this section shall not apply in the case of an emergency that requires immediate action to prevent a threat to human health and safety or the environment. In such instances the applicant shall promptly notify the department that an emergency exists, and within ten days of completing an emergency activity, submit a report to the department. Such report shall include:

(1) the name, address, and telephone number of the applicant;

(2) a description of the emergency activity;

(3) a small-scale map showing the location of the emergency activity;

(4) the estimated amount of marl, sand, and gravel disturbed or removed as a result of the emergency activity; and

(5) the date(s) the emergency activity took place.

(d) Additional requirements. The department may, at its discretion, require a permittee to furnish reports during and after any activity authorized under the provisions of this undesignated head.

#### §57.87. Best Management Practices.

(a) In issuing a general permit, the department has relied in part on the information provided by the permittee with the notification. If such information proves to

be false, incomplete, or inaccurate, this permit may be modified, suspended, or revoked, in whole or in part.

(b) Structures and activities authorized under a general permit shall be in compliance with all terms and conditions herein. Failure to abide by such conditions invalidates the authorization and may result in a violation of the law, requiring remediation of the site or other remediation action.

(c) Permittee shall not prevent the full and free public use of all navigable waters at or adjacent to the project.

(d) There shall be no unreasonable interference with navigation.

(e) Permittee shall make every reasonable effort to conduct the activities authorized hereunder in a manner so as to minimize any adverse impact of the work on water quality, fish and wildlife and their habitats, and the natural environment.

(f) Permittee shall allow authorized department representatives access to the project site as needed for periodic inspections to ensure that the activity being performed under this authorization is consistent with the terms and conditions herein.

(g) Stream or river realignment is not authorized under the general permit. Activities shall not restrict or impede the passage of normal or expected high flows or cause the relocation of water.

(h) The project shall be designed to be stable against the forces of flowing water, wave action, and the wake of passing vessels.

(i) Appropriate erosion and siltation controls shall be used and maintained in effective operating condition during construction and all exposed soil and other fills shall be stabilized at the earliest practicable date.

(j) Activities conducted in wetlands shall be avoided or minimized through the use of other practicable alternatives. Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.

(k) No activities may occur in the proximity of a public water supply intake, except for construction or repair of public water supply intake structures or adjacent bank stabilization.

(l) No authorization is granted under the general permit for an activity that is likely to jeopardize the continued existence of a threatened or endangered state or federal species or a species proposed for such designation, or for an activity that is likely to destroy or adversely modify the critical habitat of such species.

(m) The project shall not significantly disrupt the movement of species or

aquatic life indigenous to the water body or those species that normally migrate through the project area. Activities in spawning areas during spawning seasons or in breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

(n) Trees, particularly mast-producing trees such as oaks and hickories, shall be avoided, preserved, and protected wherever possible.

§57.89. Fees. The department shall charge a nonrefundable processing fee of \$250 for permits authorized under this undesignated head, payable at the time of the notification required by §57.85 of this title (relating to Notification). If the department determines that a general permit is not authorized for an activity, the processing fee can be applied to the application fee for an individual permit.

§57.91. Exemptions. The following activities are exempt from any permit requirement of the department or payment to the department for marl, sand, and gravel removed from the public waters of this state:

(1) projects to restore or maintain the storage capacity of existing public water supplies;

(2) maintenance projects carried out by public utilities for noncommercial purposes; and

(3) public road projects contracted by the Texas Department of Transportation.

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

Issued in Austin, Texas, on September 21, 1995.

TRD-9512119

Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife  
Department

Proposed date of adoption: November 2, 1995

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

The Texas Parks and Wildlife Department proposes the repeal of §§57.271-57.281 and 57.283, and new §§57.271-57.284, concerning permits for scientific research, educational display, and zoological collection.

House Bill 1964, as enacted by the 74th Legislature, mandates the adoption of new regulations governing the issuance of such permits, including provisions for application procedures, injunctive relief, and fees, by no later than December 1, 1995.

The repeals and new sections are necessary to implement the provisions of House Bill 1964.

The repeals and new sections will function by establishing the criteria and procedures by which permits for scientific research, educational display, and zoological collection may be issued or cancelled by the department; providing for reporting requirements; and setting fees for the permits.

Robin Riechers, staff economist, has determined that for the first five years the rules as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules as proposed.

Mr. Riechers also has determined that for the first five years the rules as proposed are in effect, the anticipated public benefit as a result of enforcing or administering the rules will be that qualified persons will be able to conduct zoological, scientific or educational activities involving protected wildlife by obtaining permits allowing such activities only to the extent that such resources are not unduly impacted.

There will be no effect on small businesses. The economic cost to persons required to comply with the rules as proposed will be the cost of the fees for various permits. The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, §2001.022, as this agency has determined that the rules as proposed will not impact local economies.

Comments on the proposed rules may be submitted to John Herron, Wildlife Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744, (512) 389-4771 or 1-800-792-1112, extension 4771.

## Scientific, Educational, and Zoological Permits

### • 31 TAC §§57.271-57.281, 57.283

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

The repeals are proposed under Parks and Wildlife Code, Chapter 43, Subchapter C, which provides the Parks and Wildlife Commission with the authority to establish regulations governing the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation.

The repeals and new sections implement House Bill 1964, Acts of the 74th Texas Legislature, 1995.

§57.271. Application.

§57.272. Definitions.

§57.273. Endangered Species.

§57.274. Permit: Application.

§57.275. Qualifications.

§57.276. Restrictions.

§57.277. Reports.

§57.278. Permit: Period of Validity.

§57.279. Permit: Renewal.

§57.280. Permit: Cancellation.

§57.281. Documentation.

§57.283. Scientific, Zoological, and Aquarium Permit Fees.

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

Issued in Austin, Texas, on September 20, 1995.

TRD-9512081

Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife  
Department

Proposed date of adoption: November 2, 1995

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

### • 31 TAC §§57.271-57.284

The new sections are proposed under Parks and Wildlife Code, Chapter 43, Subchapter C, which provides the Parks and Wildlife Commission with the authority to establish regulations governing the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation.

The new sections implement House Bill 1964, Acts of the 74th Texas Legislature, 1995.

§57.271. Definitions. The following words and terms, when used in this undesignated head, shall have the following meanings, unless the context clearly indicates otherwise:

Department—The Texas Parks and Wildlife Department.

Educational display permit—A permit issued by the department authorizing permittee(s) and subpermittee(s) working under the permittee's direct supervision to receive protected wildlife from other permitted individuals or organizations and to collect, hold, possess, release, display or

transport protected wildlife for educational purposes.

Educational purposes—Activities conducted by a permittee for the purposes of encouraging management and conservation of protected wildlife or furthering awareness and understanding among the general public of the biology of protected wildlife, but does not include activities intended only for entertainment purposes.

Permittee—A person named on a permit who is authorized to conduct the activities authorized under that permit.

Protected wildlife—All mammals, birds, reptiles, amphibians, fish and other aquatic life indigenous to the state, the taking, collecting, holding, possession, propagation, release, display or transport of which is governed by a provision of the Texas Parks and Wildlife Code or by a rule of the commission.

Scientific research permit—A permit issued by the department authorizing permittee(s) and subpermittee(s) working under the permittee's direct supervision to collect, hold, possess, display, release, propagate or transport protected wildlife for scientific purposes.

Scientific purposes—Research activities conducted by qualified persons for the purposes of enhancing, protecting, conserving or managing protected wildlife, or furthering scientific understanding of that resource by gathering data suitable for publication in a bona fide scientific or academic publication.

Subpermittee—A person named on a permit who either does not qualify for or does not wish to obtain a permit under this undesignated head, but who is authorized to conduct the activities of a permit only under the direct supervision of a permittee as set forth in §57.275(c) of this title (relating to Qualifications).

Transport permit—A letter of permission issued by the department authorizing a non-resident to conduct transport of protected wildlife from a specified origin outside of Texas to specified destinations within the state for scientific, zoological or educational purposes.

Zoological collection permit—A permit issued by the department authorizing permittee(s) and subpermittee(s) working under the permittee's direct supervision to receive from other permitted individuals or organizations, collect, hold, possess, propagate, display, release or transport protected wildlife for zoological, scientific or educational purposes.

Zoological purposes—Activities conducted by qualified persons for the purposes of furthering scientific understanding of protected wildlife, encouraging management and conservation of protected wildlife, or furthering awareness and understanding among individuals or the general public of the biology of protected wildlife, through captive propagation, husbandry and public



display, but does not include activities intended only for entertainment purposes.

#### §57.272. General Rules.

(a) The department may issue a permit to a qualified person to collect, hold, possess, display, transport, release, or propagate protected wildlife for scientific research, educational display or zoological collection. The propagation of protected wildlife for educational display shall not be authorized and no permit for such activity may be issued.

(b) All permits issued under this undesignated head must, at a minimum, specify the numbers and species of protected wildlife to be collected, held, possessed, displayed, transported, released, or propagated, the authorized means and methods for capturing and handling such protected wildlife, and the location(s) where such activities are to be conducted. The Department may make appropriate provisions, conditions and limitations in a permit as necessary to safeguard a protected wildlife resource from unnecessary or harmful impacts.

(c) Activities authorized by a permit issued under this undesignated head shall be made only by the permittee(s) or subpermittee(s) named on the permit.

(d) A permit issued under this undesignated head shall not authorize a person, firm, or corporation to engage in the propagation or holding in captivity of protected wildlife for commercial purposes.

(e) Permits issued under this undesignated head may be issued for any period of time not exceeding three years from the date of issuance, except that transport permits shall not be issued for a period greater than 90 days.

#### §57.273. Permit Required.

(a) No person may collect, hold, possess, display, transport, release, or propagate protected wildlife for scientific research, educational display or zoological collection without a permit issued under this undesignated head.

(b) If at any time during the period of validity of a permit a permittee wishes to change or add devices, means or methods, or activities to those listed on a permit, the permittee must submit a written request for an amendment to the permit. An amendment, if granted, shall be in writing. A permittee and any subpermittee named on a permit must carry such amendments along with the original permit while conducting any activity authorized by the permit.

(c) This undesignated head does not apply to any privately owned animals, fish, or fowl, or to the management or harvest of

such privately owned animals, fish, or fowl by the owners.

(d) No permit authorized under this undesignated head is required for an activity listed in subsection (a) of this section that is lawfully conducted under the authority of another permit or license issued by the department.

(e) A permit under this undesignated head is not required to hold, propagate, transport or display a marine mammal held under the authority of the Federal Marine Mammal Protection Act (16 United States Code, §§1361 et seq) unless the marine mammal is:

(1) a marine mammal for which the department has been delegated management authority under section 1379 of the Marine Mammal Protection Act (16 United States Code, §1379); or

(2) a marine mammal listed under the Federal Endangered Species Act (16 United States Code, §§1531 et seq).

(e) No other license, permit, tag, or stamp required by statute or regulation is required for an activity lawfully conducted under a permit issued under this undesignated head.

#### §57.274. Application for Permit.

(a) An applicant for a scientific research, educational display or zoological collection permit shall submit to the department a completed application on a form supplied by the department and letters of recommendation from two persons recognized in the concerned biological or professional field. Such applications shall contain the following information:

(1) the name, address, and driver's license number of the person seeking the permit;

(2) the numbers and species of protected wildlife to be handled;

(3) the location(s) where permitted activities will be conducted;

(4) the methods and devices to be used for capturing or handling protected wildlife;

(5) the name and address for the school, university, zoo, research institute or other authorized entity where post-collection activities are to be conducted;

(6) a sworn statement as to the accuracy of the information contained in the application; and

(7) any additional information required by the department to insure the welfare of a protected wildlife resource.

(b) An applicant for a scientific research, educational display or zoological

collection permit seeking authorization to collect, hold, possess, display, release, propagate or transport species listed by the department as threatened or endangered shall justify the need for the permit by giving evidence that the activity for which the permit is requested will benefit the particular species involved.

(c) A person named as a subpermittee in a scientific research, educational display or zoological collection permit who desires to make collections in the field without being accompanied by the permittee(s) shall complete the requirements for acquiring a scientific research, educational display or zoological collection permit.

(d) Transport permits may be issued upon receipt of a written request from the applicant that includes:

(1) the dates during which such transport will occur;

(2) the origin and destination(s) of such transport;

(3) a list of species and numbers of specimens of each species for which permit authorization is sought; and

(4) copies of any other state or federal permits required for the legal possession or transport of such species.

#### §57.275. Qualifications.

(a) Zoological collection permits shall be issued only to agents of recognized municipal or nonprofit zoological gardens or institutions accredited by the American Zoo and Aquarium Association (AZA) desiring to hold specimens for zoological, scientific or educational purposes.

(b) Scientific research, educational display, transport and zoological collection permits shall be issued to named individuals only, and not in the name of agencies, firms, or institutions.

(c) Scientific research permits shall not be issued to persons lacking adequate training, as determined by the department, in biological science applicable to the purpose for which the permit is to be issued, or to students not enrolled in graduate school. Persons who lack the necessary qualifications to be issued a permit but desire to engage in activities involving the handling of protected wildlife shall do so under the direct supervision of a qualified individual who has a valid permit issued under this undesignated head.

(d) Educational display permits shall be issued only to qualified employees, representatives or agents of accredited primary, secondary or post-secondary educational institutions, or recognized municipal or non-profit institutions.

§57.276. *Restrictions.*

(a) A permit issued under this undesignated head shall contain a listing of devices, means or methods, species, locations, or other conditions for the activities for which the permit is issued.

(b) Specimens collected or held under a permit issued pursuant to this undesignated head may not be sold, bartered, or retained for personal use by the permittee, but may be donated or transferred only as described in §57.277 of this title (relating to Final Disposition of Specimen). If specimens are donated to charitable organizations, public hospitals, orphanages, or indigent persons, the department-supplied receipt form(s) that accompanied the permit at the time of its issuance shall be promptly completed and forwarded to the department at Austin.

(c) Collections by permittees may not be made on private premises without prior written consent of the owner, lessee, or operator, nor within state parks, preserves, or game management areas without additional written authorization from the department. Written consent of the landowner must accompany the application for a permit. Authority to make collections within state parks shall be obtained from the Resource Management Section of the Public Lands Division, Texas Parks and Wildlife Department, Austin 78701.

§57.277. *Final Disposition of Specimens.* All specimens of protected wildlife captured or held under permits issued pursuant to this undesignated head shall be disposed of only by one or more of the following methods:

(1) examination, experimentation, necropsy, or disposing of as waste in accordance with state, county, or city regulations relating to the disposal of waste materials;

(2) retaining specimens for scientific, zoological or educational purposes;

(3) release to the wild, if expressly authorized by the permit or in subsequent written authorization by the department;

(4) donation of edible portions of game species to charitable organizations, public hospitals, orphanages, or indigent persons, when such donations are accompanied by donation-receipt forms supplied by the Department;

(5) transfer or donation to other persons authorized to receive such specimens under a permit issued pursuant to this undesignated head; or

(6) special disposition as prescribed in writing by the department.

§57.278. *Prohibited Acts.*

(a) The use of a device, means or methods, or other activity not authorized in a permit is violation of this undesignated head.

(b) A permittee, while acting pursuant to the authority of a permit issued under this undesignated head, commits an offense if the permittee fails to comply with a provision of any state or federal law or regulation governing protected wildlife unless specifically exempted by a condition of the permit.

(c) No permittee may transport or ship protected wildlife out of this state except as specifically authorized by a condition of the permit or by a letter of authority issued by the department.

(d) Wildlife held in captivity or propagated under a permit issued pursuant to this undesignated head shall not be released from captivity unless such release is an explicit provision of the permit or is authorized in writing by the Department.

§57.279. *Reports.* No later than 14 days following the expiration date of a scientific research, zoological collection or educational display permit, the permittee shall file with the department a complete and legible report, on a form provided by the department, of all activities conducted under the authority of the permit. The report shall contain the following information:

(1) the numbers and species of protected wildlife collected, held, possessed, propagated, released, displayed or transported during the permit period;

(2) the locations where permitted activities were conducted; and

(3) any other information the department may require.

§57.280. *Permit: Renewal.*

(a) Scientific research, educational display and zoological collection permits issued in accordance with §§57.272, 57.273, 57.275, and 57.283 of this title (relating to Application, Qualifications and Scientific Research, Educational Display, and Zoological Collection Permit Fees) may be renewed by completing and returning the report form as required by §57.279 of this title (relating to Reports) and any fees required by §57.283.

(b) The department may renew a scientific or zoological permit issued prior to December 1, 1995, upon receipt of an completed annual report as required by §57.279 and any fees required by §57.283. Upon expiration of such renewals, no additional renewals shall be granted and the

permittee shall reapply for a new permit in accordance with §§57.272, 57.273, 57.275, 57.283 and any other applicable provisions of this undesignated head.

(c) The Department may deny a renewal if the permittee has violated any of the provisions of the permit, rules of the commission, or federal or state wildlife laws, or if the permittee fails to meet any of the requirements or conditions under which the original permit was issued.

§57.281. *Suspension or Revocation of Permit.*

(a) Any violation of the Texas Parks and Wildlife Code, rules and regulations of the commission, federal rules governing wildlife, or any provision or condition of a permit issued under this undesignated head, including amendments, may result in suspension, probation, or revocation of a permit in addition to any applicable civil, criminal or administrative penalties.

(b) Any misrepresentation of fact in an application or report required under this undesignated head is a violation of this undesignated head.

§57.282. *Hearings.*

(a) An opportunity for hearing shall be provided to any applicant or permit holder for a denial of a permit, probationary terms of a permit, denial of a permit renewal, or issuance of a permit where the terms of issuance are materially different from those requested by the applicant and adversely affect the applicant's interests.

(b) Requests for hearings shall be made in writing before the expiration of 30 calendar days from the date of the denial.

(c) All hearings shall be conducted in accordance with the provisions of §§51.21-51.57 of this title (relating to Practice and Procedure in Contested Cases).

§57.283. *Scientific Research, Zoological Collection, and Educational Display Permit Fees.*

(a) Except as provided in subsection (b) of this section, the following nonrefundable fees shall be submitted with any application for a permit pursuant to Texas Parks and Wildlife Code, Chapter 43, Subchapter C:

(1) \$150 for an application seeking a zoological collection permit; and

(2) \$50 for an application seeking a scientific research, or educational display permit.

(b) No fee shall be required for:

(1) applications seeking a permit solely on behalf of an employee of an elementary or secondary educational institution, provided the application includes proof that the institution is accredited and includes a sworn statement that the applicant will use the permit only for educational purposes on behalf of that institution;

(2) applications seeking a permit solely on behalf of an employee of a state or federal agency that has statewide jurisdiction over the regulation of environmental contaminants or statewide responsibility for protection of public health, provided the application includes a sworn statement that the applicant will not receive compensation for any work undertaken pursuant to the permit other than from that agency; and

(3) applications seeking a permit solely on behalf of an employee of a federal agency that has regulatory authority over the taking of fish or wildlife in Texas, provided the application includes a sworn statement that the applicant will not receive compensation for any work undertaken pursuant to the permit other than from that agency.

*§57.284. Penalty.* Penalties for a violation of this undesignated head are as provided by Parks and Wildlife Code, §43.030.

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 September 20, 1995.

TRD-9512082 Bill Harvey, Ph D  
Regulatory Coordinator  
Texas Parks and Wildlife  
Department

Proposed date of adoption: November 2, 1995

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

## Chapter 59. Parks

### Park Entrance and Park User Fees

#### • 31 TAC §59.2, §59.3

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

The proposed amendment to §59.2 sets the upper range for an annual park entrance permit at \$75. The amendment also extends use of a youth-group annual entrance permit for entrance to parks which have a per-vehicle entrance fee to parks which have a historic-site tour fee, and renders the permit nonre-

fundable; sets the range for per-person entrance fees at \$.50-\$5.00, and expands fee ranges for entrance to parks or historical sites for educational purposes to all persons in private or public institutions of learning. Finally, the amendment authorizes the Executive Director to establish fees for replacement and/or duplicate annual or seasonal permits.

The amendment to §59.3, concerning activity and facility use fees, sets the fee range for a regular campsite at \$5.00-\$18, for a campsite with electricity at \$9.00-\$23; and for campsites with electricity and sewer connections at \$10-\$25; establishes a fee range for shelters with amenities at \$25-\$40; sets the fees for recreational hall day use at \$50-\$150 and overnight use from \$80-\$200; allows fees for group lodge accommodations based on accommodations to vary from \$70-\$400 at individual sites or from \$10-\$50 when per-person fees apply; establishes above-capacity per-person fees from \$5.00-\$15; sets the lower fee range for pavilion use at \$17. The amendment also establishes the fee range for amphitheaters at \$10-\$100 and auditorium use at \$200-\$500; sets a new fee range for gymnasium use at \$300-\$500; establishes an additional fee of \$50-\$100 if dining hall privileges are required; establishes a fee range for group picnic areas at \$17-\$60; sets the fee range for picnic shelters with kitchen facilities at \$30-\$125; sets the fee range for individual additional adult lodging at \$5.00-\$15 at Indian Lodge; sets the fee range for each additional adult lodging at \$5.00-\$15 at Balmorhea-San Solomon Springs Court; extends the additional fee range to \$5.00-\$15 for lodging with a kitchen unit at this site; sets the fee range of \$5.00-\$15 for additional adult lodging at Landmark Inn; and increases the group rate fee range at swimming pools from \$35-\$500.

The amendment also increases the range of Lockhart Golf Course annual family greens fee permits from \$150-\$300; establishes new fees for boat transportation at Matagorda Island State Park; expands the range for excess vehicle parking from \$1.00-\$4.00; expands fee ranges to \$2.00-\$25 for activity use fees per person; establishes a fee based on a discounted daily rate for use of seasonal or annual use permits; establishes a visitor shuttle fee range of \$2.00-\$10; establishes a tour fee for educational, interpretive, instructional, adventure and entertainment tours at \$.25-\$500; establishes educational seminar fees, equipment rental fees, park operation fees, and event fees; and expands the range of excess occupancy fees to \$1.00-\$15; and establishes a commercial boat landing fee at \$50-\$500.

Jim Dickinson, Chief of Staff, has determined that for the first five-year period the rules are in effect, the fiscal implications to state government as a result of enforcing or administering the rule will be an estimated net increase in revenue of \$530,000 in 1996; \$592,000 in 1997; \$592,000 in 1998; \$592,000 in 1999; and \$592,000 in 2000. There will be no fiscal implications for local governments.

Mr. Dickinson also has determined that for each of the first five years the amendments as proposed are in effect the anticipated pub-

lic benefit expected as a result of enforcing or administering the rules will be continuation of services for the public good. The anticipated economic cost to persons required to comply with the rules as proposed will be the payment of the fees indicated.

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

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

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

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

#### §59.2. Park Entrance and Use Fees.

(a) (No change.)

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

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

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

with the required fee to the chief, park operations, or designee, for approval. The permit authorizes entry of vehicles carrying group members provided the adult sponsor presents the permit(s) at the park entrance and identifies each vehicle carrying group members.

(e) (No change.)

(f) An entrance fee of **\$50-\$500** will apply on a per person basis at parks designated by the department.

(g)-(n) (No change.)

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

(p)-(r) (No change.)

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

(t) (No change.)

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

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

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

**§59.3. Activity and Facility Use Fees.** The amount of user fees will be determined by the Parks and Wildlife Commission and will be based primarily on comparisons of current fees for facilities and services of comparable character under similar conditions, with due consideration for length of season, provisions for peak loads, average percentage of occupancy, accessibility, availability, cost of labor, materials and supplies, type of

patronage, and other such factors deemed significant, except the costs of park acquisition, development, and major repairs. The executive director will cause to be collected a user fee at the time a park facility is assigned or occupied, and as new parks, activities and facilities are added to the system, the approved fee schedule will be implemented when feasible. Where variable use fees are authorized by the commission they may be set on an individual park basis, individual activity or an individual facility basis by the department based on visitation and site desirability. Fees may also be set on a basis other than daily, e.g., weekly, monthly, etc. **When an annual or seasonal permit is offered for a facility or activity in lieu of a daily fee, the executive director is authorized to establish a fee for a replacement and/or a duplicate permit.** The executive director may discount or waive use fees in order to enhance utilization of existing facilities or activities. The following park use fees are effective **January 1, 1996** [March 1, 1993]:

(1) (No change.)

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

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

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

(5) (No change.)

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

(7)[(6)] recreation hall:

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

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

(8)[(7)] group lodge:

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

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

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

(D) Daingerfield-bass, one person-\$105-\$160;

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

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

[(9) tabernacle:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Indian lodge:

(i) single-\$40-\$70;  
 (ii) double-\$45-\$75;  
 (iii) double with double  
 beds-\$50-\$80;  
 (iv) suite with double  
 beds-\$55-\$100;  
 (v) each additional  
 adult-\$5.00-\$15 [\$10];  
 (vi) each additional child  
 (six-12)-\$2.00-\$4.00;  
 (vii) children under  
 six-free;

(B) Balmorhea-San Solomon  
 Springs Court:

(i) single-\$35-\$50;  
 (ii) each additional  
 adult-\$5.00-\$15 [\$10];  
 (iii) each additional child  
 (six-12)-\$2.00-\$4.00;  
 (iv) children under  
 six-free;  
 (v) with kitchen unit  
 add-\$5.00-\$15 [\$10];

(C) Landmark Inn:

(i) single-\$35-\$50;  
 (ii) double (two  
 persons)-\$40-\$55;  
 (iii) children (six-  
 12)-\$2.00-\$4.00;  
 (iv) children under  
 six-free;  
 (v) additional adult (when  
 space is available for cot)-\$5.00-\$15 [\$10];

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

(22)[(21)] swimming pools:

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

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

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

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

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

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

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

(iii) annual  
 individual-\$100-\$150;  
 (iv) 18 years of age and  
 under excluding (weekends and holidays)  
 -\$3.00-\$6.00;

(B) trail fee for privately  
 owned golf carts:

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

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

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

(A) fares:

(i) adult (one-  
 way)-\$8.00-\$13;

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

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

(iv) child (three-12) (R-  
 T)-\$7.00-\$12;

(B) train lease for filming  
 purposes:

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

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

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

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

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

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

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

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

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

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

(25) Matagorda Island:

(A) boat transportation fee;

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

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

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

(C) beach shuttle fee:

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

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

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

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

(28)[(26)] activity use fee per  
 person(day or overnight) -\$2.00-\$25  
 [\$6.00];

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

(29)[(28)] [Purtis Creek] lake  
 [Lake] use fee-\$5.00-\$10;

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

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

(30) Matagorda Island boat  
 transportation fee:

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

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

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

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

(31) beach shuttle fee:

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

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

(32) tour fee (includes educa-  
 tional, interpretive, instructional, adven-  
 ture and entertaining) per person-\$25-  
 \$500.

(32) historic site tour fees:

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

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

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

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

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

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

(37) event fee:

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

(B) Special public activities, festivals and exhibitions when authorized and conducted-fee is negotiated.

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

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

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

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

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

Issued in Austin, Texas, on September 21, 1995

TRD-9512120 Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife  
Department

Proposed date of adoption: November 2, 1995

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

## Chapter 65. Wildlife

### Subchapter C. Permits for

#### Trapping, Transporting, and Transplanting Game Animals and Game Birds

- 31 TAC §§65.101, 65.103, 65.105, 65.107, 65.109, 65.111, 65.113, 65.115, 65.117, 65.119

The Texas Parks and Wildlife Department proposes new §§65.101, 65.103, 65.105, 65.107, 65.109, 65.111, 65.113, 65.115, 65.117, and 65.119, concerning the trapping,

transporting and transplanting of game animals and game birds. House Bill 1964, enacted during the 74th Legislature, directs the Texas Parks and Wildlife Commission to adopt rules for the private trapping, transporting and transplanting of game animals and game birds pursuant to Texas Parks and Wildlife Code, Chapter 43, Subchapter E, by no later than December 1, 1995.

The proposed new rules establish definitions; create the trap, transport, and transplant permit; create the urban white-tailed deer removal permit; set applications procedures and fees; establish conditions for the issuance of the permits; specify the conditions for keeping the permits and their period of validity; provide for the marking of game animals and game birds captured under such permits; stipulate reporting requirements; specify prohibited acts; and provide for penalties.

The proposed new rules are necessary to implement the provisions of House Bill 1964, Acts of the 74th Legislature, 1995.

Bob Klepac, budget officer, has determined that for the first five years the rules as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules as proposed.

Mr. Klepac also has determined that for the first five years the rules as proposed are in effect, the anticipated public benefit as a result of enforcing or administering the rules will be the simplification and clarification of regulations.

There will be no effect on small businesses. The anticipated economic cost to persons required to comply with the rules as proposed will be the cost of the applications processing fees. The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, §2001.022, as this agency has determined that the rules as proposed will not impact local economies.

Comments on the proposed rules may be submitted to Bryan Richards, Assistant Upland Wildlife Ecology Program Leader, Wildlife Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744, (512) 389-4777 or 1-800-792-1112, extension 4777.

The new rules are proposed under Parks and Wildlife Code, Chapter 43, Subchapter E, which provides the Parks and Wildlife Commission with the authority to establish regulations for trapping, transporting and transplanting of game animals and game birds in the state.

The proposed new rules affect Parks and Wildlife Code, Chapter 43.

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

**Amendment**-A specific alteration or revision of currently permitted activities, the effect of which does not constitute, as determined by the department, a new trap-

ping, transporting and transplanting operation.

**Certified Wildlife Trapper**-An individual who receives a department-issued permit pursuant to this section and agrees by signature, subject to applicable penalties, to abide by all conditions listed on the permit.

**Department**-The Texas Parks and Wildlife Department or any authorized employee thereof.

**Game Animal**-An animal listed in Parks and Wildlife Code, §63.001.

**Game Bird**-A bird listed in Parks and Wildlife Code, §64.001.

**Natural Habitat**-The type of site where a game animal or game bird normally occurs and existing game populations are not dependent on manufactured feed or feeding devices for sustenance.

**Nuisance Squirrel**-A squirrel that is causing damage to personal property.

**Overpopulation**-A condition where the habitat is being detrimentally affected by high animal densities, or where such condition is imminent.

**Release Site**-The specific destination of game animals or game birds to be relocated pursuant to a permit issued under this subchapter.

**Stocking Policy**-The policy governing stocking activities made or authorized by the department as specified in §§52.101-52.105, 52.201, 52.202, 52.301 and 52.401 of this title (relating to Stocking Policy).

**Trap Site**-The specific source of game animals or game birds to be relocated pursuant to a permit issued under this subchapter.

**Trap, Transport and Transplant Permit**-A permit issued by the department that authorizes an individual to relocate game animals or game birds for wildlife management purposes.

**Trapping Period**-A timeframe designated by the department, but not to exceed one year, during which the trapping, transporting, and transplanting of a specific game animal or game bird by individuals will be allowed.

**Urban White-Tailed Deer Removal Permit**-A permit issued by the department that authorizes an individual to relocate white-tailed deer from areas where human health and safety concerns preclude adequate harvest of deer.

**Wildlife Management Purposes**-Factors including, but not limited to, propagation, distribution, population reduction or enhancement, sex-ratio manipulation and genetic enhancement with respect to the relocation of game animals or game birds.

**Wildlife Stocking Plan**-A document prepared by an applicant for a permit authorized through this subchapter that fulfills criteria and conditions specified on the permit application and justifies permit issuance.

**§65.103. Trap, Transport, and Transplant Permit.**

(a) The department may issue permits to individuals to trap, transport, and transplant game animals or game birds for the purposes of wildlife management.

(b) Permits to trap, transport, and transplant game animals and game birds may be issued only when the application is accompanied by an approved wildlife stocking plan for both the trap and release sites.

(c) The contents of a wildlife stocking plan shall include, but are not limited to:

- (1) complete land ownership information;
- (2) description of the land tract;
- (3) location of the land tract;
- (4) estimates of game animal or game bird densities on the tract;
- (5) management practices conducted on the tract; and
- (6) justification for the proposed activity.

(d) The department may deny a permit application if the department determines that:

- (1) the removal of game animals or game birds from the trap site may be detrimental to existing populations or systems;
- (2) the removal of game animals or game birds may detrimentally affect the population status on neighboring properties;
- (3) the release of game animals or game birds at the release site may be detrimental to existing populations or systems;
- (4) the release site is outside of the suitable range of the game animal or game bird;
- (5) the applicant has misrepresented information on the application or associated wildlife stocking plan; or
- (6) the activity identified in the permit application does not comply with the provisions of the department's stocking policy.

(e) The department may establish trapping periods, based on biological criteria, when the trapping, transporting, and transplanting of game animals and game birds under this section by individuals will be permitted.

(f) The department may, at its discretion, require the applicant to supply additional information concerning the proposed trapping, transporting, and transplanting activity when deemed necessary to carry out the purposes of this subchapter.

(g) No permit or report is required for a landowner or his/her agent to live trap, transport, and release nuisance squirrels if:

(1) local ordinances prohibit the use of means and methods provided by §65.11 of this title (relating to Means and Methods);

(2) written permission from the owner of the property where squirrels are to be released:

(A) has been obtained prior to transport and release; and

(B) is carried while transporting squirrels;

(3) trapping devices are:

(A) designed to not inflict physical injury to trapped squirrels; and

(B) labeled with the owner's name, street address, city, and telephone number;

(4) reasonable precautions are made to assure the humane treatment of trapped squirrels; and

(5) trapped squirrels are released no later than 24 hours after capture.

**§65.105. Urban White-Tailed Deer Removal Permit.**

(a) The department may issue urban white-tailed deer removal permits to individuals for the trapping, transporting, and transplanting of white-tailed deer.

(b) Urban white-tailed deer removal permits may only be issued when the applicant shows, to the department's satisfaction, that:

(1) an overpopulation of deer exists at the trap site;

(2) hunting is inadequate, because of human health and safety concerns, to reduce the overpopulation;

(3) the release site identified by the applicant consists of natural habitat;

(4) the addition of white-tailed deer to the release site will not result in immediate overpopulation; and

(5) the transplanted deer will be subject to lawful hunting.

(c) The department may establish trapping periods, based on biological criteria, when the trapping, transporting and transplanting of white-tailed deer under this section by private individuals will be permitted.

(d) The department may, at its discretion, require the applicant to supply additional information concerning the proposed trapping, transporting, and transplanting activity when deemed necessary to carry out the purposes of this subchapter.

**§65.107. Permit Applications and Fees.**

(a) Permit applications.

(1) Application for permits authorized under this subchapter shall be on a form prescribed by the department.

(2) A single application may specify multiple trap and/or release sites.

(3) A single application may not specify multiple species of game birds and/or game animals.

(4) The application must be signed by:

(A) the applicant;

(B) the landowner or agent of the trap site(s); and

(C) the landowner or agent of the release site(s).

(5) The applicant must identify all persons and/or companies that will be involved in the permitted activities, including direct handling, transport and release of game animals or game birds.

(b) Permit fees.

(1) The department shall charge a nonrefundable application processing fee of \$150 for permits authorized pursuant to this subchapter.

(2) The department shall charge a nonrefundable application processing fee of \$25 for amendments to existing permits.

(3) The department will not process any permit application unless the application fee has been received by the department.

(4) Applications to trap, transport, and transplant nuisance squirrels are exempt from application fees.

(5) Applications for urban white-tailed deer removal permits that specify trap sites consisting solely of property owned by a political subdivision or institution of higher education of this state are exempt from application fees.

**§65.109. Issuance of Permit.** Permits authorized under this subchapter:

(1) will be issued only if the activities identified in the application are determined by the department to be in accordance with the department's stocking policy;

(2) will be issued only if the application and any associated materials are approved by a Texas Parks and Wildlife Department (TPWD) biologist classified not less than CS VI;

(3) shall not be issued to individuals who are not in compliance with the reporting requirements specified in §65.115 of this title (relating to Reports);

(4) shall not be issued to applicants who have been finally convicted, during the two-year period immediately preceding the date of application, of any violation of the provisions of this subchapter; and

(5) do not exempt an applicant from the requirements of §§55.142-55.152 of this title (relating to Aerial Management of Wildlife and Exotic Animals).

#### §65.111. *Permit Conditions and Period of Validity.*

(a) The permittee is responsible for all activities conducted under a permit issued under the authority of this subchapter.

(b) Only persons listed on the permit are authorized to conduct the permitted activities.

(c) Activities authorized through permits under this subchapter must be conducted at no cost to the state.

(d) The permittee shall notify the local game warden at least 24 hours prior to the commencement of permitted trapping activities.

(e) If it is determined by the department that any condition listed on the permit has been violated, the department may suspend the permit after notifying the permittee that a violation has occurred. The permittee shall have 14 days from the date of such notice to request a hearing pursuant to §§51.21-51.57 of this title (relating to Practice and Procedure in Contested Cases).

(f) Permits issued pursuant to this subchapter shall expire at the end of the specified trapping period for that species. The maximum period of validity for a permit issued under this subchapter shall not exceed one year.

(g) Unattended trapping equipment and devices at trap sites within incorporated areas shall be labeled with the owner's name, complete address, and telephone number; the date of trap site establishment; and the date the trap site was last visited.

(h) Unattended trap sites that may pose a human health and safety hazard shall be clearly marked as such.

§65.113. *Marking of Game Animals and Game Birds.* To facilitate later field rec-

ognition, the permittee may place suitable ear tags on trapped game animals or suitable patagial tags and/or leg bands on trapped game birds. Game animals and game birds may not be otherwise marked unless specifically authorized by the department.

§65.115. *Reports.* The permittee shall file a report on a form provided by the department not later than 15 days following the expiration date of the permit. The report shall identify, at a minimum:

(1) the number of game animals or game birds trapped;

(2) the sex of game animals or game birds trapped;

(3) the locations where game animals or game birds were trapped and released;

(4) the dates when trapping occurred;

(5) the trapping methods used; and

(6) any mortality incurred during the permitted activity and the disposition of carcasses.

#### §65.117. *Prohibited Acts.*

(a) It is an offense if:

(1) game birds or game animals are trapped at any location other than the trap site(s) specified on the permit;

(2) game birds or game animals are released at any location other than the release site(s) specified on the permit;

(3) the permittee violates any of the conditions listed on the permit;

(4) the permittee does not take reasonable precautions to maximize the humane treatment of and to minimize the stress on trapped game animals or game birds;

(5) the permittee does not take reasonable precautions to minimize human health and safety risks during all aspects of permitted trapping, transporting, and transplanting operations; or

(6) game animals or game birds obtained under a permit issued under this subchapter are sold, bartered, or otherwise exchanged for anything of value.

(b) Game animals or game birds being transported under a permit authorized by this subchapter shall not be removed from the transport vehicle prior to arrival at the release site unless such removal is immediately necessary to maintain the health of the game animals or game birds. If such removal is necessary, transport activities must resume within 24 hours.

§65.119. *Penalties.* A person who violates a provision of this subchapter, a condition of any permit issued pursuant to this subchapter, or any provision of Parks and Wildlife Code, Chapter 43, Subchapter E, commits an offense and is subject to the penalties prescribed by Parks and Wildlife Code, §12.405.

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 September 20, 1995.

TRD-9512077

Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife  
Department

Proposed date of adoption: November 2, 1995

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

### Subchapter T. Scientific Breeder's Permits

The Texas Parks and Wildlife Department proposes the repeal of §§65.601-65.614 and new §§65.601-65.613, concerning scientific breeder's permits. The proposed new rules eliminate references to sections of Parks and Wildlife Code that were repealed by House Bill 1964, enacted during the 74th Legislature; reorganize and simplify regulatory activity; and incorporate non-substantive changes for housekeeping purposes.

The proposed new rules establish definitions; stipulate requirements and set forth privileges; provide for permit application and issuance procedures; establish fees; set forth facility standards; provide for inspections; specify the marking requirements for captive deer; establish reporting requirements; implement requirements for purchase and transport permits; specify prohibited acts; set forth provisions for the disposition of deer held under permit; and provide for penalties.

The proposed new rules are necessary to conform regulations to the provisions of House Bill 1964, Acts of the 74th Legislature, 1995, and to simplify, reorganize, and clarify regulatory policy.

Bob Klepac, budget officer, has determined that for the first five years the rules as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules as proposed.

Mr. Klepac also has determined that for the first five years the rules as proposed are in effect, the anticipated public benefit as a result of enforcing or administering the rules will be the conformance of regulatory policy with statutory law and the simplification and clarification of regulations.

There will be no effect on small businesses. The anticipated economic cost to persons



required to comply with the rules as proposed will be the cost of the applications processing fees. The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, §2001.022, as this agency has determined that the rules as proposed will not impact local economies.

Comments on the proposed rules may be submitted to Bryan Richards, Assistant Upland Wildlife Ecology Program Leader, Wildlife Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744, (512) 389-4777 or 1-800-792-1112, extension 4777.

• 31 TAC §§65.601-65.614

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

The repeals are proposed under Parks and Wildlife Code, Chapter 43, Subchapter L, which provides the Parks and Wildlife Commission with the authority to promulgate regulations governing the issuance and conditions of scientific breeder's permits in the state.

The repeals and new rules implement Parks and Wildlife Code, Chapter 43, Subchapter L.

§65.601. Definitions.

§65.602. Permit: Application.

§65.603. Holding Facility Standards and Care of Deer.

§65.604. Inspections.

§65.605. Issuance of Permit

§65.606. Transport of Deer.

§65.607. Source of Deer.

§65.608. Identification: Marking of Deer.

§65.609. Prohibited Acts.

§65.610. Fees.

§65.611. Annual Reports and Records.

§65.612. Period of Validity.

§65.613. Disposition of Deer.

§65.614. Penalties.

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 September 20, 1995.

TRD-9512079

Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife  
Department

Proposed date of adoption: November 2, 1995

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

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• 31 TAC §§65.601-65.613

The new rules are proposed under Parks and Wildlife Code, Chapter 43, Subchapter L, which provides the Parks and Wildlife Commission with the authority to promulgate regulations governing the issuance and conditions of scientific breeder's permits in the state.

The new rules implement Parks and Wildlife Code, Chapter 43, Subchapter L.

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

Adult deer—Any deer held in captivity on January 1 following birth.

Captivity—The keeping of an animal in an enclosure suitable for and capable of retaining the animal it is designed to retain at all times under reasonable and ordinary circumstances and to prevent entry by another animal, Texas Parks and Wildlife Code, §43.351(2).

Certified Wildlife Biologist—A person not employed by the department who has been certified as a wildlife biologist by The Wildlife Society, or who:

(A) has fulfilled the scholastic requirements of an accredited university or college for the B.S. degree (or an advanced degree) with major course work in wildlife science or wildlife management; and

(B) has not less than five years of post-graduate experience in research or wildlife management associated with white-tailed deer or mule deer within the past ten years.

Common Carrier—Any licensed firm, corporation or establishment which solicits and operates public freight or passenger transportation service or any vehicle employed in such transportation service.

Deer—White-tailed deer of the species *Odocoileus virginianus* or mule deer of the species *Odocoileus hemionus*.

Department—The Texas Parks and Wildlife Department or any authorized employee thereof.

Designated agent—An individual, identified on an application for a scientific breeder's permit, who is authorized by the

permittee to conduct activities on behalf of the permittee.

Director—The Executive Director of the Texas Parks and Wildlife Department.

Enclosure—An area of not more than 320 acres that is completely surrounded by department-approved fencing for the purposes of reducing deer to a state of captivity.

Facility—One or more enclosures, in the aggregate and including additions, that are the site of scientific breeding operations under a single scientific breeder's permit.

Management—The application of scientifically tested techniques to manipulate captive deer herds in a manner that they manifest desired attributes that can be applied to free-ranging deer herds.

Propagation—The holding of captive white-tailed deer or mule deer for the purpose of increasing their numbers.

Purchase Permit—A permit required of all persons to purchase or accept a live white-tailed deer or mule deer in this state.

Sale—The transfer of possession of deer for consideration and includes a barter and an even exchange.

Scientific—The accumulation of knowledge, by systematic methods, about the physiology, nutrition, genetics, reproduction, mortality and other biological factors affecting white-tailed deer or mule deer.

Scientific Breeder—A person holding a valid scientific breeder's permit issued by the department, Texas Parks and Wildlife Code, §43.351(1).

Serial Number—A permanent number assigned to the scientific breeder by the department.

Transport Permit—A permit required for the transport or shipment of a live white-tailed deer or mule deer by any person except a scientific breeder or his designated agent.

§65.602. Permit Requirement and Permit Privileges.

(a) A person who possesses or seeks to possess deer for scientific, propagation or management purposes must hold, prior to possession of any deer, a valid scientific breeder's permit issued by the department, unless that person possesses a valid permit issued under the provisions of §§57.271-57.283 of this title (relating to Scientific, Educational, Zoological, and Rehabilitation Permits) or Chapter 65, Subchapter C of this title (relating to Permits for the Trapping, Transporting, and Transplanting of Game Animals and Game Birds).

(b) A person who possesses a valid scientific breeder's permit may:

(1) engage in the business of breeding deer within the facility for which the permit was issued;

(2) possess deer within the permitted facility for the purpose of propagation; and

(3) sell deer that are in the legal possession of the permittee.

*§65.603. Application and Permit Issuance.*

(a) An applicant for a scientific breeder's permit shall submit the following to the department:

(1) a completed notarized application on a form supplied by the department;

(2) a management plan which identifies:

(A) the activities proposed to be conducted; and

(B) the purpose(s) for proposed activities;

(3) a letter of endorsement by a certified wildlife biologist which states that:

(A) the certified wildlife biologist has reviewed the management plan;

(B) the activities identified in the management plan are adequate to accomplish the purposes for which the permit is sought; and

(C) the facility identified in the application is adequate to conduct the proposed activities;

(4) a diagram of the physical layout of the facility;

(5) the application processing fee specified in §65.604 of this title (relating to Fees); and

(6) any additional information that the department determines is necessary to process the application.

(b) A scientific breeder's permit may be issued when:

(1) the application and associated materials have been approved by the department;

(2) the facility has been inspected and approved as specified in §65.606 of this title (relating to Inspections); and

(3) the department has received the fee as specified in §65.604 of this title (relating to Fees).

(c) A scientific breeder's permit shall be valid from the date of issuance to the following September 30, unless suspended or revoked by the director in ac-

cordance with the provisions of Parks and Wildlife Code, §§12.501-12.507.

(d) A scientific breeder's permit may be renewed annually, provided that the applicant:

(1) is in compliance with the provisions of this subchapter;

(2) has submitted a notarized application and associated materials required by this section;

(3) has filed the annual report in a timely fashion, as required by §65.609 of this title (relating to Annual Reports and Records); and

(4) has paid the permit renewal fee as specified in §65.604 of this title (relating to Fees).

*§65.604. Fees.*

(a) The application processing fee for a scientific breeder's permit or renewal of the permit is \$150.

(b) The application processing fee for a purchase permit is \$25.

(c) The application processing fee for a transport permit is \$25.

(d) Application processing fees are not refundable.

*§65.605. Holding Facility Standards and Care of Deer.*

(a) A scientific breeder shall provide and maintain the following facility standards during the permit period.

(1) At any time that an enclosure is used to hold deer in captivity, the enclosure shall meet the following space requirements:

(A) a minimum of 400 square feet per adult deer;

(B) a minimum of 400 square feet for each adult doe with fawn(s); and

(C) a minimum of 200 square feet for each fawn segregated from its dam.

(2) Each enclosure, when deer are present, shall be provided with:

(A) a prepared commercial deer ration of not less than 12% protein at a daily rate of not less than two pounds per deer when comparable natural forage is not immediately available within that enclosure in quantity to maintain deer in a healthy condition; and

(B) sufficient fresh, clean water at all times.

(3) Each enclosure where deer are held shall include a single area of continuous shade measuring at least 20 square feet per deer.

(4) The entire perimeter fence of a facility shall be no less than seven feet in height, and shall be constructed of department-approved net mesh, chain link or welded wire that will retain deer. An indoor facility is acceptable if it meets the standards described in this section and provides permanent access to an outdoor environment that is sufficient for keeping the deer in captivity.

(b) The permittee shall insure that medical treatment will be provided, when appropriate, to maintain the health of deer held under the provisions of this subchapter.

*§65.606. Inspections.*

(a) The department may inspect the facilities of an applicant for or holder of a scientific breeder's permit at any reasonable time to ensure compliance with the standards specified in §65.605 of this title (relating to Holding Facility Standards and Care of Deer).

(b) Each new facility or addition to an existing facility must be inspected prior to the placement of deer in that facility or addition.

(c) The department shall notify the applicant for or holder of a scientific breeder's permit of all deficiencies reported as a result of department inspections.

(d) A scientific breeder's permit shall not be issued or renewed until deficiencies have been corrected.

(e) When deficiencies exist, an applicant for a scientific breeder's permit may:

(1) correct the deficiencies and request that the department reinspect the facility; or

(2) withdraw the application.

(f) A scientific breeder whose facilities are found to be deficient shall:

(1) correct the deficiencies within 30 days of notification by the department; or

(2) relinquish the permit and dispose of the deer as prescribed by §65.612 of this title (relating to Disposition of Deer).

*§65.607. Marking of Deer.* Each deer held in captivity by a permittee shall be permanently marked for positive identification as prescribed in this section.

(1) Each deer shall have a metal tag attached to the ear as prescribed by Texas Parks and Wildlife Code, §43.356(b); and

(2) Each deer shall be permanently freeze-branded on the left hip with a 2" by 4" brand showing the letters "TX" together, or shall be tattooed in one ear with the serial number assigned to the scientific breeder.

(3) Fawns must be permanently marked by the first October 1 following birth.

#### §65.608. Annual Reports and Records.

(a) Each scientific breeder shall file an annual report by not later than October 15 of each year on a form provided by the department. The report shall cover the 12-month period of validity for the permit and account for the disposition of all deer by providing the following information:

(1) the number of deer possessed at beginning of report period;

(2) the number of deer sold or transferred and the name and address of each purchaser and/or recipient of each deer;

(3) the number of deer purchased and the name and address of person(s) from whom the deer were purchased;

(4) the number of fawns born during the reporting period;

(5) the number of deer that died and the cause of each mortality;

(6) the number of deer released into the wild and location of each release; and

(7) the number of deer possessed at the end of the reporting period.

(b) The annual report shall also indicate the results of any scientific research conducted authorized under the permit during the permit year.

(c) The holder of a scientific breeder's permit shall, on request, provide to the department adequate documentation as to the source or origin of all deer held in captivity.

#### §65.609. Purchase of Deer and Purchase Permit.

(a) Deer may be purchased or obtained for:

(1) holding for propagation purposes if the purchaser possesses a valid scientific breeder's permit; or

(2) liberation for stocking purposes.

(b) Deer may be purchased or obtained only from:

(1) a holder of a valid scientific breeder's permit; or

(2) a lawful out-of-state source.

(c) An individual may purchase or obtain deer only after a purchase permit has been issued by the department.

(d) The department may issue a purchase permit for liberation for stocking purposes if the department determines that:

(1) the release of deer will not detrimentally affect existing populations or systems; and

(2) the release is in accordance with the provisions of the department's stocking policy, §§52.101-52.105, 52.201, 52.202, 52.301 and 52.401 of this title (relating to Stocking Policy).

(e) Deer purchased or obtained for stocking purposes by an individual who does not possess a valid scientific breeder's permit may be temporarily held in captivity:

(1) to acclimate the deer to habitat conditions at the release site;

(2) when specifically authorized by the department;

(3) for a period to be specified on the purchase permit, not to exceed six months;

(4) if the deer are maintained as set forth in §65.605(a)(1)-(4) of this title (relating to Holding Facility Standards and Care of Deer); and

(5) if the deer are not hunted prior to liberation.

#### §65.610. Transport of Deer and Transport Permit.

(a) The holder of a valid scientific breeder's permit or a designated agent may, without any additional permit, transport legally possessed deer:

(1) to another scientific breeder when a valid purchase permit has been issued for that transaction;

(2) to an individual who does not possess a scientific breeder's permit if a valid purchase permit for release into the wild for stocking purposes has been issued for that transaction; and

(3) to and from an accredited veterinarian for the purpose of obtaining medical attention.

(b) The department may issue a transport permit to an individual who does not possess a scientific breeder's permit if the individual is transporting deer for liberation purposes and the deer were legally purchased or obtained from:

(1) a scientific breeder; or

(2) a lawful out-of-state source.

(c) All deer entering the boundaries of this state shall:

(1) be accompanied by a certificate of health, signed by an accredited veterinarian, which bears the purchaser's name and address, specifies the destination of the deer, and certifies that the deer:

(A) have been inspected by the veterinarian named on the certificate within ten days prior to the time of transport;

(B) are free of external parasites; and

(C) are free of evidence of contagious and communicable diseases; and

(2) be accompanied by a permit or document from the government agency authorizing the exportation of the deer from the state or country of origin, if such permit or document was required as a condition for export from the state or country of origin.

(d) Deer may not be transported for the purposes of this subchapter during any open season for deer or during the period beginning ten days immediately prior to an open season for deer unless:

(1) the antlers of any male deer have been removed immediately above the pedicel;

(2) the game warden in the county of origin of the deer and the game warden in the county of the destination of the deer have been notified in writing; and

(3) written permission has been granted by the game wardens in both the origin and destination counties and such written permission is carried with the deer during transportation.

#### §65.611. Prohibited Acts.

(a) Deer obtained from the wild under the authority of a permit or letter of authority issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter C or E shall not be commingled with deer held under a scientific breeder's permit.

(b) A person commits an offense if that person places or holds deer in captivity at any place or on any property other than property for which a scientific breeder's permit, or a permit authorized under other provisions of this title or Parks and Wildlife Code, is issued, except that a permittee may transport and temporarily hold deer at a veterinary facility for treatment.

(c) No live deer taken from the wild may be possessed under a scientific breeder's permit.

(d) No deer shall be held in a trailer or other vehicle of any type except for the purpose of immediate transportation from one location to another.

(e) Possession of a scientific breeder's permit is not a defense to prosecution under any statute prohibiting abuse of animals.

(f) No scientific breeder shall hunt or kill, or allow the hunting or killing of deer held in captivity pursuant to this subchapter.

(g) No scientific breeder shall exceed the number of deer allowable for the permitted facility, as specified by the department on the scientific breeder's permit.

#### §65.612. Disposition of Deer.

(a) Upon termination, suspension, or revocation of a scientific breeder's permit, the permittee shall dispose of all deer covered by the permit.

(b) Deer may be disposed of by sale or donation to another scientific breeder, by sale or donation to a holder of a zoological permit, or by release to the wild as specifically authorized by the department.

(c) Deer still in possession 30 days following termination, revocation, or suspension of a permit shall be disposed of at the discretion of the Department.

(d) Disposition of all deer shall be at the expense of the permittee.

§65.613. Penalties. A person who violates the provisions of this subchapter, a condition of a permit issued under the provisions of this subchapter or violates any provision of Parks and Wildlife Code, Chapter 43, Subchapter L commits an offense punishable by the penalty prescribed by Parks and Wildlife Code, §43.367.

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-9512080

Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife  
Department

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

## Chapter 69. Resource Protection

### Wildlife Rehabilitation Permits

The Texas Parks and Wildlife Department proposes the repeal of §§69.41, 69.43, 69.45, 69.47, 69.49, 69.51, 69.53, 69.55, and 69.57, and new 69.41, 69.43, 69.45, 69.47, 69.49, 69.51, 69.53, 69.55, and 69.57 concerning wildlife rehabilitation permits.

House Bill 1964, enacted by the 74th Legislature, repeals the department's present wildlife rehabilitation regulations as of September 1, 1995. The department is in the process of developing a wildlife rehabilitation policy that more effectively addresses the concerns of various concerned parties, but that process is not yet completed. In order to meet the statutory obligation to regulate wildlife rehabilitation in the interim, the department is repealing the regulations that will cease to exist on September 1, 1995, and is replacing with them with identical regulations until the new wildlife rehabilitation regulations are ready for proposal.

The repeals and new sections are necessary to implement the provisions of House Bill 1964.

The repeals and new sections will function by establishing the criteria and procedures by which permits for wildlife rehabilitation may be issued or cancelled by the department; providing for reporting requirements; and setting fees for the permits.

Robin Riechers, staff economist, has determined that for the first five years the rules as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rules as proposed.

Mr. Riechers also has determined that for the first five years the rules as proposed are in effect, the anticipated public benefit as a result of enforcing or administering the rules will be that qualified persons will be able to conduct wildlife rehabilitation.

There will be no effect on small businesses. The economic cost to persons required to comply with the rules as proposed will be the cost of the fees for the permits. The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, §2001.022, as this agency has determined that the rules as proposed will not impact local economies.

Comments on the proposed rules may be submitted to John Herron, Wildlife Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744, (512) 389-4771 or 1-800-792-1112, extension 4771.

- 31 TAC §§69.41, 69.43, 69.45, 69.47, 69.49, 69.51, 69.53, 69.55, 69.57

(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 Parks and Wildlife Department or in the

Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Parks and Wildlife Code, Chapter 43, Subchapter C, which provides the Parks and Wildlife Commission with the authority to establish regulations governing wildlife rehabilitation.

The repeals and new sections implement House Bill 1964, Acts of the 74th Texas Legislature, 1995.

§69.41. Purpose of Rules.

§69.43. Definitions.

§69.45. Applications and Permits.

§69.47. Permit Renewals.

§69.49. Violations and Enforcement.

§69.51. Hearings.

§69.53. Permit Requirements

§69.55. Annual Reports.

§69.57. General Facilities Standards

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 September 20, 1995.

TRD-9512083

Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife  
Department

Proposed date of adoption: November 2, 1995

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

The new sections are proposed under Parks and Wildlife Code, Chapter 43, Subchapter C, which provides the Parks and Wildlife Commission with the authority to establish regulations governing wildlife rehabilitation.

The new sections implement House Bill 1964, Acts of the 74th Texas Legislature, 1995.

§69.41. Purpose of Rules. The purpose of this subchapter is to implement the permit requirements of the Texas Parks and Wildlife Code, Chapter 43, Subchapter C for Rehabilitation Permits. It is intended to set out the requirements for issuing and renewing rehabilitation permits.

§69.43. Definitions. The following words and terms, when used in this subchapter,

shall have the following meanings, unless the context clearly indicates otherwise.

**Captive releases**—Release of wildlife to an enclosed area from which the animal is not likely to be able to leave at will.

**Co-permittee**—A person holding all rights and responsibilities under a permit with another person.

**Department**—The Texas Parks and Wildlife Department.

**Endangered species**—Any species listed or described by the department pursuant to the Texas Parks and Wildlife Code, Chapter 68.

**Holding**—Retaining in captivity.

**Human imprinting or human bonding**—An abnormal dependency or fixation upon humans as parent substitutes or as companions resulting from too much association with humans at an early age.

**Migratory birds**—A bird listed under or pursuant to the Migratory Bird Treaty Act (16 United States Code, 703-701).

**Non-releasable animal**—An injured animal, which after rehabilitation is determined by the department to be unlikely to survive in the wild if released.

**Protected wildlife**—A species, the possession or taking of which is regulated, prohibited, or controlled by state law or regulation.

**Raptor**—Birds of the order Falconiformes and Strigiformes.

**Rehabilitation**—The temporary caring for injured, orphaned, or sick wildlife until such animals can be released to the wild.

**Release to the wild**—Release of wildlife to an area where it is capable of leaving at will.

**Sub-permittee**—A person authorized by a permit to conduct activities only while under the supervisory responsibility of a permit holder or co-permittee.

**Supervisory responsibility**—The responsibility that a permit holder or co-permit holder has to direct the actions of an individual under his or her control, and for which that supervisor accepted legal responsibility.

**Taking**—The act of hooking, netting, snaring, trapping, pursuing, shooting, killing, or capturing by any means or device and includes the attempt to take by the use of any method.

**Threatened species**—Any species listed or described as threatened by the department pursuant to the Texas Parks and Wildlife Code, Chapter 67.

**Transportation**—The transfer of captive protected wildlife from one permit holder to another, from an out-of-state source to an in-state permit holder, from an in-state permit holder to an out-of-state destination, from site of legal capture to holding, or to site of final disposition.

#### §69.45. Applications and permits.

(a) Applications shall be filed on forms supplied by or approved by the Department.

(b) Applications shall contain a verified or sworn statement by the applicant attesting to the truth of the facts stated in the application.

(c) Applications shall be made in the name of an adult natural person except as provided in this section.

(d) Permits shall be issued under the authority of the Executive Director or his designee.

(e) Permits may not be issued until the applicant's facilities have satisfactorily passed an inspection conducted by a department representative.

(f) Any person holding a permit which authorizes holding of live protected wildlife shall provide for appropriate humanitarian care meeting at least the minimum standards set out in this subchapter.

(g) Permits for the taking or holding of migratory bird species shall not be valid unless the permit holder also obtains and maintains a valid federal permit.

(h) Permits may not be for the same species as permits issued to holders of other licenses or permits authorizing the propagation for sale of any protected wildlife other than finfish or aquatic invertebrates.

(i) Permits may not be issued without a finding that the permit applicant has the ability and intent to humanely care for and rehabilitate wildlife with the intent to eventually release them to the wild. At a minimum, the applicant must demonstrate formal educational training or actual experience in wildlife rehabilitation of the types of wildlife for which permit authority is sought.

(j) All protected wildlife, their offspring, and their parts taken or held under the authority of a permit issued pursuant to this subchapter remain the property of the State of Texas, and the department retains the authority to seize or direct the disposition of such specimens, including wild or captive release, or take any action necessary or convenient to protect the welfare of individual specimens or the species.

(k) Protected wildlife held under the authority of a rehabilitation permit may not be sold, bartered, or exchanged for any consideration but may only be disposed of or released as prescribed by permit provision and such disposition or release shall be reported to the department in a manner prescribed by this subchapter or by permit.

(l) Permits may be issued for any period of time not exceeding 3 years from date of issuance.

#### §69.47. Permit Renewals.

(a) All permits may be renewed in accordance with this subchapter subject to its requirements unless issued as non-renewable permits.

(b) Renewal applications shall be filed in writing on an application form provided by the department no later than the expiration date of the permit.

(c) All terms of the permit including the filing of complete annual reports must be fully complied with before a renewal can be granted.

(d) Applications for rehabilitating migratory birds shall contain a current federal permit number.

(e) A renewal may not be granted if the permit holder has been convicted of a state wildlife law violation within the 12 month period immediately preceding department action on the renewal.

(f) Denial of renewal may occur if the permit holder fails to meet any of the requirements for receiving or holding the original permit.

(g) Applications for renewal may not be acted upon while unresolved criminal charges are pending for alleged violation of state or federal wildlife laws or animal cruelty laws.

#### §69.49. Violations and enforcement.

(a) Any violation of the Texas Parks and Wildlife Code, rules and regulations of the commission, a proclamation of the commission, or any provision in the permit, including amendments, may result in suspension, probation, or revocation of a permit in addition to any applicable civil, criminal or administrative penalties.

(b) Any misrepresentation of material fact in an application or annual report is a violation of this subchapter.

#### §69.51. Hearings.

(a) An opportunity for hearing shall be provided to any applicant or permit holder for any denial of a permit, probationary terms of a permit, denial of a permit renewal, or issuance of a permit where the terms of issuance are materially different from those requested by the applicant and adversely affect the applicant's interests.

(b) Requests for hearings shall be made in writing before the expiration of 30 calendar days from the date of the adverse action.

(c) All hearings shall be conducted in accordance with the rules of practice and procedure of the Texas Parks and Wildlife Department and the Administrative Procedure and Texas Register Act.

#### §69.53. Permit requirements.

(a) A permit holder shall carry out all rehabilitation in a manner consistent

with the goal of returning wildlife to its native habitat.

(b) A permit holder shall carry out all rehabilitation in a humane manner and plan activities to return the injured animals to a condition which will allow them to survive in the wild.

(c) A permit holder shall conduct rehabilitation in an environment which minimizes human contact and prevents human and domestic animal imprinting.

(d) A permit holder shall not display animals under rehabilitation to the public unless specifically authorized by permit provision.

(e) A permit holder shall not conduct rehabilitation at the same location as or within 1,000 feet of a location where taxidermy is carried on except that rehabilitation permits may be issued as an incident to zoological parks and aquariums which are permitted under the authority of the Parks and Wildlife Code and which also conduct on-site taxidermy. This restriction may be waived by the department on a case-by-case basis if the department finds that the restriction represents an undue hardship on the permit holder due to circumstances beyond his or her control.

(f) Non-releasable protected wildlife may only be retained for approved educational, fostering, or socialization purposes incident to wildlife rehabilitation or transferred to other permitted rehabilitators, zoological permit holders, or educational permit holders in accordance with requirements of this subchapter and only after a written request for such retention or transfer has been made to and approved by the department.

(g) All permittee's facilities shall be subject to unannounced inspections by authorized department employees at reasonable times.

(h) The department may make such special provisions and limitations in a permit to retain non-releasable protected wildlife as are necessary to protect their welfare.

(i) Permit holders possessing non-releasable raptors shall band the raptors with markers supplied by the department.

(j) Releases of rehabilitated wildlife.

(1) A permit holder shall not release wildlife in such a manner or at such a location so that the released animals are likely to become a nuisance or a depredation threat.

(2) Wildlife releases which are made to fenced or enclosed areas without a reasonable expectation that the individuals will be able to leave at will may be considered as captive releases.

(3) Captive releases may subject the landowner or person in control of the premises to additional licensing require-

ments for holding protected wildlife in captivity or stocking protected wildlife.

(4) Protected wildlife shall be released only to habitat appropriate for the species.

(5) Terrestrial animals shall only be released in the county where they were acquired or found, or in an adjacent county unless specific written permission for release elsewhere is granted by the department.

(6) Protected wildlife may not be imported from another state or another country without a specific permit provision allowing such activity.

(k) All applications for permits, renewals and amendments shall provide the following information:

(1) Personal information which allows the identification of the applicant including full name, date of birth, sex, home address, and facility address;

(2) Each new application shall be supported by two references from acknowledged animal rehabilitation or veterinary authorities who have known the applicant for at least five years and who attest to the applicant's ability to handle and care for protected wildlife in a humane and effective manner;

(3) names of co-permittees and sub-permittees;

(4) a statement that the applicant has not been convicted of any wildlife law violations in the past 12 months;

(5) a verified or sworn statement attesting to the truth of the facts stated in the application;

(6) the name and address of at least one veterinarian who will be delivering care to animals in the permit holder's custody; and

(7) any other information determined by the department to be necessary to review the application.

(l) All new permit applicants' facilities shall be inspected by a representative of the department, and no permit shall be issued until the facilities are determined to satisfy all of the applicable facilities standards of this subchapter.

(m) The department may make special conditions in individual permits which are consistent with this subchapter and which are necessary to carry out the intent of this subchapter and the Texas Parks and Wildlife Code, Chapter 43, Subchapter C.

#### §69.55. Annual Reports.

(a) Permit holders shall file annual reports as required by the permit unless permission is granted for a later filing.

(b) Permit holders shall complete and submit an annual report on a form provided by or approved by the department and shall include, as a minimum, the information necessary to ascertain the species identification, injuries, treatment, and disposition of all animals handled during the reporting period.

#### §69.57. General Facilities Standards.

(a) Rehabilitation permit holders shall comply with the applicable facilities standards of this subchapter in addition to any specific requirements placed in their permits.

(b) Rehabilitation permit holders who possess or care for species regulated by Texas Parks and Wildlife Code, Chapter 12, Subchapter G, §§12. 601-12.607, Restricted Wild Animals and the rules adopted pursuant to that subchapter at 31 TAC §§55.201-55.211 of this title (relating to Restricted Wild Animals), are required to conform their facilities to the requirements of those rules as a condition of holding a permit pursuant to this subchapter.

(c) Permit holders shall provide confinement areas and cages for rehabilitation purposes appropriately sized, constructed, and maintained so as to provide a humane and safe environment for animals held under the authority of a permit issued pursuant to this subchapter.

(d) The department may specify individual caging requirements in each permit on a case-by-case basis depending upon the species, number, size, type and length of care required. In imposing individual standards, the department may be guided by similar requirements imposed by state and federal agencies regulating comparable activities.

(e) Clean water shall be available at all times except where medical circumstances require the temporary denial of water.

(f) Veterinary care shall be available to all animals.

(g) Feces and waste materials shall be removed on a daily basis except for species which normally re-ingest fecal material.

(h) Cages shall be cleaned and disinfected using effective and non-irritating methods.

(i) A person authorized by permit shall be in attendance at least once daily unless otherwise specified by the permit.

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 September 20, 1995.

TRD-9512084 Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife  
Department

Proposed date of adoption: November 2, 1995

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



## Texas Department of Insurance Exempt Filing

Notifications 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 tenth 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 2177 on November 9, 1995, at 1:30 p.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 staff of the Workers' Compensation Group of the Texas Department of Insurance pertaining to an amendment to Rule IX C. Volunteer Personnel-Political Subdivisions and amendment to Texas Volunteer Workers' Coverage Endorsement WC 42 03 03 contained in the Texas Basic Manual of Rules, Classifications and Experience Rating Plan of Workers' Compensation and Employers' Liability Insurance (manual). The purpose of these amendments is to implement the provisions of Labor Code, Subchapter E, §406.092, as added by the 74th Legislature.

The proposed amendments to Rule IX D. provides that an emergency service organization that is not a political subdivision or which is separate from any political subdivision may elect to obtain workers' compensation insurance coverage for its named volunteer members who participate in the normal functions of the organization. In addition, the volunteer member covered under a workers' compensation policy is entitled to full medical benefits and the minimum compensation payments under the law. The volunteer members of emergency service organizations are required to be classified and rated in accordance with the appropriate classifications shown in the Classifications Section of the manual. The remuneration to be used for premium deter-

mination of each volunteer member covered shall be the hourly wage rate for a beginning full time employee engaged in similar activities, subject to a maximum of \$5,200 annually. The staff proposal also includes minor changes to Texas Volunteer Workers' Coverage Endorsement WC 42 03 03, so that volunteer members of the emergency service organizations may be either designated by name or by classification if workers' compensation coverage is to be provided.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Article 5.96.

A copy of the petition containing the full text of the proposed changes to Rule IX D. and Endorsement WC 42 03 03 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-0995-28-I).

This notification is made pursuant to the Insurance Code, Article 5.96, 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 September 22, 1995.

TRD-9512204 Alicia M. Fechtel  
General Counsel and Chief  
Clerk  
Texas Department of  
Insurance

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



The Commissioner of Insurance at a hearing scheduled under Docket Number 2178 on November 9, 1995, at 1:30 p.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 staff of the Workers' Compensation Group of the Texas Department of Insurance pertaining to an amendment to Part Seven-Our Duty to You for Claim Notification,

Texas Amendatory Endorsement, WC 42 03 01. The purpose of this amendment is to implement the provisions of the Insurance Code, Article 5.65A(b), as amended by the 74th Legislature in House Bill 1933.

The proposed amendment to Endorsement WC 42 03 01 requires that the insurance company provide the requested claim information to the policyholder in writing not later than the 30th day after the date the company receives the policyholder's written request for the information. The information is considered to be provided on the date that the information is received by the United States Postal Service or personally delivered.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.56A, 5.56, 5.57, and 5.96.

A copy of the petition containing the full text of the proposed changes to Endorsement WC 42 03 01 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-0995-29-I).

This notification is made pursuant to the Insurance Code, Article 5.96, 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 September 22, 1995.

TRD-9512206 Alicia M. Fechtel  
General Counsel and Chief  
Clerk  
Texas Department of  
Insurance

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



The Commissioner of Insurance at a hearing scheduled under Docket Number 2179 on November 9, 1995, at 1:30 p.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 Texas Workers' Compensation Insurance

Fund (Fund) pertaining to an amendment to Rule VII—Premium Discount in the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance (Manual).

The proposed amendment to Rule VII of the manual provides that the premium discount rule does not apply to risks written through the Texas Workers' Compensation Insurance Fund pursuant to Insurance Code, Article 5.76-4. For the purposes of conforming with the Legislative intent of Insurance Code, Article 5.76-4, the Fund requests that the Commissioner approve the amendment to Rule VII retroactive to January 1, 1994, the date the Fund assumed the role of insurer of last resort.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.76-3, 5.76-4, and 5.96.

A copy of the petition containing the full text of the proposed changes Rule VII of the manual 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-0995-30).

This notification is made pursuant to the Insurance Code, Article 5.96, 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 September 22, 1995.

TRD-9512208 Alicia M. Fachtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

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

The Commissioner of Insurance, at a public hearing under Docket Number 2180 scheduled for November 9, 1995, at 1:30 p.m. 1995 in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a staff petition. Staff's petition proposes changes in the Texas Automobile Rules and Rating Manual (the Manual) as required by Senate Bill 3 of the 74th Legislature. Amending Rule 33, Rule 55, Rule 58, Rule 85, Rule 87, Endorsement TE 23 30B, and Endorsement TE 24 03A, to be redesignated TE 23 30C and TE 24 03B, respectively. Staff's petition (Reference Number A-0995-33-I) was filed on September 19, 1995.

The proposed changes would bring the Manual into compliance with Senate Bill 3, which relates to the regulation of motor carriers and transfers the responsibility from the Railroad Commission to the Department of Transportation. Where appropriate, Manual references

to the Railroad Commission would be replaced by references to the Department of Transportation, whose staff has concurred in these proposals. Statutory references in the above endorsements have been updated, and all proposals in the petition are routine in nature.

A copy of the petition containing the full text of the proposed amendments to the Manual is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 322-4147 (refer to Reference Number A-0995-33-I).

The written comments should be directed to Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to David Durden, Deputy Commissioner, Property and Casualty Insurance Lines, Texas Department of Insurance, P.O. Box 149104, MC 104-5A, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

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 September 22, 1995

TRD-9512210 Alicia M. Fachtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

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

The Commissioner of Insurance, at a public hearing under Docket Number 2181 scheduled for November 9, 1995, at 1:30 p.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a staff petition. Staff's petition seeks amendment of the Texas Automobile Rules and Rating Manual (the Manual), to adopt new and/or adjusted 1991-1995 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Reference Number A-0995-34-I) was filed on September 19, 1995.

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability, and other relevant loss factors for the various model years of the listed vehicles. The deletions shown in the exhibit attached to staff's petition are symbols used by Insurance Services Office (ISO) for multi-purpose and utility type vehicles for 1994 and prior year models, which will continue to be rated according to the traditional method set forth in the Manual, page 2 of the Symbol and Identification Section. For 1995 and later year mod-

els, excluding customized vehicles, the symbol for each multi-purpose and utility type vehicle must be used in the same manner as the symbol for a private passenger auto, as required by Commissioner's Order Number 95-0607, effective September 1, 1995. The operative provisions of that order have been printed in the Manual.

A copy of the petition containing the full text of the proposed amendments to the Manual is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 322-4147 (refer to Reference Number A-0995-34-I).

The written comments should be directed to Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to David Durden, Deputy Commissioner, Property and Casualty Insurance Lines, Texas Department of Insurance, P.O. Box 149104, MC 104-5A, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

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 September 22, 1995

TRD-9512212 Alicia M. Fachtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

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

The Commissioner of Insurance, at a public hearing under Docket Number 2182 scheduled for November 9, 1995, at 1:30 p.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a petition filed by Nationwide Insurance Companies (Nationwide). The petition seeks amendment of the Texas Automobile Rules and Rating Manual (the Manual), Rule 74H, to add a new optional discount, called "companion policy discount." The petition (Reference Number A-0195-1) was filed on January 9, 1995.

Nationwide proposes a new category of discount by which the applicable premium rates to be charged under an auto policy for liability and physical damage coverages may be reduced by up to ten percent when the named insured under the auto policy is also a named insured under either a homeowners or residential fire insurance policy issued by the same company or company group. The discount would not apply to UM/UIM coverages. This discount is similar to that provided in the Personal Lines Manual by which the rates to be charged under the homeowners or resi-



dential fire insurance policy may be reduced by up to ten percent when a companion policy is issued.

A copy of the petition containing the full text of the proposed amendments to the Manual is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 322-4147 (refer to Reference Number A-0195-1).

Any written comments should be directed to Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to David Durden, Deputy Commissioner, Property and Casualty Insurance Lines, Texas Department of Insurance, P.O. Box 149104, MC 104-5A, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

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 September 22, 1995.

TRD-9512235

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

For further information, please call: (512) 463-6328



The Commissioner of Insurance will hold a public hearing under Docket Number 2183 on November 9, 1995, at 1:30 p.m., in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, to consider a petition by the staff of the Texas Department of Insurance proposing amendatory mandatory endorsements to residential property insurance policies and amendments to the Homeowners, Dwelling, Farm and Ranch Owners, and Farm and Ranch sections of the Texas Personal Lines Manual. The petition requests consideration of proposed endorsements and Manual rule amendments to provide that a claim that is filed under a residential property policy but is not paid or payable under the policy cannot be counted for purposes of premium surcharges or refusal to renew under Article

21.49-2B, §7 of the Insurance Code. The proposed amendatory mandatory endorsements and the policies to which these endorsements are to be attached are: (1) Endorsement HO-197/all Texas Homeowner's Policies, (2) Endorsement Number TDP-097/Texas Dwelling Forms 1 and 2, (3) Endorsement Number TDP-098/Texas Dwelling Form 3, (4) Endorsement Number FRO-497/all Texas Farm and Ranch Owner's Policies, (5) Endorsement Number TFR-097/Texas Farm and Ranch Forms 1 and 2, and (6) Endorsement Number TFR-098/Texas Farm and Ranch Form 3. The proposed Manual rules to be amended relating to permissibility of premium surcharges for number of claims filed include: (1) Rule IV-C-6-A in the Homeowner's Section, (2) Rule IV-M-1 in the Dwelling Section, (3) Rule IV-C-2-A in the Farm and Ranch Owner's Section, and (4) Rule IV-O-1 in the Farm and Ranch Section. The proposed Manual rules to be amended relating to refusal to renew due to losses include: (1) Rule V-G in the Homeowner's Section, (2) Rule V-J in the Dwelling Section, (3) Rule V-F in the Farm and Ranch Owner's Section, and (4) Rule V-J in the Farm and Ranch Section.

These endorsements and Manual rule amendments are necessary because of the passage of House Bill 46 (Acts 1995, 74th Legislature, Chapter 888, §1, effective September 1, 1995) by the 74th Texas Legislature which amended Article 21.49-2B §7(a) of the Insurance Code to provide that a claim that is filed under a residential property policy but is not paid or payable under the policy cannot be counted for purposes of premium surcharges or refusal to renew under Article 21.49-2B, §7. This legislation applies only to those claims filed with the insurer on or after September 1, 1995. While the statutory prohibition enacted in House Bill 46 is not required by Article 21.49-2B §7 to be included in the residential property insurance policy forms, staff is proposing such inclusion so that policyholders will be aware of the prohibition. Article 21.49-2B, §7 provides that insurers may assess a premium surcharge in certain instances, including at the time a policy is renewed if the insured has filed two or more claims in the preceding policy year and if an insurer renews a policy of an insured who has filed three or more claims under the policy in a three-year period. Article 21.49-2B, §7 also provides that an insurer may decline to renew a policy if the insured has filed three or more claims under the policy in any three-year period and that an insurer may notify an insured who has filed two claims in a period of less than three years that the insurer may decline to renew the policy if the insured files a third claim during the three-year period.

House Bill 46 was enacted by the legislature because of the practice of some insurers in Texas to count as claims, for purposes of premium surcharges or refusal to renew under Article 21.49-2B, §7 of the Insurance Code, situations of residential property losses less than the insured's deductible that result in no losses being paid by the insurer and simple inquiries by policyholders to agents or insurers about possible residential property losses which also do not result in any losses being paid by the insurer.

Although the statutory prohibition enacted in House Bill 46 applies to all residential property insurance claims filed with the insurer on or after September 1, 1995, the new endorsements and Manual rules are proposed to become effective for all residential property insurance policies issued or renewed on or after January 1, 1996.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 21.49-2B, 5.35, and 5.96.

Copies of the full text of the staff petition and the proposed endorsements and Manual rule amendments are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. For further information or to request copies of the petition and proposed amendments, please contact Angie Arizpe at (512) 322-4147 (refer to Reference Number P-0995-35-I).

Comments on the proposals must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to the Office of the Chief Clerk, P.O. Box 149104, MC113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Lyndon Anderson, Associate Commissioner for Property and Casualty Division, P.O. Box 149104, MC103-1A, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

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 September 22, 1995.

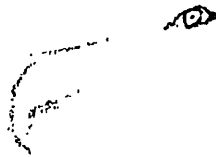
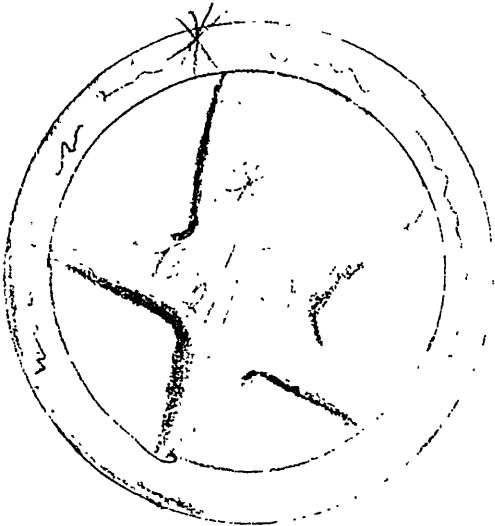
TRD-9512246

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

For further information, please call: (512) 463-6328



Name: Chad Smith  
Grade: 10  
School: China Spring High School, China Spring ISD



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# WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the **Texas Register**. The notice is effective immediately upon filing or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the **Texas Register**, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the **Texas Register**.

## TITLE 4. AGRICULTURE Part I. Texas Department of Agriculture

### Chapter 6. Boll Weevil Control

#### • 4 TAC §6.4

The Texas Department of Agriculture has withdrawn the emergency effectiveness of amendment to §6.4, concerning the boll weevil control. The text of the emergency amendment appeared in the September 15, 1995, issue of the *Texas Register* (20 TexReg 7249). The effective date of this withdrawal is September 25, 1995.

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

TRD-9512250

Dolores Alvarado Hibbs  
Chief Administrative Law  
Judge  
Texas Department of  
Agriculture

Effective date: September 25, 1995

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

## TITLE 10. COMMUNITY DEVELOPMENT

### Part V. Texas Department of Commerce

#### Chapter 187. Job Training Partnership Act Rules

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

#### • 10 TAC §187.106

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed new §187.106, submitted by the Texas Department of Commerce, has been automatically withdrawn, effective September 12, 1995. The new section as proposed appeared in the March 10, 1995, issue of the *Texas Register* (20 TexReg 1734).

TRD-9511673

#### Subchapter G. Eligibility Pol- icy and Procedures

#### • 10 TAC §187.241

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed amendment to §187.241, submitted by the Texas Department of Commerce, has been automatically withdrawn, effective September 12, 1995. The amendment as proposed appeared in the March 10, 1995, issue of the *Texas Register* (20 TexReg 1734).

TRD-9511675

## TITLE 16. ECONOMIC REGULATION

### Part VIII. Texas Racing Commission

#### Chapter 313. Officials and Rules of Horse Racing

#### Subchapter B. Entries, Declara- tions, and Allowances

#### Declarations and Scratch Pro- cedure

#### • 16 TAC §313.132

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed amendment to §313.132, submitted by the Texas Racing Commission, has been automatically withdrawn, effective September 8, 1995. The amendment as proposed appeared in the March 7, 1995, issue of the *Texas Register* (20 TexReg 1605).

TRD-9511543

#### Chapter 321. Pari-mutuel Wagering

#### Subchapter C. Simulcast Wa- gering

#### General Provisions

#### • 16 TAC §321.208

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed amendment to §321.208, submitted by the Texas Racing Commission, has been au-

tomatically withdrawn, effective September 8, 1995. The amendment as proposed appeared in the March 7, 1995, issue of the *Texas Register* (20 TexReg 1607).

TRD-9511542

## TITLE 25. HEALTH SER- VICES

### Part I. Texas Department of Health

#### Chapter 115. Home and Community Support Services Agencies

#### Subchapter A. General Provi- sions

#### • 25 TAC §115.2

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed amendment to §115.2, submitted by the Texas Department of Health, has been automatically withdrawn, effective September 12, 1995. The amendment as proposed appeared in the March 10, 1995, issue of the *Texas Register* (20 TexReg 1739).

TRD-9511676

#### Subchapter C. Service Stan- dards

#### • 25 TAC §115.22, §115.26

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed amendments to §115.22 and §115.26, submitted by the Texas Department of Health, has been automatically withdrawn, effective September 12, 1995. The amendments as proposed appeared in the March 10, 1995, issue of the *Texas Register* (20 TexReg 1739).

TRD-9511674

#### Subchapter E. Home Health Aides and Medication Aids

#### • 25 TAC §115.61

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the pro-

posed amendment to §115.61, submitted by the Texas Department of Health, has been automatically withdrawn, effective September 12, 1995. The amendment as proposed appeared in the March 10, 1995, issue of the *Texas Register* (20 TexReg 1740).

TRD-9511672

◆ ◆ ◆  
TITLE 37. PUBLIC  
SAFETY AND CORREC-  
TIONS

Part IX. Commission on  
Jail Standards

Chapter 259. New Construction  
Rules

New Medium-Risk Design,  
Construction and Furnishing  
Requirements

• 37 TAC §259.324

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed amendment to §259.324, submitted by the Commission on Jail Standards, has been automatically withdrawn, effective September 8, 1995. The amendment as proposed appeared in the March 7, 1995, issue of the *Texas Register* (20 TexReg 1630).

TRD-9511540

# 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 I. Office of the Governor

#### Chapter 4. Automobile Theft Prevention Authority

##### • 1 TAC §4.36

The Automobile Theft Prevention Authority (ATPA) adopts an amendment to §4.36, concerning the administration of the (ATPA) program, with changes to the proposed text as published in the April 11, 1995, issue of the *Texas Register* (20 TexReg 2689).

The amendment is necessary to ensure that the applicants for funds have complete information concerning the level of funding for grant projects.

The amendment adopts a level of funding for projects receiving ATPA funding and establishes ratios of maximum ATPA funds and minimum local cash and/or in-kind contributions from grantees.

The ATPA received written and oral comments on the amendment from the Galveston County Auto Crimes Task Force. A summary of those comments is as follows.

(1) ATPA funding should be at 80% of the total costs of the funded project, rather than at 80% of the previous ATPA grant award. As an alternative, ATPA should fund salaries at 100% of costs with a 5% cost-of-living increase and other costs at 80%. The ATPA disagrees with these comments in that such an approach would be inconsistent with the intent of ATPA's grants program which is to provide initial funding for automobile theft prevention programs and to allocate ATPA funds to those areas that do not have existing programs. The ATPA's decision to fund third-year programs at 80% of the previous year's grant amount makes those funds available for other projects.

(2) The ATPA should not award inefficiencies in estimating costs by allowing grantees to utilize money that is left over from the fiscal year 1995 grants. The ATPA agrees with this comment and has deleted that provision from its proposed rules.

The amendment is adopted under Texas Civil Statutes, Article 4413(37), §6(a), which authorizes the Automobile Theft Prevention Au-

thority to adopt rules to implement its powers and duties.

Texas Civil Statutes, Article 4413(37) is affected by this adoption.

#### §4.36. Level of Funding for Grant Projects.

(a) The level of funding for projects receiving ATPA funding will be at the following ratios of maximum ATPA funds and minimum local cash and/or in-kind contributions (ATPA-funded indirect costs excluded):

Local ATPA Funds Contribution Year (maximum) (minimum)
First 100% 0%
Second 100% 0%
Third 80% 20%
Fourth 60% 40%
Fifth 60% 40%

(b)-(c) No change.

(d) For Fiscal Year 1996 only:

(1) Grantees who are in their 80% ATPA funding year may either apply for 80% of the Fiscal Year 1995 funds without match, or provide documentation for 20% of cash and/or in-kind contribution match, if the grantee chooses to show its local contribution to the grant program.

(2) Cash and/or in-kind contributions which have been previously documented and submitted to ATPA can be accrued for credit for the respective grantee, for the sole purpose of satisfying the 20% match, if the grantee chooses to show its local contribution to the grant program.

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

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

TRD-9512196

Linda Young  
Executive Director  
Texas Department of  
Transportation

Effective date: October 13, 1995

Proposal publication date: April 11, 1995

For further information, please call: (512) 467-3999

## Part IV. Office of the Secretary of State

### Chapter 105. Solicitations

#### Subchapter C. Telephone Solicitations

##### • 1 TAC §§105.201, 105.204-105.207

The Office of the Secretary of State adopts new §105.201 and §§105.204-105.207, without changes to the proposed text as published in the August 18, 1995, issue of the *Texas Register* (20 TexReg 6291).

These rules are adopted to increase filing efficiency and the payment of claims in the administration of the Texas Telephone Solicitation Act.

No comments were received regarding adoption of the rules.

The rules are adopted under the authority of the Telephone Solicitation Act, Texas Civil Statutes, Article 5069-18.01, et seq (Vernon Supplement 1995), which requires the Secretary of State to accept registrations filed under the Act.

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 September 20, 1995.

TRD-9512261

Clark Kent Ervin  
Assistant Secretary of  
State  
Office of the Secretary of  
State

Effective date: October 16, 1995

Proposal publication date: August 18, 1995

For further information, please call: (512) 463-5702

# TITLE 4. AGRICULTURE

## Part II. Texas Animal Health Commission

### Chapter 35. Brucellosis

#### Subchapter A. Eradication of Brucellosis in Cattle

##### • 4 TAC §§35.1, 35.2, 35.4, 35.6, 35.7

The Texas Animal Health Commission adopts amendments to §§35.1, 35.2, 35.4, 35.6, and 35.7, concerning the implementation of the Brucellosis Free Planning Project recommendations, with changes to the proposed text as published in the July 28, 1995, issue of the *Texas Register* (20 TexReg 5556).

The amended rules are necessary for establishing categories of and testing requirements for test-eligible cattle; allowing reactor animals to be permitted to market only if approved by the Executive Director; setting requirements for quarantine release; clarifying responsibility for change of ownership testing; requiring testing prior to movement to Mexico for slaughter; requiring retest of units not depopulated after indemnity payment, and allowing indemnity for Strain 19 reactors.

Two comments were received regarding adoption of the amendments. First, the Texas Cattle Feeders Association noted that the language in §35.2(r)(4) should be clarified to state that cattle destined for designated pens may not be held in common receiving areas, and that §35.2(r)(7) should have the requirement of individual identification for interstate movement removed to conform with federal requirements. The Commission agrees with this comment and the regulation is adopted with these changes. Second, the Livestock Marketing Association noted that the requirement in §35.2(j) that reactor cattle may only be sold to slaughter through a livestock market if approved by an epidemiologist is too onerous for the producer. The Commission agrees with this comment and adopts the regulation with the requirement that these animals must move direct to slaughter if the Executive Director determines there is a significant risk of spread of brucellosis. Finally, the Commission adopted the changes to §35.4(d) with the clarification that steers, spayed heifers, and feedlot finished bulls and heifers are not required to be tested prior to export to Mexico.

The amendments are adopted under the Texas Agriculture Code, Texas Civil Statutes, §163.061, which provide the Commission with the authority to adopt rules regarding testing, vaccination, and movement.

The amendments implement the Agriculture Code, §§163.002, 163.064, 163.065, 163.066, 163.068, and 163.069, which provides the Commission with the authority to regulate and require vaccination, testing, handling of infected animals, and movement; to pay indemnity; and to establish herd plans.

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

**Designated Pens**—A set of pens in a feedlot under a plan of restricted movement, approved jointly by Animal and Plant Health Inspection Service, Veterinary Services, and the Commission in which all cattle are classified as exposed to brucellosis. The pens may be pre-approved, but the approval period will begin with initial arrival of the exposed cattle. The Designation will be automatically renewed every 12 months if requirements specified in these regulations and the approved agreement continue to be met by the feedlot. The status will continue until:

(A) the feedlot requests deactivation; or

(B) the Commission determines the status should be eliminated because of the feedlot's failure to comply with the Designation Agreement or these regulations; or

(C) changes in Federal or State law or regulations require elimination of or change in the status.

**Official Vaccinate** —

(A) **Calfhood Vaccinate:** Female cattle (dairy and beef) vaccinated between four and ten months of age with an approved *Brucella* vaccine.

(B) **Adult Vaccinate:** Female cattle that have been blood tested negative within ten days prior to vaccination and vaccinated at an age over the ages given in subparagraph (A) of this paragraph with an approved dose of *Brucella* vaccine as part of a whole herd vaccination plan.

**Priority Herd**—Exposed herd from which a reactor has been classified, infected herd, or adjacent herd.

**Test Eligible Cattle in Priority Herds**—All non-vaccinated female cattle four months of age and older, and all cattle designated as test eligible in herds other than priority herds.

**Test-Eligible Cattle in other than Priority Herds**—All cattle 18 months of age and over (as evidenced by the loss of the first pair of temporary incisor teeth), except steers, spayed heifers, official calfhood vaccinates of dairy breeds under 20 months of age, and official calfhood vaccinates of beef breeds under 24 months of age (24 months of age as evidenced by the first pair of fully erupted permanent incisor teeth). Official calfhood vaccinates that are parturient (springers) or postparturient are test-eligible regardless of age.

##### §35.2. General Requirements.

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

(d) Requirements for a herd test.

(1) Test eligibility.

(A) Priority herds

(i) All non-vaccinated female cattle four months of age and older; and

(ii) All cattle designated as test-eligible in other than priority herds.

(B) Other than priority herds—All non-exempt cattle 18 months of age and older except steers, spayed heifers, official vaccinates of dairy breeds under 20 months of age, and official calfhood vaccinates of beef breeds under 24 months of age. Official calfhood vaccinates that are parturient or post parturient are test-eligible regardless of age.

(2) Calfhood vaccination requirements. All female cattle between four and ten months of age in priority herds must be vaccinated at the time of testing.

(3) Identification requirements. All cattle tested shall be identified with either an official eartag, an individual registration tattoo, or individual registration brand. All cattle in priority herds except steers, spayed heifers, and bulls under 18 months of age must be officially identified regardless of test eligibility.

(e) Requirements of a market test.

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

(7) Cattle which show a positive reaction to the card test shall have another blood sample collected from them by an inspector. The inspector will conduct another card test and the CITE test or deliver the sample to a laboratory for a PCFIA test. If negative to the CITE or PCFIA tests the officially vaccinated cattle shall be classified negative for intrastate movement only and marked on the hip with yellow paint. If negative to the CITE or PCFIA tests, the nonvaccinated cattle shall be classified as suspect(s) and may be permitted to return to the premises of origin under hold order for retest or be "S"-branded and permitted to slaughter or to a quarantined feedlot or designated pen. The remainder of the consignment may move unrestricted. Samples tested with the CITE test shall then be submitted to a state/federal laboratory in a vacutainer for supplemental testing and accompanied by a completed Form 91-28 which lists only the card positive cattle.

(f)-(g) (No change.)

(h) Identification of brucellosis affected cattle.

(1) (No change.)

(2) Exposed Cattle. All exposed cattle moving to a quarantined feedlot, designated pen, quarantined pasture, or to slaughter shall be identified by branding with a hot iron the letter "S" (at least 2 x 2 inches) placed on the left jaw, or high on the tailhead so as to be visible from ground level. Identification shall be prior to movement, except exposed cattle on the premise of origin may be "S" permitted to a livestock market where they shall be identified by "S" brand upon arrival. Exposed cattle returned from the livestock market to the herd of origin are exempt from such identification.

(3) Suspects. Cattle classified as suspects in markets will be identified as exposed cattle.

(i) Movement of cattle classified as reactors, exposed or suspects. There shall be no diversion from the permitted destination. When moved, the cattle must be maintained separate and apart from all other classes of livestock in designated pens reserved for this purpose at livestock markets or trucking facilities. These pens must be thoroughly cleaned and disinfected before reuse.

(1) (No change.)

(2) Exposed cattle. All exposed cattle moving from a premise of origin or from a livestock market to a quarantined pasture, designated pen, quarantined feedlot, or to immediate slaughter shall remain on the premise where disclosed until an "S" permit VS Form 1-27 for movement has been prepared by a TAHC Representative and signed by the person or other legal entity moving the cattle. The completed "S" permit shall accompany the shipment of cattle to the permitted destination. Movement for immediate slaughter must be to a slaughtering establishment where Federal or State meat inspection is maintained or to a livestock market for sale to such slaughtering facility.

(3) Suspects. Suspects will be moved the same as exposed cattle, except a vaccinated suspect(s) at a livestock market in a consignment of otherwise negative cattle, (where the suspect is card positive on the presumptive test and negative to the CF or Rivanol Test(s)) may move as follows: In a single consignment of cattle, which are from a producer's herd of origin, the owner shall either return the vaccinated suspect(s) under quarantine to the herd of origin until the suspect(s) is negative to the card test, declared a stabilized suspect by an epidemiologist after subsequent test(s) conducted in not less than 30 days, or classified as a reactor on a subsequent test; or sell the suspect(s) to a quarantined feedlot, designated pen, quarantined pasture, or to slaughter, identified with an "S" brand.

Card negative cattle in this consignment may return to the herd of origin or move to another premise within the State or move interstate. Consignments containing a card positive but CF or Rivanol negative nonvaccinated suspect(s) shall be identified and moved as exposed cattle or returned to the premises of origin under quarantine.

(j) Immediate slaughter of reactors. Reactor cattle shall be sold for immediate slaughter and removed from the premise under "B" permit within 15 days from the date of identification for beef cattle and within seven days from the date of identification for dairy cattle. Movement for immediate slaughter shall be to a slaughtering establishment where Federal or State inspection is maintained or to a livestock market for sale to such a slaughtering establishment. When it has been determined by the Executive Director that a specific reactor or reactors present a significant risk of spread of brucellosis, those specific animals must move direct to slaughter and may not be moved to a livestock market.

(k) Removal of heifer calves from quarantined herds. Heifers born in an infected herd shall be removed from the herd immediately after they are weaned and moved to a market, quarantined pasture, designated pen, quarantined feedlot, or slaughter or kept as a separate heifer herd under quarantine.

(l) Requirements following classification of a dairy or a beef animal or a bison as a reactor or a suspect.

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

(3) An initial test of the herd which contained the reactor(s) or the suspect(s) and/or any other affected, adjacent or high risk herds will be conducted in accordance with subsection (d) of this chapter within a specified time set by state-federal personnel upon consultation with each herd owner unless waived by epidemiologist. If the Executive Director determines, based on epidemiological principles, that immediate action is necessary, the time for testing may be set without consultation with the herd owner.

(4) The results of the initial herd test of the herd which contained the reactor(s) or the suspect(s) and/or any other affected, adjacent or high risk herds will be used to determine the need for, and development of, an individual herd plan for prevention or elimination of brucellosis in that herd. The plan shall be developed by a State-Federal veterinarian of the brucellosis control program in consultation with the herd owner or caretaker and his veterinarian (if so requested by the owner). The plan developed by the Commission shall be final and the owner or caretaker will be provided a copy. Any proposed herd plan which has identified special management requirements

will be reviewed by a State-Federal epidemiologist who will either support or modify the plan. A regional epidemiologist may waive vaccinating cattle over eight months of age in infected herds. The terms and conditions of a herd plan may be amended in writing by the Commission upon good cause.

(5) The plan will consist of the following:

(A) Testing Procedures.

(i) all eligible cattle in the herd including all nonvaccinated heifers over four months of age shall be presented for testing or retesting at intervals stated in the herd plan until the quarantine is released.

(ii)-(v) (No change.)

(B) Vaccination Procedures.

(i)-(iii) (No change.)

(iv) previously vaccinated negative female cattle shall be presented for revaccination with Strain 19, B. abortus vaccine as determined by the epidemiologist.

(6) (No change.)

(7) Requirements for Quarantine Release.

(A) A herd is eligible for quarantine release following a minimum of three consecutive herd blood tests that are classified as negative. The first negative test shall be conducted at least 30 days after the last reactor is removed from the herd. The second negative test shall be conducted at least 120 days after the last reactor is removed from the herd. The third negative test shall be conducted a minimum of 12 months after the last reactor is removed from the herd.

(B) Heifers born in the herd and were removed from the herd and kept separately shall remain under quarantine until they test negative 30 days following calving.

(C) On the releasing test, official vaccinates that react demonstrate suspect titers on the approved supplemental test shall be classified as suspects. After suspects are stabilized, the remainder of the herd may be released from quarantine. These suspects shall remain under a hold order.

(D) To obtain a quarantine release, the owner/caretaker shall retest all test-eligible cattle in units not under quaran-

tine. The retest must be conducted not less than six months after the removal of the last reactor from the quarantined unit. This retest, together with the third negative test of the quarantined unit, may be used for herd certification if conducted no more than 14 months following a negative herd test after the removal of the last reactor. A designated brucellosis epidemiologist may exempt units from these retest requirements.

(E) Epidemiological data may be considered in the release of the quarantine.

(m) (No change.)

(n) Community notification of infected herds.

(1) The status of infected herds and the application of quarantined feedlots, designated pens, and quarantined pastures are to be made known to herd owners in the immediate community. Notification of such herd owners may be achieved by means of an educational letter delivered through personal contact or by mail. When the herd has completed its individual herd plan, or the Quarantined Premise approval is terminated, the herd owners shall also be notified within 30 days by means of an educational letter delivered by personal contact or by mail.

(2) (No change.)

(o) Requirements for a quarantined feedlot. All parturient and postparturient cattle must be officially tested for brucellosis within 30 days prior to entry into a quarantined feedlot. All cattle except steers and spayed heifers in a quarantined feedlot shall be classified as exposed to brucellosis. The quarantined feedlot shall be maintained for finish feeding of cattle in drylot with no provisions for pasturing or grazing except in adjacent quarantined pastures. Negative exposed and untested test-eligible cattle must be permanently identified with a hot iron "S" brand either on the left jaw or high on the tailhead upon entering the quarantined feedlot. All cattle except steers and spayed heifers located in feedlots adjacent to quarantined pastures must be permanently identified with a hot iron "S" brand either on the left jaw or high on the tailhead upon entering such feedlots. All cattle except steers and spayed heifers leaving such feedlot must go directly to slaughter; or may be moved directly to another quarantined feedlot or designated pen with an "S" permit; or may be "S"-branded at the feedlot and move to a market to be sold for movement with an "S" permit issued at the market directly to another quarantined feedlot, to designated pens or directly to slaughter.

(p) Requirements of a quarantined pasture for "S"-branded heifers. The Commission in conjunction with the United

States Department of Agriculture (USDA), Animal and Plant Health Inspection Services (APHIS), Veterinary Services (VS) may issue an approval to a landowner or operator to operate a quarantined pasture for a period not to exceed eight months, which approval is personal to the person named, and nontransferable to any other premises from the premises described in the approval. To be considered, an applicant must submit a completed application in writing to the Texas Animal Health Commission. Hereafter, the word "operator" is used to indicate the person who received the approval to operate a quarantined pasture.

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

(4) The operator shall obtain an "S" brand permit for all heifers prior to their leaving the quarantined pasture and shall be responsible for their moving either:

(A) to a market to be sold for movement directly to slaughter or to a quarantined feedlot or designated pen; or

(B) (No change.)

(C) directly to a quarantined feedlot or designated pen.

(5) (No change.)

(6) An applicant denied approval may reapply any time upon a substantial change in circumstances.

(q) Market cattle identification. All test-eligible cattle which are being moved from markets to slaughtering establishments shall be identified by a USDA approved backtag placed just below the midline and just behind the shoulder of the animal. The check-in document will identify each backtagged animal to the consignor.

(r) Requirements for Designated Pens. Cattle exposed to brucellosis may be moved into designated pens in feedlots provided they meet the following requirements:

(1) The designated pens shall be maintained for finish feeding of cattle in dry lot with no provisions for pasturing or grazing.

(2) Double cattle-proof fences shall separate the designated pens from the remainder of the feedlot with at least 12 feet of space between the fences where cattle are not maintained. An alley may satisfy this separation requirement as long as neither food nor water is available and cattle are not maintained in the alley.

(3) All parturient and post parturient cattle must be officially tested negative for brucellosis within 30 days prior to entry into designated pens, classified as exposed to brucellosis and handled as specified in this section.

(4) Cattle going to designated pens will be unloaded and moved directly into those pens, and not held in common receiving areas used for cattle not destined for designated pens.

(5) All cattle must be permanently identified with a hot iron "S" brand either on the left jaw or high on the tailhead upon entering the designated pens.

(6) Cattle fed in designated pens may be processed or treated in common processing, sick, or hospital areas if the common area is cleaned and disinfected with an approved disinfectant after each use for these cattle and prior to use by cattle not from designated pens. If separate facilities are used for cattle from designated pens, cleaning and disinfecting are not necessary.

(7) All cattle leaving such designated pens must go directly to slaughter accompanied by a VS 1-27 permit.

(8) Detailed records of all cattle entering and leaving the designated pens, including dates and numbers of cattle, must be maintained by the feedlot for inspection by Commission representatives.

(9) If designated pen status is eliminated or deactivated, either on the feedlot's request or on determination by the Commission, the designated pen status will be removed after the need for cleaning and disinfecting of the designated pens is evaluated.

(s) Entering premises. Representatives engaged in the Brucellosis Control Program are authorized to enter into any property for the exercise of any authority or the performance of any duties authorized in this regulation and shall practice such sanitary procedures so as to minimize the risk of physically transmitting the disease to other premises. Owners and caretakers owning or having charge of cattle shall gather their cattle and furnish necessary labor in drawing blood or milk samples, vaccinating and identifying animals.

(t) Requirements for cleaning and disinfecting.

(1) Dairy. When reactors are disclosed in cattle which use the same facilities daily, those facilities will be cleaned and disinfected under the supervision of Approved Personnel upon removal of infected animals.

(2) Beef. As determined by Approved Personnel under individual herd plan following removal of reactor animals.

(u) Requirements on dealer recordkeeping. Any dealer must maintain records of cattle that are parturient or postparturient or 18 months of age or older. Such records shall show the buyers's and seller's name and address, county of origin, number of animals, and a description of



each animal, including sex, age, color, breed, brand, and individual identification such as eartag, bangle tag, backtag, tattoo or firebrand. Records at auctions and commission firms shall show the delivery vehicle license number. All dealer records must be maintained for a minimum of two years after the date of the transaction.

(v) Brucellosis advisory committees. There may be one or more committees of cattle owners in the state, appointed by the chairman of the commission, to serve at the pleasure of the Commission, for the purposes of advising the commission on matters pertaining to the brucellosis program.

#### §35.4. Entry, Movement, and Change of Ownership .

(a) Requirements for cattle from foreign countries without comparable brucellosis status that enter and remain in Texas. (Note: Cattle from foreign countries with comparable brucellosis status would enter by meeting the requirements for a state with similar status.)

(1) (No change.)

(2) Branding requirements.

(A) Sexually intact cattle destined for a quarantined feedlot or designated pen must be "S"-branded prior to entry into the state.

(B) (No change.)

(3) Vaccination requirement. Nonvaccinated sexually intact female cattle between four and ten months of age entering for purposes other than immediate slaughter or feeding for slaughter in a quarantined feedlot or designated pen shall be placed under quarantine on arrival and officially brucellosis vaccinated as outlined in §35.2(m) of this title (relating to General Requirements). The quarantine may be released after meeting test requirements.

(4) Testing requirements for bulls entering for purposes other than immediate slaughter or feeding in a quarantined feedlot or designated pen. Bulls entering for purposes other than immediate slaughter or feeding in a quarantined feedlot or designated pen shall be tested at the port of entry into Texas under the supervision of the port veterinarian, and placed under quarantine and retested 120 to 180 days after arrival. The quarantine will be released following a negative brucellosis test.

(5) Testing requirements for females entering for purposes other than immediate slaughter or feeding in a quarantined feedlot or designated pen. All sexually intact female cattle entering for purposes other than immediate slaughter or

feeding for slaughter in a quarantined feedlot or designated pen shall be tested at the port of entry into Texas under the supervision of the port veterinarian, and placed under quarantine on arrival and retested for brucellosis in no less than 120 days nor more than 180 days after arrival for release of the quarantine. The releasing negative test shall not be sooner than 30 days after the animal has had its first calf.

(6) Testing requirements for sexually intact cattle entering for feeding in a quarantined feedlot. All sexually intact cattle destined for feeding for slaughter in a quarantined feedlot or designated pen must be tested at the port of entry into Texas under the supervision of the port veterinarian. These cattle must be "S"-branded prior to entry into the state, and may move into the quarantined feedlot or designated pen only in sealed trucks with a permit issued by TAHC or USDA personnel.

(7) (No change.)

(b) Requirements for cattle entering Texas from other states.

(1) Vaccination. All female cattle between four and ten months of age shall be officially vaccinated prior to entry. Exceptions to these vaccination requirements:

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

(D) Nonvaccinated female cattle between four and ten months of age consigned from an out-of-state farm of origin will be accompanied by a waybill to a Texas market, feedlot for feeding for slaughter or direct to slaughter. These cattle may be vaccinated at the market at no expense to the state prior to leaving the market and be moved freely. If these cattle are not vaccinated at the market then they shall be consigned from the market only to a feedlot for feeding for slaughter or direct to slaughter, accompanied by an "S" permit. Cattle from other than Class Free states entering for feeding for slaughter shall also be "F"-branded high on tail-head prior to or upon entering the feedlot.

(E) Nonvaccinated female cattle between four and ten months of age consigned from an out-of-state livestock market to a Texas livestock market, feedlot for feeding for slaughter or direct to slaughter will be accompanied by an "S" permit or certificate of veterinary inspection. Individual identification is not required. These cattle may be vaccinated at no expense to the state prior to leaving the market and be moved freely. If these cattle are not vaccinated at the market then they shall be consigned from the market only to a feedlot for feeding for slaughter or direct to slaughter, accompanied by an "S" permit. Cattle from

other than Class Free states entering for feeding for slaughter shall also be "F"-branded high on tail-head prior to or upon entering the feedlot.

(F) Nonvaccinated female cattle between four and ten months of age moving may enter on a calfhod vaccination permit and must be vaccinated at no expense to the state within 14 days after arriving at the premise of destination.

(2) Testing. All test-eligible cattle entering Texas:

(A) (No change.)

(B) shall be "S"-branded and moved directly to a quarantined feedlot, to designated pens, or to slaughter, accompanied with an "S" permit, or moved directly from a farm of origin to a USDA specifically approved livestock market to be "S"-branded and moved directly to a quarantined feedlot, to designated pens, or to slaughter accompanied with an "S" permit;

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

(E) shall be tested negative one or more times as described in this subparagraph:

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

(iii) all female cattle and test-eligible males from a Class "C" State or Area shall originate from a brucellosis certified free herd when consigned for purposes other than slaughter or to quarantined feedlot or designated pen. Females over four months of age must meet vaccination requirements for entry.

(c) Change of ownership within Texas.

(1) Vaccination. It is recommended that all female cattle between four and ten months of age being purchased or sold for use in grazing, breeding, or dairy operations be officially vaccinated.

(2) Testing. All test-eligible cattle changing ownership within Texas shall:

(A) (No change.)

(B) be tested negative by the seller within 30 days prior to sale; or

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

(d) Movement to Mexico. All test-eligible cattle must be tested negative within 30 days prior to export to Mexico for slaughter. Steers, spayed heifers, and feedlot finished bulls and heifers are not re-

quired to be tested prior to export. Test results must be recorded on the Certificate of Veterinary Inspection.

*§35.6. Indemnity Payments to Owners of Cattle Exposed to Brucellosis .*

- (a)-(b) (No change)
- (c) (General Requirements)
- (1)-(7) (No change.)

(8) The owner of a herd approved for depopulation must agree to complete a herd test of eligible animals in units not depopulated six to 12 months after depopulation.

(d) If approved by the State Epidemiologist, an owner may be paid \$200 per B. abortus Strain 19 reactor, not to exceed the greater of five head or 5.0% of the herd.

*§35.7. Disposition of Animals Other Than Cattle That React to a Brucellosis Test.* Equine that react positively to brucellosis testing and are diagnosed as infected shall be moved direct to slaughter accompanied by a VS Form 1-27 permit. Reactor equine may be permitted to an approved market for sale to slaughter if approved by a State-Federal epidemiologist. The permit must individually describe each horse and show any individual identification

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 September 22, 1995.

TRD-9512230 Terry Beals, DVM  
Executive Director  
Texas Animal Health  
Commission

Effective date: October 22, 1995

Proposal publication date: July 28, 1995

For further information, please call: (512) 719-0714

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**Chapter 51. Interstate Shows,  
and Fairs**

• 4 TAC §51.4

The Texas Animal Health Commission adopts an amendment to §51.4, concerning special requirements for entry from areas with vesicular stomatitis, with changes to the proposed text as published in the July 25, 1995, issue of the *Texas Register* (20 TexReg 5459).

The amendment is necessary to protect Texas livestock from exposure to vesicular stomatitis by prohibiting the entry of certain species of animals if they originate within ten

miles of a premise where the disease has been diagnosed within the previous 30 days. The rule also requires animals originating from states where the disease has been diagnosed to be accompanied by a health certificate stating the animals did not originate within ten miles of a premise where the vesicular stomatitis has been diagnosed with the past 30 days. A change was made to the statement required on the health certificate to acknowledge that the certifying veterinarian may not have personal knowledge of the location of the animals for the prior 30 days.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Agriculture Code, Texas Civil Statutes, §161.081, which provide the Commission with the authority to promulgate rules regulating movement of animals into the state.

The amendment implements the Agriculture Code, §161.061 and §161.081, which provide the Commission with the authority to quarantine animals designated as potential carriers of disease and provide pre-entry requirements.

*§51.4. Special Requirements for Entry from Areas with Vesicular Stomatitis .*

(a) No equine, bovine, porcine, caprine, ovine, or cervidae may enter Texas from another state if vesicular stomatitis has been diagnosed within ten miles of the premise of origin within the last 30 days.

(b) Any equine, bovine, porcine, caprine, ovine, or cervidae entering Texas from a state where vesicular stomatitis has been diagnosed within the last 30 days must be accompanied by a Certificate of Veterinary Inspection with the following statement written by the accredited veterinarian on the Certificate: To the best of my knowledge, all animals identified on this health certificate have been examined and found to be free from vesicular stomatitis. During the past 30 days, they have neither been exposed nor located within ten miles of a premise where vesicular stomatitis has been diagnosed.

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 September 22, 1995.

TRD-9512231 Terry Beals, DVM  
Executive Director  
Texas Animal Health  
Commission

Effective date: October 22, 1995

Proposal publication date: July 25, 1995

For further information, please call: (512) 719-0714

**TITLE 25. HEALTH SERVICES**

**Part I. Texas Department of Health**

**Chapter 289. Radiation Control**

The Texas Department of Health (department) adopts the repeal of existing §289.117 and new §289.256, concerning the use of sealed sources in the healing arts. New §289.256 is adopted with changes to the proposed text as published in the May 9, 1995, issue of the *Texas Register* (20 TexReg 3440). The repeal is adopted without changes and will not be republished.

The new section incorporates language from Part 33, titled "Use of Sealed Sources in the Healing Arts," of the Texas Regulations for Control of Radiation (TRCR) which was adopted by reference in §289.117, which is now being repealed. In addition to incorporating existing language into new section requirements, §289.256 includes new provisions for patients treated with the temporary eye plaques to be released from hospitalization if the licensee ensures that the exposure rate from the patient at the treatment location is less than five milliroentgens per hour at a distance of one meter, the patient is provided with information on how to maintain doses to other individuals as low as reasonably achievable (ALARA), a radiation survey is made of the patient after removal of the plaque to ensure all sources have been removed, and upon removal, a physical inventory of the sources is conducted. These new provisions were added to the section in response to a petition for rulemaking requesting such provisions.

The repeal and new section are part of the first phase to convert existing sections that adopt by reference the various parts of the TRCR to *Texas Register* format.

The following are the public comments made concerning the proposed section and the department's responses to those comments.

Comment. Concerning §289.256(b)(5)(B), one commenter noted that the point of measurement should be at 1 meter from the surface of the patient. The physical location of the source may be arguable and/or vague, particularly for inspection personnel. The surface of the patient is not debatable.

Response. The department believes that requiring the measurement to be from the surface of the patient would be more confusing because this could be interpreted to be at the head, feet, back, or front of the patient. Patient records indicate what the patient is being treated for, where the permanent implant is located, and therefore, a more precise location from which the measurement is to be taken. The department made no change to the section as a result of the comment.

Comment. Concerning §289.256(b)(5)(B), one commenter expressed concern that the six milliroentgens per hour value was in conflict with §289.252(f) (3)(A) value of five milliroentgens per hour and the Texas Regulations for Control of Radiation (TRCR)

Part 21.301(a)(3) value of two milliroentgens per hour. Confusion could be reduced and radiation safety improved if a single limit was settled on. The two milliroentgen per hour at a meter should be enacted since in view of TRCR Part 21.301, it would be difficult to justify any higher level.

Response. The department agrees in part with the commenter and has changed the value to five milliroentgens per hour to reflect consistency with the value in §289.252(f)(3)(A) and the United States Nuclear Regulatory Commission's value in its comparable regulation. The value in TRCR Part 21 is a dose of two millirem in any one hour, not a dose rate of two millirem per hour.

Comment. Concerning §289.256(b)(5)(C)(i), a commenter suggested that the words, "...in the language native to the individual..." should be inserted after "instructions." With the medical centers in Texas becoming drawing cards from around the world, proper instruction has to be clear to the patient.

Response. The section does not restrict the language in which the instructions are to be written. A medical center may choose to provide written instructions in a variety of languages. The department made no change to the section as a result of the comment.

Comment. Concerning §289.256(b)(5)(C)(iii), one commenter suggested that the clause might be less awkward if it was rearranged to read, "...after removal of the eye plaque and prior to release of the patient, a radiation survey of the patient is made with an appropriate survey instrument to determine that all sources have been removed."

Response. The department agrees with the commenter and has changed the rule accordingly. The department has also changed the word "determine" to "verify."

Comment. Concerning §289.256(b)(5)(C)(iv), a commenter suggested that the words, "...the plaque is disassembled and..." be deleted because disassembly of Au-198 or I-125 seed plaques is not necessary to perform an inventory because the seeds are visible through the clear silicone.

Response. The department agrees with the commenter and has deleted §289.256(b)(5)(C)(iv), and has added a new §289.256(b)(5)(D) to read, "A physical inventory of the sources shall be conducted by the licensee to confirm that all sources have been removed from the patient and the inventory records shall be maintained for inspection by the agency."

Comment. Concerning §289.256(b)(5)(C)(iv), a commenter noted that the assumption seems to be that all eye plaques have radioactivity in the form of seeds and points out that this has not been true historically. Many types of plaques have not required seed loading and disassembling. The commenter suggested that a modifying phrase such as "When seed assemblies are used." or "When applicable..." should be added.

Response. The department agrees with the commenter, has deleted §289.256(b)(5)(C)(iv), and has added a new §289.256(b)(5)(D) to read, "A physical inven-

tory of the sources shall be conducted by the licensee to confirm that all sources have been removed from the patient and the inventory records shall be maintained for inspection by the agency."

In addition to the changes made in response to comments, §289.256(b)(5)(E) was added to clarify recordkeeping requirements.

Commenters included a representative from the Methodist Hospital in Houston; Baylor College of Medicine in Houston; and two individuals. The commenters were generally in favor of the proposal; however, they presented comments and suggestions for changes to the proposal as previously discussed.

## Texas Regulations for the Control of Radiation

### • 25 TAC §289.117

The repeal is adopted under the Health and Safety Code, Chapter 401, which provides the Texas Board of Health with authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which authorizes the board to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

### *§289.117. Use of Sealed Sources in the Healing Arts.*

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 September 20, 1995.

TRD-9512070

Susan K Steeg  
General Counsel  
Texas Department of  
Health

Effective date: November 1, 1995

Proposal publication date: May 9, 1995

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

## License Regulations

### • 25 TAC §289.256

The new section is adopted under the Health and Safety Code, Chapter 401, which provides the Texas Board of Health with authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which authorizes the board to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

### *§289.256. Use of Sealed Sources in the Healing Arts.*

(a) Scope. The provisions of this section apply to all licensees who use sealed sources in the healing arts and are in addition to, and not in substitution for, other applicable provisions of this chapter.

(b) Interstitial, intracavitary, and superficial applications.

(1) Accountability, storage and transit.

(A) Except as otherwise specifically authorized by the agency, each licensee shall provide accountability of sealed sources and shall keep a record of the issue and return of all sealed sources. A physical inventory shall be made at least every six months and a written record of the inventory maintained.

(B) When not in use, sealed sources and applicators containing sealed sources shall be kept in a protective enclosure of such material and wall thickness as may be necessary to assure compliance with the provisions of 21.201, 21.207, and 21.301 of Texas Regulations for Control of Radiation (TRCR) Part 21 as adopted by reference in §289.113 of this title (relating to Standards for Protection Against Radiation).

(2) Testing sealed sources for leakage and contamination. Sealed sources of radioactive material shall be tested for leakage and contamination in accordance with §289.201(g) of this title (relating to General Provisions).

(3) Radiation surveys.

(A) The maximum radiation level at a distance of one meter from the patient in whom brachytherapy sources have been inserted shall be determined by measurement or calculation and preferably by both. This radiation level shall be entered on the patient's chart and other signs as required under paragraph (4) of this subsection.

(B) The radiation levels in the patient's room and the surrounding area shall be determined, recorded, and maintained for inspection by the agency.

(4) Signs and records.

(A) In addition to the requirements of 21.901, 21.902, and 21.904 of TRCR Part 21 as adopted by reference in §289.113 of this title, the bed, cubicle, or room of the hospital brachytherapy patient shall be marked with a sign indicating the presence of brachytherapy sources. This sign shall incorporate the radiation symbol and specify the radionuclide, the activity, date, and the individual(s) to contact for radiation safety instructions. The sign is not required provided the exception in 21.903 is met.

(B) The following information shall be included in or on the patient's chart:

(i) the radionuclide administered, number of sources, activity in millicuries and time and date of administration;

(ii) the exposure rate at one meter, the time the determination was made, and by whom;

(iii) the radiation symbol; and

(iv) the precautionary instructions necessary to assure that the exposure of individuals other than the patient does not exceed that permitted under 21.201 of TRCR Part 21 as adopted by reference in §289.113 of this title.

(5) Release of patients containing temporary implants or permanent implants.

(A) Immediately after removing the last temporary implant source or retraction of a source(s) from a remote control brachytherapy device at the conclusion of treatment, and before the patient is released from the therapy room, the licensee shall perform a radiation survey of the patient with an appropriate survey instrument. The licensee shall not release from confinement for medical care a patient treated by temporary implant or remote control brachytherapy device until all sources have been removed, except as provided in subparagraph (C) of this paragraph.

(B) Any individual containing permanent implant sources shall remain hospitalized and shall not be released from confinement until the maximum exposure rate from the patient is less than five milliroentgens per hour at a distance of one meter from the implant location.

(C) Upon prior approval by the agency of the licensee's written procedures, patients treated with temporary eye plaques may be released from the hospital provided that the procedures ensure that:

(i) the exposure rate from the patient is less than five milliroentgens per hour at a distance of one meter from the eye plaque location;

(ii) the patient is provided with written instructions and radiation safety guidance on how to maintain exposures to other individuals as low as reasonably achievable (ALARA); and

(iii) after removal of the eye plaque and prior to release of the patient, a radiation survey of the patient is made with an appropriate survey instrument

to verify that all sources have been removed.

(D) A physical inventory of the sources shall be conducted by the licensee to confirm that all sources have been removed from the patient and the inventory records shall be maintained for inspection by the agency.

(E) Records of surveys required by subparagraph (C)(iii) of this paragraph shall be maintained for inspection by the agency.

(c) Teletherapy.

(1) Equipment.

(A) The housing shall be so constructed that, at one meter from the source, the maximum exposure rate does not exceed ten milliroentgens per hour when the beam control mechanism is in the "off" position. The average exposure rate measured at a representative number of points about the housing, each one meter from the source, shall not exceed two milliroentgens per hour.

(B) For teletherapy equipment installed after January 1, 1970, the leakage radiation measured at one meter from the source when the beam control mechanism is in the "on" position shall not exceed one roentgen per hour or 0.1% of the useful beam exposure rate.

(C) Adjustable or removable beam-defining diaphragms shall allow transmission of not more than 5.0% of the useful beam exposure rate.

(D) The beam control mechanism shall be of a positive design capable of acting in any orientation of the housing for which it is designed to be used. In addition to an automatic closing device, the mechanism shall be designed so that it can be manually returned to the "off" position with a minimum risk of exposure.

(E) The closing device shall be so designed as to return automatically to the "off" position in the event of any breakdown or interruption of the activating force and shall stay in the "off" position until reactivated from the control panel.

(F) When any door to the treatment room is opened, the beam control mechanism shall automatically and rapidly restore the unit to the "off" position and cause it to remain there until the door is secured and the unit is reactivated from the control panel.

(G) There shall be at the housing and at the control panel a warning device that plainly indicates whether the beam is on or off.

(H) The equipment shall be provided with a locking device to prevent unauthorized use and shall be locked in the "off" position when not attended.

(I) The control panel shall be provided with a timer that automatically terminates the exposure after a pre-set time.

(J) Provision shall be made to permit continuous observation of and two-way aural communication with patients during irradiation.

(2) Shielding.

(A) Primary protective barriers shall be provided for any area that the useful beam may strike when using the largest possible diaphragm opening. Such barriers should extend at least one foot beyond the useful beam for any possible orientation.

(B) Secondary protective barriers shall be provided for all occupied areas exposed to leakage and scattered radiation.

(3) Operation. No individual who is occupationally exposed to radiation shall be in the treatment room during irradiation unless that individual is the patient. No other individual shall be there except when it is clinically necessary.

(4) Testing for leakage and contamination. Teletherapy sources shall be tested for leakage and contamination in accordance with the procedures described in §289.201(g) of this title (relating to General Provisions). Tests of leakage may be made by wiping accessible surfaces of the housing port or collimator while the source is in the "off" position and measuring these wipes for transferred contamination.

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 September 20, 1995.

TRD-9512071

Susan K. Steeg  
General Counsel  
Texas Department of  
Health

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Proposal publication date: May 9, 1995

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

## Part II. Texas Department of Mental Health and Mental Retardation

### Chapter 409. Medicaid Programs

#### Subchapter F. Case Management Program Requirements

- 25 TAC §§409.201, 409.203-409.207

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts amendments to §§409.201 and 409.203-409.206; and new §409.207, concerning case management program requirements. Section 409.203 and §409.206 are adopted with changes to the proposed text as published in the July 28, 1995, issue of the *Texas Register* (20 TexReg 5589). Sections 409.201, 409.204, 409.205, and 409.207 are adopted without changes and will not be republished.

Section 409.203 is revised on adoption to indicate that the department will notify providers when the changes in program definitions, reimbursement methodology, or related matters are contingent on an amendment or amendments to the Texas State Plan for Medical Assistance Programs, which must be approved by the Health Care Financing Administration before taking effect. Section 409.206(d)(1) is changed on adoption to include language explaining the reference to §409.201 (relating to Definitions).

Subsequent to the proposal, the fiscal note was recalculated. The use of the mean instead of the median for rate setting would increase the matching federal revenue by \$225,934 for fiscal year 1995, \$623,675 for fiscal year 1996, \$641,289 for fiscal year 1997, \$664,866 for fiscal year 1998, and \$689,249 for fiscal year 1999.

No comments were received regarding adoption of the amendments and new section. A public hearing was held on August 17, 1995; no one attended the hearing and no oral or written testimony was presented.

The amendments and new section are adopted under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers; and under the provisions of Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

#### §409.203. Case Management Services.

(a) Case management services are provided to assist individuals with mental retardation or who have a related condition in gaining access to medical social, educational, and other appropriate services that will help them achieve a quality of life and community participation acceptable to each individual. The role of persons who provide

case management activities is to support and assist the person in achieving personal goals. Case management is provided regardless of age. The department will notify providers when changes in program definitions, reimbursement methodology, and related matters are contingent on an amendment or amendments to the Texas State Plan for Medical Assistance Programs, which must be approved by the Health Care Financing Administration before taking effect.

(b) Case management services may include:

(1) screening and assessment: obtaining client-identifying information and identifying the nature of the presenting problem and service and support needs of the individual;

(2) crisis intervention: locating and coordinating emergency services;

(3) service planning and coordination: identifying and arranging for the delivery of services and supports that address the individual's needs;

(4) monitoring: evaluating the effectiveness of the services and the need for additional or different services.

#### §409.206. Reimbursement Methodology for Case Management for Individuals with Mental Retardation or Related Condition.

(a) General Information. As specified in §§409.001-409.007 of this title (relating to General Specifications; Methodology; Basic Objectives and Criteria for Desk Review of Cost Reports; Determination of Inflation Indices; Notification; Adjusting Rates When New Legislation, Regulations, or Economic Factors Affect Costs; and Reviews and Administrative Hearings), TDMHMR reimburses qualified providers for case management services provided to Medicaid eligible individuals with mental retardation or a related condition. The Texas Board of Mental Health and Mental Retardation determines reimbursement at least annually for case management services. Reimbursement is:

(1) uniform statewide;

(2) prospective (see §409.201 of this title (relating to Definitions)); and

(3) cost related.

(b) Basis for Reimbursement Analysis.

(1) For the reimbursement period, providers will be reimbursed on the projected expenses required to provide case management services for individuals with mental retardation or a related condition.

(2) TDMHMR or its designee collects both statistical and cost data. The statistical information includes the number

of telephone and in person (face-to-face) case management contacts provided to clients and the number of direct server hours performed during the cost reporting period. The cost data include direct costs, programmatic indirect costs, and general and administrative costs, including salaries, benefits, and non-labor costs.

(3) The reimbursement is based upon cost report data submitted by providers, consultation with service providers, and consultation with professionals experienced in case management services.

#### (c) Reporting of Cost.

(1) Cost reporting. Each provider must submit financial and statistical information in a cost report or survey format designated by TDMHMR or its designee. The cost report will capture the expenses of the provider including salaries and benefits, administration, building and equipment, utilities, supplies, travel, and indirect overhead expenses related to the provision of case management services.

(2) The following requirements apply:

(A) Accounting requirements. All information submitted on the cost reports must be based upon the accrual method of accounting unless the governmental entity operates on a cash or modified accrual basis. The provider must complete the cost report according to the prescribed statement of allowable and unallowable costs. Cost reporting should be consistent with generally accepted accounting principles (GAAP). In cases in which cost reporting rules conflict with GAAP, Internal Revenue Service, or other authorities, the cost reporting rules take precedence for Medicaid provider cost reporting.

(B) Reporting period. The provider must prepare the cost report to reflect activities during the provider's fiscal year. The cost report is due three months after the end of this fiscal year, although an extension may be granted for good cause. TDMHMR or its designee may require cost reports or other information for other time periods. Failure to file an acceptable cost report or complete required additional information will result in a hold on the vendor payments until the cost report information or additional information is provided. The provider must certify the accuracy of the cost report or additional information.

(C) Review of cost reports. As specified in §409.003 of this title (relating to Basic Objectives and Criteria for Desk Review of Cost Reports); TDMHMR or its designee reviews each cost report or survey. Cost reports not completed accord-

ing to instructions or rules are returned to the provider for proper completion.

(D) Onsite audit of cost reports. TDMHMR or its designee performs a sufficient number of audits each year to ensure the fiscal integrity of the case management reimbursement. The number of onsite audits actually performed each year may vary. Adjustments consistent with the results of onsite audits are made to the reimbursement base until the reimbursement base is closed for final reimbursement analysis.

(E) Recordkeeping requirements. Each provider must maintain records according to the requirements specified in Title 40, TAC, §69.202. The provider must ensure that the records are accurate and sufficiently detailed to support the financial and statistical information reported in the cost report. If a provider does not maintain records which support the financial and statistical information submitted on the cost report, the provider will be given 90 days to correct this recordkeeping. A hold of the vendor payments to the provider will be made if the deficiency is not corrected within 90 days from the date the provider is notified.

(F) Access to records. The provider must allow TDMHMR or its designated agents access to any and all records necessary to verify information on the cost report.

(G) Reviews of cost report disallowances. A provider who disagrees with TDMHMR or its designee on cost report disallowances may request a review of the disallowances as specified in §409.007 of this title (relating to Reviews and Administrative Hearings).

(H) TDMHMR or its designee notifies providers of exclusions and adjustments to reported expenses made during desk reviews and onsite audits of cost reports according to §409.005 of this title (relating to Notification).

(d) Reimbursement methodology.

(1) Reimbursement by unit of service. Reimbursement for case management services will be determined for a unit of service defined as a case management contact. The action can be face-to-face or by telephone. See §409.201 of this title (relating to Definitions) for the definition of "case management contact."

(2) Exclusion or adjustment of expenses. Providers must eliminate unallowable expenses from the cost report. TDMHMR or its designee excludes from

the reimbursement base any unallowable expenses included in the cost report and makes adjustments to expenses reported by providers to ensure that the reimbursement base reflects costs which are consistent with efficiency, economy and quality of care, are necessary for the provision of case management services, and are consistent with federal and state Medicaid regulations. If there is doubt as to the accuracy or allowability of a significant part of the information reported, individual cost reports may be eliminated from the reimbursement base.

(3) Reimbursement determination process. The Texas Board of Mental Health and Mental Retardation determines reimbursement according to §409.001 of this title (relating to General Specifications). As specified in §409.006 of this title (relating to Adjusting Rates When New Legislation, Regulations, or Economic Factors Affect Costs), the Texas Board of Mental Health and Mental Retardation may also adjust reimbursements when new legislation, regulations, or economic factors affect costs. TDMHMR staff submit reimbursement recommendations to the Texas Board of Mental Health and Mental Retardation. Recommended reimbursements are determined in the following manner:

(A) Total allowable costs for each provider will be determined from analyzing the allowable historical costs reported on the cost report.

(B) Each provider's total allowable costs are projected from the historical cost reporting period to the prospective reimbursement period using inflation factors according to §409.004 of this title (relating to Determination of Inflation Indices).

(C) For each type of contact (face-to-face and telephone) each provider's cost per contact is calculated. The mean provider cost per contact is calculated, and the statistical outliers (those providers whose cost per contact exceeds plus or minus (+/-) two standard deviations of the mean provider cost per contact) are removed. After removal of the statistical outliers, the mean cost per contact is calculated. This mean cost per contact becomes the recommended reimbursement per contact as of May 20, 1995.

(e) General information. Only allowable cost information is used to compile the reimbursement base. See §409.201 of this title (relating to Definitions) for definitions of allowable and unallowable costs.

(1) List of allowable costs. The following list of allowable costs is not comprehensive; instead, it is meant to serve as a general guide and to clarify certain key expense areas. The absence of a particular

cost does not necessarily mean that expense is not an allowable cost.

(A) Compensation of staff providing case management services. Compensation may be provided only to those staff who provide case management services directly to the clients or who support the work of staff providing case management services, including supervisors, administrators, and clerical workers. This category includes:

(i) wages and salaries;

(ii) payroll taxes and insurance, including Federal Insurance Contributions Act (FICA or Social Security), unemployment compensation insurance, workman's compensation insurance; and

(iii) employee benefits. This category includes employer paid health, life accident, liability and disability insurance for employees; contributions to employee retirement funds; and deferred compensation limited to the dollar amount the employer contributes.

(B) Indirect costs. Costs incurred at administrative and support levels of management (that is, personnel, staff development, legal, quality assurance, accounting, bookkeeping, and building and equipment maintenance) above the staff providing case management services are allowable only if the costs were incurred in the purchase of materials, supplies, or services used by the staff providing case management services in the conduct of normal operations. Allowable costs are limited to the allocated portion of these costs which can be documented as being related to the delivery of case management services.

(C) Utilization review committee.

(D) Materials and supplies. This category includes office supplies, housekeeping supplies, and materials and supplies for the operation, maintenance, and repair of buildings, grounds, and equipment.

(E) Utilities. This category includes electricity, natural gas, fuel oil, water, waste water, garbage collection, telephone, and telegraph.

(F) Buildings, equipment, and capital expenses.

(i) Buildings, equipment, and capital used by the staff providing case management services or in support of the staff providing case management services, and not for personal business. If these costs are shared with other program operations

the portion of these costs relating directly to the provision of case management services may be allowed on a prorata basis if the proportion of use for provision of case management services is documented

(ii) Depreciation and amortization expense. Property owned by the provider entity and improvements to owned, leased or rented property that is used in the provision of case management services that are valued at more than \$500 at the time of purchase must be depreciated or amortized, using the straight line method. The minimum usable lives to be assigned to common classes of depreciable property are:

(I) buildings: a minimum of 30 years, with a minimum salvage value of 10%;

(II) transportation equipment used for the transport of clients, materials and supplies, or staff providing case management services: a minimum of three years for passenger automobiles, with a minimum salvage value of 10%; five years for light trucks and vans, with a minimum salvage value of 10%.

(G) Provider owned property. Property may be treated by the provider as ordinary expenses when the property and improvements to the property owned, leased, or rented by the provider are valued at less than \$500 at the time of purchase.

(H) Rental and lease expense. This category includes buildings, building equipment, transportation equipment, equipment, materials and supplies. Allowable rental or lease expense paid to a related party is limited to the actual allowable cost incurred by the related party.

(I) Transportation expense. This category includes depreciation, lease, or mileage claimed at the allowable reimbursement per mile set by the state legislature for state employees.

(J) Business and professional association dues limited to associations devoted primarily to the issues of case management.

(K) Outside training costs. These expenses are limited to direct costs (transportation, meals, lodging, and registration fees) for training provided to staff providing case management services. The training must be directly related to issues concerning case management, and it must be located within the continental United States.

(2) List of unallowable costs. Unallowable costs are not included in the reimbursement base used to determine recommended reimbursement. The following list clarifies certain expense categories of unallowable costs. See also §409.201 of this title (relating to Definitions) for definition of unallowable costs.

(A) Compensation in the form of salaries, benefits, or any form of compensation given to individuals for the provision and support of services other than case management services.

(B) Personal expenses not directly related to the provision of case management services.

(C) Management fees or indirect costs that are not derived from the actual cost of materials, supplies or services provided directly to staff providing case management services.

(D) Advertising expenses other than those for advertising in the yellow pages, ads for employee recruitment, and advertising to meet any statutory or regulatory requirement.

(E) Business expenses not directly related to the provision of case management services.

(F) Political contributions.

(G) Depreciation and amortization of unallowable costs. This category includes amounts in excess of those resulting from straight line depreciation method, capitalized lease expenses in excess of the actual lease payment, and goodwill or any excess above the actual value of the physical assets at the time of purchase.

(H) Trade discounts of all types. This category includes returns, allowances, and refunds.

(I) Donated facilities, materials, supplies and services including the values assigned to the services of unpaid workers and volunteers.

(J) Dues to all types of political and social organizations, and to professional associations not directly and primarily concerned with case management services.

(K) Entertainment expenses except those incurred for entertainment pro-

vided to the staff providing case management services as an employee benefit.

(L) Board of directors fees.

(M) Fines and penalties for violations of regulations, statutes, and ordinances of all types.

(N) Fundraising and promotional expenses.

(O) Interest expenses on loans pertaining to unallowable items and on that portion of interest paid which is reduced or offset by interest income.

(P) Insurance premiums pertaining to items of unallowable cost.

(Q) Accrued expenses that are not a legal obligation of the provider or are not clearly enumerated as to dollar amount. This category includes any form of profit sharing and the accrued liabilities of deferred compensation plans.

(R) Mileage expense exceeding the current reimbursement rate set by the Texas Legislature for state employee travel.

(S) Costs of purchases from a related party which exceed the original cost to the related party.

(T) Out of state travel expenses, except for provision of case management related services including training and quality assurance functions.

(U) Contributions to self-insurance funds which do not represent payments based on current liabilities.

(V) Expenses incurred because of imprudent business practices.

(W) Expenses which cannot adequately be documented.

(X) Expenses not reported according to the instructions of the cost report.

(Y) Expenses not allowable under other pertinent federal, state, or local laws or regulations.

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 September 22, 1995.

TRD-9512155

Ann Utley  
Chairman, Texas MHMR  
Board  
Texas Department of  
Mental Health and  
Mental Retardation

Effective date: October 13, 1995

Proposal publication date: July 28, 1995

For further information, please call: (512) 206-4516

◆ ◆ ◆  
Subchapter G. Case Management for Persons with Severe and Persistent Mental Illness

• 25 TAC §§409.251-409.256

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts amendments to §§409.251-409.255 and new §409.256, concerning case management for persons with severe and persistent mental illness. Section 409.252 and §409.255 are adopted with changes to the proposed text as published in the July 28, 1995, issue of the *Texas Register* (20 TexReg 5592). Sections 409.251, 409.253, 409.254, and 409.256 are adopted without changes and will not be republished.

Section 409.203 is revised on adoption to indicate that the department will notify providers when the changes in program definitions, reimbursement methodology, or related matters are contingent on an amendment or amendments to the Texas State Plan for Medical Assistance Programs, which must be approved by the Health Care Financing Administration before taking effect. Section 409.255(c)(2)(F) is revised on adoption to substitute the term "designee" for "designated agent."

Subsequent to the proposal, the fiscal note was recalculated. The use of the mean instead of the median for rate setting would increase the matching federal revenue by \$335,059 for fiscal year 1995, \$1,072,147 for fiscal year 1996, \$1,102,426 for fiscal year 1997, \$1,142,957 for fiscal year 1998, and \$1,184,873 for fiscal year 1999.

Public comment was received from the Texas Alliance for the Mentally Ill, Austin, which commented that the proposed changes are acceptable. A public hearing was held on August 17, 1995; no one attended the hearing and no oral or written testimony was presented.

The amendments and new section are adopted under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers; and under the provisions of Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

§409.252. Case Management Services.

(a) Case management services are provided to assist individuals with severe and persistent mental illness in gaining access to medical, social, educational, and other appropriate services that will help them achieve a quality of life and community participation acceptable to each individual. The role of persons who provide case management activities is to support and assist the person in achieving personal goals. Case management is provided regardless of age. The department will notify providers when changes in program definitions, reimbursement methodology, and related matters are contingent on an amendment or amendments to the Texas State Plan for Medical Assistance Programs, which must be approved by the Health Care Financing Administration before taking effect.

(b) Case management services may include:

(1) screening and assessment: obtaining client-identifying information and identifying the nature of the presenting problem and the service and support needs of the individual;

(2) crisis intervention: locating and coordinating emergency services;

(3) service planning and coordination: identifying and arranging for the delivery of services and supports that address the individual's needs; and

(4) monitoring: evaluating the effectiveness of the services and the need for additional or different services.

§409.255. Reimbursement Methodology for Case Management for Persons with Severe and Persistent Mental Illness.

(a) General Information. As specified in §§409.001-409.007 of this title (relating to General Specifications; Methodology; Basic Objectives and Criteria for Desk Review of Cost Reports; Determination of Inflation Indices; Notification; Adjusting Rates When New Legislation, Regulations, or Economic Factors Affect Costs; and Reviews and Administrative Hearings), the Texas Department of Mental Health and Mental Retardation TDMHMR reimburses qualified providers for case management services provided to Medicaid eligible individuals with severe and persistent mental illness. The Texas Board of Mental Health and Mental Retardation determines reimbursements at least annually for case management services. The reimbursements are:

(1) uniform statewide;

(2) prospective (see §409.201 of this title (relating to Definitions)); and

(3) cost related.

(b) Basis for Reimbursement Analysis.

(1) For the reimbursement period, providers will be reimbursed on the projected expenses required to provide case management services for persons with severe and persistent mental illness.

(2) TDMHMR or its designee collect both statistical and cost data. The statistical information includes the number of telephone and in person (face-to-face) contacts provided to clients and the number of direct server hours performed during the cost reporting period. The cost data include direct costs, programmatic indirect costs, and general and administrative costs, including salaries, benefits, and nonlabor costs.

(3) The reimbursement is based on cost report data submitted by providers, consultation with service providers, and consultation with professionals experienced in case management services.

(c) Reporting of Cost.

(1) Cost reporting. Each provider must submit financial and statistical information in a cost report or survey format designated by TDMHMR or its designee. The cost report will capture the expenses of the provider including salaries and benefits, administration, building and equipment, utilities, supplies, travel, and indirect overhead expenses related to the provision of case management services.

(2) The following requirements apply:

(A) Accounting requirements. All information submitted on the cost reports must be based upon the accrual method of accounting unless the governmental entity operates on a cash or modified accrual basis. The provider must complete the cost report according to the prescribed statement of allowable and unallowable costs. Cost reporting should be consistent with generally accepted accounting principles (GAAP). In cases in which cost reporting rules conflict with GAAP, Internal Revenue Service, or other authorities, the cost reporting rules take precedence for Medicaid provider cost reporting.

(B) Reporting period. The provider must prepare the cost report to reflect activities during the provider's fiscal year. The cost report is due three months after the end of this fiscal year, although an extension may be granted for good cause. TDMHMR or its designee may require cost reports or other information for other time periods. Failure to file an acceptable cost report or complete required additional infor-



mation will result in a hold on the vendor payments until the cost report information or additional information is provided. The provider must certify the accuracy of the cost report or additional information.

(C) Review of cost reports. As specified in §409.003 of this title (relating to Basic Objectives and Criteria for Desk Review of Cost Reports), TDMHMR or its designee reviews each cost report or survey. Cost reports not completed according to instructions or rules are returned to the provider for proper completion.

(D) Onsite audit of cost reports. TDMHMR or its designee performs a sufficient number of audits each year to ensure the fiscal integrity of the case management reimbursement. The number of onsite audits actually performed each year may vary. Adjustments consistent with the results of onsite audits are made to the reimbursement base until the reimbursement base is closed for final reimbursement analysis.

(E) Recordkeeping requirements. Each provider must maintain records according to the requirements specified in Title 40, TAC, §69.202. The provider must ensure that the records are accurate and sufficiently detailed to support the financial and statistical information reported in the cost report. If a provider does not maintain records which support the financial and statistical information submitted on the cost report, the provider will be given 90 days to correct this recordkeeping. A hold of the vendor payments to the provider will be made if the deficiency is not corrected within 90 days from the date the provider is notified.

(F) Access to records. The provider must allow TDMHMR or its designee access to any and all records necessary to verify information on the cost report.

(G) Reviews of cost report disallowances. A provider who disagrees with TDMHMR or its designee on cost report disallowances may request a review of the disallowances as specified in §409.007 of this title (relating to Reviews and Administrative Hearings).

(H) TDMHMR or its designee notifies providers of exclusions and adjustments to reported expenses made during desk reviews and onsite audits of cost reports according to §409.005 of this title (relating to Notification).

(d) Reimbursement methodology.

(1) Reimbursement by unit of service. Reimbursement for case management services will be determined for a unit

of service defined as a case management contact. The action can be face-to-face or by telephone. See §409.201 of this title (relating to Definitions).

(2) Exclusion or adjustment of expenses. Providers must eliminate unallowable expenses from the cost report. TDMHMR or its designee excludes from the reimbursement base any unallowable expenses included in the cost report and makes adjustments to expenses reported by providers to ensure that the reimbursement base reflects costs which are consistent with efficiency, economy and quality of care, are necessary for the provision of case management services, and are consistent with federal and state Medicaid regulations. If there is doubt as to the accuracy or allowability of a significant part of the information reported, individual cost reports may be eliminated from the reimbursement base.

(3) Reimbursement determination process. The Texas Board of Mental Health and Mental Retardation determines reimbursement according to §409.001 of this title (relating to General Specifications). As specified in §409.006 of this title (relating to Adjusting Rates When New Legislation, Regulations, or Economic Factors Affect Costs), the Texas Board of Mental Health and Mental Retardation may also adjust reimbursements when new legislation, regulations, or economic factors affect costs. TDMHMR staff submit reimbursement recommendations to the Texas Board of Mental Health and Mental Retardation. Recommended reimbursements are determined in the following manner:

(A) Total allowable costs for each provider will be determined from analyzing the allowable historical costs reported on the cost report.

(B) Each provider's total allowable costs are projected from the historical cost reporting period to the prospective reimbursement period using inflation factors according to §409.004 of this title (relating to Determination of Inflation Indices).

(C) For each type of contact (face-to-face and telephone) each provider cost per contact is calculated. The mean provider cost per contact is calculated, and the statistical outliers (those providers whose cost per contact exceeds plus or minus (+/-) two standard deviations of the mean provider cost per contact) are removed. After removal of the statistical outliers, the mean cost per contact is calculated. This mean cost per contact becomes the recommended reimbursement per contact as of May 20, 1995.

(e) Cost information. Only allowable cost information is used to compile the

reimbursement base. See §409.201 of this title (relating to Definitions) for definitions of allowable and unallowable costs.

(1) List of allowable costs. The following list of allowable costs is not comprehensive; instead, it is meant to serve as a general guide and to clarify certain key expense areas. The absence of a particular cost does not necessarily mean that expense is not an allowable cost.

(A) Compensation of staff providing case management services. Compensation may be provided only to those staff who provide case management services directly to the clients or who support the work of staff providing case management services, including supervisors, administrators, and clerical workers. This category includes:

(i) wages and salaries.

(ii) payroll taxes and insurance, including Federal Insurance Contributions Act (FICA or Social security), unemployment compensation insurance, workman's compensation insurance; and

(iii) employee benefits. This category includes employer paid health, life accident, liability and disability insurance for employees; contributions to employee retirement funds; and deferred compensation limited to the dollar amount the employer contributes

(B) Indirect costs. Costs incurred at administrative and support levels of management (that is, personnel, staff development, legal, quality assurance, accounting, bookkeeping, and building and equipment maintenance) above the staff providing case management services are allowable only if the costs were incurred in the purchase of materials, supplies, or services used by the staff providing case management services in the conduct of normal operations. Allowable costs are limited to the allocated portion of these costs which can be documented as being related to the delivery of case management services.

(C) Utilization review committee.

(D) Materials and supplies. This category includes office supplies, housekeeping supplies, and materials and supplies for the operation, maintenance, and repair of buildings, grounds, and equipment.

(E) Utilities. This category includes electricity, natural gas, fuel oil, water, waste water, garbage collection, telephone and telegraph.

(F) Buildings, equipment, and capital expenses.

(i) Buildings, equipment, and capital used by the staff providing case management services or in support of the staff providing case management services, and not for personal business. If these costs are shared with other program operations the portion of these costs relating directly to the provision of case management services may be allowed on a prorata basis if the proportion of use for provision of case management services is documented.

(ii) Depreciation and amortization expense. Property owned by the provider entity and improvements to owned, leased or rented property used for the provision of case management services that are valued at more than \$500 at the time of purchase must be depreciated or amortized, using the straight line method. The minimum usable lives to be assigned to common classes of depreciable property are:

(I) buildings: a minimum of 30 years, with a minimum salvage value of 10%;

(II) transportation equipment used for the transport of clients, materials and supplies, or staff providing case management services: a minimum of three years for passenger automobiles, with a minimum salvage value of 10%; five years for light trucks and vans, with a minimum salvage value of 10%.

(G) Provider-owned property. Property may be treated by the provider as ordinary expenses when the property and improvements to the property owned, leased, or rented by the provider are valued at less than \$500 at the time of purchase.

(H) Rental and lease expense. This category includes buildings, building equipment, transportation equipment, equipment, materials and supplies. Allowable rental or lease expense paid to a related party is limited to the actual allowable cost incurred by the related party.

(I) Transportation expense. This category includes depreciation, lease, or mileage claimed at the allowable reimbursement per mile set by the state legislature for state employees.

(J) Business and professional association dues limited to associations devoted primarily to the issues of case management.

(K) Outside training costs. These expenses are limited to direct costs (transportation, meals, lodging, and registration fees) for training provided to personnel rendering services directly to the clients or staff providing case management services. The training must be directly related to issues concerning case management, and it must be located within the continental United States.

(2) List of unallowable costs. Unallowable costs are not included in the reimbursement base used to determine recommended reimbursement. The following list clarifies certain expense categories of unallowable costs. See also §409.201 of this title (relating to Definitions) for definition of unallowable costs.

(A) Compensation in the form of salaries, benefits, or any form of compensation given to individuals for the provision and support of services other than case management services.

(B) Personal expenses not directly related to the provision of case management services.

(C) Management fees or indirect costs that are not derived from the actual cost of materials, supplies or services provided directly to staff providing case management services.

(D) Advertising expenses other than those for advertising in the yellow pages, ads for employee recruitment, and advertising to meet any statutory or regulatory requirement.

(E) Business expenses not directly related to the provision of case management services.

(F) Political contributions.

(G) Depreciation and amortization of unallowable costs. This category includes amounts in excess of those resulting from straight line depreciation method, capitalized lease expenses in excess of the actual lease payment, and goodwill or any excess above the actual value of the physical assets at the time of purchase.

(H) Trade discounts of all types. This category includes returns, allowances, and refunds.

(I) Donated facilities, materials, supplies and services including the values assigned to the services of unpaid workers and volunteers.

(J) Dues to all types of political and social organizations, and to professional associations not directly and primarily concerned with case management services.

(K) Entertainment expenses except those incurred for entertainment provided to the staff providing case management services as an employee benefit.

(L) Board of director fees.

(M) Fines and penalties for violations of regulations, statutes, and ordinances of all types.

(N) Fundraising and promotional expenses.

(O) Interest expenses on loans pertaining to unallowable items and on that portion of interest paid which is reduced or offset by interest income.

(P) Insurance premiums pertaining to items of unallowable cost.

(Q) Accrued expenses that are not a legal obligation of the provider or are not clearly enumerated as to dollar amount. This category includes any form of profit sharing and the accrued liabilities of deferred compensation plans.

(R) Mileage expense exceeding the current reimbursement rate set by the Texas Legislature for state employee travel.

(S) Costs of purchases from a related party which exceed the original cost to the related party.

(T) Out of state travel expenses, except for provision of case management related services including training and quality assurance functions.

(U) Contributions to self insurance funds which do not represent payments based on current liabilities.

(V) Expenses incurred because of imprudent business practices.

(W) Expenses which cannot adequately be documented.

(X) Expenses not reported according to the instructions of the cost report.

(Y) Expenses not allowable under other pertinent federal, state, or local laws or regulations.

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 September 22, 1995.

TRD-9512156

Ann Utley  
Chairman, Texas MHMR  
Board  
Texas Department of  
Mental Health and  
Mental Retardation

Effective date: October 13, 1995

Proposal publication date: July 28, 1995

For further information, please call: (512) 206-4516

## Subchapter I. Rehabilitative Services for Persons with Mental Illness

### • 25 TAC §§409.351-409.357

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts amendments to §§409.351-409.357, concerning rehabilitative services for persons with mental illness. Section 409.356 is adopted with changes to the proposed text as published in the August 1, 1995, issue of the *Texas Register* (20 TexReg 5694). Sections 409.351-409.355, and 409.357, are adopted without changes and will not be republished.

Section 409.356(c)(3) is revised on adoption to correct a typographical error.

Subsequent to the proposal, the fiscal note was recalculated. The use of the mean instead of the median for rate setting would increase the matching federal revenue by \$2,191,152 for fiscal year 1995, \$5,806,196 for fiscal year 1996, \$3,903,635 for fiscal year 1997, \$4,047,155 for fiscal year 1998, and \$4,195,577 for fiscal year 1999.

Public comment was received from the Texas Alliance for the Mentally Ill, Austin, and the Center for Health Care Services, San Antonio. A public hearing was held on August 17, 1995; no one attended the hearing and no oral or written testimony was presented.

One commenter stated that the proposed changes were acceptable to the commenter's organization.

Another commenter suggested adding a required timeframe for documentation of services provided prior to or outside the plan of care. The department responds that it is appropriate to allow each Medicaid enrolled provider to regulate its own timeframes. The department notes, however, that language is in place requiring documentation before the provider may bill for services.

The same commenter asked if the proposed appeal procedures were different from the existing appeals procedures. The department responds that the only change to the appeal procedures is the submission of a request for a hearing to TDMHMR, rather than the Texas Department of Human Services.

The amendments are adopted under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers; and under the provisions of Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

### §409.356. Rehabilitative Services Reimbursement Methodology.

#### (a) General information.

(1) The Texas Department of Mental Health and Mental Retardation (TDMHMR) or its designee will reimburse qualified providers for rehabilitative services provided to Medicaid eligible persons with mental illness.

(2) The Texas Board of Mental Health and Mental Retardation determines reimbursement in accordance with §§409.001-409.007 of this title (relating to General Specifications; Methodology; Basic Objectives and Criteria for Desk Review of Cost Reports; Determination of Inflation Indices; Notification; Adjusting Rates When New Legislation, Regulations, or Economic Factors Affect Costs; and Reviews and Administrative Hearings). The reimbursement is uniform, determined prospectively and at least annually. Reimbursement may be determined more often than annually if the Texas Board of Mental Health and Mental Retardation determines it to be necessary.

(b) Basis for the reimbursement analysis.

(1) For the reimbursement period, providers will be reimbursed on the projected expenses required to provide rehabilitative services.

(2) TDMHMR or its designee will collect several different kinds of data. These include the number of rehabilitative services units of service in 15-minute increments that clients receive and the number of direct care server minutes, defined as direct server time by staff. The cost data will include direct costs, programmatic indirect costs, and general and administrative overhead costs. These costs include salaries, benefits, and other costs.

(3) The reimbursement will be developed via TDMHMR or its designee's cost report data submitted by providers, consultation with service providers, and professionals experienced in rehabilitative services.

#### (c) Reporting of Costs.

(1) Cost reporting. Providers must submit information annually, unless otherwise specified, on cost report forms provided by TDMHMR or its designee or on facsimiles formatted according to TDMHMR or its designee's specifications, and that are preapproved by TDMHMR or its designee. From the data, TDMHMR or its designee will develop and implement cost based statewide, uniform reimbursements for rehabilitative services. Providers must complete the cost report forms according to the rules and specifications set forth in the methodology specified in this section.

(2) Reporting period and due date. Provider agencies must prepare the cost report to reflect rehabilitative activities during the designated cost report reporting period. The cost reports must be submitted to TDMHMR or its designee no later than 90 days following the end of the designated reporting period unless otherwise specified by TDMHMR or its designee.

(3) Extension of the due date. TDMHMR or its designee may grant extensions of due dates for good cause. A good cause is one that the provider agency could not reasonably be expected to control. Provider agencies must submit requests for extensions in writing to TDMHMR or its designee before the cost report due date. TDMHMR or its designee responds to requests within ten workdays of receipt.

(4) Failure to file an acceptable cost report. If a provider agency fails to file a cost report according to all applicable rules and instructions, TDMHMR or its designee may withhold all provider payments until the provider agency submits an acceptable cost report.

(5) Allocation method. If allocations of cost are necessary, provider agencies must use and be able to document reasonable methods of allocation. TDMHMR or its designee adjusts allocated costs if TDMHMR or its designee considers the allocation method to be unreasonable. The provider agency must retain workpapers supporting allocations, as specified in Title 40, TAC, §69.202.

(6) Cost report certification. Provider agencies must certify the accuracy of cost reports submitted to TDMHMR or its designee in the format specified by TDMHMR or its designee. Provider agencies may be liable for civil and/or criminal penalties if they misrepresent or falsify information.

(7) Cost data supplements. TDMHMR or its designee may at times require additional financial and statistical information other than the information contained on the cost report.

(8) Review of cost reports. TDMHMR or its designee staff review each cost report to ensure that all financial and statistical information submitted conforms to all applicable rules and instructions. The review of the cost report includes a desk audit. TDMHMR or its designee reviews all cost reports according to the criteria specified in §409.003 of this title (relating to Basic Objectives and Criteria for Desk Review of Cost Reports). If a provider agency fails to complete the cost report according to instructions or rules, TDMHMR or its designee returns the cost report to the provider agency for proper completion. TDMHMR or its designee may require information other than that contained in the cost report to substantiate reported information.

(9) On-site audits. TDMHMR or its designee may perform on-site audits on all provider agencies that participate in the Medicaid program for rehabilitative services. TDMHMR or its designee determines the frequency and nature of audits but ensures that they are not less than that required by federal regulations related to the administration of the program.

(10) Notification of exclusions and adjustments. TDMHMR or its designee notifies providers of exclusions and adjustments to reported expenses made during desk reviews and on-site audits of cost reports as specified in §409.005 of this title (relating to Notification).

(11) Access to records. Each contracted provider must allow access to any and all records necessary to verify cost report information submitted to TDMHMR or its designee. This requirement includes records pertaining to related party transactions and other business activities engaged in by the contracted provider. If a provider agency does not allow inspection of pertinent records within 30 days following written notice from TDMHMR or its designee, a hold is placed on vendor payments until access to the records is allowed. If the provider agency continues to deny access to records, TDMHMR or its designee may cancel the provider agency's contract.

(12) Recordkeeping requirements. Provider agencies must maintain records according to the requirements specified in Title 40, TAC, §69.202. Provider agencies must ensure that records are accurate and sufficiently detailed to support the financial and statistical information contained in cost reports.

(13) Failure to maintain adequate records. If a provider agency fails to maintain adequate records to support the financial and statistical information reported in cost reports, TDMHMR or its designee allows 90 days for the provider to bring recordkeeping into compliance. If a pro-

vider agency fails to correct deficiencies within 90 days from the date of notification of the deficiency, TDMHMR or its designee may cancel the provider agency's contract for services.

(d) Reimbursement determination. TDMHMR or its designee determines reimbursement in the following manner:

(1) Inclusion of certain reported expenses. Provider agencies must ensure that all requested costs are included in the cost report.

(2) Data collection. TDMHMR or its designee collects several different kinds of data. These include the number of rehabilitative services units of service in 15-minute increments that clients receive (client time) and the number of direct care service minutes by staff (server minutes). The cost data will include direct costs, programmatic indirect costs, and general and administrative overhead costs. These costs include salaries, benefits, and other costs. Other costs include nonsalary related costs such as building and equipment maintenance, repair, depreciation, amortization, and insurance expenses; employee travel and training expenses; utilities; plus material and supply expenses.

(A) Server minutes are collected by the type of service delivered and the annualized salary tier of the server. These services are specified in §409.353 of this title (relating to Rehabilitative Services).

(B) The server minutes can be given by professionals and paraprofessionals. These include, but are not necessarily limited to physicians, psychologists, nurses, social workers, mental health technicians, counselors, therapists, and therapy associates. TDMHMR or its designee collects the wages, salaries, benefits, and other costs so that reimbursement can be determined.

(C) Programmatic indirect costs include salaries, benefits, and other costs of the rehabilitative service programs that are indirectly related to the delivery of rehabilitative services to individuals. General administrative overhead includes the salaries, benefits, and other costs of operations of the provider that, while not directly part of the rehabilitative program, constitute costs that support the operations of the rehabilitative program.

(D) Costs are aggregated into three salary tiers based on the percentage of direct servers' salaries in each tier. A percentage is calculated by dividing the individual tiers by the total of the three tiers.

These percentages are used as allocation factors to subdivide total net allowable costs into cost pools based on salary tier. Then each of these pools is separately allocated to the various rehabilitative services based on the percentage of server minutes utilized within each service category and salary tier. The server minutes are identified by individual service and salary tiers. TDMHMR or its designee determines the reimbursement for providing each individual service by summing the total costs in each salary tier and then dividing the total cost of each service by the total units of service in 15-minute increments.

(3) Reimbursement methodology. TDMHMR determines the recommended reimbursement using the following method:

(A) Cost per unit of service. Within an individual service, the unit cost is determined by dividing the total cost of the rehabilitative service by the total units of service in 15-minute increments.

(B) Projected and adjusted costs. Reported costs are projected and adjusted prior to calculations for determining reimbursement. TDMHMR or its designee uses reasonable methods for projecting costs from the historical reporting period to the prospective reimbursement period. The historical reporting period is the time period covered by the cost report. Cost projections adjust the allowed historical costs for significant changes in cost related conditions anticipated to occur between the historical cost period and the prospective reimbursement period. Significant conditions include, but are not necessarily limited to, wage and price inflation or deflation, changes in program utilization and occupancy, modification of federal or state regulations and statutes, and implementation of federal or state court orders and settlement agreements. TDMHMR or its designee determines reasonable and appropriate economic adjusters, as specified in §409.004 of this title (relating to Determination of Inflation Indices), to calculate the projected expenses. The Implicit Price Deflator for Personal Consumption Expenditures (IPD-PCE), which is based on data from the U.S. Department of Commerce, is the most general measure of inflation and is applied to most salaries, materials, supplies, and services when other specific inflators are not appropriate. The three payroll tax inflators, FICA (Social Security), FUTA/SUTA (federal and state unemployment) and WCI (Workers' Compensation) are based on data obtained from the Statistical Abstract of the United States, the Texas Employment Commission and the Texas Board of Insurance, respectively. For community based providers, wage inflation factors are based on

wage and hour survey information submitted on cost reports or special surveys or the IPD-PCE, when wage and hour survey information is unavailable. For state operated providers, the inflation factor is based on wage increases approved by the Texas Legislature. TDMHMR or its designee adjusts reimbursement if new legislation, regulations, or economic factors affect costs, as specified in §409.006 of this title (relating to Adjusting Rates when New Legislation, Regulations, or Economic Factors Affect Costs).

(C) Reimbursement determination. For each type of rehabilitative service each provider's cost per unit of service is calculated. The mean provider cost per unit of service is calculated, and the statistical outliers (those providers whose unit costs exceed plus or minus (+/-) two standard deviations of the mean provider cost) are removed. After removal of the statistical outliers, the mean cost per unit of service is calculated. This mean cost per unit of service becomes the recommended reimbursement per unit of service as of May 20, 1995.

(D) Reimbursement setting authority. The Texas Board of Mental Health and Mental Retardation establishes the reimbursement in an open meeting after consideration of financial and statistical information and public testimony. The Board sets reimbursements that, in its opinion, are within budgetary constraints, adequate to reimburse the cost of operations for an economic and efficient provider, and justifiable given current economic conditions.

(E) Reviews of cost report disallowances. A provider agency may request notification of the exclusions and adjustments to reported expenses, made during either desk reviews or on-site audits, according to §409.005 of this title (relating to Notification). Providers may request an informal review and, if necessary, an administrative hearing to dispute the action taken by TDMHMR or its designee under §409.007 of this title (relating to Reviews and Administrative Hearings).

(F) Requirements for allowable costs. Allowable costs must be:

- (i) Necessary and reasonable for the proper and efficient administration of rehabilitative services for which TDMHMR or its designee has contracted;
- (ii) Authorized or not prohibited under state or local laws or regulations;
- (iii) Consistent with any limitations or exclusions described in this

section, federal or state laws, or other governing limitations as to types or amounts of cost items;

(iv) Consistent with policies, regulations, and procedures that apply to both rehabilitative services and other activities of the organization of which the contracted agency is a part;

(v) Treated consistently using generally accepted accounting principles appropriate to the circumstances;

(vi) Not allowable to or included as a cost of any other program in either the current or a prior period; and

(vii) Net of all applicable credits.

(G) Reasonableness. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business. In determining the reasonableness of a given cost, TDMHMR or its designee considers the following:

(i) whether the cost is of a type generally recognized as ordinary and necessary for the provision of rehabilitative services or the performance under the contract;

(ii) the restraints or requirements imposed by generally accepted sound business practices, arm's length bargaining, federal and state laws and regulations, and contract terms and specifications; and

(iii) the action that a prudent person would take in the circumstances, considering his responsibilities to the public, the government, his employees, clients, shareholders, and/or members, and the fulfillment of the purpose for which the business was organized.

(H) List of allowable costs. The following list of allowable costs is not comprehensive but rather serves as a general guide and serves to clarify certain key expense areas. The absence of a particular cost does not necessarily mean it is not an allowable cost. The following are allowable costs:

- (i) Advertising expenses (employee recruitment, in the yellow pages and to meet regulatory requirements);
- (ii) Automatic data processing equipment leasing expenses;
- (iii) Bonding expenses;
- (iv) Civil defense expenses;
- (v) Compensation for personal services, including back pay;

est);

(vii) Depreciation;  
(viii) Economic planning (allowable only as an indirect cost);

(ix) Employee morale, health, welfare, food service and dormitory expenses and credit;

(x) Fringe benefits;  
(xi) Insurance and indemnification;

(xii) Labor relations expenses;

(xiii) Maintenance and repair;

(xiv) Material and supply cost;

(xv) Patent expenses;

(xvi) Pension plans;

(xvii) Plant protection expenses;

(xviii) Recruitment expenses;

(xix) Relocation expenses;

(xx) Rental expenses;

(xxi) Service and warrant expense;

(xxii) Severance pay;

(xxiii) Special tooling and special test equipment expenses;

(xxiv) Termination expenses;

(xxv) Business, technical and professional activity expenses related to rehabilitative services;

(xxvi) Training and educational expenses;

(xxvii) Transportation expenses;

(xxviii) Travel expenses;

(xxix) Utilities;

(xxx) Utilization review committee.

(I) Unallowable Costs. The following list of unallowable costs is not comprehensive, but rather serves as a general guide and clarifies certain key expense areas. The absence of a particular cost does not necessarily mean that it is an allowable cost. The following are unallowable costs:

(i) Alcoholic beverage expenses;

- (ii) Bad debts and directly associated collection and legal costs;
- (iii) Bid and proposal costs in excess of a set limit;
- (iv) Board of directors fees;
- (v) Congressional lobbying;
- (vi) Contingency provisions as such;
- (vii) Contributions and donations;
- (viii) Entertainment expenses;
- (ix) Executive lobbying costs;
- (x) Fines and penalties for violations of regulations, statutes and ordinances of all types;
- (xi) First class air travel unless authorized under specific circumstances and documented and justified;
- (xii) Goodwill (acquired);
- (xiii) Gains or losses on disposition of capital assets other than depreciable assets;
- (xiv) Idle facility costs except in limited circumstances;
- (xv) Independent research and development costs beyond set limits;
- (xvi) Insurance, retroactive or backdated;
- (xvii) Interest costs for operating funds;
- (xviii) Legal fees defending fraud (and litigating appeals against the government);
- (xix) Long term leases of property and equipment and leases from related parties are limited to the costs of ownership;
- (xx) Losses on other contracts;
- (xxi) Organization expenses;
- (xxii) Product advertising;
- (xxiii) Professional service costs to prosecute claims against the U.S.;
- (xxiv) Promotional and fund raising expenses;
- (xxv) Social club memberships;
- (xxvi) Stock options and some forms of deferred compensation;

- (xxvii) Trade discounts of all types (returns, allowances and refunds);
- (xxviii) Certain taxes.

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 September 22, 1995.

TRD-9512158

Ann Utley  
Chairman, Texas MHMR  
Board  
Texas Department of  
Mental Health and  
Mental Retardation

Effective date: October 13, 1995

Proposal publication date: August 1, 1995

For further information, please call: (512) 206-4516

### ◆ ◆ ◆

## Subchapter J. Reimbursement for Services in Institutions for Mental Diseases (IMD)

### • 25 TAC §§409.371-409.380

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§409.371-409.380, concerning reimbursement for services in institutions for mental diseases (IMD). Sections 409.372-409.376 and 409.379 are adopted with changes to the proposed text as published in the July 28, 1995, issue of the *Texas Register* (20 TexReg 5594). Sections 409.371, 409.377, 409.378, and 409.380 are adopted without changes to the proposed text.

Throughout the subchapter "institution for mental disease" was changed from singular to plural; additionally, necessary punctuation and language were added and unnecessary language was deleted. The definition of "institution for mental diseases" was modified to identify the delivery of psychiatric diagnosis and treatment, and the inclusion of care of persons with mental illness. A definition of "single state agency" was added. In §409.374, language was added to clarify that an acceptable alternate placement is determined by the individual's treatment team. Also in §409.374, language was deleted that referred to initial authorization and re-authorization.

In §409.375(a)(1)(D), the term "involuntary admissions" was changed to "persons involuntarily committed for inpatient mental health treatment under the Texas Health and Safety Code, Chapters 573 and 574" for clarification. In (a)(2)(A)(iii), language was added that identified the single state agency as having access to the institution, patients, and patients' records in accordance with federal regulations. In §409.375(c)(3), the term "health care" was clarified to mean the patient's mental and physical health care. In §409.375(d), the term "inspection team" was changed to "medical review team" for consistency. Notice of termination of reimbursement for IMD services in §409.376(b) was clarified as written notice. Language in §409.376(b)(6) clarifies

that the single state agency has the option of not participating in reimbursement for IMD services. In §409.377(b), the fractions with a denominator of 17 was changed to 12 to correct a mathematical error. In the same subsection language was added that addressed the possibility of the median average per diem falling between two providers. The reference section was updated to reflect an additional reference.

Public comment was received from Advocacy, Inc. A public hearing was held on August 17, 1995; no one attended the hearing and no oral or written testimony was presented.

The commenter believed the definition of "institution for mental diseases" did not sufficiently indicate that the IMD is expected to provide ongoing, aggressive psychiatric treatment for persons with mental illness. The department responds by modifying the definition to reflect the commenter's concerns.

Regarding §409.374(3), the commenter wondered how and by whom a determination of acceptable alternate placement would be made, asking if the lack of a vacancy at an acceptable alternate placement would constitute continued delivery of IMD services to the person. The department responds that language was added to clarify that the individual's treatment team determines acceptable alternate placement. Available alternate placement is not a consideration in the discharge criteria described in §409.378.

The commenter questioned what criteria would be used to base the decision regarding the need for inpatient hospitalization, asking if the availability of alternate community-based placement would impact that decision. The department responds that Chapter 402, Subchapter A (relating to Admissions, Transfers, Absences, and Discharges-Mental Health Facilities) and Chapter 401, Subchapter J (relating to Standards of Care and Treatment in Psychiatric Hospitals) describe the criteria for admission. Also, the Texas Health and Safety Code, Chapter 574, describes the criteria for court-ordered commitments. The availability of alternate community-based placement would not have an impact on the decision.

The commenter expressed concern regarding the re-authorization of continued stay, questioning if the monitoring process ensures that it was not just a procedure in which the physician routinely signs a form every 30 days. The commenter requested that re-authorization involve and provide a monitoring process. The department responds that this subchapter addresses only the reimbursement for IMD services. It does not govern the standards of care and treatment or the necessity for IMD services. The department determined that statements referring to initial authorization and re-authorization were not appropriate for this subchapter and deleted the language. All rules and regulations regarding admissions to, continued stay in, and discharge from psychiatric hospitals apply to individuals from whom Medicaid reimbursement in an IMD may be authorized.

The commenter requested clarification on the term "involuntary admissions" in

§409.375(a)(1)(D). The department responds by replacing the term with the following language: "persons involuntarily committed for inpatient mental health treatment under the Texas Health and Safety Code, Chapters 573 and 574. "

The commenter requested that the language "as related to both treatment and placement alternatives" be added to §409.375(a)(2)(A)(ii). The department responds that it does not want to limit the types of alternative methods of care an IMD could develop.

Regarding §409.375(c), the commenter suggested no advance notice (or as little as possible) be given to the facility for visits by the medical review team. The commenter made this suggestion so that the medical review team could inspect the normal day-to-day workings of the facility. The department responds that the medical review team inspects compliance with the elements described in subsection (a), as well as the adequacy of services being provided to patient's for whom Medicaid reimbursement is made for IMD services, the need for the patient's continued stay, and the feasibility of meeting the patient's needs through alternate care. Federal regulations prohibit announcements more than 48 hours in advance of a visit. The department does not agree that a more restrictive standard is required at this time, however, the department has the authority to conduct unannounced visits for reasonable cause.

The new sections are adopted under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers; and under the provisions of Texas Civil Statutes, Article 4413(502) §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

§409.372. *Application.* This subchapter applies to institutions for mental diseases.

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

Department—The Texas Department of Mental Health and Mental Retardation (TDMHMR) or its designee.

Inpatient hospital services—Services provided under the supervision of a physician in an IMD that meet the requirements for psychiatric hospitals in 42 Code of Federal Regulations, §482.60(b), (c), and (d) and meet certain utilization review requirements in 42 Code of Federal Regulations, §482.30(a), (b), (d), and (e) unless the utilization review requirements have been waived pursuant to 42 Code of Federal Regulations, §440.140.

Institution for mental diseases (IMD)—A hospital of more than 16 beds that is primarily engaged in providing psychiatric diagnosis, treatment, and care of persons

with mental diseases, including medical care, nursing care, and related services.

IMD provider—A provider who has a provider agreement with the department and is receiving reimbursement for IMD services.

IMD services—Inpatient hospital services provided by an eligible IMD provider for the care and treatment (including room and board) of individuals with mental diseases including, but are not limited to:

- (A) initiation, titration, or change in medication;
- (B) monitoring and assessing by qualified mental health professionals;
- (C) suicide precautions;
- (D) redirection of inappropriate behaviors and/or reinforcement of appropriate behaviors;
- (E) group and individual therapies;
- (F) structured skills training activities; and
- (G) nursing services.

Medical review team—A team designated by TDMHMR Office of Medicaid Administration, that includes at least one physician, as prescribed by 42 Code of Federal Regulations, §456.602, who is familiar with the care of mentally ill individuals. No team member may be employed by or have a significant financial interest in the facility under review.

Mental diseases—Diseases listed as mental disorders in the International Classification of Diseases, Ninth Edition, modified for clinical applications (ICD-9-CM), with the exception of mental retardation and chemical dependency disorders.

Qualified mental health professional—A person acting within the scope of his or her training and licensure or certification, who is a:

- (A) certified or licensed social worker as defined by the Human Resources Code, §50.001;
- (B) licensed professional counselor as defined by the Licensed Professional Counselor Act, §2 (Texas Civil Statutes, Article 4512g);
- (C) physician who is "practicing medicine" as defined by the Medical Practice Act, §1.03 (Texas Civil Statutes, Article 4495b) or a person employed by any

agency of the United States having a license to practice medicine in any state of the United States;

(D) registered nurse as defined in the Nurse Practice Act (Texas Civil Statutes Article 4518, §5); or

(E) psychologist offering "psychological services" as defined by the Psychologists' Certification and Licensing Act; §2 (Texas Civil Statutes, Article 4512c).

Single state agency—The Texas Health and Human Services Commission or its designee.

§409.374. *Eligible Population.* Reimbursement for IMD services is limited to individuals:

- (1) who are age 65 years or older;
- (2) who have one or more mental diseases;
- (3) who have no acceptable alternate placement as determined by the individual's treatment team;
- (4) who are eligible for participation in the Texas Medicaid program;
- (5) who are not eligible for medical compensation from other payment sources;
- (6) who have been certified by a licensed physician to need inpatient hospitalization for the care and treatment of a mental disease;
- (7) who meet all other federal, state and local regulations applicable to admission to a mental hospital; and
- (8) for whom the department has authorized IMD services based on medical necessity.

(7) who meet all other federal, state and local regulations applicable to admission to a mental hospital; and

(8) for whom the department has authorized IMD services based on medical necessity.

§409.375. *Provider Eligibility for Reimbursement.*

(a) To be eligible for reimbursement for IMD services, a provider must:

(1) submit an approved application for enrollment through means established by TDMHMR, Office of Medicaid Administration, to include evidence that the provider:

(A) meets the Medicare conditions of participation specified in 42 Code of Federal Regulations, §482.60;

(B) is accredited by the Joint Commission on Accreditation of Healthcare Organizations;

(C) if applicable, licensed by the state as a psychiatric hospital under the provision of the Texas Health and Safety Code, Chapter 577; and

(D) has a consistent historical pattern of accepting persons involuntarily committed for inpatient mental health treatment under the Texas Health and Safety Code, Chapters 573 and 574, during a two-year period prior to application for participation.

(2) have in effect a written provider agreement with the department which:

(A) describes respective responsibilities of the provider and the department's Office of Medicaid Administration, including arrangements to ensure:

(i) joint planning efforts;  
(ii) development of alternative methods of care;

(iii) access by the single state agency to the institution, its patients, and patients' records when necessary to carry out the agency's responsibilities in accordance with 42 Code of Federal Regulations, §431.107;

(iv) recording, reporting, and exchanging medical and social information about the patients; and

(v) other procedures that may be required to achieve the purposes of the agreement;

(B) assures the capacity of the provider to admit, readmit from alternate care, and treat both eligible persons voluntarily seeking services under the Texas Health and Safety Code, Chapter 572 and persons involuntarily committed for inpatient mental health treatment under the Texas Health and Safety Code, Chapters 573 and 574;

(C) assures that the provider is meeting the requirements specified in 42 Code of Federal Regulations, §440.140(a) pertaining to providers of inpatient hospital services in institutions for mental diseases;

(D) assures that the provider is in compliance with those provisions of the Texas Administrative Code, Title 25, Part II, Chapters 401, 402, 403, 404, 405 and 408 that relate to patient care and treatment in inpatient mental health facilities;

(E) assures that the provider is serving a patient population in which more than 50% currently require institutionalization because of a mental disease; and

(F) assures that the provider will submit cost reports and audit data in a manner authorized by the department.

(b) A provider's eligibility for reimbursement must be renewed periodically at a time designated by the department's Office of Medicaid Administration, but not to exceed two years.

(c) Evidence of compliance with subsection (a) of this section will be validated through onsite inspections by a medical review team designated by the TDMHMR Office of Medicaid Administration. Inspections will occur at an interval decided upon by the department and the team but no less than annually. No facility may be notified more than 48 hours before the scheduled arrival of the team. For each Medicaid patient, the team will additionally review:

(1) the adequacy of services available to meet the patient's current health needs and promote the patient's maximum physical well-being;

(2) the necessity or desirability of the patient's continued placement in the facility; and

(3) the feasibility of meeting the patient's mental and physical health care needs through alternative institutional or non-institutional care.

(d) If the provider fails to provide evidence of compliance with subsection (c)(1)-(3) of this section, then the provider must take corrective action, as needed, based on the findings in the medical review team's report.

(1) If the provider fails to take corrective action, recoupment of Medicaid funds associated with the finding(s) will be initiated as provided for in Chapter 409, Subchapter C (relating to Fraud and Abuse and Recovery of Funds).

(2) Recoupment is an adverse action for which the provider is entitled to an administrative hearing in accordance with Chapter 409, Subchapter B of this title (relating to Adverse Actions).

#### §409.376. Provider Reimbursement.

(a) Reimbursement for IMD services provided to eligible individuals begins on the date established by written notice from the department's Office of Medicaid Administration and is contingent upon validation of evidence of provider eligibility as described in §409.375(c) of this title (relating to Provider Eligibility for Reimbursement).

(b) Provider reimbursement for IMD services is subject to termination with written notice on the date that any of the following occurs:

(1) loss of Medicare and/or JCAHO certification;

(2) if applicable, loss of licensure as a psychiatric hospital;

(3) failure to meet requirements specified in 42 Code of Federal Regulations, §440.140(a) pertaining to providers of inpatient hospital services in institutions for mental diseases;

(4) demonstrated noncompliance with those provisions of the Texas Administrative Code, Title 25, Part II, Chapters 401, 402, 403, 404, 405, and 408 that relate to patient care and treatment in inpatient mental health facilities, or with state laws governing admission and treatment;

(5) breach of the written provider agreement described in §409.375(a)(2) of this title (relating to Provider Eligibility for Reimbursement); or

(6) termination of participation by the single state agency in the reimbursement for services in IMD Medicaid program.

(c) Failure to submit an acceptable cost report in the cost report time frame constitutes an administrative contract violation, which could result in a hold of vendor payments

(d) Termination of provider reimbursement or being placed on vendor hold are adverse actions for which the provider is entitled to an administrative hearing in accordance with Chapter 409, Subchapter B of this title (relating to Adverse Actions).

(e) Providers who receive Medicaid reimbursement for IMD services are governed by Chapter 409, Subchapter C of this title (relating to Fraud and Abuse and Recovery of Funds).

§409.379. References. The following laws and rules are referred to in this subchapter:

(1) 42 Code of Federal Regulations, §§482.60, 482.30, 431.620, 440.140, and 431.107;

(2) Human Resources Code, §50.001;

(3) Texas Civil Statutes, Articles 4495b, 4512c, 4512g, and 4518, §5;

(4) Texas Health and Safety Code, Chapters 572-574 and 577;

(5) those provisions in Chapters 401-405 and 408 of this title, which relate to patient care and treatment in inpatient mental health facilities; and

(6) Chapter 409, Subchapter B of this title (relating to Adverse Actions); and

(7) Chapter 409, Subchapter C of this title (relating to Fraud and Abuse and Recovery of 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 September 22, 1995.

TRD-9512157

Ann Utley  
Chairman, Texas MHMR  
Board  
Texas Department of  
Mental Health and  
Mental Retardation

Effective date: October 13, 1995

Proposal publication date: July 28, 1995

For further information, please call: (512) 206-4516

## TITLE 28. INSURANCE

### Part I. Texas Department of Insurance

#### Chapter 25. Insurance Premium Finance

##### Subchapter A. General Provisions

###### • 28 TAC §25.9

The Commissioner of Insurance adopts an amendment to §25.9, requiring insurance premium financing information to be disclosed to consumers in both English and Spanish, without changes to the proposed text as published in the August 18, 1995, issue of the *Texas Register* (20 TexReg 6295).

Amended §25.9 will make the premium financing information already required to be disclosed by §25.9 available in Spanish as well as English. Amended §25.9 also adopts by reference an amended Premium Finance Comparison Disclosure Form (disclosure form) for use by all insurance premium finance companies subject to Chapter 25 of the Administrative Code and the Insurance Code, Chapter 24. The amended disclosure form contains premium financing information in English, followed by the same information translated into Spanish.

Amended §25.9 is necessary to provide for disclosure of premium financing information to more insurance consumers, those speaking either English or Spanish. The amended section will enable a greater number of consumers to make more informed decisions when financing insurance premiums.

For: Consumers Union. For with changes: Office of Public Insurance Counsel. With suggested changes: National IPF Company doing business as Emerald Finance Company.

Comment: One commenter strongly supports amended §25.9. The commenter states that requiring the disclosure form to be in both English and Spanish is necessary to bring pertinent financing information to the large number of Spanish-speaking Texans so that they may make informed decisions.

Agency Response: The department agrees.

Comment: Another commenter strongly supports the amendment to §25.9. However, the

commenter was concerned about the wording of the notice segment of the disclosure form. The commenter argues that the use of the word "installments" to refer to both the Texas Automobile Insurance Plan Association (TAIPA) installment payment plan and the premium finance payment plan is confusing. The commenter suggests that the department substitute its proposed language for the notice paragraph in lieu of the proposed language. The commenter also argues that the signature line may be confusing, i.e. that consumers may believe it is necessary to sign the form to get either payment option. The commenter suggests it would be clearer to have two signature blocks, each directly below the payment option to which it refers.

Agency Response: The department disagrees. The word "installment" is used in connection with the premium finance payment plan only once when describing that the consumer repays the premium finance company in installments. Since this is precisely what happens, this is an accurate statement. The focus of the disclosure form is to provide consumers with a balanced and accurate picture of the payment options available to them. The fact is that both TAIPA and insurance premium finance companies allow consumers to pay their insurance premiums in installments over time. The disclosure form simply allows consumers to compare the differences in the costs of each payment option. The department also disagrees with the suggestion that the form have two signature blocks. The inclusion of two signature boxes is potentially confusing in itself. The signature block clearly states that consumers are to sign the form if they choose the premium finance payment option.

Comment: A commenter asserts that, as used in the language of the disclosure form, the meaning of the term "deposit premium" is unclear. The commenter asserts that the term might include a premium paid to an insurer by an insurance premium finance company on behalf of the insured. The commenter concludes that this might reduce the amount of unearned premium (in which the insurance premium company has a security interest) and allow the insurer to retain funds, which might reduce the insurance premium finance company's security interest.

Agency Response: The department disagrees. The use of the term "deposit premium" must be considered in context. The notice to applicants on the disclosure form states that applicants, with certain exceptions, are eligible to pay their insurance premium through TAIPA's monthly installment plan. The exceptions to the eligibility are listed at the bottom of the disclosure form and state: that TAIPA's installment plan is not available for commercial automobile policies; and, that an insurer assigned through TAIPA has a right to offset any premiums it is owed. These provisions apply only to those applicants who want to use TAIPA's installment payment plan. In other words, the insurer's right to offset would not apply to premiums financed through an insurance premium finance company. The offset is only triggered if the consumer owes for a previous default in premium, but desires to use the TAIPA installment payment plan.

The amendment is adopted pursuant to the Insurance Code, Articles 24.09 and 1.03A, and the Government Code, §§2001.004 et seq (Administrative Procedure Act). Article 24.09 authorizes the Texas Department of Insurance to adopt and enforce rules necessary to carry out the provisions of Chapter 24 (regulating insurance premium finance companies). Article 1.03A provides that the Commissioner of Insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance only as authorized by a statute. The Government Code, §§2001.004 et seq, authorize and require each state agency to adopt rules of practice setting forth the nature and requirements of available procedures and to prescribe the procedures for adoption of rules by a state agency.

The following article is affected by this proposal: Insurance Code, Chapter 24.

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 September 22, 1995

TRD-9512216

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

Effective date: October 15, 1995

Proposal publication date: August 18, 1995

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

## TITLE 30. ENVIRONMENTAL QUALITY

### Part I. Texas Natural Resource Conservation Commission

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

##### Subchapter J. Industrial Solid Waste and Hazardous Waste Fee System

###### • 30 TAC §335.325, §335.326

The Texas Natural Resource Conservation Commission adopts amendments to §335.325 and §335.326, concerning industrial solid waste and hazardous waste fee system, without changes to the proposed text as published in the April 28, 1995, issue of the *Texas Register* (20 TexReg 3129). The Texas Health and Safety Code, Chapter 361, Subchapter D authorizes the commission to establish an industrial solid waste and hazardous waste fee system related to the generation and disposition of waste and the operation of waste management facilities subject to permits. Under the current fee program, monthly waste management fees are

assessed based on the actual amounts of waste which are treated, stored or disposed at permitted facilities. Under provisions of the Texas Health and Safety Code, §361.136(c), these waste management fees are based on the total weight of the amounts of waste managed, except for wastes which are disposed in underground injection wells, which are based on the dry weight of the waste. The Texas Health and Safety Code, §361.131 defines dry weight to be the weight of waste stream constituents other than water. The Texas Health and Safety Code, §361.136(m) authorizes the commission to establish by rule a method for computing the dry weight of a waste.

Some companies generate waste streams that significantly exceed the average for dry weight ratios of injected waste streams due to the presence of naturally-occurring brines at high concentrations. The rules as adopted will mitigate the impact of the highly saline waste streams on fee calculations by assessing a lower fee for the brine component of wastes above a threshold dry weight measure. The commission also adopts alternative procedures for the determination of the dry-weight measurement of hazardous wastes which are high in inorganic salts or brines.

Comments on the proposed rules were received from the Texas Chemical Council and BP Chemicals. The Texas Chemical Council supported the proposed amendments. BP Chemicals requested that the proposed rule be amended to adopt a lower threshold for dry-weight at which the reduced fee rate would become effective in order to increase the incentives for implementation of waste reduction efforts which typically reduce the volumes of wastewater and increase the concentrations of dissolved solids. A threshold of 8.0% was recommended as an alternative to the 10% proposed by the commission. The commission recognizes the efforts being made industry-wide to reduce waste stream volumes and acknowledges that these efforts will have implications for the concentration of aqueous waste streams and the relative cost per unit of volume for disposal fee payments. It must also be recognized, however, that because fees for injections wells are based solely on dry weight, fee payments do not increase with the relative concentration of solids in the waste stream as a result of waste reduction efforts. In addition, the proposed amendment to the rules is intended to address a limited number of circumstances where relatively small quantities of waste significantly differ from the norm and result in fee payments that are inconsistent with the volumes of waste involved and the size of the affected facilities. To broaden the application of this rule would have revenue implications for agency programs that cannot be determined at this time, but which, if significant, would likely require adjustments to disposal fee rates for all injection well operators in order to maintain adequate financial support of programs. For these reasons, the suggested change to the proposal has not been adopted. The Texas Chemical Council also commented on two errors in the preamble to

the proposed rules. Paragraph three of the preamble refers incorrectly to §335.135 rather than §335.325 which is being amended. The section is correctly numbered as §335.325 in the body of the adopted rule. Also, the proposal refers to an amendment to §335.325(j) which changed a reference in the subsection to include the proposed new subsection (q) in that section. Although the new §335.325(q) was published and now adopted, the amended §335.325(j) was inadvertently omitted from the publication. As soon as practicable, the commission will submit a proposal which will include publication of the amendment to §335.325(j) that correctly refers to the new subsection (q).

The amendments are adopted under the Texas Health and Safety Code, Chapter 361, which provides the Texas Natural Resource Conservation Commission with the authority to establish an industrial solid waste and hazardous waste fee program and implement fee assessments for industrial solid waste and hazardous waste generators, waste management facilities and permit applicants.

The sections will implement provisions of the Texas Health and Safety Code, §§361.131, 361.136, and 361.139.

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 September 22, 1995.

TRD-9512251

Kevin McCalla  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

Effective date: October 16, 1995

Proposal publication date: April 28, 1995

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

◆ ◆ ◆  
**TITLE 34. PUBLIC FI-  
NANCE**  
**Part III. Teacher  
Retirement System of  
Texas**

**Chapter 29. Benefits**

**Retirement**

• **34 TAC §29.11**

The Teacher Retirement System of Texas (TRS) adopts an amendment to §29.11, without changes to the proposed text as published in the August 15, 1995, issue of the *Texas Register* (20 TexReg 6198).

The changes in the section are necessary to adopt by reference the actuarial tables needed to implement recent statutory changes to early age retirement benefits, re-

tirement benefits, and disability retirement benefits offered by TRS.

The amendment will provide TRS with actuarial tables for calculating service retirement allowing an additional joint survivor benefit option. Also the new tables update the early age reduction factors to reflect a statutory amendment that will allow early age retirement at age 50 with 30 years of service without a reduction in retirement benefits.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Government Code, §825.102, which provides the Board of Trustees of the Teacher Retirement with the authority to adopt rules for membership eligibility, the administration of the funds of the retirement system and the transaction of its business; §825.105, which authorizes the board to adopt actuarial tables for benefit calculation.

*§29.11. Actuarial Tables.* Actuarial tables furnished by Watson Wyatt Worldwide, Consulting Actuaries, will be used for computation of benefits. Factors for ages or types of annuities not included in the tables will be computed from the same data by the same general formulas. The Teacher Retirement System adopts by reference the Watson Wyatt Company's June 1995, factors for retirement options and the early age reduction factors based on 8.0% interest. These actuarial tables shall be effective beginning September 1, 1995. The Teacher Retirement System also adopts by reference Watson Wyatt Worldwide's June 1995, factors for disabled member retirement options based on 8.0% interest. These actuarial tables shall be effective beginning September 1, 1995. The board of trustees may change the tables or adopt new tables from time to time by amending this section; provided however, that any such change does not result in any member receiving a smaller benefit than the benefit computed immediately before the change. Information regarding and/or copies of these tables may be obtained by contacting Teacher Retirement System of Texas, 1000 Red River Street, Austin, Texas 78701-2698, (512) 397-6400.

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 September 21, 1995.

TRD-9512140

John R. Mercer  
Interim Executive Director  
Teacher Retirement  
System of Texas

Effective date: October 13, 1995

Proposal publication date: August 15, 1995

For further information, please call: (512) 370-0506

# OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

**Emergency meetings and agendas.** Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

**Posting of open meeting notices.** All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the *Texas Register*.

**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

## Texas Department of Agriculture

Thursday, October 12, 1995, 10:30 a.m.

Texas Department of Agriculture, 900-B East Expressway 83

San Juan

Office of Hearings

### AGENDA:

Alleged violation of Texas Agriculture Code Annotated, §§101.001-101.021 and/or §§102.001-102.172 (Vernon 1995) by Goldman-Hayden Company, Incorporated as petitioned by the Produce Cellar, Incorporated.

Contact: Joyce C. Arnold, P.O. Box 12847, Austin, Texas 78711, (512) 475-1668.

Filed: September 21, 1995, 11:35 a.m.

TRD-9512103

Thursday, October 19, 1995, 10:30 a.m.

Texas Department of Agriculture, 900-B East Expressway 83

San Juan

Office of Hearings

### AGENDA:

Alleged violation of Texas Agriculture Code Annotated, §§101.001-101.021 and/or §§102.001-102.172 (Vernon 1995) by Ralph Scott Produce as petitioned by David Esau.

Contact: Joyce C. Arnold, P.O. Box 12847, Austin, Texas 78711, (512) 475-1668.

Filed: September 21, 1995, 11:35 a.m.

TRD-9512104

## Texas Alcoholic Beverage Commission

Thursday, October 5, 1995, 9:00 a.m.

5806 Mesa Drive, Suite 185

Austin

### AGENDA:

9:00 a.m.—Call to order.

Convene in open meeting.

Announcement of executive session.

1. Executive session:

a. briefing regarding operations of the general counsel's office;

b. discussion of *Ourioga v. TABC*; and

c. discussion of *Sewell v. TABC*.

Continue open meeting.

2. Take action, including a vote, if appropriate on topics listed for discussion under executive session.

3. Approval of minutes of August 7, 1995, meeting.

4. Recognition of agency employees with 20 or more years of service.

5. Administrator's report.

6. Request for rule change to 16 TAC §45.113(h)(3) to increase promotional item

cost from \$1.00 and 16 TAC §45.113(f)(7) to allow gifts to consumers under national promotions; discussion, comment and possible action. (Relaxation of Certain Restrictions)

7. Request for rule change to 16 TAC §33.24(j)(1); discussion, comment and possible action. (Conduct Surety Bond)

8. Amend 16 TAC §45.101 as published in the August 29, 1995, issue of the *Texas Register* (20 *TexReg* 6732); discussion, comment and possible adoption. (Rebates, Coupons and Premium Stamps)

9. Public comment.

Contact: Doyne Bailey, P.O. Box 13127, Austin, Texas 78711, (512) 206-3217.

Filed: September 25, 1995, 8:14 a.m.

TRD-9512228

## Automobile Theft Prevention Authority

Wednesday, September 27, 1995, 9:00 a.m.

1102 South Commerce

Harlingen

Ad Hoc Committee

### AGENDA:

I. Discuss/consider development of additional definitions and options for grant match

**II. Adjournment**

**Contact:** Linda Young, 4000 Jackson Avenue, Building One, Austin, Texas 78731, (512) 302-2059.

**Filed:** September 22, 1995, 3:05 p.m.

TRD-9512195

**Tuesday, October 3, 1995, 9:00 a.m.**

604 Brazos Street

Austin

Board Meeting

**AGENDA:**

- I. Call to order
- II. Report on HEAT Program
- III. Committee reports

IV. Director/staff report

V. Discussion/approval of rules to be established regarding insurance company refunds

VI. Review of standing committees

VII. Executive session to discuss/approve ATPA personnel matters, pursuant to Texas Government Code

VIII. Discussion/approval of funds for public awareness contract

IX. Discussion/approval of travel allowance for grantees to board meetings

X. Discussion/approval of recommendations from Ad Hoc Committee on grant match

XI. Update on office space for ATPA staff

XII. Adjournment

**Contact:** Linda Young, 4000 Jackson Avenue, Building One, Third Floor, Austin, Texas 78731, (512) 467-3999.

**Filed:** September 22, 1995, 3:05 p.m.

TRD-9512194

**State Board of Barber Examiners**

**Tuesday, October 3, 1995, 9:00 a.m.**

333 Guadalupe, Suite 2-110, William P. Hobby Building, Room 218

Austin

Board of Directors

**AGENDA:**

Open of meeting; roll call; read and possibly approve minutes of August 8, 1995; new business; executive session; open session; and adjournment.

**Contact:** Alice Mora, 333 Guadalupe, Suite 2-110, Austin, Texas 78701, (512) 305-8475.

**Filed:** September 25, 1995, 1:41 p.m.

TRD-9512274

**Certified Nonprofit Health Corporation Advisory Committee**

**Monday, October 9, 1995, 9:30 a.m.**

333 Guadalupe Street, Room 1250A, Tower One

Austin

**AGENDA:**

- 1. Opening remarks
- 2. Introduction of committee members and staff
- 3. Committee purpose
- 4. Election of chairperson
- 5. Presentation of draft rules
- 6. Future meeting dates
- 7. Recess

**Contact:** Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

**Filed:** September 26, 1995, 9:00 a.m.

TRD-9512296

**Conservatorship Board**

**Tuesday, September 26, 1995, 9:00 a.m.**

710 Brazos, Perry Brooks Building

Austin

Emergency Meeting

**AGENDA:**

Call to order; approval of September 12, 1995 minutes; executive session to discuss personnel matters; reconvene and adjournment.

Reason for Emergency: Necessary for Conservatorship Board to meet in order to meet statutory mandate.

**Contact:** Conrad Alexander, 710 Brazos, Austin, Texas 78701, (512) 867-8147.

**Filed:** September 22, 1995, 8:23 a.m.

TRD-9512139

**Texas Education Agency**

**Friday-Sunday, September 29-October 1, 1995, 5:00 p.m. (Friday) and 8:00 a.m. (Saturday-Sunday), respectively.**

Holiday Inn, Conference Room, 20 North IH-35

Austin

Marketing Education Essential Elements Project

**AGENDA:**

Friday, the group will review the August meeting and hear a project update. Saturday, subgroups will begin work on different marketing functions. Sunday, the subgroups will make reports, and the full group will review the projects as a whole.

**Contact:** Emmett Eary, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9443.

**Filed:** September 22, 1995, 4:13 p.m.

TRD-9512221

**Thursday, October 5, 1995, 1:00 p.m.**

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee of the Whole

**AGENDA:**

On Thursday, October 5, 1995, from 1:00 p.m. until 3:00 p.m., the SBOE Committee of the Whole will have a briefing on performance standards and review of revised draft of the Articles of Incorporation and Bylaws of the Texas Permanent School Fund Management Company, Inc.

**Contact:** Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

**Filed:** September 26, 1995, 8:11 a.m.

TRD-9512290

**Thursday, October 5, 1995, 3:00 p.m.**

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee of the Whole

**AGENDA:**

On Thursday, October 5, 1995, from 3:00 p.m. until 5:00 p.m., the SBOE Committee of the Whole will have a briefing on the proposed application and criteria for selection of open-enrollment charters.

**Contact:** Criss Cloudt, 1701 North Congress Avenue, Austin, Texas (512) 463-9701.

**Filed:** September 26, 1995, 8:11 a.m.

TRD-9512291

## Employees Retirement System of Texas

Wednesday-Thursday, October 4-5, 1995, 1:30 p.m. and 9:00 a.m., respectively.

ERS Auditorium, ERS Building, 18th and Brazos

Austin

ERS Board of Trustees

### AGENDA:

Approval of minutes; briefing on revisions to the Uniform Group Insurance Program Strategic Plan; appointment of Investment Advisory Committee members; consideration of advisor INVESCO Capital Management, Inc.'s Recommended Universe of Eligible Stocks; election of a member to the Board of Trustees of the Texas Growth Fund; adoption of proposed investment policy; selection of auditor to perform financial audit of the system for the fiscal year ended August 31, 1995; selection of a vendor for supplemental permanent life insurance; appeals of contested cases; next trustee meeting date; and adjournment.

Contact: William S. Nail, 18th and Brazos, Austin, Texas 78701, (512) 867-3336.

Filed: September 26, 1995, 9:06 a.m.

TRD-9512297

## General Land Office

Tuesday, October 3, 1995, 10:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Rooms 118 and 831

Austin

School Land Board

### AGENDA:

Approval of previous board meeting minutes; opening and consideration of bids received for the October 3, 1995 oil, gas and other minerals lease sale; pooling applications, Keystone (San Andres) and Keystone (Holt) Fields, Winkler County; Giddings (Austin Chalk-3), Fayette County; consideration of adoption of rules relating to marginal oil and gas well royalty rules, production reporting and royalty payments; direct land sale, El Paso County; coastal public lands-commercial easement applications and renewals, Clear Lake, Galveston County; Chocolate Bayou, Brazoria County, Old Brazos River, Brazoria County; easement applications and renewals, Copano Bay, Aransas County; Dickinson Bayou, Galveston County; Galveston Bay, Galveston County; Hynes Bay, Calhoun County; Galveston Bay, Chambers County; Carancahua Bay, Calhoun County; structure (cabin) permit terminations and renewals, Laguna Madre, Cameron County; Espiritu

Santo Bay, Calhoun County; Laguna Madre, Kleberg County, Laguna Madre, Kennedy County; executive session-pending or contemplated litigation; executive session-consideration of land acquisition and disposition in El Paso County; open session-consideration of land acquisition and disposition in El Paso County; executive session-consideration of land acquisition, Kleberg County; open session-consideration of land acquisition, Kleberg County; executive session-consideration of extension of time to exercise option to purchase under the option contract, Smith School Tract, Travis County; open session-consideration of extension of time to exercise option to purchase under the option contract, Smith School Tract, Travis County.

Contact: Linda K Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: September 25, 1995, 3:41 p.m.

TRD-9512269

## Texas Department of Health

Tuesday, October 3, 1995, 1:30 p.m.

Room S-402, Texas Department of Health Annex, 8407 Wall Street

Austin

Medical Radiologic Technologist Advisory Committee, Rules Subcommittee/Telephone Conference Call

### AGENDA:

The subcommittee will discuss and possibly act on: rules relating to education and training programs for registrants (no-certified technologists); public comment; and announcement of next meeting date.

Contact: Donna Hardin Flippin, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6617. 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: September 22, 1995, 4:40 p.m.

TRD-9512224

Thursday, October 5, 1995, 10:00 a.m.

Room T-607, Texas Department of Health, 1100 West 49th Street

Austin

County Indigent Health Care Program (CIHCP) Advisory Committee

### AGENDA:

The committee will discuss approval of the minutes from the July 20, 1995 meeting, and discuss and possibly act on: status of Texas 1115 Medicaid Waiver; CIHCP director's report; public comment; and sched-

ule of future meetings and suggested agenda items.

Contact: Jane Jaggard, 1100 West 49th Street, Austin, Texas 78756, (512) 338-6461. For ADA assistance, contact Richard Butler at (512) 458-7695 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: September 25, 1995, 11:40 a.m.

TRD-9512259

## Texas Department of Housing and Community Affairs

Friday, September 29, 1995, 8:00 a.m.

Capitol Extension, 1100 North Congress Avenue, Room E1.016

Austin

Program Committee Meeting

### AGENDA:

The Program Committee will meet to consider and possibly act on the following: approval of minutes of meeting of August 24, 1995; boarder housing initiatives recommendations for funding; purchase of remaining properties from resolution trust corporation; funding of CCBC contract for Beeville; HOME Program contract amendments for cities of Trinity, Pineland, Kountze and Tenaha; approval of interim construction loan for Dove Springs subdivision; amendment to 1995 Texas Community Development Program final statement; and CDBG Young v. Cisneros Fund; executive director's report; executive session consultation with attorney under §551.071(2) of Texas Government Code; adjourn.

Supporting materials and staff recommendations on these agenda items are available for review at Texas Department of Housing and Community Affairs, 811 Barton Springs Road, Austin, Texas 78704 or copies may be obtained on specific items by calling (512) 475-3934 (copies are subject to open records request copying charge per page).

Individuals who require auxiliary aids or services for this meeting should contact Aurora Carvajal, ADA Responsible Employee, at (512) 475-3822 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Contact: Larry Paul Manley, 811 Barton Springs Road, Suite 500, Austin, Texas 78704, (512) 475-3934.

Filed: September 21, 1995, 4:38 p.m.

TRD-9512129

Friday, September 29, 1995, 9:15 a.m.  
1100 North Congress Avenue, Room  
E1.016, Capitol Extension

Austin

Low Income Housing Tax Credit Commit-  
tee Meeting

AGENDA:

The Low Income Housing Tax Credit Com-  
mittee of the Board of the Texas Depart-  
ment of Housing and Community Affairs  
will meet to consider and possibly act upon  
the following: update status on Tax Credit  
Program; delegation of signature authority;  
executive session-consultation with attorney  
under §551.071(2) of Texas Government  
Code; adjourn.

Contact: Larry Paul Manley, 811 Barton  
Springs Road, Suite 500, Austin, Texas  
78704, (512) 475-3934.

Filed: September 21, 1995, 4:38 p.m.

TRD-9512130

Friday, September 29, 1995, 10:30 a.m.

Capitol Extension, 1100 North Congress  
Avenue, Room E1.016

Austin

Audit Committee Meeting

AGENDA:

The Audit Committee will meet to consider  
and possibly act on the following:

KPMG Peat Marwick's reports on loan ser-  
vicing audit and status of fiscal year 1995  
independent audit; fiscal year 1996 internal  
auditing plan; status of internal audits and  
special projects in progress-CDBG Revolving  
Loan Fund Program, Public Funds In-  
vestment Act, Collateralized Mortgage Ob-  
ligations Series 1978A, Low Income  
Housing Tax Credit Program, Budgetary  
Accounting System, Series 1995A and B  
Tax Exempt/1995 A and B Taxable Bond  
Issues; state auditor's fiscal year 1995 state-  
wide audit; department's request to state  
auditor's office for comprehensive financial  
and management control audit; posting for  
Internal Auditor IV position; adjourn.

Supporting materials and staff recommenda-  
tions on these agenda items are available for  
review at Texas Department of Housing and  
Community Affairs, 811 Barton Springs  
Road, Austin, Texas 78704 or copies may  
be obtained on specific items by calling  
(512) 475-3934 (copies are subject to open  
records request copying charge per page).

Individuals who require auxiliary aids or  
services for this meeting should contact Au-  
rora Carvajal, ADA Responsible Employee,  
at (512) 475-3822 or Relay Texas at  
1-800-735-2989 at least two days before the  
meeting so that appropriate arrangements  
can be made.

Contact: Larry Paul Manley, 811 Barton  
Springs Road, Suite 500, Austin, Texas  
78704, (512) 475-3934.

Filed: September 21, 1995, 4:39 p.m.

TRD-9512134

Friday, September 29, 1995, 11:30 a.m.

1100 North Congress Avenue, Room  
E1.016, Capitol Extension

Austin

Finance Committee Meeting

AGENDA:

The Finance Committee of the Board of the  
Texas Department of Housing and Commu-  
nity Affairs will meet to consider and possi-  
bly act on the following: approval of min-  
utes of meeting of August 20, 1995, and  
meeting of August 24, 1995; approval of  
resolution concerning 1995 bond transac-  
tion; approval of master servicer; approval  
of delegation of authority to director to  
select a guaranteed investment contract bro-  
ker/provider and bond insurer; approval of  
investment policy; executive session-  
consultation with attorney under §551.  
071(2) of Texas Government Code; execu-  
tive director's report; adjourn.

Supporting materials and staff recommenda-  
tions on these agenda items are available for  
review at Texas Department of Housing and  
Community Affairs, 811 Barton Springs  
Road, Austin, Texas 78704 or copies may  
be obtained on specific items by calling  
(512) 475-3934 (copies are subject to open  
records request copying charge per page).

Individuals who require auxiliary aids or  
services for this meeting should contact Au-  
rora Carvajal, ADA Responsible Employee,  
at (512) 475-3822 or Relay Texas at  
1-800-735-2989 at least two days before the  
meeting so that appropriate arrangements  
can be made.

Contact: Larry Paul Manley, 811 Barton  
Springs Road, Suite 500, Austin, Texas  
78704, (512) 475-3934.

Filed: September 21, 1995, 4:38 p.m.

TRD-9512131

Friday, September 29, 1995, 1:00 p.m.

1100 North Congress Avenue, Room  
E1.016, Capitol Extension

Austin

Board Meeting

AGENDA:

The Board of Texas Department of Housing  
and Community Affairs will meet to con-  
sider and possibly act on: approval of min-  
utes of meeting of August 19, 1995 and  
August 24, 1995 meetings; approval of  
1996 internal auditing plan; approval of res-  
olution concerning 1995 bond transaction;

approval of master servicer; approval of  
delegation of authority to director to select a  
guaranteed investment contract broker/pro-  
vider and bond insurer; approval of invest-  
ment policy; border housing initiatives rec-  
ommendations for funding; purchase of re-  
maining properties from the resolution trust  
corporation; funding of CCBC contract for  
Beeville; HOME Program contract amend-  
ments for cities of Trinity, Pineland,  
Kountze and Tenaha; approval of interim  
construction loan for Dove Springs subdivi-  
sion; amendment to 1995 Texas Community  
Development Program final statement; and  
CDBG Young v. Cisneros Fund; delegation  
of signature authority; election of secretary,  
treasurer and assistant secretary of the  
board; action on manufactured housing con-  
tested cases: Docket Number  
MHD1994000055D, in the matter of Billy  
Woods, respondent; Docket Number  
MHD1994000524D, in the matter of Duane  
Flow, Jr. doing business as Curry House  
Moving, respondent; resolution delegation  
authority to the board chair on signing of  
final orders; executive session-anticipated  
litigation (general counsel to give report on  
litigation under §551.071 and §551.103,  
Texas Government Code litigation excep-  
tion). Proposed restructure of mutual benefit  
bonds; consultation with attorney under  
§551.071(2) of the Texas Government  
Code; action in open session on items dis-  
cussed in executive session; executive di-  
rector's report;

Supporting materials and staff recommenda-  
tions on these agenda items are available for  
review at Texas Department of Housing and  
Community Affairs, 811 Barton Springs  
Road, Austin, Texas 78704 or copies may  
be obtained on specific items by calling  
(512) 475-3934 (copies are subject to open  
records request copying charge per page).

Individuals who require auxiliary aids or  
services for this meeting should contact Au-  
rora Carvajal, ADA Responsible Employee,  
at (512) 475-3822 or Relay Texas at  
1-800-735-2989 at least two days before the  
meeting so that appropriate arrangements  
can be made.

Contact: Larry Paul Manley, 811 Barton  
Springs Road, Suite 500, Austin, Texas  
78704, (512) 475-3934.

Filed: September 21, 1995, 4:38 p.m.

TRD-9512132

◆ ◆ ◆  
**Texas State Affordable Hous-  
ing Corporation**

Friday, September 29, 1995, 2:00 p.m.

1100 North Congress Avenue, Room  
E1.016, Capitol Extension

Austin

Board of Directors Meeting

AGENDA:

The Board of the Texas State Affordable Housing Corporation will meet to consider and possibly act upon the following: approval of minutes of August 24, 1995; appointment of executive vice-president and chief operating officer of Corporation; appointment of assistant secretary; discussion and proposed action on amendments to the by-laws; discussion and proposed action on service agreement between Corporation and Texas Department of Housing and Community Affairs; executive session-consultation with attorney under §551.071(2) of Texas Government Code; adjourn.

Contact: Larry Paul Manley, 811 Barton Springs Road, Suite 500, Austin, Texas 78704, (512) 475-3934.

Filed: September 21, 1995, 4:38 p.m.

TRD-9512133

**Texas Department of Human Services**

Thursday, October 5, 1995, 10:00 a.m.

701 West 51st, Third Floor, Room 305, East Tower

Services to Persons with Disabilities Subcommittee

AGENDA:

- 1. Welcome and introductions. 2. Approval of minutes. 3. Public comment. 4. Announcements from SSPD members. 5. Summary of September 15, 1995 TDHS board meeting, revised rules for termination of services in CCAD programs. Medicaid rules, non-Medicaid rules. 6. Summary of September 5, 1995 ADAC meeting. ADAC action items. ADAC informational/technical items. 7. OSPD updates. Fiscal year 1995 OSPD annual report. Fiscal year 1996 OSPD strategies. Summary of major impacts of TDHS functional review. Consumer satisfaction surveys. 8. Action item. Capacity assessment Tool of Self Care and Financial Management. Current goal/objective/strategy/measure structure. 9. Follow-up on actions/motions/recommendations made at August 3, 1995 SSPD meeting. Guidelines for end of life decisions in LTC facilities. 10. Next meeting scheduled for Thursday, December 7, 1995 at 10:00 a.m. 11. Adjournment.

Contact: D. J. Johnson, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-3533.

Filed: September 25, 1995, 10:51 a.m.

TRD-9512256

**Texas Department of Insurance**

Monday, October 9, 1995, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0973

To consider whether disciplinary action should be taken against Tamara Gale Barnes, Houston, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License, a Variable Contract Agent's License, a Group II, Insurance Agent's License and a Local Recording Agent's License issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: September 26, 1995, 8:59 a.m.

TRD-9512293

Tuesday, October 10, 1995, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-1226

To consider whether disciplinary action should be taken against Charles C. Emmons, Garland, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License and a Group I, 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: September 26, 1995, 8:59 a.m.

TRD-9512294

Tuesday, October 18, 1995, 1:00 p.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0830.C

To consider whether disciplinary action should be taken against John Henry Glenn, Dallas, Texas, who holds a Local Recording Insurance Agent's License issued by the Texas Department of Insurance (continued from August 14, 1995).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: September 26, 1995, 8:59 a.m.

TRD-9512295

**Texas State Library and Archives Commission**

Friday-Saturday, October 6-7, 1995, 10:00 a.m. and 8:30 a.m., respectively.

Lorenzo de Zavala State Archives and Library Building, Room 202

Austin

Texas Historical Records Advisory Board

AGENDA:

- 1. Call to order
- 2. Approval of minutes of meeting-August 18, 1995
- 3. Preparation of final draft of strategic plan
- 4. Discussion of committee assignments and responsibilities
- 5. Determination of site and date for next meeting
- 6. Adjournment

Contact: Raymond Hitt, P.O. Box 12927, Austin, Texas 78711, (512) 463-5440 or e-mail: raymond\_hitt@tsl.texas.gov.

Filed: September 21, 1995, 4:10 p.m.

TRD-9512127

**Texas Natural Resource Conservation Commission**

Wednesday, October 4, 1995, 9:30 a.m.

12118 North Interstate 35, Building E, Room 201S

Austin

AGENDA:

The commission will consider approving the following matters: Water utility matters; municipal waste discharge enforcements; municipal solid waste enforcement; public water supply enforcement; petroleum storage tank enforcements; State Office of Administrative Hearing, proposal for decision; executive session; 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: September 25, 1995, 1:04 p.m.

TRD-9512260

Tuesday, October 17, 1995, 1:00 p.m.

Enviro Waste Management, Inc., 5119-B East Seventh Street

Austin

AGENDA:

On an application by Enviro Waste Management, Inc., Proposed Permit Number MSW2250, to authorize a Type V (Grease Trap) municipal solid waste processing facility. The proposed facility is to be located on approximately 0.5 acres of land at 5119-B East Seventh Street in Austin, Travis County, Texas.

Contact: Charles Stavley or Ann Scudday, P.O. Box 13087, Austin, Texas 78711, (512) 239-6687 or (512) 239-4756.

Filed: September 21, 1995, 11:53 a.m.

TRD-9512107

Thursday, October 19, 1995, 7:00 p.m.

Lubbock City Hall, Council Chambers, 1625 13th Street

Lubbock

AGENDA:

On an application by the City of Lubbock for the West Texas Regional Disposal Facility, Proposed Permit Number MSW2252, to authorize a Type I (Landfill) municipal solid waste management facility. The proposed site covers approximately 1,237 acres of land and is to be located at the southeast intersection of Farm-to-Market Roads 579 and 2528, near the town of Abernathy, in Lubbock County, Texas.

Contact: Charles Stavley or Ann Scudday, P.O. Box 13087, Austin, Texas 78711, (512) 239-6687 or (512) 239-4756.

Filed: September 21, 1995, 11:53 a.m.

TRD-9512106

### Board of Nurse Examiners

Friday, October 13, 1995, 9:30 a.m.

9101 Burnet Road, Suite 104

Austin

Advisory Committee on Education

AGENDA:

Approval of minutes

Discussion and report of issues of priority

Unlicensed personnel

Faculty qualifications

Preceptors/monitoring

Update on student peer assistance/mandatory reporting

Definition of "student"

NLN/TLN "Vision Project"

New business

Adjournment

Contact: Cheryl K. Rosipal, Box 140466, Austin, Texas 78714, (512) 835-8653.

Filed: September 22, 1995, 1:31 p.m.

TRD-9512176

### Texas Board of Nursing Facility Administrators

Thursday, October 5, 1995, 1:00 p.m.

Room N-218, The Exchange Building, 8407 Wall Street

Austin

Policies and Procedure Committee

AGENDA:

The committee will discuss and possibly act on proposed changes to Title 22, Texas Administrative Code, Chapter 241.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. For ADA assistance, contact Richard Butler at (512) 458-6410 or T.D.D. at (512) 458-7708 at least two days prior to the meeting.

Filed: September 22, 1995, 4:39 p.m.

TRD-9512223

Thursday, October 5, 1995, 1:00 p.m.

Room N-456, The Exchange Building, 8407 Wall Street

Austin

Finance Committee

AGENDA:

The committee will discuss and possibly act on proposed changes to Title 22, Texas Administrative Code, Chapter 241.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. For ADA assistance, contact Richard Butler at (512) 458-6410 or T.D.D. at (512) 458-7708 at least two days prior to the meeting.

Filed: September 25, 1995, 11:40 a.m.

TRD-9512258

### Texas Board of Physical Therapy Examiners

Thursday, September 28, 1995, 10:00 a.m.

Fairmont Hotel, Patio Room, 1717 North Akard Street

Dallas

Emergency Revised Agenda

AGENDA:

I. Public comment

II. Approval of minutes of May 9, 1995 board meeting

III. Discussion and action on Executive Council and Board Committee appointments

IV. Executive session pursuant to §551.071 of the Government Code, consultation with attorney regarding pending or contemplated litigation

V. Committee reports

A. Education/Rules Committee

1. Review and possible adoption of posted changes to §329.5, Licensing Procedures for Foreign-Trained Applicants

2. Review and possible adoption of posted changes to Chapter 341, License Renewal

3. Review and possible adoption of posted changes to Chapter 321, Definitions

4. Review and possible adoption of posted changes to §346.1, Educational Settings

5. Review and possible action on Chapter 341, License Renewal

6. Review and possible action on Chapter 329, General Licensing Procedure

7. Review and possible action on Chapter 321, Definitions

8. Discussion and possible action relating to a test of written/spoken English

B. Investigation Committee

1. Review and possible action on Agreed Order Numbers 95126, 95162, 95056, and 95160

2. Investigation procedures

C. Applications Review Committee

1. Review and possible action relating to credentialing review agencies Chapter 323

VI. PT Coordinator's report

VII. Executive Director's report

VIII. Presiding Officer's report

IX. Items for future consideration

X. Adjournment

Reason for Emergency: Discussion of pending litigation



Contact: Gerard Swain, 333 Guadalupe, Suite 2-510, Austin, Texas 78704, (512) 305-6900.

Filed: September 21, 1995, 11:12 a.m.

TRD-9512102

◆ ◆ ◆  
**Texas Department of Protective and Regulatory Services**

Friday, September 29, 1995, 9:30 a.m.

2355 North Stemmons Freeway, Executive Conference Room, 12th Floor, Stemmons Building

Dallas

Texas Board of Protective and Regulatory Services

**AGENDA:**

The board will meet in closed executive session to discuss selection of an executive director and agency personnel issues, including employment, evaluation, and duties of agency employees, pursuant to §551.074 of the Texas Government Code. No action will be taken at this meeting.

Contact: Linda Edwards, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-4435.

Filed: September 21, 1995, 2:19 p.m.

TRD-9512114

◆ ◆ ◆  
**Texas Department of Public Safety**

Tuesday, October 3, 1995, 9:30 a.m.

DPS Headquarters, 5805 North Lamar Boulevard

Austin

Public Safety Commission

**AGENDA:**

Approval of minutes

Budget matters

Internal audit report

Personnel matters

Pending and contemplated litigation

Real estate matters

Public comment

Miscellaneous and other unfinished business

Discharge appeal hearing of DPS employee Robert Maldonado

Notice of assistance at public meetings: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or

services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Dorothy Wright at (512) 453-2224 two work days prior to the meeting so that appropriate arrangements can be made.

Contact: James Wilson, 5805 North Lamar Boulevard, Austin, Texas 78752, (512) 465-2000, Ext. 3700.

Filed: September 22, 1995, 4:06 p.m.

TRD-9512220

◆ ◆ ◆  
**Public Utility Commission of Texas**

Wednesday, October 4, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Legal Administration

**AGENDA:**

A prehearing conference has been scheduled in Docket Number 14716—Application of Texas Utilities Electric Company for authority to implement Rate WP1 to Lyntegar Electric Cooperative, Inc. and Taylor Electric Cooperative, Inc.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 22, 1995, 2:00 p.m.

TRD-9512184

*Note: Due to an error by the Texas Register, this notice was published in the September 26, 1995, issue (20 TexReg 7873) with the incorrect date of the meeting. The correct date is Wednesday, October 11, 1995.*

Wednesday, October 11, 1995, 2:00 p.m.

7800 Shoal Creek Boulevard

Austin

**AGENDA:**

The commission will consider Project Number 14045—Rulemaking on transmission access and pricing and stranded investment.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0241.

Filed: September 20, 1995, 4:17 p.m.

TRD-9512088

◆ ◆ ◆  
**Railroad Commission of Texas**

Tuesday, October 3, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

**AGENDA:**

The commission will consider and act on the Office of Information Services Director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Box 12967, Austin, Texas 78701, (512) 463-6710.

Filed: September 22, 1995, 10:23 a.m.

TRD-9512146

Tuesday, October 3, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

**AGENDA:**

The commission will consider and act on the Surface Mining and Reclamation Division Director's recommendation for filing a reclamation lien on the Alcoa Abandoned Mine Land Project. The commission will consider and act on the Division Director's report on division administration, budget, procedures, and personnel matters.

Contact: Melvin B. Hodgkiss, P.O. Box 12967, Austin, Texas 78711, (512) 463-6901.

Filed: September 22, 1995, 10:24 a.m.

TRD-9512147

Tuesday, October 3, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

**AGENDA:**

The commission will consider and act on the Automatic Data Processing Division Director's report on division administration, budget, procedures, equipment acquisitions, and personnel matters.

Contact: Bob Kmetz, P.O. Box 12967, Austin, Texas 78701, (512) 463-7251.

Filed: September 22, 1995, 10:26 a.m.

TRD-9512148

Tuesday, October 3, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

**AGENDA:**

The commission will consider and act on the agency budget, fiscal and administrative matters and the Administrative Services Division Director's report on division administration, budget, procedures and personnel matters, including fixed asset accounting changes and the Alternative Fuels Training and Conversion Center status report.

Contact: Roger Dillon, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7257.

Filed: September 22, 1995, 10:26 a.m.

TRD-9512149

Tuesday, October 3, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

The commission will consider and act on agency administration, budget, policy and procedures, and personnel matters for all divisions. The commission may meet in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline and/or dismissal of personnel.

Contact: Mark Bogan, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6981.

Filed: September 22, 1995, 10:26 a.m.

TRD-9512150

Tuesday, October 3, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

The commission will consider and act on the Information Resource Manager's report on information resource planning documents.

The commission will consider and act on the Information Resource Manager's report on the administration, budget, procedures, equipment acquisitions, contracts, work schedules and quarterly updates associated with the Department of Energy-RRC Area of Review (AOR) data management enhancements grant status review.

Contact: Mel Mireles, P.O. Box 12967, Austin, Texas 78701, (512) 463-7249.

Filed: September 22, 1995, 10:27 a.m.

TRD-9512151

Tuesday, October 3, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

According to the complete agenda, the Railroad Commission of Texas will consider various applications and other matters within the jurisdiction of the agency including oral arguments at the time specified on the agenda. The Railroad Commission of Texas may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received.

The commission may meet in executive session on any items above as authorized by the Open Meetings Act.

Contact: Carole J. Vogel, P.O. Box 12967, Austin, Texas 78711, (512) 463-7033.

Filed: September 22, 1995, 10:27 a.m.

TRD-9512152

Tuesday, October 3, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

Revised Agenda

AGENDA:

Consideration of a motion for rehearing in oil and gas Docket Number 01-0206480: enforcement action against Louis McCann doing business as McCann Production on the Moore (13291) Lease, Well Number 2, Nixon Field, Gonzales County, Texas.

Consideration of a motion for rehearing in oil and gas Docket Number 04-0405422: enforcement action against John W. Bahr on the Bahr Gas Unit (11245) Lease, Well Number 1, Peach Orchard (Hiawatha) Field, Duval County, Texas.

Contact: Colin Lineberry, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6924.

Filed: September 22, 1995, 11:29 a.m.

TRD-9512164

Tuesday, October 3, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

Revised Agenda

AGENDA:

The commission will consider delegation to staff of authority to issue water quality certification.

Contact: Jeb Boyt and Terri Eaton, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6790.

Filed: September 25, 1995, 1:33 p.m.

TRD-9512262

## Texas Senate

Tuesday, October 3, 1995, 9:30 a.m.

1100 Congress Avenue, Senate Chamber

Austin

Senate Criminal Justice Committee

AGENDA:

I. Discussion of interim charges, specifically DWI and Right-to-Carry laws.

Contact: Diana Lolley, P.O. Box 12068, Austin, Texas 78711, (512) 463-0115.

Filed: September 25, 1995, 5:12 p.m.

TRD-9512289

## Boards for Lease of State-Owned Lands

Tuesday, October 3, 1995, 9:45 a.m.

General Land Office, Stephen F. Austin Building, 1700 North Congress Avenue, Room 831

Austin

Board for Lease of Texas Department of Criminal Justice

AGENDA:

Approval of previous board meeting minutes; consideration of nomination of tracts offered for lease at the October 3, 1995 oil, gas and other minerals lease sale; consideration of bids received for the October 3, 1995 oil, gas and other minerals lease sale; executive session-pending or contemplated litigation.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: September 25, 1995, 3:41 p.m.

TRD-9512271

Tuesday, October 3, 1995, 2:00 p.m.

General Land Office, Stephen F. Austin Building, 1700 North Congress Avenue, Room 832

Austin

Board for Lease of Texas Department of Criminal Justice

AGENDA:

Approval of previous board meeting minutes; consideration of nomination of tracts offered for lease at the October 3, 1995 oil, gas and other minerals lease sale; consideration of bids received for the October 3, 1995 oil, gas and other minerals lease sale; executive session-pending or contemplated litigation.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: September 25, 1995, 3:41 p.m.

TRD-9512270

## Texas Southern University

Friday, September 29, 1995, 4:00 p.m.

3100 Cleburne, Hannah Hall, Room 111

Houston

Special Meeting of the Board of Regents

### AGENDA:

Meeting to consider: Personnel matters.

Contact: Everett O. Bell, 3100 Cleburne, Houston, Texas 77004, (713) 529-8911.

Filed: September 25, 1995, 9:24 a.m.

TRD-9512234

## The Texas State University System

Friday, September 29, 1995, 9:00 a.m.

Speaker phone available in Conference Room, The Texas State University System, 333 Guadalupe, Tower III, Suite 810

Austin

Board of Regents

### AGENDA:

Review of matters of the board, the System Administrative Office and the universities in the System including: the management and operations of the Aquarena Springs property at Southwest Texas State University and consideration of leased vehicles for system executives.

(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: September 22, 1995, Noon.

TRD-9512169

## University of Houston System

Monday, October 2, 1995, 1:00 p.m.

Conference Room One, 1600 Smith, Suite 3400, UH System Offices

Houston

Facilities Planning and Building Committee Meeting

### AGENDA:

To discuss and/or approve the project manager for the Center for Public Broadcasting-UH System.

Contact: Peggy Cervenka, 1600 Smith, Suite 3400, Houston, Texas 77002, (713) 754-7440.

Filed: September 25, 1995, 4:21 p.m.

TRD-9512273

## The University of Texas Health Center at Tyler

Thursday, October 5, 1995, Noon.

Highway 271 and Highway 155, Room 116

Tyler

Animal Research Committee

### AGENDA:

Approval of minutes

Chairman report

Veterinarian report

Old business

New business

Adjournment

Contact: Cindy Pessink, P.O. Box 2003, Tyler, Texas 75710, (903) 877-7594.

Filed: September 22, 1995, 1:01 p.m.

TRD-9512170

## Texas Board of Veterinary Medical Examiners

Thursday-Friday, October 5-6, 1995, 8:30 a.m.

Hearing Room 102, Tower Two, 333 Guadalupe

Austin

Board

### AGENDA:

The board will meet to review the negotiated settlements of disciplinary cases; consider petitions; adopt rules; approve the 1996-1997 operating budget; the 1996-1997 Information Resources Operating Plan; elect new officers; and conduct other business.

Persons requiring reasonable accommodations are requested to contact Judy Smith, 333 Guadalupe, #2-330, Austin, Texas 78701-3998, (512) 305-7555 or T.D. D. 1-800-735-2989 within 72 hours of the meeting to make appropriate arrangements.

Contact: Ron Allen, 333 Guadalupe, #2-330, Austin, Texas 78701-3998, (512) 305-7555.

Filed: September 25, 1995, 3:29 p.m.

TRD-9512267

Wednesday, October 4, 1995, 2:00 p.m.

Room 106, John Reagan Building, 105 West 15th Street

Austin

Board

### AGENDA:

The Texas Board of Veterinary Medical Examiners will hold a public hearing on proposed Rule 22 TAC §573.72 concerning Animal Reproduction. Comments will be limited to this rule and conclude at 4:00 p.m.

Persons requiring reasonable accommodations are requested to contact Judy Smith, 333 Guadalupe, #2-330, Austin, Texas 78701-3998, (512) 305-7555 or T.D. D. 1-800-735-2989 within 72 hours of the meeting to make appropriate arrangements.

Contact: Ron Allen, 333 Guadalupe, #2-330, Austin, Texas 78701, (512) 305-7555.

Filed: September 25, 1995, 3:28 p.m.

TRD-9512266

Friday, October 6, 1995, 11:00 a.m.

333 Guadalupe, Room 2-330, William P. Hobby Building

Austin

Examination Preparation Committee

### AGENDA:

The committee will meet to prepare the December State Board Examination for licensure. The committee will convene in open session and then go into executive session in accordance with Attorney General Opinions H-484, 1974 and JM-640, 1987.

Contact: Ron Allen, 333 Guadalupe, Suite 2-330, Austin, Texas 78701, (512) 305-7555.

Filed: September 25, 1995, 3:28 p.m.

TRD-9512265

## Texas Workers' Compensation Commission

Thursday, September 28, 1995, 10:00 a.m.

4000 South IH-35, Room 910-911, Southfield Building

Austin

Public Hearing

### AGENDA:

1. Call to order
2. Public comments taken on Rule 166.8, Qualifications of Field Safety Representative
3. Adjournment

Contact: Todd K. Brown, 4000 South IH-35, Austin, Texas 78704, (512) 440-5690.

Filed: September 21, 1995, 2:19 p.m.

TRD-9512113

## Texas Workforce Commission

Tuesday, October 3, 1995, 9:00 a.m.

Room 644, TEC Building, 101 East 15th Street

Austin

### AGENDA:

Prior meeting notes; executive session to discuss qualifications and duties of executive director; actions, if any, resulting from executive session; staff reports; internal procedures of commission appeals; consideration and action on tax liability cases and higher level appeals in unemployment compensation cases listed on Commission Docket 40, and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: September 25, 1995, 4:09 p.m.

TRD-9512272

## Regional Meetings

Meetings Filed September 21, 1995

The Dallas Housing Authority Dallas Housing Authority Board of Commissioners met on the Third Floor, Dale V. Kesler Building Room, 3939 North Hampton Road, Dallas Housing Authority, Dallas, September 28, 1995, at 4:00 p. m. Information may be obtained from Elizabeth S. Horn, 3939 North Hampton Road, Dallas, Texas 75212, (214) 951-8301. TRD-9512135

The East Texas Council of Governments Board of Directors met at 501 Richardson Drive, Henderson, September 28, 1995, at 7:30 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9512128.

The Gray County Appraisal District Board of Directors met at 815 North Sumner, Pampa, September 26, 1995, at 7:30 a.m. Information may be obtained from Sherri Schaible, P.O. Box 836, Pampa, Texas 79066-0836, (806) 665-0791. TRD-9512123.

The Heart of Texas Housing Finance Corporation Board met at the HOTCOG Building, 300 Franklin Avenue, Waco, September 26, 1995, at Noon. Information may be obtained from Lyndon Olson, 510 North Valley Mills Drive, Suite 600, Waco, Texas 76710, (817) 776-3336. TRD-9512138.

The Lower Neches Valley Authority Business Development Committee met at 7850 Eastex Freeway, Beaumont, September 26, 1995, at 10:00 a.m. Information may be obtained from A. T. Hebert, Jr., P.O. Drawer 3464, Beaumont, Texas 77704, (409) 892-4011. TRD-9512137.

The San Jacinto River Authority Board of Directors met at 2301 North Millbend Drive, The Woodlands, September 27, 1995, at 12:30 p.m. Information may be obtained from James R. Adams or Ruby Shiver, P.O. Box 329, Conroe, Texas 77305, (409) 588-1111. TRD-9512101.

The Surplus Lines Stamping Office of Texas Board of Directors met at Hughes and Luce, 111 Congress Avenue, Suite 900, Austin, September 26, 1995, at 10:00 a.m. Information may be obtained from Charles L. Tea, Jr., P.O. Box 9906, Austin, Texas 78766, (512) 346-3274. TRD-9512124.

The West Central Texas Council of Governments (Revised Agenda.) Executive Committee met at 1025 East North Tenth Street, Abilene, September 27, 1995, at 12:45 p.m. Information may be obtained from Brad Helbert, 1025 East North Tenth Street, Abilene, Texas 79601, (915) 672-8544. TRD-9512100.

Meetings Filed September 22, 1995

The Alamo Area Council of Governments 9-1-1 Area Judges Committee met at 118 Broadway, Suite 400, San Antonio, September 27, 1995, at 10:00 a.m. Information may be obtained from Al J. Notzon III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (210) 225-5201. TRD-9512142.

The Alamo Area Council of Governments Rural Area Judges met at 118 Broadway, Suite 400, San Antonio, September 27, 1995, at 11:15 a.m. Information may be obtained from Al J. Notzon III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (210) 225-5201. TRD-9512141.

The Alamo Area Council of Governments Board of Directors met at 118 Broadway, Suite 400, San Antonio, September 27, 1995, at 1:00 p.m. Information may be obtained from Al J. Notzon III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (210) 225-5201. TRD-9512143.

The Andrews Center Board of Trustees met at 2323 West Front Street, Board Room, Tyler, September 28, 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-9512178.

The Aqua Water Supply Corporation Board of Directors will meet at 305 Eskew, Bastrop, October 2, 1995, at 7:30 p.m. Information may be obtained from Adlinie Rathman, Drawer P, Bastrop, Texas 78602, (512) 303-3943. TRD-9512186.

The Austin-Travis County MHMR Center Finance and Control Committee met at 1430 Collier Street, Austin, September 26, 1995, at Noon. Information may be obtained from Sharon Taylor, 1430 Collier

Street, Austin, Texas 78704, (512) 447-4141. TRD-9512153.

The Austin-Travis County MHMR Center Board of Trustees met at 1430 Collier Street, Board Room, Austin, September 28, 1995, at 5:00 p.m. Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78764-3548, (512) 447-4141. TRD-9512225.

The Bosque County Central Appraisal District Board of Directors met at 202 South Highway 6, Meridian, September 28, 1995, at 8:00 p.m. Information may be obtained from Janice Henry, P.O. Box 393, Meridian, Texas 76665-0393, (817) 435-2304. TRD-9512168.

The Brazos River Authority Water Resource Development Committee Board of Directors will meet at 4400 Cobbs Drive, Waco, October 2, 1995, at 9:00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441. TRD-9512219.

The Brazos River Authority Administrative Policy Committee Board of Directors will meet at 4400 Cobbs Drive, Waco, October 2, 1995, at 10:00 a. m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441. TRD-9512218.

The Brazos Valley MHMR Authority Board of Trustees met at 804 Texas Avenue, Conference Room A, Bryan, September 28, 1995, at 1:00 p.m. Information may be obtained from Leon Bawcom, P.O. Box 4588, Bryan, Texas 77805, (409) 822-6467. TRD-9512193.

The Dallas Area Rapid Transit Audit Committee met in Conference Room B, Dallas Area Rapid Transit, 1401 Pacific Avenue, Dallas, September 26, 1995, at 11:00 a.m. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9512171.

The Dallas Area Rapid Transit Committee-of-the-Whole met at the Dallas Area Rapid Transit, Conference Room C, 1401 Pacific Avenue, Dallas, September 26, 1995, at 1:00 p.m. Information may be obtained from Paula J. Bailey, DART, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9512172.

The Dallas Area Rapid Transit (Revised Agenda.) Board met at 1401 Pacific, Board Room, First Floor, Dallas, September 26, 1995, at 6:30 p.m. Information may be obtained from Paula J. Bailey, DART, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9512174.

The Dallas Area Rapid Transit State Fare Ribbon Cutting met at 3921 Martin Luther King Boulevard, Dallas, September 28, 1995, at 5:00 p.m. Information may be obtained from Paula J. Bailey, DART, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9512173.

The Edwards Aquifer Authority Board of Directors met at 501 Broadway, San Antonio, September 27, 1995, at 7:00 p.m. Information may be obtained from Mike Beldon, P.O. Box 15830, San Antonio, Texas 78212, (210) 341-3100. TRD-9512222.

The Erath County Appraisal District (Emergency Meeting.) Appraisal Review Board met at 1390 Harbin Drive, Stephenville, September 25, 1995, at 9:00 a.m. (Reason for emergency: Need supplement to be approved before taxes are sent out to taxpayers.) Information may be obtained from Mitzi Meekins, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-5434. TRD-9512227.

The Golden Crescent Private Industry Council met at 2401 Houston Highway, Victoria, September 27, 1995, at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9512167.

The Gregg Appraisal District Board of Directors met at 2010 Gilmer Road, Longview, September 28, 1995, at Noon. Information may be obtained from William T. Carroll, 2010 Gilmer Road, Longview, Texas 75604, (903) 759-0015. TRD-9512177.

The Heart of Texas Region MHMR Center Board of Trustees met at 110 South 12th Street, Waco, September 27, 1995, at 11:45 a.m. Information may be obtained from Helen Jasso, P.O. Box 890, Waco, Texas 78703, (817) 752-3451, Ext. 290. TRD-9512144.

The Texas Municipal Power Agency (TMPA) Board of Directors met at the DFW Hyatt Regency, Meteor Room, East Tower, International Parkway, DFW Airport, September 26, 1995, at 10:00 a.m. Information may be obtained from Carl Shahady, P.O. Box 7000, Bryan, Texas 77805, (409) 873-2013. TRD-9512185.

The Texas Panhandle Mental Health Authority Board of Trustees, TPMHA met at 7201 I-40 West, Second Floor, Amarillo, September 28, 1995, at 10:30 a.m. Information may be obtained from Shirley Hollis, P.O. Box 3250, Amarillo, Texas 79116-3250, (806) 353-3699, Fax: (806) 353-9537. TRD-9512163.

The Permian Basin Regional Planning Commission Board of Directors Permian Basin Private Industry Council met at 2910 LaForce Boulevard, Midland, September 27, 1995, at 10:00 a.m. Information may be obtained from Carole Burrow, P.O. Box 60660, Midland, Texas 79711-0660, (915) 563-1061. TRD-9512145.

The Tyler County Appraisal District Board of Directors will meet at 806 West Bluff, Woodville, October 5, 1995, at 4:00 p.m. Information may be obtained from Travis E. (Eddie) Chalmers, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9512175.

The Upper Leon River Municipal Water District Board of Directors met at the General Office, located off of FM 2861, Lake Proctor Dam, Comanche, September 26, 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-9512226.

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**Meetings Filed September 25,  
1995**

The Ark-Tex Council of Governments (ATCOG) Board met at Highway 24 Bypass, Cooper, September 28, 1995, at 5:30 p.m. Information may be obtained from Becky Borgenson, P.O. Box 5307, Texarkana, Texas 75505, (903) 832-8636. TRD-9512257.

The Austin-Travis County MHMR Center (Revised Agenda.) Board of Trustees met at 1430 Collier Street, Board Room, Austin, September 28, 1995, at 5:00 p.m. Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78764-3548, (512) 447-4141. TRD-9512268.

The Central Plains Center for MHMR and SA Board of Trustees met at 208 South Columbia, Plainview, September 28, 1995, at 3:30 p.m. Information may be obtained from Gail P. Davis, 2700 Yonkers, Plainview, Texas 79072, (806) 293-2636. TRD-9512238.

The Central Texas Council of Governments Executive Committee met at 302 East Central, Belton, September 28, 1995, at 11:30 a.m. Information may be obtained from A. C. Johnson, P.O. Box 729, Belton, Texas 76513, (817) 939-1801. TRD-9512254.

The Fisher County Appraisal District FCAD Board of Directors will meet in the Fisher County Court Room, Fisher County Court House, Roby, October 12, 1995, at 8:00 a.m. Information may be obtained from Betty Mise, P. O. Box 516, Roby, Texas 79543, (915) 776-2733. TRD-9512253.

The Kendall Appraisal District Appraisal Review Board will meet at 121 South Main Street, Boerne, October 12, 1995, at 9:00 a.m. Information may be obtained from Mick Mikulenka or Tammy Johnson, P.O. Box 788, Boerne, Texas 78006, (210) 249-8012, Fax: (210) 249-3975. TRD-9512263.

The Lavaca County Central Appraisal District Board of Directors will meet at 113 North Main Street, Hallettsville, October 9, 1995, at 4:00 p. m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396. TRD-9512275.

The MHMR Authority of Brazos Valley Personnel/Budget and Finance Committee met at 804 Texas Avenue, Conference Room D, Bryan, September 28, 1995, at Noon. Information may be obtained from Leon Bawcom, P.O. Box 4588, Bryan, Texas 77805, (409) 822-6467. TRD-9512255.

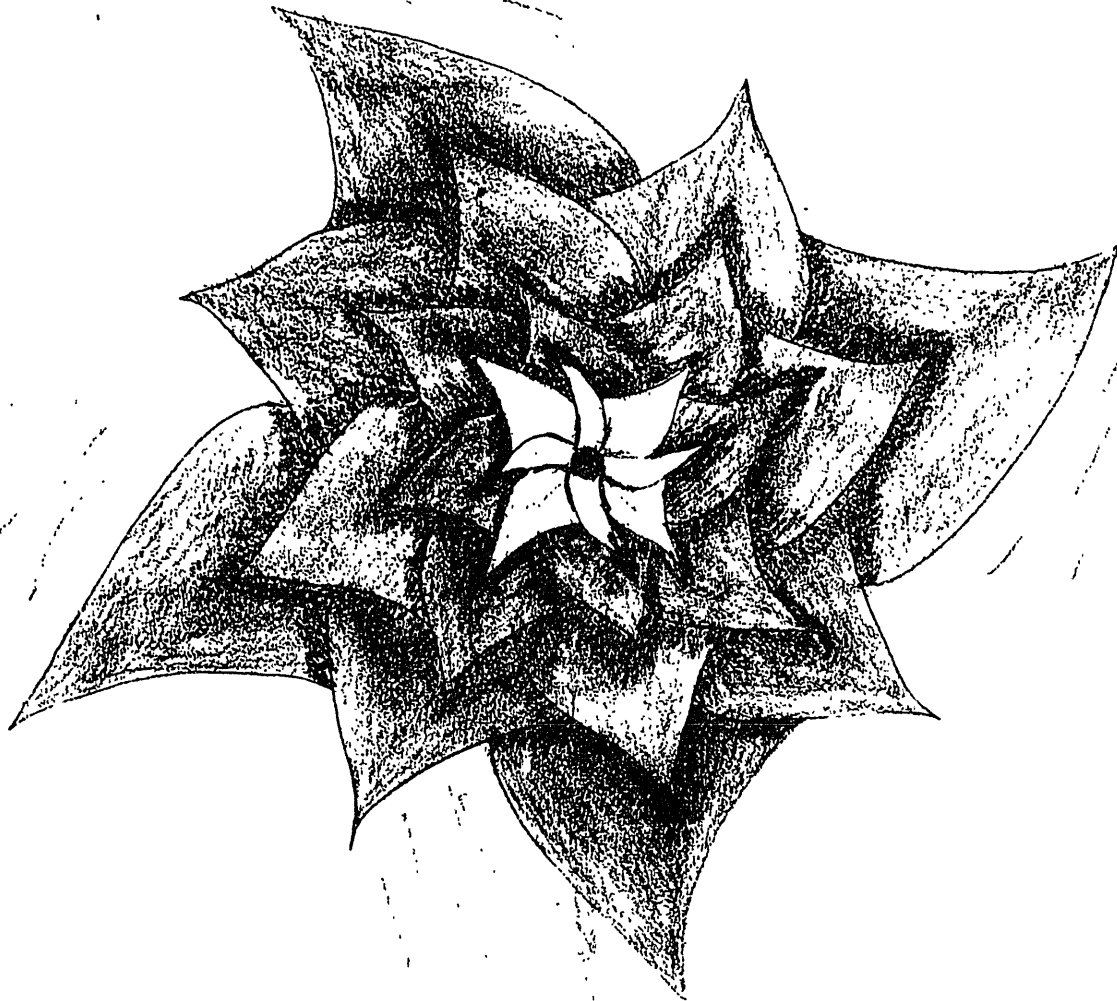
The Millersville-Doole Water Supply Corporation Board of Directors will meet one block west of FM Highway 765 and FM Highway 2134, Millersview, October 2, 1995, at 8:00 p.m. Information may be obtained from Glenda M. Hampton, P.O. Box E, Millersview, Texas 76862-1005, (915) 483-5438. TRD-9512243.

The North Texas Regional Library System Board of Directors met at the Roanoke Community Center, 312 Walnut, Roanoke, September 28, 1995, at 1:30 p.m. Information may be obtained from Charlene McMorrow, 1111 Foch Street, Suite #100, Fort Worth, Texas 76107, (817) 335-6076. TRD-9512229.

The North Texas Regional Library System Board of Directors met at the Roanoke Community Center, 312 Walnut, Roanoke, September 28, 1995, at 1:30 p.m. Information may be obtained from Charlene McMorrow, 1111 Foch Street, Suite #100, Fort Worth, Texas 76107, (817) 335-6076. TRD-9512244.

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**Meetings Filed September 26,  
1995**

The Deep East Texas Council of Governments Deep East Texas (Public Hearing) will meet at Stephen F. Austin State University, 1936 North Street, Regents Suite B, Nacogdoches, October 6, 1995, at 3:00 p.m. Information may be obtained from Andy Phillips, 274 East Lamar Street, Jasper, 75951, (409) 384-5704. TRD-9512301.



Name: Brooke Waggoner

Grade: 12

School: China Spring High School, China Spring ISD



# IN ADDITION

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The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

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## Texas Commission on Alcohol and Drug Abuse

### Consultant Services Contract Amendment

The following consultant contract amendment (#517-4-1476) is filed under the provisions of Government Code, Title 10, Subchapter B.

The consultant request was published in the December 21, 1993, issue of the *Texas Register* (18 TexReg 9863).

The contractor will conduct evaluations of a small number of substance abuse treatment programs funded by the Texas Commission on Alcohol and Drug Abuse. The consultant will supervise the collection of intake, in-treatment, and post-discharge data. The amendment extends the period of performance through August 31, 1996.

The contractor is: Treatment Research Institute, 3600 Market Street, Suite 846, Philadelphia, Pennsylvania, 19104-2648.

The total value of the contract, remains at \$55,999. The contract starts March 16, 1994 and is amended to end August 31, 1996.

Issued in Austin, Texas, on September 21, 1995.

TRD-9512105      Conrad B. Alexander  
Executive Director  
Texas Commission on Alcohol and Drug  
Abuse

Filed: September 21, 1995

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## Texas School for the Blind and Visually Impaired

### Consultant Proposal Request

Pursuant to Texas Civil Statutes, Article 6252-11c, the Texas School for the Blind and Visually Impaired announces the availability of \$15,437 for an 11-month project of training and support on implementation of the Quality Programs for Students with Visual Impairments process. Training is designed for Educational Service Center consultants for the visually impaired and Outreach staff at the Texas School for the Blind and Visually Impaired.

Quality Programs for Students with Visual Impairments (QPVI) is a model for providing technical assistance to public schools in developing and/or improving services for students with visual impairments. The process is directed by a trained Education Service Center or Texas School for the Blind and Visually Impaired Outreach Consultant along with a member of the district or co-op special education administrative staff. With the VI staff, this

comprises the "work team" who act jointly to complete the process.

For administrators, the process allows their programs serving students with visual impairments to become process driven, rather than personnel driven, resulting in program strength and continuity. Teachers will see their effectiveness and job satisfaction increase dramatically as the program is designed to meet the needs of students. Parents and student should see more consistency in instruction, improved student outcomes, and successful integration of the student in the mainstream of public school education.

The program was developed in and for Texas and has been in use successfully since 1985. The guide has been field tested in regions across the state. It is being used in single districts, large and small, and by co-ops and special VI co-ops.

The process typically begins in early fall. Approximately one-half day a month, for ten months, is the estimated time required by district/co-op staff to participate in this process. The time devoted to the process is equivalent to that allocated to traditional program supervision. The process generally takes three years to develop a cohesive "work team" and to effect change and growth.

TSBVI is soliciting proposals for the provision of services including 40 days at \$300 per day honorarium plus travel expenses for meals, hotel, mileage, rental cars or plane tickets in accordance with State rules and regulations. These days will include presentations to Education Service Centers and special education directors, meetings with TEA staff, TSBVI Outreach staff and other Quality Programs implementors, and additions or revisions to the program guides. Those Proposals that demonstrate the respondents' ability and willingness to work with organizations, schools, and agencies representing or providing services to individuals who are blind or visually impaired will be viewed favorably. These services are for an 11-month period which begins October 25, 1995, and ends August 31, 1996.

TSBVI will award the contract to Nancy Toelle, Richardson, Texas, unless another person or organization can demonstrate superior knowledge and expertise in the training and implementation of the Quality Programs for Student with Visual Impairments process.

Contact person: Requests for application packets and for further information regarding the provision of the listed state services may be directed to Cyral Miller, Outreach Director, TSBVI, 1100 West 45th Street, Austin, Texas 78756, (512) 206-9242.

Deadline for Submission of Proposals: Deadline for the receipt of proposals in the office of TSBVI is October 2, 1995, at 4:00 p.m. Proposals received after 4:00 p.m. will

not be considered. Proposals are to be addressed to Cyral Miller, Outreach Director, TSBVI, 1100 West 45th Street, Austin, Texas 78756.

Issued in Austin, Texas, on September 20, 1995.

TRD-9512233      Cyral Miller  
                         Outreach Director  
                         Texas School for the Blind and Visually  
                         Impaired

Filed: September 25, 1995

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## Texas Department of Criminal Justice Request for Proposals

Pursuant to the General Appropriations Act, Texas Department of Criminal Justice Rider Number 63 (P.V.-27), 74th Legislature, and the Government Code, §494.001, the Texas Department of Criminal Justice hereby requests all interested parties to submit proposals to contract as a consultant on the Inmate Telephone Systems project. This Request for Proposal (RFP) is in response to the Legislative mandate that the Texas Department of Criminal Justice will generate five million dollars of its appropriations through commissions from Inmate Telephone Systems installed in State Jail and Substance Abuse Felony Punishment facilities.

**Purpose.** The purpose of this Request for Proposal is to obtain the services of a qualified and independent contractor with proven experience in writing two Requests for Proposals for telecommunications equipment and services with specific emphasis on Inmate Telephone Systems. Rider Number 63 specifically requires that separate RFPs be issued for equipment and for a carrier service. Services to be provided by the contractor will include writing each individual RFP, assisting TDCJ in the evaluation of responses, and providing a complete implementation strategy.

**Evaluation Criteria.** The Texas Department of Criminal Justice will award a contract to the proposer whose proposal is the most advantageous and is in the best interest of the state considering the selection criteria set forth as follows. (Note: The order listed does not imply the priority.)

1. The relative thoroughness, professional quality and merit of the proposer's plan to provide the services sought in the RFP.
2. The overall qualifications, abilities, and experience of the proposer to provide the services sought in the RFP. Qualifications include, but are not limited to, expertise in telecommunications and technology, and a proven track record. Particular attention will be focused on the proposer's client references and experience
3. The qualifications of the proposer's personnel who will be assigned to the project, and the adequacy of the proposed staffing plan to complete the services sought in a timely fashion.
4. Creative initiative in response to the RFP.
5. Reasonableness of the proposed compensation for the services sought.

**Consultant Qualifications.** All respondents to the RFP must: demonstrate that the firm has thorough knowledge of the corrections industry; explain how the proposed Congressional deregulation and/or Billed Party Preference

(BPP) could potentially affect the two RFPs; demonstrate that the firm has a thorough knowledge of the technologies that will be specified by these RFPs, to include call monitoring, call recording, computer to include PCs, Minis, Mainframes, and Client Servers; and convey an understanding of telephone station features, local, intra-lata and inter-lata tariffs, statewide networking, Inmate Telephone control systems, PINS and debit systems.

**Deadline.** The proposer must submit a signed original and five copies of the proposal. The proposal must be submitted by 3:00 p.m., Central Time on or prior to October 10, 1995, in a sealed envelope or container addressed to: Texas Department of Criminal Justice, Communications Department, P.O. Box 99, 815 11th Street, Room G-3, Huntsville, Texas 77342-0099, Attention: Donna Kahn, Acting Assistant Director for Communications.

Proposals received after the deadline will not be considered. For more information, please contact Donna Kahn at (409) 294-2720 or write to the previously listed address.

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

TRD-9512232      Carl Reynolds  
                         General Counsel  
                         Texas Department of Criminal Justice

Filed: September 25, 1995

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## Employees Retirement System of Texas Consultant Contract Awards

This award for consulting services is being filed pursuant to the provisions of the Government Code, §2254.024. The consultant will provide benefit communication services on programs administered by the Employees Retirement System of Texas. The consultant is N. J. Robnett, Jr., P.O. Box 685093, Austin, Texas 78758. The total cost for the contract is \$40,800, and the term of the contract is September 1, 1995-August 31, 1996.

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

TRD-9512241      Charles D. Travis  
                         Executive Director  
                         Employees Retirement System of Texas

Filed: September 25, 1995

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This award for consulting services is being filed pursuant to the provisions of the Government Code, §2254.024. The consultant will provide reporting services of federal actions affecting public pension plans in order to assist the Employees Retirement System of Texas in discharging its fiduciary responsibilities and maintaining a qualified pension plan. The consultant is Don Kennard, Route 3, Box 229, Charles Town, West Virginia 35414. The total cost of the contract is \$19,800, and the term of the contract is September 1, 1995-August 31, 1996.

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

TRD-9512242      Charles D. Travis  
                         Executive Director  
                         Employees Retirement System of Texas

Filed: September 25, 1995



## Texas Ethics Commission

### List of Delinquent Filers

Listed are the names of filers from the Texas Ethics Commission who did not file reports, filed late reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. For further information, please contact Kristin M. Newkirk, Director, Disclosure Filings Division, at (512) 463-5800.

Deadline: Lobby reports due June 12, 1995: Pauline A. Cashion, 905 D West Oltorf, Austin, Texas 78704; Tol S. Higginbotham, IV, P.O. Box 13052, Austin, Texas 78711; Albert Luna, III, 1122 Colorado Street, Austin, Texas 78701; and Carvel McNeil, Jr., 811 North Loop West, Houston, Texas 77008.

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

TRD-9511815 Jim Mathieson  
General Counsel  
Texas Ethics Commission

Filed: September 14, 1995

## Texas Department of Health

### Correction of Errors

The Texas Department of Health adopted amendments to §289.116 and §289.122. The rules appeared in the August 25, 1995, issue of the *Texas Register* (20 TexReg 6656).

Due to an oversight on the department's part, the following errors need to be corrected.

The adopted rules were printed in the proposed section, pages 6581-6591 as well as in the adopted rules section beginning on page 6656. The rules were for final adoption only.

Page 6656, the adoption preamble stated that "§289.112 adopts by reference...", the correct site should be §289.122.

Page 6659, in a response to a comment, there is a reference made to §289.112 which is incorrect. The correct site should be §289.122.

Page 6664, a reference was made to the name of a commenter as being "Surgical Associates in Euless, Texas; Mobile Health, Inc." when the correct names should be the "Surgical Associates in Euless; Texas Mobile Health, Inc. in Houston."

Page 6666, subsection (c)(1) and (2) there are references to §289.112 of this title. The correct site should be §289.122.

Page 6670, subsection (e), the sentence "Except for paragraph (1)(I)(ii) and (iii) of this subsection, these requirements are effective October 1, 1995." should be deleted.

6670, subsection (e)(1)(F) language was left out at the end of the sentence and should read: "...specifications shall be within +/- 5.0% of the indicated kVp." The reference line to subparagraph (G) Figure 2:25 TAC ...should be separate from the language in subparagraph (F).

6670, subsection (e)(1)(H), the fifth line of the subparagraph reads "shall be >- kVp/100..." The statement should read "shall be ≥kVp/100..."

Page 6670, subsection (e)(1)(K), third line of the subparagraph reads "if one or more large areas +/- 1

square centimeter)..." The sentence should be "if one or more large areas > 1 square centimeter)..."

6671, subsection (f)(6), the seventh line of the paragraph reads "applicable; (7); (8)-(13);..." and the tenth line of the paragraph reads "(n) (1)(B)-(F), and (G);..." The correct sites should be "applicable; (7)-(13);..." and "(n)(1)(B)-(G);..."

Page 6672, subsection (i)(2), add following sentence after first sentence in (i)(2): "Registrants utilizing relief interpreting physicians or technologists from a temporary service do not need to notify the agency unless these personnel will be at the facility for a period exceeding four weeks."

Page 6673, subsection (o)(1)(A)(IV), add the word "and" after "lactating;"

The Texas Department of Health adopted new §289.252. The rule appeared in the August 22, 1995, issue of the *Texas Register* (20 TexReg 6411).

Due to errors in the department's submission, the following corrections are necessary.

On page 6433, subsection (w)(5)(C)(ii), the acronym ACCME is incorrect and the acronym should be ACGME.

On page 6435, subsection (w)(5)(H), the parenthetical phrases concerning the effective date of the rule should be replaced with an actual date. The sentence should read, "and those issued by the agency before October 1, 1995 who perform only..."

## Notice of Emergency Cease and Desist Order

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Capitol Imaging Center (registrant M-00387) of Austin to cease and desist performing mammographic examinations until all requirements are met for mammographic quality control as described in Texas radiation control regulations. The bureau determined that performing mammography without an adequate quality control program may subject patients to unnecessary radiation exposure, which constitutes an immediate threat to public health and safety, and the existence of an emergency.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on September 21, 1995.

TRD-9512109 Susan K. Steeg  
General Counsel, Office of General  
Counsel  
Texas Department of Health

Filed: September 21, 1995

## Notice of Emergency Impoundment Order

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Joe C. Edwards, D.D.S. (registrant-

R05931) of San Antonio to immediately surrender to the bureau for impoundment all sources of radiation possessed under the certificate of registration. The bureau determined that continued operation of x-ray equipment without a valid certificate of registration and failure to correct health related violations found during a previous inspection of the facility constitute an immediate threat to public health and safety, and the existence of an emergency. The order will remain in effect until the bureau has received, reviewed and approved the actions taken to ensure compliance with Texas radiation control regulations.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on September 21, 1995.

TRD-9512111 Susan K. Steeg  
General Counsel, Office of General  
Counsel  
Texas Department of Health

Filed: September 21, 1995

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**Notice of Revocation of Certificates of  
Registration**

The Texas Department of Health, having duly filed complaints pursuant to Texas Regulations for Control of Radiation, Part 13 (25 Texas Administrative Code §289.112), has revoked the following certificates of registration: Thomas D. Dickerson, Arlington, R09246, September 1, 1995; Southwestern CT Systems, Bedford, R13570, September 1, 1995; Alamo Madras, Inc., San Antonio, R20264, September 1, 1995; Kenneth E. Sykes, D.D.S., Fort Worth, R12893, September 1, 1995; M. M. Salim, M.D., Arlington, R17226, September, 1, 1995; Stephen Hambricht, D.C., Stamford, R18350, September 1, 1995.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on September 21, 1995.

TRD-9512110 Susan K. Steeg  
General Counsel, Office of General  
Counsel  
Texas Department of Health

Filed: September 21, 1995

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**Texas Department of Human Services  
Request for Information (RFI)-Electronic  
Fingerprint Imaging System**

The Texas Department of Human Services (TDHS) plans to test an electronic fingerprint imaging system to determine if the technology will be a cost-effective method to prevent welfare fraud and duplicate benefits. This test will be conducted in Dallas County and Tarrant County beginning as early as February 1, 1996.

**Description:** TDHS is interested in obtaining information on how it can best use electronic fingerprint imaging technology to prevent welfare fraud in the AFDC and Food Stamp programs. The desired technology will compare the fingerprint of a new applicant (or recipient that

has not previously been fingerprinted) against the entire database of recipients to ensure that the person is not already receiving benefits under a different name or from a different office. TDHS is interested in obtaining a turnkey system which provides all hardware, software, application support, training in system use, maintenance, and all other required services to successfully operate a fingerprint imaging system, with the exception of operators used to capture fingerprint images.

**Background:** TDHS is a government agency subject to Texas Civil Statutes, Article 6252-17a, the Texas Open Records Act. Information submitted to TDHS will be considered public information unless the specific parts thereof can be shown to fall within one or more of the 23 exceptions listed in the Act. One of those exceptions is for trade secrets and commercial or financial information which is privileged or confidential by law or judicial decision. Respondents must specify those parts and the exception(s) believed to apply with specific and detailed reasons. Vague and general claims to confidentiality are not acceptable.

TDHS expenditures for procuring a fingerprint imaging system to test in the pilot sites will not exceed \$499,999 including federal matching funds. TDHS is submitting an Advance Planning Document (APD) for agency planning for this project to the Food and Consumer Services, United States Department of Agriculture and the Administration for Children and Families, United States Department of Health and Human Services. Federal approval is not required for projects under \$500,000. However federal approval is being requested because total project costs will likely exceed \$500,000 should the technology prove to be cost-effective and a decision be made to expand statewide.

**Process:** A copy of the RFI can be obtained from the contact person. Vendors are to respond to the RFI to ensure that our requirements are feasible. Responses to the RFI must be received no later than 3:00 p.m. on Friday, October 13, 1995. After reviewing the responses, it is the intent of TDHS to prepare a formal specification document and issue a Request for Offers (RFO). In their response to the RFI, vendors are requested to provide specific information on: (1) ease of capturing the fingerprint image; (2) elapsed time required to capture the fingerprint image; (3) ability to interface with existing systems to attach demographic information from TDHS legacy systems to the fingerprint file for identification purposes; (4) response time required to match a set of two fingerprints against a database of sufficient size to handle two fingerprints for the AFDC and Food Stamp caseload in Texas (approximately one million cases); (5) percentage of match requests which will generate a list of potential matches; (6) time required to determine if a potential match is in fact a match; (7) the impact of using an electronic photograph to reduce the time and expense required to determine if a potential match of fingerprints are in fact a match; (8) accuracy rates in terms of false positive and false negative matches; (9) hardware required; (10) time required for training operators; (11) security, including use of an operators fingerprint to obtain access; (12) template size and storage requirements; (13) support services required to operate a fingerprint imaging system; (14) industry standards followed; (15) process flow diagrams and descriptions.

Vendors interested in providing a turnkey package of equipment, software and services which meet the specified requirements should attend the vendor meeting, must answer the RFI, and must take appropriate action to become

a Qualified Information Systems Vendor (QISV) on the Texas State Catalogue as required by the Texas General Services Commission. For information on becoming a QISV (otherwise known as a "Catalogue vendor"), call the General Services Commission at (512) 463-8889. Only QISV vendors with the required technology on their catalogues will receive a copy of the RFO. TDHS anticipates awarding a contract as early as January 1, 1996. TDHS will select the vendor which can provide the products and services which are the best value and in the best interest of the State of Texas.

**Meeting Notice:** TDHS will hold a meeting of interested vendors on October 9, 1995 at 701 West 51st Street, Public Hearing Room, Room 125-E, Austin, Texas, beginning at 2:00 p.m. The meeting will be devoted to a question and answer session concerning the TDHS system requirements and selection criteria.

**Contact Person:** Written information responses, including product and service literature should be sent to Jill Demler, Fingerprint Imaging Contract Manager, P.O. Box 149030, Mail Code C-747, Austin Texas 78714-9030. Telephone inquiries should be directed to Jill Demler, Fingerprint Imaging Contract Manager, (512) 438-3948. Requests to be added to the TDHS Fingerprint Imaging Mailing List may be made to the listed mail address or sent via Internet to [jill.demler@rigel.dhs.state.texas.us](mailto:jill.demler@rigel.dhs.state.texas.us).

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

TRD-9512159 Nancy Murphy  
Section Manager, Media and Policy Service  
Texas Department of Human Services

Filed: September 22, 1995

## Texas Department of Insurance Insurer Services

The following applications have been filed with the Texas Department of Insurance and are under consideration.

1. Application for admission in Texas for Princeton Insurance Company, a foreign fire and casualty company. The home office is in Princeton, New Jersey.
2. Application for a name change in Texas for Ramsey Insurance Company, a foreign fire and casualty company. The proposed new name is St. Paul Medical Liability Insurance Company. The home office is in St. Paul, Minnesota.
3. Application for a name change in Texas for Frankona America Life Reassurance Company, a foreign life, accident and health company. The proposed new name is ERC Life Reinsurance Corporation. The home office is in Kansas City, Missouri.
4. Application for a name change in Texas for American Service Life Insurance Company, a domestic life, accident and health company. The proposed new name is Coventry Health and Life Insurance Company. The home office is in Fort Worth, Texas.
5. Application for a name change in Texas for Transamerica Title Insurance Company, a foreign title company. The proposed new name is Transnation Title Insurance Company. The home office is in Phoenix, Arizona.

Any objections must be filed within 20 days after this notice was filed with the Texas Department of Insurance.

addressed to the attention of Cindy Thurman, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

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

TRD-9512237 Alicia M. Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: September 25, 1995

## Notices of Public Hearing

The Commissioner of Insurance will reconvene the September 22 public hearing, Docket Number 2170, 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, to continue consideration of a petition by the staff of the Texas Department of Insurance proposing a new rule to the Homeowners and Farm and Ranch Owners sections of the Texas Personal Lines Manual to provide optional large deductibles for coverage afforded under a homeowners policy and a farm and ranch owners policy.

The Commissioner recessed the September 22 hearing to allow additional comments to be filed through October 6 and to be presented at the October 6 reconvened hearing. The hearing on this matter was originally scheduled for October 6, 1995 (published in the August 18, 1995, issue of the *Texas Register* (20 TexReg 6318 and 6363)) and was rescheduled to September 22, 1995 (published in the August 25, 1995, issue of the *Texas Register* (20 TexReg 6693)).

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.35, 5.101, and 5.96.

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

TRD-9512236 Alicia M. Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: September 25, 1995

The Commissioner of Insurance at a hearing scheduled under Docket Number 2177 on November 9, 1995, at 1:30 p.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 staff of the Workers' Compensation Group of the Texas Department of Insurance pertaining to an amendment to Rule IX C. Volunteer Personnel-Political Subdivisions and amendment to Texas Volunteer Workers' Coverage Endorsement WC 42 03 03 contained in the Texas Basic Manual of Rules, Classifications and Experience Rating Plan of Workers' Compensation and Employers' Liability Insurance (manual). The purpose of these amendments is to implement the provisions of Labor Code, Subchapter E, §406. 092, as added by the 74th Legislature.

The proposed amendments to Rule IX D. provides that an emergency service organization that is not a political subdivision or which is separate from any political subdivision may elect to obtain workers' compensation insurance coverage for its named volunteer members who participate in the normal functions of the organization. In addition, the volunteer member covered under a workers' compensation policy is entitled to full medical benefits and the minimum compensation payments under the law. The volunteer members of emergency service organizations are

required to be classified and rated in accordance with the appropriate classifications shown in the Classifications Section of the manual. The remuneration to be used for premium determination of each volunteer member covered shall be the hourly wage rate for a beginning full time employee engaged in similar activities, subject to a maximum of \$5, 200 annually. The staff proposal also includes minor changes to Texas Volunteer Workers' Coverage Endorsement WC 42 03 03, so that volunteer members of the emergency service organizations may be either designated by name or by classification if workers' compensation coverage is to be provided.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Article 5.96.

A copy of the petition containing the full text of the proposed changes to Rule IX D. and Endorsement WC 42 03 03 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-0995-28-I).

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

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

TRD-9512205      Alicia M. Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: September 22, 1995

The Commissioner of Insurance at a hearing scheduled under Docket Number 2178 on November 9, 1995, at 1:30 p.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 staff of the Workers' Compensation Group of the Texas Department of Insurance pertaining to an amendment to Part Seven-Our Duty to You for Claim Notification, Texas Amending Endorsement, WC 42 03 01. The purpose of this amendment is to implement the provisions of the Insurance Code, Article 5.65A(b), as amended by the 74th Legislature in House Bill 1933.

The proposed amendment to Endorsement WC 42 03 01 requires that the insurance company provide the requested claim information to the policyholder in writing not later than the 30th day after the date the company receives the policyholder's written request for the information. The information is considered to be provided on the date that the information is received by the United States Postal Service or personally delivered.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.56A, 5.56, 5.57, and 5.96.

A copy of the petition containing the full text of the proposed changes to Endorsement WC 42 03 01 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-0995-29-I).

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

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

TRD-9512207      Alicia M. Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: September 22, 1995

The Commissioner of Insurance at a hearing scheduled under Docket Number 2179 on November 9, 1995, at 1:30 p.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 Texas Workers' Compensation Insurance Fund (Fund) pertaining to an amendment to Rule VII-Premium Discount in the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance (Manual).

The proposed amendment to Rule VII of the manual provides that the premium discount rule does not apply to risks written through the Texas Workers' Compensation Insurance Fund pursuant to Insurance Code, Article 5.76-4. For the purposes of conforming with the Legislative intent of Insurance Code, Article 5.76-4, the Fund requests that the Commissioner approve the amendment to Rule VII retroactive to January 1, 1994, the date the Fund assumed the role of insurer of last resort.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.76-3, 5.76-4, and 5.96.

A copy of the petition containing the full text of the proposed changes Rule VII of the manual 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-0995-30).

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

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

TRD-9512209      Alicia M. Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: September 22, 1995

The Commissioner of Insurance, at a public hearing under Docket Number 2180 scheduled for November 9, 1995, at 1:30 p.m. 1995 in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a staff petition. Staff's petition proposes changes in the Texas Automobile Rules and Rating Manual (the Manual) as required by Senate Bill 3 of the 74th Legislature: Amending Rule 33, Rule 55, Rule 58, Rule 85, Rule 87, Endorsement TE 23 30B, and Endorsement TE 24 03A, to be redesignated TE 23 30C and TE 24 03B, respectively. Staff's petition (Reference Number A-0995-33-I) was filed on September 19, 1995.

The proposed changes would bring the Manual into compliance with Senate Bill 3, which relates to the regulation

of motor carriers and transfers the responsibility from the Railroad Commission to the Department of Transportation. Where appropriate, Manual references to the Railroad Commission would be replaced by references to the Department of Transportation, whose staff has concurred in these proposals. Statutory references in the above endorsements have been updated, and all proposals in the petition are routine in nature.

A copy of the petition containing the full text of the proposed amendments to the Manual is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 322-4147 (refer to Reference Number A-0995-33-I).

The written comments should be directed to Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to David Durden, Deputy Commissioner, Property and Casualty Insurance Lines, Texas Department of Insurance, P.O. Box 149104, MC 104-5A, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

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

TRD-9512211      Alicia M. Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: September 22, 1995

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The Commissioner of Insurance, at a public hearing under Docket Number 2181 scheduled for November 9, 1995, at 1:30 p.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a staff petition. Staff's petition seeks amendment of the Texas Automobile Rules and Rating Manual (the Manual), to adopt new and/or adjusted 1991-1995 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Reference Number A-0995-34-I) was filed on September 19, 1995.

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability, and other relevant loss factors for the various model years of the listed vehicles. The deletions shown in the exhibit attached to staff's petition are symbols used by Insurance Services Office (ISO) for multi-purpose and utility type vehicles for 1994 and prior year models, which will continue to be rated according to the traditional method set forth in the Manual, page 2 of the Symbol and Identification Section. For 1995 and later year models, excluding customized vehicles, the symbol for each multi-purpose and utility type vehicle must be used in the same manner as the symbol for a private passenger auto, as required by Commissioner's Order Number 95-0607, effective September 1, 1995. The operative provisions of that order have been printed in the Manual.

A copy of the petition containing the full text of the proposed amendments to the Manual is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas.

For further information or to request copies of the petition, please contact Angie Arizpe at (512) 322-4147 (refer to Reference Number A-0995-34-I).

The written comments should be directed to Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to David Durden, Deputy Commissioner, Property and Casualty Insurance Lines, Texas Department of Insurance, P.O. Box 149104, MC 104-5A, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

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

TRD-9512213      Alicia M. Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: September 22, 1995

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The Commissioner of Insurance, at a public hearing under Docket Number 2182 scheduled for November 9, 1995 at 1:30 p.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a petition filed by Nationwide Insurance Companies (Nationwide). The petition seeks amendment of the Texas Automobile Rules and Rating Manual (the Manual), Rule 74H, to add a new optional discount, called "companion policy discount." The petition (Reference Number A-0195-1) was filed on January 9, 1995.

Nationwide proposes a new category of discount by which the applicable premium rates to be charged under an auto policy for liability and physical damage coverages may be reduced by up to 10% when the named insured under the auto policy is also a named insured under either a homeowners or residential fire insurance policy issued by the same company or company group. The discount would not apply to UM/UIM coverages. This discount is similar to that provided in the Personal Lines Manual by which the rates to be charged under the homeowners or residential fire insurance policy may be reduced by up to 10% when a companion policy is issued.

A copy of the petition containing the full text of the proposed amendments to the Manual is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 322-4147 (refer to Reference Number A-0195-1).

Any written comments should be directed to Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to David Durden, Deputy Commissioner, Property and Casualty Insurance Lines, Texas Department of Insurance, P.O. Box 149104, MC 104-5A, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

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

TRD-9512239

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

Filed: September 25, 1995



The Commissioner of Insurance will hold a public hearing under Docket Number 2183 on November 9, 1995, at 1:30 p.m., in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, to consider a petition by the staff of the Texas Department of Insurance proposing amendatory mandatory endorsements to residential property insurance policies and amendments to the Homeowners, Dwelling, Farm and Ranch Owners, and Farm and Ranch sections of the Texas Personal Lines Manual. The petition requests consideration of proposed endorsements and Manual rule amendments to provide that a claim that is filed under a residential property policy but is not paid or payable under the policy cannot be counted for purposes of premium surcharges or refusal to renew under Article 21.49-2B, §7 of the Insurance Code. The proposed amendatory mandatory endorsements and the policies to which these endorsements are to be attached are: (1) Endorsement HO-197/all Texas Homeowner's Policies, (2) Endorsement Number TDP-097/Texas Dwelling Forms 1 and 2, (3) Endorsement Number TDP-098/Texas Dwelling Form 3, (4) Endorsement Number FRO-497/all Texas Farm and Ranch Owner's Policies, (5) Endorsement Number TFR-097/Texas Farm and Ranch Forms 1 and 2, and (6) Endorsement Number TFR-098/Texas Farm and Ranch Form 3. The proposed Manual rules to be amended relating to permissibility of premium surcharges for number of claims filed include: (1) Rule IV-C-6-A in the Homeowner's Section, (2) Rule IV-M-1 in the Dwelling Section, (3) Rule IV-C-2-A in the Farm and Ranch Owner's Section, and (4) Rule IV-O-1 in the Farm and Ranch Section. The proposed Manual rules to be amended relating to refusal to renew due to losses include: (1) Rule V-G in the Homeowner's Section, (2) Rule V-J in the Dwelling Section, (3) Rule V-F in the Farm and Ranch Owner's Section, and (4) Rule V-J in the Farm and Ranch Section.

These endorsements and Manual rule amendments are necessary because of the passage of House Bill 46 (Acts 1995, 74th Legislature, Chapter 888, §1, effective September 1, 1995) by the 74th Texas Legislature which amended Article 21.49-2B, §7(a) of the Insurance Code to provide that a claim that is filed under a residential property policy but is not paid or payable under the policy cannot be counted for purposes of premium surcharges or refusal to renew under Article 21.49-2B, §7. This legislation applies only to those claims filed with the insurer on or after September 1, 1995. While the statutory prohibition enacted in House Bill 46 is not required by Article 21.49-2B, §7 to be included in the residential property insurance policy forms, staff is proposing such inclusion so that policyholders will be aware of the prohibition. Article 21.49-2B, §7 provides that insurers may assess a premium surcharge in certain instances, including at the time a policy is renewed if the insured has filed two or more claims in the preceding policy year and if an insurer renews a policy of an insured who has filed three or more claims under the policy in a three-year period. Article 21.49-2B, §7 also provides that an insurer may decline to renew a policy if the insured has filed three or more claims under the policy in any three-year period and that an insurer may notify an insured who has filed two claims in

a period of less than three years that the insurer may decline to renew the policy if the insured files a third claim during the three-year period.

House Bill 46 was enacted by the legislature because of the practice of some insurers in Texas to count as claims, for purposes of premium surcharges or refusal to renew under Article 21.49-2B, §7 of the Insurance Code, situations of residential property losses less than the insured's deductible that result in no losses being paid by the insurer and simple inquiries by policyholders to agents or insurers about possible residential property losses which also do not result in any losses being paid by the insurer.

Although the statutory prohibition enacted in House Bill 46 applies to all residential property insurance claims filed with the insurer on or after September 1, 1995, the new endorsements and Manual rules are proposed to become effective for all residential property insurance policies issued or renewed on or after January 1, 1996.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 21.49-2B, 5.35, and 5.96.

Copies of the full text of the staff petition and the proposed endorsements and Manual rule amendments are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. For further information or to request copies of the petition and proposed amendments, please contact Angie Arizpe at (512) 322-4147 (refer to Reference Number P-0995-35-I).

Comments on the proposals must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to the Office of the Chief Clerk, P.O. Box 149104, MC113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Lyndon Anderson, Associate Commissioner for Property and Casualty Division, P.O. Box 149104, MC103-1A, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts action taken under Article 5.96 from the requirements of the Administrative Procedure Act (Government Code, Title 10, Chapter 2001).

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

TRD-9512247

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

Filed: September 25, 1995



### Petitions Filed by the Texas Workers' Compensation Insurance Facility

The Commissioner of Insurance will consider approval of the proposed amendments, filed in four separate petitions, making changes to the Rules and Regulations Governing Employers Rejected Risk Fund of the Texas Workers' Compensation Insurance Facility, the Rules and Regulations Governing the Small Premium Policy Plan of the Texas Workers' Compensation Insurance Facility, the By-laws of the Texas Workers' Compensation Insurance Facility and the Procedures for Hearing Appeals. The approval of the proposed amendments will occur 30 days after publication of this notice in the *Texas Register* pursuant to Article 5.76-2, §2.04. All of the proposed amendments set forth in the four petitions have been approved by the Governing Committee of the Facility and

the members of the Facility who were present, in person or by proxy at the annual meeting of the Facility convened on June 22, 1995.

The proposed amendments to the Rules and Regulations Governing Employers Rejected Risk Fund of the Texas Workers' Compensation Insurance Facility are as follows:

(1) Article II. Administration inserts wording that the Facility may not write workers' compensation policies through the Employers' Rejected Risk Fund on or after January 1, 1994;

(2) Article XIV. Appeals proposes that at the Executive Director's discretion, any member or any employer insured through the Employers Rejected Risk Fund may appeal any decision of the Facility to its Governing Committee.

The proposed changes to the Rules and Regulations Governing the Small Premium Policy Plan of the Texas Workers' Compensation Insurance Facility are as follows:

(1) Article I. Definitions is amended to redefine the word "Board" to mean the Commissioner of Insurance and/or the Texas Department of Insurance;

(2) Article II. Administration is amended to insert wording that workers' compensation insurance may not be written by the Texas Workers' Compensation Insurance Facility under the Small Premium Policy Plan on or after January 1, 1994;

(3) two places in the document, the words "State Board of Insurance" are replaced with the word "Board", which is redefined in Article I. Definitions.

The proposed changes to the Bylaws of the Texas Workers' Compensation Insurance Facility are as follows:

(1) Article III. Definitions adds definitions for the words "Plan" and "Rejected Risk";

(2) Article IV. Powers of the Facility is proposed to reflect that the Facility shall not write workers' compensation insurance on or after January 1, 1994;

(3) Article V. Governing Committee is proposed to change the present tense of the verb "shall be" in item 3 to the past tense "were designated", as the appointment of Governing Committee members for a specified term has already taken place;

(4) Article VII. Executive Director is proposed to reflect that the Executive Director shall have the authority to monitor and administer the servicing of policies and claims and no longer binds or cancels coverage, since workers' compensation coverage is no longer being written;

(5) Article IX. Fees, Assessments and Expenses is proposed to make reference to delete reference to the Small Premium Policy Plan because Plan is defined in Article III. Definitions as Small Premium Plan;

(6) Article XI. Immunity is proposed to add the immunity provisions pursuant to Insurance Code, Article 5.76-2, §2.12.

The proposed changes to the Procedures for Hearing Appeals are as follows:

(1) Article III. Procedures, B. Hearing Officer or Special Subcommittee is proposed to eliminate the words "In cases involving disputed facts, complicated legal issues, or other circumstances where the Chairman deems appropriate". The Chairman may designate a hearing officer or a Special

Subcommittee of the Governing Committee to hear an appeal, either in lieu of or in addition to the Appeals Subcommittee hearing.

(2) Article III. Procedures F. Appeals to State Board of Insurance is proposed to substitute "the Commissioner of Insurance" for "State Board of Insurance" in the title of the section;

(3) In the body of Article III. F., the proposed language states that an aggrieved appellant may appeal the Governing Committee's action in regard to any recommendation made through this appeals process to the Commissioner of Insurance, pursuant to Article 5.76-2, §2.08. This provision does not preclude the Facility from invoking any other remedies provided to it by Insurance Code, Article 5.76-2.

Any objections to any of these proposed changes made in the four reference petitions filed by the Texas Workers' Compensation Insurance Facility must be submitted in writing 30 days after publication of the proposals in the *Texas Register* addressed to Alicia M. Fechtel, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be submitted to Nancy Moore, Deputy Commissioner Workers' Compensation, Texas Department of Insurance, Mail Code 105-2A, P.O. Box 149092, Austin, Texas 78714-9092.

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

TRD-9512217 Alicia M. Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: September 22, 1995

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**Texas Natural Resource Conservation  
Commission  
Enforcement Orders**

An agreed enforcement order was entered regarding City of Nederland, Docket Number 95-0089-MWD-E (Permit Number 10483-02) on September 11, 1995, assessing \$56,460 in administrative penalties with \$46,460 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond C. Winter, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0477.

An agreed enforcement order was entered regarding City of Robert Lee, Docket Number 95-1274-MWD-E (Permit Number 10603-02) on September 11, 1995, assessing \$3,380 in administrative penalties with \$2,000 deferred and \$1,380 waived.

Information concerning any aspect of this order may be obtained by contacting Gilbert Angelle, Enforcement Coordinator, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4489.

An enforcement order was entered regarding Southwest Oil Company, Docket Number 95-0685-PST-E (TNRCC Facility I.D. 10642; Enforcement I.D. E10467) on September 11, 1995, assessing \$36,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Raymond C. Winter, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0477.

An agreed enforcement order was entered regarding City of Thrall, Docket Number 95-1203-MWD-E (Permit Number 13448-01) on September 11, 1995, assessing \$3,640 in administrative penalties with \$1,640 deferred and \$2,000 waived.

Information concerning any aspect of this order may be obtained by contacting Carla N. Thomas, Enforcement Coordinator, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4483.

An agreed enforcement order was entered regarding the City of Malone, Docket Number 95-0629-MWD-E (Permit Number 13448-01) on September 8, 1995, assessing \$3,680 in administrative penalties with \$3,080 deferred.

Information concerning any aspect of this order may be obtained by contacting Geoff Petrov, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0677.

An agreed order was entered regarding Gaines County Airport, Docket Number 95-1293-PST-E (TNRCC Facility I.D. Number 19085, Enforcement I.D. Number E10810), on September 22, 1995, assessing \$1,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting William C. Foster, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3407.

An agreed enforcement order was entered regarding Grand Canyon Dairy, Docket Number 95-0789-AGR-E (Permit Number 02950) on September 14, 1995, assessing \$8,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0678.

An agreed enforcement order was entered regarding Metro Fuel Inc, Docket Number 95-1327-PST-E (TNRCC Facility I.D. Number 51472, Enforcement I.D. Number E10812) on September 22, 1995 assessing \$600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting William C. Foster, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3407.

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

TRD-9512161 Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: September 22, 1995



## Notice of Application for Waste Disposal Permits for the Week Ending September 8-22, 1995

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.

American Petrofina Pipe Line Company; the Harbor Island Terminal and Tank Farm; the plant site is on Harbor Island between State Highway 361 and the south bank of the Aransas Channel approximately six miles east of the City of Aransas Pass in Nueces County, Texas; renewal; 00656.

Brazoria County Municipal Utility District Number 6; the wastewater treatment facilities are approximately 0.2 mile east of State Highway 288 and 0.55 mile south of FM Road 518, on the west side of County Road 94 in Brazoria County, Texas; new; 13784-01.

Brock Independent School District; the wastewater treatment facilities and the disposal site are entirely within Brock Independent School District property situated on the northwest corner of FM Road 1189 and unnamed county road located approximately two miles south of Interstate Highway 20 in Parker County, Texas; new; 13798-01.

City of Callisburg; the wastewater treatment facilities are adjacent to and west of FM Road 678 approximately 3,000 feet southeast of the intersection of FM Roads 678 and 2896 in Cooke County, Texas; amendment; 11840-01.

City of Galveston; the wastewater treatment facilities are at Seawolf Park on Pelican Island approximately 3.5 miles northeast of the Pelican Island Bridge in Galveston County, Texas; renewal; 10688-04.



Harris County Municipal Utility District Number 23; wastewater treatment facilities are approximately 1.3 miles northeast of the intersection of U.S. Highway 290 and Fairbanks-North Houston Road at 7214 Woodland West Drive, on the north bank of Whiteoak Bayou in Harris County, Texas; renewal; 11485-01.

Henrichson Cattle Company, Inc.; the beef feedlot is located on the east side of Interstate Highway 35 on an unnamed gravel road located approximately 0.5 mile south of the Town of Artesia Wells, La Salle County, Texas; amendment; 02390.

City of Houston; the Water Control and Improvement District Number 47 Wastewater Treatment Facilities are at 7410 Galveston Road (State Highway Number 3) in the City of Houston in Harris County, Texas; amendment; 10495-050.

Koch Gathering Systems, Inc.; the Marine Terminal and Petroleum Storage/Transfer facility is approximately five miles south of the City of Aransas Pass, Texas, at the south end of FM Road 1069, adjacent to Corpus Christi Bay, San Patricio County, Texas; renewal; 01207.

Dennis Kennedy; the dairy is located on the west side of Bagley Road approximately one mile north of the intersection of Bagley Road and FM Road 110 in Cherokee County, Texas; renewal; 03261.

Leverett's Chapel Independent School District; the wastewater treatment facilities are approximately 7,500 feet north of the intersection of State Highways 135 and 42, and approximately 400 feet east of State Highway 42 northeast of the City of Overton in Rusk County, Texas; renewal; 1113-01.

Lochinvar Golf Club the wastewater treatment facilities are approximately 2, 100 feet east-southeast of the intersection of Hardy Road and Farrell Road, and 2.3 miles east-northeast of the intersection of Interstate Highway 45 and Kuykendahl Road in Harris County, Texas; renewal; 12141-01.

An Loper; the dairy is on the north side of Apple Orchard Road approximately three miles west of the intersection of State Highway 6 and U.S. Highway 377 in Erath County, Texas; renewal; 03089.

Lower Colorado River Authority; the wastewater treatment facilities and the disposal site are located approximately 1.2 miles east-northeast of the intersection of State Highway 95 and FM Road 1441; approximately six miles north of the City of Bastrop, Bastrop County, Texas; renewal; 13548-01.

Niject Services Company, A Partnership; an air separation plant is along the south side of FM Road 1795, approximately 3000 feet east of the intersection of FM Road 1795 and State Highway 14, Wood County, Texas; renewal; 03247.

City of Sterling City; the wastewater treatment facilities and the disposal site are approximately 650 feet southwest of the intersection of U.S. Highway 87 and State Highway 158 in Sterling County, Texas; renewal; 12147-01.

U.S. INTEC, Inc.; a roofing products manufacturing facility; the plant site is at 13530-60 Industrial Road approximately one mile east of the intersection of Industrial Road and Federal Road in Harris County, Texas; new; 03828.

West Columbia National Bank; the wastewater treatment facilities are in Autumn Shadows Subdivision approximately 570 feet east from the intersection of State High-

way 35 and FM Road 1459 on the south side of State Highway 35 in Brazoria County, Texas; new; 13796-01.

The Woodlands Corporation; the wastewater treatment plant and the disposal site are located in the Point Venture II Development, at the southwest end of Lohman's Crossing Road, approximately six miles south-southwest of the intersection of FM Road 1431 and Lohman's Crossing Road in Travis County, Texas; renewal; 12970-01.

Texas General Land Office (TGLO); to authorize the construction of 21 application plots (miscellaneous units) for the application of approximately 100 gallons of crude oil, approximately 4-5 gallons on each test plot. Crude oil from off-site sources will be received on a non-commercial basis at the TGLO application site at Parker Cove. Crude oil managed at this facility is a hazardous waste; the facility is located in Parker Cove, 1.5 miles north of Interstate Highway 10, on the San Jacinto River, in Harris County, Texas. The cove begins approximately 800 meters south of a boat access ramp at the Riverside Marina in Channelview, Texas; new; HW50367; 45-day notice.

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

TRD-9512166 Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: September 22, 1995

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**Notice of Opportunity to Comment on  
Permitting Actions for the Week  
Ending September 22, 1995**

The following applications are subject to a Commission resolution adopted August 30, 1995, 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 (Mailcode 105), Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number and type of application-new permit, amendment, or renewal.

City of Newark for a minor amendment to Permit Number 11626-01 in order to replace Number 4 of "Other Requirements" which requires supplemental suspended solids removal through filtration with a constructed wetlands treatment process. The permit currently authorizes a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 150,000 gallons per day, which will remain the same. The Newark Wastewater Treatment Plant is on the east bank of Derrett Creek immediately south of the Newark Beach Road Bridge, about 850 feet west of the intersection of Roger Road and Berke Street in Wise County, Texas.

North Mission Glen Municipal Utility District for a minor amendment to Permit Number 12379-01 in order to authorize the addition of an interim II phase with a volume not to exceed an average flow of 565,000 gallons per day. The permit currently authorizes a discharge of treated domestic wastewater effluent at a final volume not to exceed an average flow of 620,000 gallons per day, which will remain the same. The proposed amendment will enforce more stringent effluent limitations as needed, in order to meet existing applicable rules and regulations. The wastewater treatment plant is at a point approximately 1/2 mile west of Gaines Road, approximately 3/4 mile south of the intersection of Addicks Clodine Road and Beechnut Street in Fort Bend County, Texas.

Application Number 23-865H by Public Utilities Board of Brownsville to Amend Certificate of Adjudication Number 23-865, as amended. Applicant seeks authorization to combine a portion of the water rights authorized by Certificate Number 23-284, as amended, (150 acre-feet of Class "A" Rio Grande Irrigation water rights) and a portion of the water rights authorized by Certificate Number 23-289, as amended, (187.5 acre-feet of Class "A" Rio Grande Irrigation water rights) with the water rights authorized by Certificate Number 23-865, as amended, under Certificate Number 23-865, as amended, and to amend Certificate Number 23-865, as amended and combined, by changing the purpose of use of the 337.5 acre-feet of water rights from irrigation to municipal use; establishing the place of use of the water to Brownsville's service area and establishing the diversion point on the Rio Grande for use of the water as Brownsville's diversion point. (Terry Slade)

Consideration of the application of W. E. Vlasek doing business as Shalako Estates and Canyon Springs Water Systems to Transfer Water CCN Number 10214 from Cave Spring Water Supply Corporation; Amend Water CCN Number 12685 to include Canyon Springs and Bumble Bee Hills; Cancel Water CCN Number 10214 in Kerr County, Texas. (Application #30696-S, Vera Poe)

Consideration of the Application of Fort Belknap Water Supply Corporation to Transfer and Cancel Water CCN Number 11651 from Jean Water Supply Corporation in Young County, Texas. (Application #30643-S)

Consideration of the Application of Fort Belknap Water Supply Corporation to Amend CCN Number 11042 in

Young County, Texas. (Application #30704-C)

Consideration of the application of Hill Country Water Supply Corporation to Amend Water Certificate of Convenience and Necessity Number 12485 in Hays County, Texas. (Application #30846-C, Darrell Nichols)

Consideration of the application of Onion Creek Wastewater Corporation to Transfer Sewer CCN Number 20499 from Lumberman's Investment Corporation doing business as Onion Creek Development Company to Onion Creek Wastewater Corporation in Travis CoPor.

Application by Northwest Travis County Municipal Utility District Number 1 for approval of \$1,000,000 combination unlimited tax and revenue bonds, second issue, 7.74% net effective interest rate, series 1995. Applicant requests approval of a bond issue to finance improvements to the District's existing water distribution system.

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

TRD-9512162 Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: September 22, 1995

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**Notice of Receipt of Application and  
Declaration of Administrative  
Completeness for Municipal Solid  
Waste Management Facility Permits  
for the Week Ending September 15,  
1995**

Application by Laidlaw Waste Systems, Inc.; Proposed Permit Amendment Number MSW1614-A, authorizing an amendment to their Type I (Landfill) municipal solid waste facility permit. The site covers approximately 144 acres of land and is located south of Heath Lane, approximately 0.5 miles east of the intersection of Heath Lane and U.S. Highway 69, in Cherokee County, Texas.

Application by Bell Processing, Inc.; Proposed Permit Number 1827-A, authorizing a Type IV (Landfill) municipal solid waste management facility permit. The site covers approximately 60.36 acres of land and is to receive approximately 68 tons of solid waste per day. The site is located 4,000 feet west of Farm to Market Road 1634, 1.5 miles north of U.S. Highway 277, six miles west of the city of Wichita Falls in Wichita County, Texas.

Application by Laidlaw Waste Systems (Texas) Inc., Proposed Permit Number MSW 1327-B, authorizing a Type I (Landfill) municipal solid waste management facility permit. The site covers approximately 221 acres of land and is to receive approximately 1,000 tons of municipal solid waste per day. The site is located approximately 1.0 mile northwest of the intersection of U.S. Highway 31 and Interstate Highway 20, near Kilgore in Gregg County, Texas.

Notice of Application by BMFS, Inc.; Proposed Permit Number MSW2249, authorizing a Type IV (Landfill) municipal solid waste management facility. The site covers approximately 53 acres of land and will daily receive approximately 2,000 cubic yards of municipal solid waste. The proposed facility is located at the northwest corner of the intersection of Spring Cypress Road and Valka Road, approximately 2,500 feet west of the intersection of Spring

Cypress Road and Steubner Airline Road, near the city of Houston, Harris County, Texas.

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.

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 September 22, 1995.

TRD-9512165 Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: September 22, 1995

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**Provisionally-Issued Temporary Permits  
to Appropriate State Water**

Permits issued during the period of August 24-September 18, 1995.

Application Number TA-7532 by Elias Dugi for diversion of ten acre-feet in a three-month period for irrigation purposes. Water may be diverted from Cibolo Creek near the stream crossing of Highway 541, approximately nine miles east of Poth, also being 15 miles south east of Floresville, Wilson County, Texas, San Antonio River Basin.

Application Number TA-7533 by Redfish Bay Terminal, Inc. for diversion of ten acre-feet in a one year period for industrial (hydrostatic Test, Tank A) purposes. Water may be diverted from approximately 25 miles southeast of Sinton, San Patricio County, Texas, San Antonio-Nueces Coastal Basin.

Application Number TA-7534 by Redfish Bay Terminal, Inc. for diversion of seven acre-feet in a one year period for industrial (hydrostatic Test, Tank B) purposes. Water may be diverted from approximately 25 miles southeast of Sinton, San Patricio County, Texas, San Antonio-Nueces Coastal Basin.

Application Number TA-7535 by Glenn Fuqua, Inc. for diversion of three acre-feet in a one-year period for industrial (highway construction FM 539) purposes. Water may be diverted from the FM 539 crossing of Cibolo Creek, approximately 17 miles northeast of Floresville, Wilson County, Texas, San Antonio River Basin.

Application Number TA-7536 by Tour 18, Inc. for diversion of ten acre-feet in a one year period for irrigation purposes. Water may be diverted from Lake Grapevine approximately 2.5 miles southeast of the intersection of Hwy 377 and FM Road 1171, also being approximately 27 miles in a southerly direction from Denton, Denton County, Texas, Trinity River Basin.

Application Number TA-7537 by Water Line Systems for diversion of ten acre-feet in a one-year period for mining (gas well drilling) purposes. Water may be diverted from the Rio Grande seven miles south of Loop 20, seven miles south of Laredo, Webb County, Texas, Rio Grande Basin.

Application Number TA-7538 by Mitchell Energy Corporation for diversion of two acre-feet in a one year period for mining purposes. Water may be diverted located just west of FM 156 from Denton Creek, approximately ten miles southwest of Denton, Denton County, Texas, Trinity River Basin.

Application Number TA-7540 by C. L. Seaton doing business as Seaton Construction for diversion of one acre-foot in a one-year period for industrial purposes. Water may be diverted from the Dahlia Road crossing of Bishop Creek, approximately 7.5 miles east of Gilmer, Upshur County, Texas, Cypress Basin.

Application Number TA-7541 by Smith and Company in care of AGC of Texas for diversion of one acre-foot in a six-month period for industrial (highway construction, FM 3090) use. Water may be diverted from the FM 3090 Road crossing of Rocky Creek, approximately seven miles northwest of Anderson, Grimes County, Texas, Brazos Basin.

Application Number TA-7542 by Jordan Paving Corporation for diversion of one acre-foot in a one-year period for industrial (highway construction, FM 977 and FM 1119) purposes. Water may be diverted from the FM 1119 Road crossing of Boggy Creek and FM 811 Road crossing of Keechi Creek, located approximately 9.5 miles southeast of Centerville, Leon County, Texas, Trinity Basin.

Application Number 7544 by Young Contractors, Inc. for diversion of two acre-feet in a one-year period for industrial (road construction FM 50) purposes. Water may be diverted from the Yegua Creek crossing of FM 50, approximately two miles south of Clay, Burleson County, Texas, Brazos River Basin.

Application Number TA-7539 by PUMPCO, Inc. for diversion of one acre-foot in a 30-day period for industrial (hydrostatic testing of natural gas pipeline) purposes. Water may be diverted from approximately two miles west of County Road 336 and 14 miles northeast of Caldwell in Burleson County, Texas, Brazos 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 previously 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 September 22, 1995.

TRD-9512160 Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: September 22, 1995

## Public Notices

Texas Natural Resource Conservation Commission (TNRCC) announces notice and availability of a regional solid waste management plan proposed by the Central Texas Council of Governments (CTCOG) and a 30-day period for public comment on the plan.

Notice is hereby given that the document entitled, *The 20-Year Regional Solid Waste Management Plan for the Central Texas Council of Governments 1990-2010*, is available for public review and comment. Regional solid waste management plans are required by the Texas Health and Safety Code, Chapter 363 (*Comprehensive Municipal Solid Waste Management, Recovery, and Conservation Act, 1990*) for each of the established regional planning agencies (COGs) in the state, which have been officially designated as solid waste management planning regions. The CTCOG region includes the counties of Mills, Hamilton, San Saba, Bell, Milam, Coryell, and Lampasas. The plan describes current solid waste management efforts in the region, assesses problems and needs, and provides recommendations for future action. The plan was developed with the input of a solid waste advisory committee composed of various public and private interests; meetings of this advisory committee were open to the general public. In addition, numerous public meetings and a formal public hearing concerning the plan were held in accordance with guidelines of TNRCC. Immediately upon adoption by TNRCC, the plan will have rule status. Subchapter O of *Municipal Solid Waste Regulations* (§330.568) will be amended at a later date to include, by reference, all adopted regional solid waste management plans in the state.

The interested public is invited to submit written comments on the proposed regional plan to the Texas Natural Resources Conservation Commission. Written comments must be received by no later than 30 days from the publication date of this notice. Please address comments to: Daniel J. Eden, Director, Waste Planning and Assessment Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

Copies of the regional plan document are available for public review at the following two locations: Central Texas Council of Governments, 100 South East Street, Belton, Texas 76513-0729, (817) 939-1803; and the Texas Natural Resource Conservation Commission, Library, 12100 Park 35 Circle, Building A, First Floor Austin, Texas 78753, (512) 239-0020.

The Texas Natural Resource Conservation Commission will consider formal adoption of this regional plan at a regular agenda meeting, after the close of the comment period.

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

TRD-9512197 Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation  
Commission

Filed: September 22, 1995

The Executive Director of the Texas Natural Resource Conservation Commission has issued a public notice of the amended selection of a remedy for a State Superfund Site which constitutes an imminent and substantial endangerment due to a release or threatened release of hazardous substances into the environment. The notice was published in the Athens Daily Review on Friday, September 29, 1995.

In accordance with 30 Texas Administrative Code (TAC) §335.349(a), concerning requirements for the remedial action under Texas Health and Safety Code Annotated, §361.187 (Vernon 1990), concerning the proposed remedial action, a public meeting regarding the proposed remedy for the Wortham Lead Salvage Site must be held 45 days after publishing a notice in the *Texas Register* and a local newspaper. The public meeting is scheduled at the Mabank Chamber of Commerce Hall, 131 East Market Street, Mabank, Texas, on November 14, 1995, at 7:00 p.m.

The site for which a remedy has been selected is the Wortham Lead Salvage Site that was originally placed on the State Superfund list on January 16, 1987, issue of the *Texas Register* (12 TexReg 205). Wortham Lead Salvage is located approximately 100 miles southeast of Dallas, in the northwest portion of Henderson County. The site is located between Mabank and Eustace along U.S. Highway 175. The Wortham Lead Salvage Site was a lead salvaging operation that caused lead contamination in the surrounding soils. A remedial investigation to determine the nature and extent of the contamination was completed on February 6, 1991. The results indicated that lead contamination exists at the site at levels which may threaten human health and the environment. A baseline risk assessment concluded that further action was needed to eliminate any potential imminent and substantial endangerment to human health and the environment from lead contamination at the site. Following approval of the baseline risk assessment, a feasibility study (FS) report was submitted and reviewed. The FS report screened and evaluated technologies that could be used to remediate the Wortham Lead Salvage Site. The FS report developed five alternatives, with soil washing being the preferred waste treatment choice. Soil Washing was finalized as the site remedial alternative after the public meeting held in Athens, Texas, on August 18, 1992. Further collection and analysis of information collected from the Wortham Lead Salvage Site since August 18, 1992, indicated that soil washing was no longer a preferred remedial alternative for the site. An amended site remedy that uses a combination of lead separation, lead recycling, and off-site disposal waste management technologies was finalized after a public meeting held in Mabank, Texas on April 25, 1995. A proposal to modify the remedial action cleanup criteria for the site has been made in response to comments received during the comment period for the amended remedy.

The public meeting will be legislative in nature and not a contested case hearing under the Administrative Procedure Act (the Government Code, Chapter 2001).

Persons desiring to make comments on the proposed remedial action may do so prior to the public meeting. All comments concerning the remedial action selected should be submitted at least ten days prior to the public meeting to Trey Collins, Project Manager, Superfund Engineering Section, MC 144, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

The public records for this site are available for public review during regular business hours at the Henderson County Public Library, 121 South Prairieville, Athens, Texas 75751, (903) 675-1717, or at the Texas Natural Resource Conservation Commission, 12118 North Interstate Highway 35, Building D, Austin, Texas 78753, (512) 239-2927. Copying of file information is subject to payment of a fee.

For further information, please call our toll free number at 1-800-633-9363.

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

TRD-9512198      Kevin McCalla  
                         Director, Legal Division  
                         Texas Natural Resource Conservation  
                         Commission

Filed: September 22, 1995



The Texas Natural Resource Conservation Commission published in the April 7, 1992, issue of the *Texas Register* (17 TexReg 2643), the first Priority Enforcement List (PEL) identifying illegal tire sites for which no responsible party had been identified. The following is an update to the first PEL published to include additional sites identified and to delete sites cleaned up. Thirty-seven additional sites have been added and 29 sites have been cleaned up since the last publication and are being deleted. Copies of the PEL can be obtained from the Texas Natural Resource Conservation Commission, Municipal Solid Waste Division, Waste Tire Recycling Fund Program (WTRF) at 12015 Park 35 Circle Austin, Texas 78753. Any questions regarding the implementation or operation of this program should be directed to the staff of the WTRF at (512) 239-6001.

**SITES ADDED**  
**PRIORITY ENFORCEMENT LIST**

<u>Site #</u>	<u>Rank</u>	<u>County</u>	<u>Name</u>	<u>#Tires</u>
70837	21	LUBBOCK	RAY TIMMS	1000
70838	16	WICHITA	MARVIN'S SHAMROCK	1100
70839	28	JACK	NEIL E. LARKIN	3000
70840	31	WISE	R. HEBISEN	3600
70841	31	WISE	NEWTON SEYMORE	1800
70842	34	TARRANT	RTC-SUBLETT 287	1300
70843	34	ELLIS	FREDA DUNN TRUST	2000
70844	34	PARKER	FDIC-CRESSON	1700
70845	33	PARKER	DAVID AND JOAN GARNER	3000
70846	29	PALO PINTO	FLOY GRAHAM	2500
70847	37	LAMAR	BOB WRIGHT	2000
70848	35	ATASCOSA	TIJERING SITE	850
70849	32	EL PASO	PAUL SITE	700
70850	31	TRAVIS	STEVE MENDOZA PROPERTY	2000
70851	34	BEXAR	ROTH SITE	2000
70852	36	PARKER	GRACE CARTWRIGHT	4000
70853	37	DENTON	M.C. BURCH	1500
70854	28	PALO PINTO	GUY MONTGOMERY	2500
70855	27	HUNT	ROSE WATSON	545
70856	30	GRAYSON	FRANCES TAYLOR	2000
70857	38	CAMP	BILL NICKERSON	3000
70858	28	DALLAS	DALLAS BAPTIST UNIVERSITY	1500
70859	30	EL PASO	PSB SITE	2500
70860	30	DALLAS	SUBURBAN DEVELOPERS	2050
70861	26	BRAZORIA	EHMAN	2000
70862	29	GILLESPIE	ECKHARDT RANCH SITE	2000
70863	40	BEXAR	RAYCO/MICRON DRIVE	7500
70864	28	PARKER	RAFTER J. RANCH	2100
70865	26	GRAYSON	CLAUDE ALEXANDER	1500
70866	26	DALLAS	SHACKELFORD/FIELDS/GILMORE	600
70867	26	DALLAS	STEVE & JOHN ROTEN	1700
70868	30	ELLIS	A.J. SCOTT	650
70869	29	PARKER	ANNA MOREMAN	1500
70870	28	WISE	ALVORD TRUCK STOP	3200
70871	31	DALLAS	CITY OF DALLAS (SOUTHERLAND)	1000
70872	32	DALLAS	CITY OF TEMPLE 7TH DAY	3000
70873	31	DALLAS	CITY OF DALLAS (LOCUST DRIVE)	1000

**SITES DELETED**  
**PRIORITY ENFORCEMENT LIST**

<u>Site #</u>	<u>Rank</u>	<u>County</u>	<u>Name</u>	<u>#Tires</u>
70017	28	WISE	RT HENRY	10974
70022	0	WHARTON	SAM CUNNINGHAM & EM GORDON	1123
70042	0	HARRIS	RENA LANE	2000
70137	0	WILSON	CHAPA	7424
70318	18	HARRIS	FK INTERNATIONAL	2000

70473	33	HARRIS	DIXIE FARM ROAD	9523
70522	30	PARKER	PATRICIA HAMMONS	2038
70527	32	JOHNSON	LOU ELLA FORSYTHE	2780
70533	36	VAL VERDE	VALADEZ	3371
70577	32	HARRIS	RICE UNIVERSITY	2000
70578	27	WHARTON	WEISS SURVEY	3348
70631	25	HAMILTON	SAM HEADLEY	5440
70655	31	CASS	BOBBY JOE MATHEWS	1624
70694	26	GRIMES	RONNIE KOLBASINSKI	1134
70705	35	HARRIS	AMERICA'S ACCEPTANCE	2021
70707	31	VAN ZANDT	JIM LAWLEY	8694
70708	18	ROBERTSON	LYNN OR OLEN"ELMO" CROCKER	44133
70713	36	BEXAR	PAPER STREET "H"	3018
70718	31	GUADALUPE	PAPE SITE	1972
70726	25	JONES	BFI REG LANDFILL-ABILENE	120626
70728	28	TARRANT	MARINE CREEK OF TX JT VENTURE	6598
70734	28	WISE	CITY OF DECATUR-CITY BARN	2554
70736	31	TARRANT	VILLAGE CREEK PARK	10738
70756	19	WICHITA	CHARLES PETERS	2290
70759	30	PARKER	RAY JONES	4096
70768	40	HENDERSON	TOM HARRIS & DORIS TURNER	1245
70770	37	UPSHUR	LOUISIANA PACIFIC CORP.	1929
70777	13	BEXAR	WILLIAMS SITE	3542
70815	36	BEXAR	EMICK	2829

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

TRD-9512252      Kevin McCalla  
 Director, Legal Division  
 Texas Natural Resource Conservation  
 Commission

Filed: September 25, 1995

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**Public Notice-PST Workshops**

The Texas Natural Resource Conservation Commission (TNRCC) will hold free workshops in order to assist

owners of petroleum storage tanks on how to comply with changes to the Petroleum Storage Tank Remediation (PSTR) Fund made by the 74th Legislature. Any tank not properly registered with the TNRCC makes the owner subject to enforcement penalties, and as of December 31, 1995, responsible for all corrective action expenses if any spill or leak occurs. The TNRCC staff will be available to assist with tank registration, application for reimbursement for corrective action expenses, and any other questions petroleum storage tank owners may have.

If you have any questions or need further information, please do not hesitate to contact Diane Stallings at (512) 239-6333.

152-Public Notice-PST Workshops--[figure]

**PST Workshops**

OCTOBER

DATE	TIME	CITY	LOCATIONS
10/16	1:30-4:30	CORSICANA	City Hall - Commissioners Room. 200 N. 12th St.
10/17	9-12pm	DENTON	City Council Chambers 215 East McKinney
10/17	6-9pm	TYLER	Regional Training & Development Complex Rm. 112, 1530 Loop 323.
10/18	1:30-4:30	MARSHALL	TX State Technical College - 2400 S. East End Blvd.
10/19	1:30-4:30	TEXARKANA	Texarkana College - Truman Arnold Student Center - 2500 N. Robison
10/20	9-12pm	MT PLEASANT	Northeast TX Community College - FM 1735 & Chapel Hill Rd..Student Union, Rm 109
10/24	9-12pm	ABILENE	West Central COG 1025 E. North 10th
10/25	9-12pm	LUBBOCK	Mahon Library 1306 9th Street
10/26	9-12pm	AMARILLO	Field Office 3918 Canyon Dr.
10/27	9-12pm	WICHITA FALLS	Galaxy Center Bldg. 4309 Jacksboro Hwy, #2 North, Ste. 200
10/30	1:30-4:30	HUNTSVILLE	First National Bank 6th Floor, Flag Room 1300 11th St.
10/31	1:30-4:30	BEAUMONT	Lamar Univ. - John Gray Institute, 855 E. Florida Ave.



### PST Workshops

NOVEMBER

11/1	1:30-4:00	ANGLETON	Brazoria County Historical Museum 100 East Cedar
11/2	9:30-12pm	ROSENBERG	City Council Chambers 2110 4th St.
11/2	2-4:30pm	COLUMBUS	County Court Room 1st Floor 400 Spring Street
11/13	1:30-4:30	VICTORIA	Golden Crescent Regional Planning Comm. Board Rm 568 Big Bend Drive
11/14	9-12pm	CORPUS CHRISTI	Corpus Christi Univ. 6300 Ocean Drive Blucher Institute
11/15	1-4pm	EDINBURG	Edinburg Fire Station 210 W. McIntyre
11/15	5:30-9:30pm	BROWNSVILLE	Brownsville Golf & Rec. Center 1800 West San Marcelo Blvd.
11/16	1-4pm	LAREDO	Laredo Civic Center 2400 San Bernardo
11/27	6-9pm	EL PASO	Rio Vista Community Center 901 N. Rio Vista, Socorro, TX
11/28	9-12pm	EL PASO	El Paso Community College Trans-Mountain Campus Lecture Forum 9570 Gateway Blvd. N.

## PST Workshops

DECEMBER

12/4	1:30-4:30	UVALDE	TX Ag. Experiment Station 1619 Garner Field Road
12/5	1-4pm	OZONA	Crockett County Civic Center 1st & H Streets
12/6	9-12pm	FT. STOCKTON	Northside Fire Station 1401 North Oklahoma
12/6	6-9pm	MIDLAND	Midland College, Road Runner Room 3600 North Garfield
12/7	9-12pm	SAN ANGELO	Public Works 1948 Saint Ann(off Beal)
12/11	6-9pm	WACO	Executive Plaza Conference Ctr, Ste. 1000 6801 Sanger Drive
12/12	1:30-4:30	PALESTINE	City Hall-City Council Chamber 504 North Queen St.
12/14	9-12pm	LUFKIN	Chamber of Commerce Loop 287 & Chestnut
12/15	9-12pm	JASPER	First National Bank Community Room 301 E. Houston

Issued in Austin, Texas, on September 8, 1995.

TRD-9512026 Kevin McCalla  
Director, Legal Services Division  
Texas Natural Resource Conservation  
Commission

Filed: September 20, 1995

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**North Central Texas Council of  
Governments**

**Notice of Consultant Contract Award**

Pursuant to the provisions of the Government Code, Chapter 2254, the North Central Texas Council of Government publishes this notice of consultant contract award. The consultant proposal request appeared in the July 21, 1995, issue of the *Texas Register* (20 TexReg 5439). The consultant will determine a common vision and recommend improvement action for the transportation linkages and neighborhoods between the City of Fort Worth's Central Business District, Stockyard areas, and Cultural District.

The consultant selected for this project is KVG Gideon Toal, Inc., 1500 Ballinger, Fort Worth, Texas 76102. The maximum amount of this contract is \$81,914. The contract began September 21, 1995, and will terminate on June 28, 1996.

Issued in Arlington, Texas, on September 22, 1995.

TRD-9512240 R. Michael Eastland  
Executive Director  
North Central Texas Council of  
Governments

Filed: September 25, 1995

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**Texas Department of Public Safety  
Local Emergency Planning Committee  
Hazardous Materials Emergency  
Preparedness Grant Request for  
Proposals**

**INTRODUCTION:** The Governor's Division of Emergency Management (DEM), acting for the State Emergency Response Commission (SERC), is requesting proposals for Local Emergency Planning Committee (LEPC) Hazardous Materials Emergency Preparedness (HMEP) grants to be awarded to LEPCs to further their work in hazardous materials transportation emergency planning.

**DESCRIPTION OF ACTIVITIES:** LEPCs are mandated by the federal Emergency Planning and Community Right-to-Know Act (EPCRA) to provide planning and information for the community relating to chemicals in use and in storage. The United States Department of Transportation has made grant money available to enhance communities' readiness for responding to transportation hazardous materials incidents. A grant may be used by an LEPC in various ways, depending on a community's needs.

**ELIGIBLE APPLICANTS:** Each proposal must be developed by an LEPC, the membership of which is recognized by the SERC, in cooperation with county and/or city governments. The proposal must be approved by a vote of the LEPC. Each LEPC shall arrange for a city or county to

serve as its fiscal agent for management of any and all monies awarded under this grant.

**CERTIFICATION:** The fiscal agent must provide certification to commit funds for this project. The certification must be in the form of an enabling resolution from the county or authorization to commit funds from the city as appropriate.

**BUDGET LIMITATIONS:** Total funding for these grants is dependent on the amount granted to the state from the United States Department of Transportation. No less than 75% of the money granted to the state for planning will be awarded to LEPCs. This is the third of a series of annual grant awards which will be issued through fiscal year (FY) 1998. Grants will be awarded based on population, hazardous material risk, need, and cost-effectiveness as judged by DEM. DEM will fund 80% of the total project cost. Twenty percent of the project cost must be borne by the grantee. Approved in-kind contributions may be used to satisfy this contribution. LEPCs must maintain the same level of spending for planning as the average of the past two years, in addition to the grant.

**EXAMPLES OF PROPOSALS:**

Development, improvement, and implementation of emergency plans required under the EPCRA, as well as exercises which test the emergency plan. Improvement of emergency plans may include hazards analysis as well as response procedures for emergencies involving transportation of hazardous materials.

An assessment to determine flow patterns of hazardous materials within a state, between a state and another state or Indian country, and development and maintenance of a system to keep such information current.

An assessment of the need for regional hazardous materials emergency response teams.

An assessment of local response capabilities.

Conducting emergency response drills and exercises associated with emergency preparedness plans.

Technical staff to support the planning effort. (Staff funded under planning grants cannot be diverted to support other requirements of EPCRA.)

Public outreach about hazardous materials training issues such as community protection, chemical emergency preparedness, or response.

Contract period. Grant contracts begin as early as December 15, 1995, and end August 15, 1996.

Final selection. The DEM shall review the proposals. SERC Subcommittee on Planning will make final selection. The State is under no obligation to award grants to all applicants.

Application forms and deadline. A grant application package can be obtained from the Division of Emergency Management, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512) 483-5985. Completed applications must be received at the previous address by 5:00 p.m., November 22, 1995. For further information, please call (512) 483-5985.

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

TRD-9512112 James R. Wilson  
Director  
Texas Department of Public Safety

Filed: September 21, 1995

**Public Utility Commission of Texas**  
**Notice of Intent to File Application**  
**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 contract to provide service for Abbott Laboratories in Irving, Texas.

Tariff Title and Number. Application of GTE Southwest Incorporated for Custom Specific Contract Service for Abbott Laboratories pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 14730.

The Application. GTE Southwest Incorporated is requesting approval of 1,823 lines to Abbott Laboratories at its Irving, Texas business address. The geographic service market for this specific service is the Irving, 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 September 21, 1995.

TRD-9512096 Paula Mueller  
 Secretary of the Commission  
 Public Utility Commission of Texas

Filed: September 21, 1995



**Notice of Intent to File Application**  
**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 a waiver of service connection charges related to the installation of Custom Calling Services.

Tariff Title and Number. Statement of Intent of Century Telephone of San Marcos, Inc. to file Application Pursuant to Rule 23.28. Tariff Control Number 14724.

Class of Service	Monthly Rate
Residence (one-party)	\$22.50
Business (one-party)	\$52.50
Key Line	\$52.50
PBX, CentraNet (Per Network Access)	\$52.50

Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility

The Application. Century Telephone of San Marcos, Inc. is requesting approval of a waiver of service connection charges related to the installation of Custom Calling Services for the 90 day period November 1, 1995 through January 31, 1996. The existing Secondary Service Order charges of \$2.40 for residence and \$2.05 for business for both the Customer Calling Services and Advanced Calling Services, and central office charge of \$3.60 for both business and residence customers for the Custom Calling Services

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 September 21, 1995.

TRD-9512095 Paula Mueller  
 Secretary of the Commission  
 Public Utility Commission of Texas

Filed: September 21, 1995



**Notice of Proceeding for Approval of**  
**Extended Area Service**

Notice is given to the public of the filing with the Public Utility Commission of Texas of a joint petition on August 31, seeking approval of optional, two-way extended metro service (EMS) pursuant to the Public Utility Commission of Texas Substantive Rules, §23.49(b)(8). The following is a summary of the joint petition:

JOINT PETITION OF GTE SOUTHWEST, INC. AND SOUTHWESTERN BELL TELEPHONE COMPANY TO PROVIDE EXTENDED METRO SERVICE BETWEEN THE DENTON EXCHANGE AND THE DALLAS METROPOLITAN EXCHANGE, Project Number 14646, before the Public Utility Commission of Texas.

The Application. In Project Number 14646, GTE Southwest, Inc. and Southwestern Bell Telephone Company seek approval of a joint petition to offer optional, two-way EMS to customers residing within the telephone exchange boundary of the Denton exchange and two-way calling between Denton and the Dallas Metropolitan exchange on a flat-rate basis. Customers residing in the Denton exchange electing to subscribe to EMS will continue to pay the currently approved rates as specified in GTE's General Exchange Tariff. These rates are in addition to the current rates for local exchange service.

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 on or before November 22, 1995.

Issued in Austin, Texas, on September 21, 1995.

TRD-9512094

Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: September 21, 1995

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**Texas Council on Workforce and  
Economic Competitiveness**

**Call for Presentations for "One-Stop  
Systems on the Go"**

The Texas Council on Workforce and Economic Competitiveness invites proposals for break-out session presentations at "One-Stop Systems on the Go", the upcoming state-wide conference on One-Stop Career Centers to be held January 22-23, 1996, at the Wyndham Greenspoint Hotel in Houston, Texas, with 750 anticipated attendees.

Sessions will be approximately 90 minutes long. Each session will be repeated at least once during the conference. Sessions will be scheduled in one of three tracks, for employers, for chief elected officials/workforce development board members, and for One-Stop Career Center staff. Sessions should be audience-interactive to maximize learning.

Suggested topics include: technology innovations for improved services to customers, school-to-work initiatives in a One-Stop Career Center, board governance models, jump starting a One-Stop center, using labor market information systems, working in the system while building it, the One Stop as a high performance workplace, new roles for business, financial management in a block grant environment, developing fee-based services, public sector marketing.

Proposals should be a maximum of five pages in length, discussing proposed topic and presentation plan, presenter's background, three references, and audio-visual needs. Submit proposals to: Dr. Ann Yakimovicz, Conference Coordinator, TCWEC, P.O. Box 2241, Austin, Texas 78768 by October 31, 1995. For questions, please call (512) 912-7161 or FAX (512) 912-7172.

Issued in Austin, Texas, on September 21, 1995.

TRD-9512125

Cynthia Mugerauer  
Acting Executive Director  
Texas Council on Workforce and Economic  
Competitiveness

Filed: September 21, 1995

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**Criteria for State Consideration of  
School-to-Work Local Partnership  
Grant Applications**

The Departments of Education and Labor have announced solicitation for school-to-work local partnership grant applications (see *Federal Register*, September 8, 1995, pages 46984-47009) due November 7, 1995. Local partnership

grant applications must be submitted to the State for review and comment by Wednesday, October 18, 1995.

The following criteria will be used to determine consistency of the local partnership's plan with the statewide School-to-Work system (see State implementation grant proposal for more detail):

Extent to which the partnership represents the entire region, with evidence of collaboration of all partners identified in the School-to-Work Opportunities Act. A region is defined as one of the Governor's 24 Planning Regions. Proposals submitted that fit the regional configuration will be considered to have the highest concurrence with the State system. Proposals submitted under the local workforce development area configuration (which falls within the Governor's Planning Regions) will also be considered consistent with the State system. Those plans representing neither configuration will be assessed according to how they plan to adjust to the State's regional structures.

Comprehensive plan to develop or expand career pathways, with the participation of employers, in targeted priority (high-wage, high-skill) industries, including the sequences of services to be provided.

Plan for comprehensive career development strategies that will provide all youth in targeted schools, with knowledge of possible careers, salary levels, and the educational requirements or pathways to those careers, along with the decision-making tools, to choose a career option.

Ability to leverage in-kind resources and a plan showing how the area will assume the cost of the system as federal funds are depleted.

Participation in the statewide student and adult learner follow-up system to measure results achieved by participants in career pathways and related State evaluation/feedback activities and meetings.

Development of a plan to fully address the needs of special targeted populations, including dropouts, youths with disabilities, welfare recipients, students with limited English proficiency, and students who are economically and educationally disadvantaged.

Extent to which the School-to-Work strategies or model can be replicated for dissemination statewide among other regional partnerships and local communities.

Submit two copies of local partnership grant applications to: Anne Dorsey, Texas Council on Workforce and Economic Competitiveness (TCWEC), 3000 IH 35 South, Fountain Park Plaza, Suite 200, Austin, Texas 78704. If you have any questions about the criteria, please contact Anne Dorsey at TCWEC, (512) 912-7153. All questions about the federal criteria or application should be directed to Maria Kniesler, National School-to-Work Office, (202) 401-6222.

Issued in Austin, Texas, on September 21, 1995.

TRD-9512126

Cynthia Mugerauer  
Acting Executive Director  
Texas Council on Workforce and Economic  
Competitiveness

Filed: September 21, 1995

