

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Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.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

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

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

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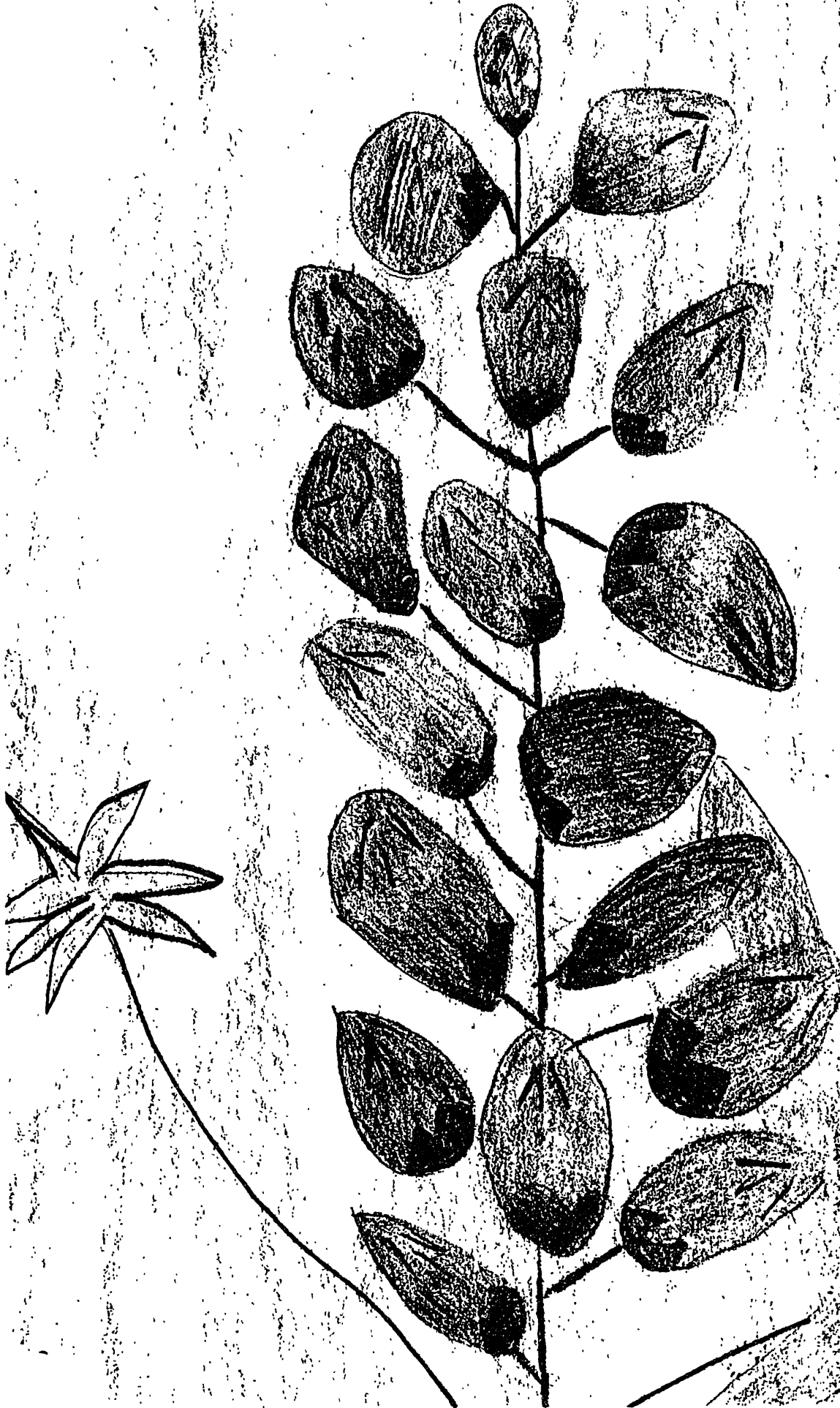
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# ADOPTED RULES

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 V. General Services Commission

#### Chapter 115. Building and Property Services Division

##### State-Owned Property

###### • 1 TAC §115.7

The General Services Commission adopts an amendment to §115.7, concerning burial in the State Cemetery, without changes to the proposed text as published in the September 1, 1995, issue of the *Texas Register* (20 TexReg 6783).

The justification for the rule action is that there will be a reduction in costs for maintenance of those grave sites surrounded by curbs or railings.

Section 115.7 is adopted to provide the commission with the discretion to permit applicants to place curbs or railings around individual grave spaces.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Senate Bill 958, §1, 74th Legislature, 1995 (to be codified at Government Code, §2165.256), which provides the General Services Commission with the authority to promulgate rules necessary to accomplish the purposes of this chapter.

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 October 5, 1995.

TRD-9512710

David Ross Brown  
Assistant General Counsel  
General Services  
Commission

Effective date: October 26, 1995

Proposal publication date: September 1, 1995

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



## TITLE 10. COMMUNITY DEVELOPMENT

### Part I. Texas Department of Housing and Community Affairs

#### Chapter 9. Texas Community Development Program

##### Subchapter A. Allocation of Program Funds

###### • 10 TAC §9.1, §9.7

The Texas Department of Housing and Community Affairs (TDHCA) adopts amendments to §9.1 and §9.7, concerning the application, the selection criteria, and the deletion of the small business incubator program and loan program for the Texas Capital Fund Program under the Texas Community Development Program, without changes to the proposed text as published in the August 29, 1995, issue of the *Texas Register* (20 TexReg 6730).

The amendments address the expanded role of the Texas Department of Commerce in the Texas Capital Fund Program.

The amended sections are being adopted to delete the small business incubator program, delete the loan program, and redefine the application, selection criteria, and role of the Texas Department of Commerce pertaining to the Texas Capital Fund Program.

The amended sections delete the small business incubator program, delete the loan program and specify the guidelines and criteria for the application, selection, and administration of the Texas Capital Fund Programs by the Texas Department of Commerce.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Government Code, Chapter 2306, §2306.098, which provides the Texas Department of Housing and Community Affairs with the authority to allocate Community Development Block Grant Program nonentitlement area funds to eligible counties and municipalities according to Department rules.

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 October 5, 1995.

TRD-9512883

Larry Paul Manley  
Executive Director  
Texas Department of  
Housing and  
Community Affairs

Effective date: October 30, 1995

Proposal publication date: August 29, 1995

For further information, please call: (512) 475-3909



###### • 10 TAC §9.3

The Texas Department of Housing and Community Affairs (TDHCA) adopts an amendment to §9.3, concerning the allocation of Community Development Block Grant (CDBG) non-entitlement area funds under the Texas Community Development Program, without changes to the proposed text as published in the August 29, 1995, issue of the *Texas Register* (20 TexReg 6730).

The amendment establishes the standards and procedures by which TDHCA will allocate fiscal years 1994 and 1995 *Young v. Cisneros* funds.

The amendment makes changes to the application procedures and selection criteria for the *Young v. Cisneros* fund.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Government Code, Chapter 2306, §2306.098, which provides TDHCA with the authority to allocate Community Development Block Grant non-entitlement area funds to eligible counties and municipalities according to department rules.

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 October 2, 1995.

TRD-9512882

Larry Paul Manley  
Executive Director  
Texas Department of  
Housing and  
Community Affairs

Effective date: October 30, 1995

Proposal publication date: August 29, 1995

For further information, please call: (512) 475-3916

## TITLE 13. CULTURAL RESOURCES

### Part II. Texas Historical Commission

#### Chapter 26. Practice and Procedure

*(Editor's Note. The 74th Legislature (TX74RSB 365) abolished the Texas Antiquities Committee and transferred its authority under the Antiquities Code of Texas (Title 9, Chapter 191 of the Texas Natural Resources Code) to the Texas Historical Commission (changes to §191.003(1) of the Texas Natural Resources Code and the Texas Government Code, §442.005(b)).*

*The Texas Register is administratively transferring the rules listed in the table published in this issue in the Tables and Graphic Section. The rules are being transferred from Title 13, Part IV. Texas Antiquities Committee to Part II. Texas Historical Commission. The table lists the old rule number and the new rule number that corresponds.)*

Figure: 13 TAC §26.1

## Part IV. Texas Antiquities Committee

### Chapter 41. Practice and Procedure

*(Editor's Note. The 74th Legislature (TX74RSB 365) abolished the Texas Antiquities Committee and transferred its authority under the Antiquities Code of Texas (Title 9, Chapter 191 of the Texas Natural Resources Code) to the Texas Historical Commission (changes to §191.003(1) of the Texas Natural Resources Code and the Texas Government Code, §442.005(b)).*

*The Texas Register is administratively transferring the rules listed in the table published in this issue in the Tables and Graphic Section. The rules are being transferred from Title 13, Part IV. Texas Antiquities Committee to Part II. Texas Historical Commission. The table lists the old rule number and the new rule number that corresponds.)*

Figure: 13 TAC §41.1

## TITLE 16. ECONOMIC REGULATION

### Part I. Railroad Commission of Texas

#### Chapter 3. Oil and Gas Division

#### Conservation Rules and Regulations

##### • 16 TAC §3.8

The Railroad Commission of Texas (the commission) adopts an amendment to §3.8, concerning to water protection, with changes to

the proposed text as published in the April 7, 1995, issue of the *Texas Register* (20 TexReg 2578). The amendment adds new definitions to subsection (a) and a new subsection (j). The amendment to §3.8 addresses requirements under the Texas Coastal Management Plan (CMP) applicable to certain commission actions. With the exception of subparagraphs (C) and (D) of paragraph (1) of the new subsection (j) (relating to policies applicable to the issuance of water quality certifications by the commission), the CMP policies applicable to commission actions reflect current commission requirements. The amendment to §3.8 will not be implemented or enforced until the amendments to 31 TAC §505.30 et seq, proposed in the July 18, 1995, issue of the *Texas Register* (20 TexReg 5191), take effect.

The enactment of House Bill 3226 during the 74th Legislature resulted in significant amendments to the enabling legislation for the CMP. Following the passage of House Bill 3226, the Coastal Coordination Council (council) proposed to amend the CMP rules that were adopted on September 19, 1994. The proposed amendment was published in the July 18, 1995, issue of the *Texas Register* (20 TexReg 5171), to be codified at Title 31, Texas Administrative Code, Chapters 501, 503, 505, and 506. None of the proposed amendments to the CMP rules have a substantive effect on the amendment to §3.8. Therefore, the commission is adopting final amendment to §3.8 prior to the council's final adoption of amendments to the CMP rules.

Pending final adoption of amendments to the CMP rules, the council has suspended implementation of the rules adopted on September 19, 1994, which took effect on June 15, 1995. We anticipate that, when the council adopts amendments to the CMP rules, it will establish a revised effective date for the CMP rules. Therefore, the effective date of these rules has been linked to the effective date of the CMP rules, as amended.

The CMP provides that actions of state agencies and subdivisions authorizing certain activities within the coastal zone must be consistent with the enforceable goals and policies of the CMP (the CMP rules) adopted by the council. The amendment to §3.8 was reviewed for consistency with the CMP rules.

The amendment to §3.8 apply only to commission actions authorizing specific activities within the CMP boundary. The CMP boundary was proposed for amendment in the July 18, 1995, issue of the *Texas Register* (20 TexReg 5181), to be codified at 31 TAC §503.1. The proposed boundary encompasses the Gulf of Mexico to the seaward limit of Texas title and ownership and areas within the following Texas counties: Cameron, Willacy, Kenedy, Kleberg, Nueces, San Patricio, Aransas, Refugio, Calhoun, Victoria, Jackson, Matagorda, Brazoria, Galveston, Harris, Chambers, Liberty, Jefferson, and Orange.

The CMP policies for the Commission's actions are found at 31 TAC §501.14. In particular, §501.14(c)(1) of the CMP rules prohibits siting a commercial oil and gas waste disposal pit in any coastal natural resource area (CNRA) and requires that oil and gas waste

disposal pits be designed to prevent releases of pollutants that may adversely affect coastal waters or critical areas. Critical areas are coastal wetlands, tidal sand and mudflats, submerged aquatic vegetation, and oyster and hard substrate reefs, as defined in 31 TAC §501.3(b). Subsection (j)(1)(A) incorporates these requirements into §3.8. After implementation of this subsection, commercial disposal pits may not be constructed in a CNRA, and all disposal pits must be designed to prevent the release of pollutants to coastal waters and critical areas.

Subparagraphs (A) and (C) of §501.14(c)(2) of the CMP rules require that oil and gas waste discharges meet the requirements of the surface water quality standards adopted by the Texas Natural Resource Conservation Commission and that the commission consider the effects of salinity when permitting any discharge. Section 501.14(c)(2)(B) of the CMP rules requires that the outfall for any new oil and gas waste discharge be located where it will not adversely affect a critical area. Section 501.14(c)(2)(B) of the CMP rules also requires that to the extent practicable, the outfall of any existing discharge that adversely affects a critical area must be relocated within two years after the effective date of the CMP goals and polices so that the discharge does not adversely affect a critical area. Otherwise, the discharge must be discontinued. Subsection (j)(1)(B) incorporates these requirements into §3.8. The two-year period for relocating or discontinuing existing discharges will be measured from the effective date of the amendments to 31 TAC Chapter 501.

Section 501.14(h)(1) of the CMP rules requires that dredging and the construction of structures in critical areas shall comply with the policies of this subsection regarding the conservation of critical areas functions and values, the avoidance and minimization of adverse effects, and the requirement of appropriate compensatory mitigation. Subsection (j)(1)(C) incorporates these requirements into §3.8. Section 501.14(j)(1) of the CMP rules requires that dredging and the disposal and placement of dredged material shall avoid and otherwise minimize adverse effects to coastal waters, submerged lands, critical areas, coastal shore areas, and Gulf beaches to the greatest extent practicable. Subsection (j)(1)(D) incorporates these requirements into §3.8.

At its meeting on June 29, 1995, the Coastal Coordination Council (council) directed that a task force be established to resolve disparities between the various thresholds for review that had been proposed by the agencies for actions subject to the CMP. The General Land Office (GLO) was the only agency other than the commission that proposed thresholds for actions relating to oil and gas exploration, production, and development that are subject to the CMP. On May 30, 1995, the GLO proposed thresholds for oil and gas activities on state-owned land, published in the May 30, 1995, issue of the *Texas Register* (20 TexReg 3954). Under its thresholds, the GLO distinguished between various types of coastal natural resource areas (CNRAs) and between CNRAs in the Upper and Lower Texas Coast. The Upper Coast was defined



as the area between Pass Cavallo in Matagorda Bay and the border with the State of Louisiana, and the Lower Coast was defined as the area between Pass Cavallo in Matagorda Bay and the border with the Republic of Mexico.

The council's threshold task force worked for eight weeks to develop criteria that could be used in the development of uniform thresholds. At the end of this process, the GLO and the commission agreed that thresholds for development in critical areas in connection with oil and gas exploration, production, and development would be set at a level ensuring that actions authorizing permanent disturbance of five acres or more would be above the threshold for all areas except bays and estuaries in the Lower Coast. For submerged aquatic vegetation or tidal sand or mud flats in the coastal bays and estuaries between Pass Cavallo in Matagorda Bay and the border with the Republic of Mexico, the GLO and the commission agreed to a higher threshold of ten acres, based on the widespread occurrence of submerged aquatic vegetation and tidal sand or mud flats in the bays and estuaries of the Lower Coast.

In accordance with the directive from the council and as a result of the negotiations with the threshold task force, the commission is adopting under subsection (j)(3)(C) a threshold of ten acres for development in submerged aquatic vegetation or tidal sand or mud flats in the bays and estuaries of the Lower Coast. This amended threshold creates a lesser burden for oil and gas operators in the Lower Coast because actions that affect less than ten acres of submerged aquatic vegetation or tidal sand or mud flats will be below the threshold for review.

One comment suggested that a definition be added for "adverse effects or adversely affect." Under the proposed CMP rules, "adverse effects or adversely affect" is defined to mean "[e]ffects that directly result in the physical destruction or significant detrimental alteration of a CNRA." 20 TexReg 5174, to be codified at 31 TAC §501.3(a)(1). However, the council may retain the previous definition which reads as follows: "Effects that result in the physical destruction or detrimental alteration of a CNRA." Both definitions include eleven examples of such alterations. Because these terms are defined under the CMP rules, no change was made in response to this comment.

One comment suggested that there is an apparent inconsistency between subsection (j)(1)(A)(i) and (3)(A). Subsection (j)(3)(A) establishes a threshold for referral for oil and gas waste disposal pits that occupy five acres or more of a CNRA. Subsection (j)(1)(A)(i) prohibits the construction of a commercial oil and gas waste disposal pit in a CNRA after the revised effective date of the applicable CMP goals and policies. The prohibition under subsection (j)(1)(A)(i) is a substantive requirement that applies only to commercial waste disposal pits. The threshold for referral under subsection (j)(3)(A) is a procedural rule that relates to the exercise of the council's authority to review the commission's actions. No change was made in response to this comment.

One comment noted that the requirement of subsection (j)(1)(B)(v) for notification of the Texas Natural Resource Conservation Commission and the Texas Parks and Wildlife Department upon receipt of an application to discharge produced waters into waters under tidal influence will assist in coordination between the commission and other agencies. No change was made in response to this comment.

One comment requested that the commission revisit this rule if the CMP is changed significantly by the Legislature. The amendments to the CMP rules proposed in response to legislative revisions of the CMP enabling legislation do not substantially affect the provisions of 31 TAC §501.14(c) that apply to the commission's actions. However, the commission makes the following changes to the proposed amendment to §3.8 to conform to the provisions of House Bill 3226 and the proposed changes to the CMP rules: the term "coastal area" is changed to "coastal zone" in §3.8(a)(35) and §3.8(j)(1)(A) and (B); the definitions of "coastal management program," "coastal natural resource area," "coastal waters," and "critical area" in §3.8(a)(36)-(39) are amended to conform to the definitions of these terms under House Bill 3226; the definition of "practicable" in §3.8(a)(40) is amended to conform to the definition under the proposed CMP rules, which appeared in the July 18, 1995, issue of the *Texas Register* (20 TexReg 5175), to be codified at 31 TAC §501.3(a)(10); references to the effective date of the CMP rules in §3.8(j)(1)(A)(i) and (B)(iii) and (iv) are changed to account for the proposed revisions to the CMP rules; and a citation in §3.8(j)(2) is changed to conform to the proposed CMP rules.

The following groups or associations submitted comments regarding the proposed amendment to §3.8 without expressing an opinion in favor of or against the proposed amendment: City of Corpus Christi, Texas Parks and Wildlife Department, and Texas Mid-Continent Oil and Gas Association.

The amendment is adopted under Texas Natural Resources Code, §91.101, which authorizes the commission to adopt rules and issue permits to prevent pollution of surface and subsurface waters, including permits relating to the discharge and disposal of oil and gas waste; Texas Natural Resources Code, §85.402(b), which authorizes the commission to adopt rules for the prevention of operations in the field that are dangerous to life or property; Texas Natural Resources Code, §33.205(a), which provides that agencies must comply with the CMP goals and policies when taking an action that is subject to the CMP; Texas Natural Resources Code, §33.2051, which relates to rulemaking actions that are subject to the CMP goals and policies; Texas Natural Resources Code, §33.2052, which relates to the certification of agency rules for consistency with the CMP goals and policies; and Texas Water Code, §26.131, which authorizes the commission to issue permits for the discharge of waste from activities associated with the exploration, development, and production of oil or gas or geothermal resources.

### §3.8. Water Protection.

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

(1)-(34) (No change.)

(35) Coastal zone—The area within the boundary established in Title 31, Texas Administrative Code, §503.1 (relating to coastal management program boundary).

(36) Coastal management program (CMP) rules—The enforceable rules of the Texas Coastal Management Program codified at Title 31, Texas Administrative Code, Chapters 501, 505, and 506.

(37) Coastal natural resource area (CNRA)—One of the following areas defined in Texas Natural Resources Code, §33.203: coastal barriers, coastal historic areas, coastal preserves, coastal shore areas, coastal wetlands, critical dune areas, critical erosion areas, gulf beaches, hard substrate reefs, oyster reefs, submerged land, special hazard areas, submerged aquatic vegetation, tidal sand or mud flats, water in the open Gulf of Mexico, and water under tidal influence.

(38) Coastal waters—Waters under tidal influence and waters of the open Gulf of Mexico.

(39) Critical area—A coastal wetland, an oyster reef, a hard substrate reef, submerged aquatic vegetation, or a tidal sand or mud flat as defined in Texas Natural Resources Code, §33.203.

(40) Practicable—Available and capable of being done after taking into consideration existing technology, cost, and logistics in light of the overall purpose of the activity.

(b)-(i) (No change.)

(j) Consistency with the Texas Coastal Management Program. The provisions of this subsection apply only to activities that occur in the coastal zone and that are subject to the CMP rules.

(1) Specific Policies.

(A) Disposal of Oil and Gas Waste in Pits. The following provisions apply to oil and gas waste disposal pits located in the coastal zone:

(i) no commercial oil and gas waste disposal pit constructed after the effective date of this subsection (j) shall be located in any CNRA; and

(ii) all oil and gas waste disposal pits shall be designed to prevent releases of pollutants that adversely affect coastal waters or critical areas.

(B) Discharge of Oil and Gas Waste to Surface Waters. The following provisions apply to discharges of oil and gas waste that occur in the coastal zone:

(i) no discharge of oil and gas waste to surface waters may cause a violation of the Texas Surface Water Quality Standards adopted by the Texas Natural Resource Conservation Commission and codified at Title 30, Texas Administrative Code, §307;

(ii) in determining whether any permit to discharge oil and gas waste that is comprised, in whole or in part, of produced water is consistent with the goals and policies of the CMP, the commission shall consider the effects of salinity from the discharge;

(iii) to the greatest extent practicable, in the case of any oil and gas exploration, production, or development operation from which an oil and gas waste discharge commences after the effective date this subsection (j), the outfall for the discharge shall not be located where the discharge will adversely affect any critical area;

(iv) in the case of any oil and gas exploration, production, or development operation with an oil and gas waste discharge permitted prior to the effective date of this subsection (j) that adversely affects any critical area, the outfall for the discharge shall either:

(I) be relocated within two years after the effective date of this subsection, so that, to the greatest extent practicable, the discharge does not adversely affect any critical area; or

(II) the discharge shall be discontinued; and

(v) the commission shall notify the Texas Natural Resource Conservation Commission and the Texas Parks and Wildlife Department upon receipt of an application for a permit to discharge oil and gas waste that is comprised, in whole or in part, of produced waters to waters under tidal influence.

(C) Development in Critical Areas. The provisions of this subparagraph apply to issuance under §401 of the federal Clean Water Act, United States Code, Title 33, §1341, of certifications of compliance with applicable water quality requirements for federal permits authorizing development affecting critical areas. Prior to issuing any such certification, the commission shall confirm that the requirements of Title 31, Texas Administrative Code, §501.14(h)(1)(A)-(G) have been satisfied. The commission shall coordinate its efforts

under this subparagraph with those of other appropriate state and federal agencies.

(D) Dredging and Dredged Material Disposal and Placement. The provisions of this subparagraph apply to issuance under §401 of the federal Clean Water Act, United States Code, Title 33, §1341, of certifications of compliance with applicable water quality requirements for federal permits authorizing dredging and dredged material disposal and placement in the coastal zone. Prior to issuing any such certification, the commission shall confirm that the requirements of Title 31, Texas Administrative Code, §501.14(j), have been satisfied.

(2) Consistency Determinations. The provisions of this paragraph apply to issuance of determinations required under Title 31, Texas Administrative Code, §505.30 (relating to agency consistency determination), for the following actions listed in Title 31, Texas Administrative Code, §505.11(a)(3): permits to dispose of oil and gas waste in a pit; permits to discharge oil and gas wastes to surface waters; and certifications of compliance with applicable water quality requirements for federal permits for development in critical areas and dredging and dredged material disposal and placement in the coastal area.

(A) The commission shall issue consistency determinations under this paragraph as an element of the permitting process for permits to dispose of oil and gas waste in a pit and permits to discharge oil and gas waste to surface waters.

(B) Prior to issuance of a permit or certification covered by this paragraph, the commission shall determine if the proposed activity will have a direct and significant adverse effect on any CNRA identified in the provisions of paragraph (1) of this subsection that are applicable to such activity.

(i) If the commission determines that issuance of a permit or a certification covered by this paragraph would not result in direct and significant adverse effects to any CNRA identified in the provisions of paragraph (1) of this subsection that are applicable to the proposed activity, the commission shall issue a written determination of no direct and significant adverse effect which shall read as follows: "The Railroad Commission has reviewed this proposed action for consistency with the Coastal Management Program (CMP) goals and policies, in accordance with the regulations of the Coastal Coordination Council (council), and has found that the proposed action will not have a direct and significant adverse effect on any coastal natural resource area (CNRA) identified in the applicable policies."

(ii) If the commission determines that issuance of a permit or certification covered by this paragraph would result in direct and significant adverse effects to a CNRA identified in the provisions of paragraph (1) of this subsection that are applicable to the proposed activity, the commission shall determine whether the proposed activity would meet the applicable requirements of paragraph (1) of this subsection.

(I) If the commission determines that the proposed activity would meet the applicable requirements of paragraph (1) of this subsection, the commission shall issue a written consistency determination which shall read as follows: "The Railroad Commission has reviewed this proposed action for consistency with the Texas Coastal Management Program (CMP) goals and policies, in accordance with the regulations of the Coastal Coordination Council (council), and has determined that the proposed action is consistent with the applicable CMP goals and policies."

(II) If the commission determines that the proposed activity would not meet the applicable requirements of paragraph (1) of this subsection, the commission shall not issue the permit or certification.

(3) Thresholds for Referral. Any commission action that is not identified in this paragraph shall be deemed not to exceed thresholds for referral for purposes of the CMP rules. Pursuant to Title 31, Texas Administrative Code, §505.32 (relating to requirements for referral of an individual agency action), the thresholds for referral of consistency determinations issued by the commission are as follows:

(A) for oil and gas waste disposal pits, any permit to construct a pit occupying five acres or more of any CNRA that has been mapped or that may be readily determined by a survey of the site;

(B) for discharges, any permit to discharge oil and gas waste consisting, in whole or in part, of produced waters into tidally influenced waters at a rate equal to or greater than 100,000 gallons per day;

(C) for certification of federal permits for development in critical areas:

(i) in the bays and estuaries between Pass Cavallo in Matagorda Bay and the border with the Republic of Mexico, any certification of a federal permit authorizing disturbance of:

(I) ten acres or more of submerged aquatic vegetation or tidal sand or mud flats; or

(II) five acres or more of any other critical area; and

(ii) in all areas within the coastal zone other than the bays and estuaries between Pass Cavallo in Matagorda Bay and the border with the Republic of Mexico, any certification of a federal permit authorizing disturbance of five acres of more of any critical area;

(D) for certification of federal permits for dredging and dredged material disposal or placement, certification of a permit authorizing removal of more than 10,000 cubic yards of dredged material from a critical area.

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 October 4, 1995.

TRD-9512644

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For further information, please call: (512) 463-7008

### • 16 TAC §3.93

The Railroad Commission of Texas (the commission) adopts new §3.93, concerning water quality certification, with changes to the proposed text as published in the April 7, 1995, issue of the *Texas Register* (20 TexReg 2581). Pursuant to §401 of the Federal Clean Water Act, United States Code, Title 33, §1341, the applicant for any federal permit that may result in a discharge into waters of the United States must provide the federal permitting agency with a state certification of compliance with applicable water quality requirements. These state certifications of compliance with applicable water quality requirements are called §401 certifications. New §3.93 governs issuance of §401 certifications by the commission. New §3.93 will not be implemented or enforced until the amendments to 31 TAC §505.30 et seq, proposed in the July 18, 1995, issue of the *Texas Register* (20 TexReg 5191), take effect.

Under Texas Natural Resources Code, §91.101, and Texas Water Code, §26.131, the commission has jurisdiction to grant §401 certifications for federal permits covering activities associated with the exploration, development, and production of oil, gas, and geothermal resources that may result in discharges to waters of the United States. Section 401 certifications are required for

National Pollutant Discharge Elimination System (NPDES) permits issued by the U.S. Environmental Protection Agency (EPA) under the Federal Clean Water Act, §402, United States Code, Title 33, §1342; permits to discharge dredged or fill material issued by the U.S. Army Corps of Engineers (the corps) under §404 of the Federal Clean Water Act, United States Code, Title 33, §1344; and permits issued by the corps for activities which might affect navigation under §9 and §10 of the Rivers and Harbors Act of 1899, United States Code, Title 33, §402.

In addition, under the Texas coastal management plan (CMP), state agencies must take into account the goals and policies of the CMP in developing rules and policies for certain activities within the coastal zone.

New §3.93 provides that a water quality certification or waiver of certification from the commission is required for an activity conducted under a federal permit which may result in a discharge into waters of the United States. Section 401 of the federal Clean Water Act provides that states must certify that federal licenses and permits comply with applicable water quality requirements. The oil and gas exploration and production activities that will be affected by this rule include activities for which a federal wastewater discharge permit is required and permits for the dredge and fill of waters of the United States, including wetlands.

New §3.93(d) provides that the commission will cooperate with the EPA and the corps in the issuance of joint notices and requests for certification. If joint notice is not used in an instance when certification is required, new §3.93(c) provides for specific notice procedures for such an instance. New §3.93(e) provides for public comment on a request for certification. New §3.93(f) describes the commission's standard of review for requests for certification. New §3.93(g) provides that the commission may waive certification, grant certification, conditionally grant certification, or deny certification. If a request for certification is denied, new §3.93(g)(5) provides that an applicant may request a hearing on the commission's final determination. New §3.93(h) establishes penalties for the violation of this section.

One comment requested that "letters of permission" be added to the definition of "Department of Army permits" under proposed §3.93(a). The definition of "Department of Army permits" has been revised as requested.

One comment requested that all references to the Rivers and Harbors Act be deleted. In many instances, the corps will have jurisdiction over a project under both the Rivers and Harbors Act and §404 of the Clean Water Act. In such instances, the corps will request §401 certification for the §404 permit. However, in those instances where only a permit under the Rivers and Harbors Act is required, the state must provide a §401 certification before the corps may issue the permit. For purposes of clarification, the definition of "Department of the Army permit" has been modified to include a reference to §10 of the Rivers and Harbors Act.

One comment noted the statement in the preamble that the commission may consider the federal §404(b)(1) guidelines when reviewing a request for water quality certification. The comment suggested that the commission's review of the §404(b)(1) guidelines duplicates work performed by the U.S. Army Corps of Engineers and that the commission's review of the §404(b)(1) guidelines would increase the permit review time for the applicant. The commission is required to ensure that permits comply with applicable water quality requirements, including the §404(b)(1) guidelines. The commission will make every effort to avoid duplicating work performed by the corps or causing needless delays of the corps' §404 permit review process. No change was made in response to this comment.

One comment stated that the proposed rule did not address activities conducted under Nationwide Permits 12, 18, and 26 and the procedures for notification adopted by the individual corps districts for these nationwide permits. Under these notification procedures, the person conducting the activity authorized by these nationwide permits must provide notice to the state but not the corps. The notice procedures under these nationwide permits do not apply to the §401 certification process because a proposed nationwide or general permit must receive state certification before it is adopted. The §401 certification procedures described herein apply when a nationwide permit or general permit is first proposed and prior to its effective date. After a nationwide permit or general permit has been adopted by the corps and taken effect, state certification is not required for individual projects that are carried out under that nationwide or general permit. No change was made in response to this comment.

One comment requested that the commission review the current §404 permitting requirements to ensure that the request for certification contains all the information necessary for the commission's review. In response to this comment, the commission has amended §3.93(c) to provide that a request for certification associated with a §404 permit application for an activity in the coastal zone must include a description of the acreage proposed to be filled. This information is necessary to readily determine whether the proposed certification would exceed a threshold for referral for review by the Coastal Coordination Council. Otherwise, the commission believes that the information provided with the request for certification will generally be adequate. Nevertheless, §3.93(c) allows the commission to request additional information when necessary.

Two comments requested that the time for responding to a request for additional information be increased from ten days to 20 or 30 days. In the alternative, one of these comments requested that the ten-day limitation be deleted. Section 3.93(c)(3) provides that the ten-day limitation applies "except as otherwise provided." If more than ten days will be necessary to compile the requested information, the commission may provide an applicant with additional time to comply with a request. However, new §3.93 also provides that the commission must issue a final deter-

mination on a request for certification within 15 days of the close of the public comment period, unless a longer period of time is agreed to by the federal permitting agency. The commission cannot delay its final determination without also delaying consideration of the federal permit by the EPA or the corps. A prompt response to a request for additional information is necessary in order to avoid any delays in the federal permitting process. No change was made in response to this comment.

One comment requested clarification of the consequences if additional information is not submitted within the ten day period. The commission will request additional information where the commission believes that such information is necessary to review a request for certification. In order for the commission to coordinate the §401 certification process with the federal permitting agency, the commission must issue a final determination on a request for certification within 45 days of the request for certification, unless the EPA or the corps has agreed to extend the time for issuance of a certification. Thus, where additional information cannot be provided within the required ten day period, the applicant and the commission must arrange with the corps or the EPA to extend the time for issuance of the certification. No change was made in response to this comment.

One comment requested that the effective date of the proposed rule be delayed pending the establishment of procedures for the issuance of joint notice. The commission has been working with the EPA and the corps districts to develop procedures for the issuance of joint notice. These procedures should be finalized prior to the effective date of new §3.93. No change was made in response to this comment.

One comment requested that the provision for notice under §3.93(d)(2)(B) be read to include a city's extraterritorial jurisdiction. Section 3.93(d)(2) (B) provides that, if a joint notice is not used, an applicant must provide notice to the mayor and health authorities of any city or town in which the proposed activity is located or that is within 1/2 mile of the potential discharge, and subparagraph (C)(2) requires that an applicant must provide notice to the county judge and health authorities of any county in which the proposed activity will be located or that is within 1/2 mile downstream of the potential discharge. Because the rule provides that the county judge and health authorities will receive notice of a potential discharge, the commission does not agree that an applicant should be required to provide a city with notice of a potential discharge located more than 1/2 mile from the city limits. No change was made in response to this comment.

One comment suggested that §3.93(d)(3)(E) be amended to provide that a copy of the permit application will be available for review in a Texas office of the federal permitting agency or at the commission. The request for certification that the commission receives may not include all of the information that is in the application, so a copy of the application may not be available for review at the commission. The EPA's regional office is in Dal-

las, and the corps has district offices in Galveston, Fort Worth, and El Paso. The office for the corps' Tulsa district is in Oklahoma. The Tulsa District includes the Texas Panhandle and counties within the watershed of the Red River. For persons conducting activities in the Tulsa District, it will probably be more convenient to review the permit applications in Tulsa than the commission offices in Austin. No change was made in response to this comment.

One comment noted that the provision under subsection (d)(2)(e) for notification of the Texas Parks and Wildlife Department will assist in coordination between the commission and the Department. No change was made in response to this comment.

One comment requested that the proposed rule be amended to specifically provide for the processing of emergency §404 actions. An "emergency" is defined under the corps' regulations as "a situation which would result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under standard procedures." Code of Federal Regulations, Title 33, §325.2(e)(4). In response to this comment, §3.93(d) (4) has been added to provide that the commission may waive notice and hearing requirements for a request for certification relating to a dredge or fill project in the event of an emergency.

One comment noted that the corps does not issue a statement of findings until after a §401 certification has been received and that it is inappropriate under proposed §3.93(g)(1) for the commission to delay acting upon a request for certification until after the statement of findings has been issued. In response to this comment, the statement that the commission may delay acting upon a request for certification until issuance of the statement of findings by the corps has been deleted from §3.93(g)(1).

One comment requested that the commission's procedures track the corps' procedures for §404 applications to reduce any delays in the §404 permitting process and avoid increasing applicants' expenses. These rules are intended to be consistent with existing federal regulations, and the commission will implement these rules so that administrative delays are minimized. No changes were made in response to this comment.

The following groups or associations submitted comments regarding the proposed new §3.93 without expressing an opinion in favor of or in opposition to the proposed rule: City of Corpus Christi, El Paso Natural Gas Company, Texas Parks and Wildlife Department, Texas Mid-Continent Oil & Gas Association, and U.S. Army Corps of Engineers.

The new section is adopted under Texas Natural Resources Code, §91.101, which authorizes the commission to adopt rules and issue permits to prevent pollution of surface and subsurface waters, including adoption of rules and issuance of permits for the management of oil and gas waste; Texas Natural Re-

sources Code, §33.205, which provides that agencies must comply with the CMP goals and policies when taking an action that is subject to the CMP; Texas Natural Resources Code, §33.2051, which relates to rulemaking actions that are subject to the CMP goals and policies; Texas Natural Resources Code, §33.2052, which relates to the certification of agency rules for consistency with the CMP goals and policies; and Texas Water Code, §26.131, which authorizes the commission to issue permits for the discharge of waste from activities associated with the exploration, development, and production of oil, gas or geothermal resources.

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

(1) 401 certification—A certification issued by the commission, under the authority of the Federal Clean Water Act, §401, that a federal permit that may result in a discharge to waters of the United States is consistent with applicable state and federal water quality laws and regulations.

(2) Commission—The Railroad Commission of Texas or its designee.

(3) Department of the Army permits—Individual or general permits or letters of permission issued by the U.S. Army Corps of Engineers under the authority of the Federal Clean Water Act, §404, or the Rivers and Harbors Act of 1899, §9 and §10, United States Code, Title 33, §402 and §403.

(4) District engineer—The U.S. Army Corps of Engineers representative responsible for administering and enforcing federal laws and regulations, including processing and issuance of permits, under the jurisdiction of the U. S. Army Corps of Engineers.

(5) Federal Clean Water Act—United States Code, Title 33, Chapter 26.

(6) NPDES permit—A permit issued by the regional administrator under the authority of the Federal Clean Water Act, §402, Title 33, United States Code, §1342. NPDES permits can either be individual or general permits.

(7) Permitting agency—Any agency of the federal government to which application is made for any permit to conduct an activity that may result in any discharge into waters of the United States.

(8) Person—A natural person, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(9) Pollutant—Any constituent that contaminates or alters the physical, thermal, chemical, or biological quality of water so as to be harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to the public health, safety, or welfare, or that impairs the usefulness or the public enjoyment of the water for any lawful purpose.

(10) Regional administrator—The administrator of the United States Environmental Protection Agency, Region 6.

(11) Water quality standards—Texas Surface Water Quality Standards, Title 30, Texas Administrative Code, Chapter 307.

(12) Waters of the United States—Interstate waters, the territorial seas, and waters that would or could affect interstate commerce, including tributaries of such waters and adjacent wetlands, as defined in Title 33, Code of Federal Regulations, Part 328.

(b) Certification Required. No person may conduct any activity subject to the jurisdiction of the commission pursuant to a Department of the Army permit or an NPDES permit if the activity may result in a discharge into waters of the United States within the boundaries of the State of Texas, unless the commission has first issued a certification or waiver of certification under this section.

(c) Request for Certification. The regional administrator, district engineer, or the permit applicant may submit a request for certification to the commission.

(1) Request by Applicant. If the permit applicant requests certification, the applicant shall submit to the commission:

(A) a copy of the completed permit application and any amendments thereto;

(B) a list on a map or on a separate sheet attached to a map of the names and addresses of owners of tracts of land adjacent to the site where the proposed activity would occur and, where the activity may result in a discharge to watercourse other than the Gulf of Mexico or a bay, the owners of each waterfront tract between the potential discharge point and 1/2 mile downstream of the potential discharge point, except for those waterfront tracts within the corporate limits of an incorporated city, town, or village;

(C) a request for certification; and

(D) for Department of the Army permits in the coastal zone, as described in 31 TAC §503.1 (relating to coastal management program boundary), a description of the acreage proposed to be filed, if any.

(2) Request by EPA or the Corps. Except as provided in subsection (d)(1) of this section, a request for certification submitted by the regional administrator or the district engineer shall contain the information specified in this paragraph:

(A) a copy of the public notice;

(B) a request for certification;

(C) for NPDES permits, a copy of the draft permit, if available; and

(D) for Department of the Army permits in the coastal zone, as described in 31 TAC §503.1 (relating to coastal management program boundary), a description of the acreage proposed to be filed, if any.

(3) Request for Additional Information. Where the commission believes more information is required to accomplish review of a request for certification, the commission shall notify the applicant or the permitting agency and request such information. In response to such a notification from the commission, the applicant or the permitting agency shall submit such materials as the commission finds necessary for review of the request for certification. Except as otherwise provided, such information shall be provided within ten days of issuance of a request for additional information by the commission.

(d) Notice of Request for Certification.

(1) Joint Notice. Notice of a request for certification shall be made using a joint mailed notice issued by the U.S. Army Corps of Engineers or the U.S. Environmental Protection Agency after agreements with those agencies have been reached regarding the content of the notice and the persons entitled to notice in Texas. When a joint notice is issued by either the U.S. Army Corps of Engineers or the U.S. Environmental Protection Agency, the requirements of subsection (c)(2) of this section do not apply.

(2) Notice by Applicant. If a joint notice is not used as provided in paragraph (1) of this subsection, the applicant must mail notice of the request for certification on or before the date the request for certification is filed with the commission.

Such notice shall include the information required in paragraph (3) of this subsection. The applicant shall provide notice by first class mail to:

(A) the owners of land adjacent to the tract upon which the activity is proposed to take place, and where the activity may result in a discharge to a watercourse other than the Gulf of Mexico or a bay, the surface owners of each waterfront tract between the potential discharge point and 1/2 mile downstream of the potential discharge point, excluding owners of those waterfront tracts within the corporate limits of an incorporated city, town, or village;

(B) the mayor and health authorities of any city or town in which the proposed activity will be located or that is within 1/2 mile downstream of the potential discharge;

(C) the county judge and health authorities of any county in which the proposed activity will be located or that is within 1/2 mile downstream of the potential discharge;

(D) the Texas Natural Resource Conservation Commission;

(E) the Texas Parks and Wildlife Department;

(F) the U.S. Environmental Protection Agency, Region 6;

(G) the U.S. Fish and Wildlife Service; and

(H) for a proposed activity within the coastal management program boundary as defined under Title 31, Texas Administrative Code §503.1 (relating to coastal management program boundary), the Secretary of the Coastal Coordination Council.

(3) Contents of Notice. Any notice provided as required in paragraph (2) of this subsection shall contain:

(A) the applicant's name and mailing address, together with the name and mailing address of the party conducting the activity, if different from the applicant;

(B) a brief written description of the activity;

(C) a statement that the applicant is seeking certification from the commission under the Federal Clean Water Act, §401;

(D) a statement that any comments concerning the request for certification may be submitted in writing to the assistant Director of Environmental Services, Railroad Commission, 1701 North Congress Avenue, P.O. Box 12967, Austin, Texas 78711-2967, on or before the deadline for submission of written public comments, which, absent special circumstances, shall be at least 30 days after the date notice is mailed; and

(E) a statement that a copy of the permit application is available for review in the office of the federal permitting agency.

(4) Emergency Actions. When the division engineer for the U.S. Army Corps of Engineers authorizes emergency procedures and it is in the public interest to provide a certification in less than 30 days, the commission may waive the notice and hearing requirements under this section and issue a final determination. For emergency actions within the coastal zone, as described in 31 TAC §503.1 (relating to coastal management program boundary), the commission may only issue a final determination if the emergency action is consistent with the provisions of 31 TAC §501.14(j)(7) (relating to policies for specific activities and coastal natural resource areas).

(e) Public Comments.

(1) Written Comments. The commission shall consider all comments related to the water quality impacts of the proposed activity that are submitted to the commission in writing prior to the deadline for submission of comments.

(2) Public Meetings. The commission shall hold a meeting to receive public comment on a request for certification if the commission finds that such a meeting is in the public interest. If the commission holds a meeting to receive public comment on a request for certification, the commission shall notify the applicant by first class mail not less than ten days before the date set for the public meeting that a meeting to receive public comment will be held on the request for certification. The commission will also provide notice by first-class mail or by personal service to all of the persons identified under subsection (d)(2) of this section and the federal permitting agency at least ten days prior to the public meeting. The notice of public meeting shall identify the federal permit application, the date, time, place, and nature of the public meeting; the legal authority and jurisdiction under which the public meeting is to be held; the applicant's proposed action; the requirements for submitting written comments; the method for obtaining additional information; and such other informa-

tion as the commission deems necessary. The notice to the federal permitting agency shall also estimate the additional time necessary to consider the request for certification and shall state that the commission is not waiving certification.

(f) Commission Review of Requests for Certification. After expiration of the time for receipt of public comments, the commission shall determine whether the proposed activity for which a request for certification has been received will result in any discharge into waters of the United States within the boundaries of the State of Texas, and if so, whether the proposed activity will comply with all applicable water quality requirements. Applicable water quality requirements include, but are not limited to, state water quality standards, and any other applicable water quality requirements. For an activity within the boundary of the Texas Coastal Management Program (CMP), applicable state water quality requirements include the enforceable goals and policies of the CMP, Title 31, Texas Administrative Code, Chapter 501.

(g) Final Action.

(1) Issuance of Final Determination. A final determination on a request for certification of an NPDES or Department of the Army permit shall be issued by the commission within 15 days from the close of the public comment period, unless the regional administrator or the district engineer, in consultation with the commission, finds that unusual circumstances require a longer time. If the commission does not act upon the request for certification within 15 days from the close of the public comment period or within a longer time granted by the regional administrator or the district engineer, the commission will be deemed to have waived certification. Notwithstanding any contrary provisions of this paragraph, in unusual circumstances the commission may elect to delay acting upon a request for certification of an NPDES permit until after a review of the draft permit.

(2) Notification of Final Determination. The commission shall notify the applicant, the regional administrator or district engineer, and any person so requesting of its final determination. Such final determination shall waive, grant, grant conditionally or deny certification. The notification of a final determination shall be in writing and shall include:

(A) the name and address of the applicant;

(B) a statement of conditions that are necessary to ensure compliance with the applicable water quality requirements;

(C) when the state certifies a draft permit instead of a permit application, any condition required to ensure compliance with applicable water quality requirements shall be identified, citing the federal or state law references upon which that condition is based. Failure by the commission to provide such a citation waives its right to certify with respect to that condition;

(D) for NPDES permits, a statement of the extent to which each condition of the draft permit can be made less stringent without the concurrence of the commission; and

(E) a statement of the basis for the commission's determination to waive certification, grant certification, grant conditional certification, or deny certification.

(3) Statement of Basis.

(A) If a waiver of certification is made, the statement of basis for the commission's determination shall explain that the waiver is based on a determination that no discharge will result from the activity or that the activity does not fall within the commission's jurisdiction or that the commission expressly waives its authority to act on a request for certification for other reasons.

(B) If a certification or conditional certification is made, the statement of basis for the commission's determination shall include either a statement that there is reasonable assurance that the activity will be conducted in a manner which will not violate any applicable water quality requirements or a statement of conditions, including monitoring conditions, that the commission deems necessary to assure that the discharge will not violate applicable water quality requirements.

(C) If a denial of certification is made, the statement of basis for the commission's determination will explain why the commission has determined that the proposed activity will result in a violation of applicable water quality requirements.

(4) Limitation. The commission shall not condition or deny certification of an NPDES permit on the grounds that state law allows a less stringent permit condition.

(5) Request for Hearing. If the commission's final determination denies certification, the applicant may request a hearing on the final determination. If the commission's final determination grants a conditional certification and the applicant disagrees with one or more of such condi-

tions, the applicant may request a hearing on the final determination. A request for a hearing must be filed within 15 days after the commission issues its final determination. The commission shall provide notice of the hearing to each of the parties provided notice of the final determination as provided in paragraph (2) of this subsection. After hearing, the examiner shall recommend a final action by the commission.

(h) Penalties. Violations of this section may subject a person to penalties and remedies specified in the Texas Natural Resources Code, Title 3, and any other statutes administered by the commission. The certificate of compliance for any oil, gas, or geothermal resource well may be revoked in the manner provided in §3.68 of this title (relating to pipeline connection and severance) (Rule 73) for violation of this section.

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 October 4, 1995.

TRD-9512645

Mary Ross McDonald  
Assistant Director, Legal  
Division, Gas  
Utilities/LP Gas  
Railroad Commission of  
Texas

Effective date: October 25, 1995

Proposal publication date: April 7, 1995

For further information, please call: (512) 463-7008

## Chapter 9. Liquefied Petroleum Gas Division

The Railroad Commission of Texas adopts the repeal of §9.161, relating to retroactivity, and amendments to §9.3, relating to LP-gas report forms, and §9.4, relating to categories of licenses and related fees, without changes to the proposed text, and adopts amendments to §9.1, relating to application of rules, severability, and retroactivity; §9.6, relating to examination and course of instruction; and §9.19, relating to insurance requirements, with changes to the proposed text as published in the August 15, 1995, issue of the *Texas Register* (20 TexReg 6181). The text of §§9.3, 9.4, and 9.161 will not be republished.

The commission adopts these amendments to implement House Bill 1226 enacted by the 74th legislature and effective September 1, 1995. The bill clarifies three commonly-used industry terms and also clarifies insurance requirements. Other proposed nonsubstantive amendments include some changes in wording, punctuation, and organization to provide clearer language. In addition, the text in current §9.161 has been moved to §9.1, and the current §9.161 is repealed. Three other areas addressed in House Bill 1226, regarding training, reciprocity of licensing requirements between states,

and acceptance of alternative insurance, are being considered for future rulemakings.

One individual commented in favor of the proposed amendments. Another individual and the Texas Propane Gas Association suggested several changes to the published proposed rules. As to §9.1(a) and §9.19(c), the comments suggested minor wording changes to promote clearer understanding of the rules; the commission agrees with these suggestions and has made the appropriate changes. For §9.1(a)(12), the comments suggested changing the phrase "engine fuel equipment" to "industrial engine equipment;" the commission disagrees with this suggestion as the language "engine fuel equipment" is parallel to the language in the statute. The comments question the reference in §9.6(f) (4) to certain lines on Table 1 which do not correspond to the Table 1 currently in the *LP-Gas Safety Rules*; however, the reference is to the proposed Table 1, which was published in the "Tables and Graphics" section of the August 15, 1995, *Texas Register* (20 TexReg 6214). Therefore, the commission makes no change to this section. The comments suggested a change in the language in §9.19(a) regarding the filing of valid certificates of insurance. The published wording indicates that the licensee or applicant for license must file the certificate; however, insurance industry practice is for the insurer to file these certificates. The comments recognized the commission's desire to place the burden for filing valid certificates of insurance on the licensee or applicant for license. The commission agrees with the suggested wording and has made this change in the adopted version.

No other groups or associations submitted comments.

### Subchapter A. General Applicability and Requirements

#### • 16 TAC §§9.1, 9.6, 9.19

The amendments are adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

The following is the statute affected by the adopted amendments: Texas Natural Resources Code, §113.051.

#### §9.1. Application of Rules, Severability, and Retroactivity.

(a) The Liquefied Petroleum Gas Division's safety rules apply to the design, construction, location, and operation of liquefied petroleum gas systems, equipment, and appliances. These standards also apply to truck and railcar loading racks, but do not apply to marine terminals, natural gasoline plants, refineries, tank farms, gas manufacturing plants, plants engaged in processing liquefied petroleum gases, or to railcar loading racks used in connection with these excluded establishments.

(1)-(11) (No change.)

(12) Division XI. Division XI applies to industrial fork lifts, trucks, and other LP-gas powered vehicles and engine fuel equipment specifically designed to be used in a building or on a consumer's premises.

(13)-(15) (No change.)

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

(d) Unless otherwise stated, the LP-Gas Safety Rules are not retroactive.

#### §9.6. Examination and Course of Instruction.

(a) (No change.)

(b) General Installers and Repairmen Exemption.

(1) Any person who is currently licensed as a mater or journeyman plumber by the Texas State Board of Plumbing Examiners or who is currently licensed with a Class A or B Air Conditioning and Refrigeration Contractors License issued by the Department of Licensing and Regulation may apply for and be granted an exemption to the Category D management examination and any service and installation employee level examination, excluding an engine fuel examination, for those categories listed in Table 1 of this section, and applicable seminar or course of instruction requirements by submitting to the commission the following information:

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

(2)-(9) (No change.)

(10) Applicants for license or licensees who qualify for the general installers and repairmen exemption are not required to take the one-hour course of instruction specified in Table 1 of this section.

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

(f) Course of instruction.

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

(4) Ultimate consumers who have purchased, leased, or obtained other rights in any vessel defined as an LP-gas transport, including any employee of an ultimate consumer that drives or in any way operates an LP-gas transport, shall pass one or more of the employee examinations listed in section B, lines 1 and 2, of Table 1 of this section.

Figure 1: 16 TAC §9.6(f)(4)

#### §9.19. Insurance Requirements.

(a) Pursuant to the Texas Natural Resources Code, Chapter 113, the Railroad Commission of Texas has adopted the minimum amounts of insurance for LP-gas licensees licensed by the State of Texas spec-

ified in Table 1 of this section. Applicants shall file or cause to be filed a valid certificate of insurance with the commission before it grants or renews a license, and a valid certificate of insurance shall remain in effect during the entire period that the license is in effect.

Figure 1: 16 TAC §9.19(a)

(b) Certificates of insurance filed with the commission shall have one of the endorsements specified in Table 1 of this section attached to the policy, and the endorsements may not be cancelled without cancellation of the policy to which they are attached.

(c) Each endorsement issued and attached to a certificate of insurance requires the insurance carrier, noted as "company" on the certificate of insurance, to give the commission written notice 30 days before the insurance cancellation. The 30-day notice commences to run from the date the notice is actually received by the commission.

(d) A licensee or applicant for a license that does not employ or contemplate employing any employee in LP-gas activities may file LPG Form 996B in lieu of a certificate of workers' compensation, including employer's liability insurance, or alternative accident and health insurance coverage. The licensee or applicant for license shall file the required insurance certificate with the commission before hiring any person as a dealership employee.

(e) (No change.)

(f) A Category A, B, C, E, or O licensee or applicant for a license that does not engage in or contemplate engaging in any LP-gas operations that would be covered by completed operations or products liability insurance, or both, may file LPG Form 998B in lieu of a certificate of completed operations and/or products liability insurance. The licensee or applicant for a license shall file the required insurance certificate with the commission before engaging in any operations that require completed operations and/or products liability insurance.

(g)-(h) (No change.)

(i) A state agency or institution, county, municipality, school district, or other governmental subdivision may meet the requirements of this section for workers' compensation, general liability, and/or motor vehicle liability insurance by filing LPG Form 995 with the commission as evidence of self-insurance, if permitted by the state Workers' Compensation Act, Texas Civil Statutes, Articles 8308-1.01, et seq; Texas Civil Statutes, Articles 8309b, 8309d, 8309g, 8309g-1, and 8309h; and Texas Natural Resources Code, §113.097.

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

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

TRD-9512637

Mary Ross McDonald  
Assistant Director, Legal  
Division, Gas  
Utilities/LP Gas  
Railroad Commission of  
Texas

Effective date: October 25, 1995

Proposal publication date: August 15, 1995

For further information, please call: (512) 463-7008

### • 16 TAC §9.3 §9.4

The amendments are adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

The following is the statute affected by the adopted amendments: Texas Natural Resources Code, §113.051.

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

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

TRD-9512636

Mary Ross McDonald  
Assistant Director, Legal  
Division, Gas  
Utilities/LP Gas  
Railroad Commission of  
Texas

Effective date: October 25, 1995

Proposal publication date: August 15, 1995

For further information, please call: (512) 463-7008

### Subchapter B. Basic Rules

#### • 16 TAC §9.161

The repeal is adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

The following is the statute, article, or code affected by the repeal: Texas Natural Resources Code, §113.051.

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

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

TRD-9512638

Mary Ross McDonald  
Assistant Director, Legal  
Division, Gas  
Utilities/LP Gas  
Railroad Commission of  
Texas

Effective date: October 25, 1995

Proposal publication date: August 15, 1995

For further information, please call: (512) 463-7008

The Railroad Commission of Texas adopts amendments to §9.184, relating to uniform safety requirements; §9.462, relating to containers manufactured for underground installation; and §9.771, relating to vehicle identification labels, without changes to the proposed text, and adopts amendments to §9.231, relating to identification of approved appliances, and §9.952, relating to piping installation identification, with changes to the proposed text as published in the August 8, 1995, issue of the *Texas Register* (20 TexReg 5980). The text of §§9.184, 9.462, and 9.771 will not be republished.

The adopted amendments make identification requirements consistent, allow the use of either a metal tag or a decal, and allow one tag or decal to serve as the identification required by all five sections. Four sections have been retitled for clarity. Other proposed nonsubstantive amendments include some changes in wording, punctuation, or organization to provide clearer language or sequence. The adopted amendments changed from the proposed versions of §9.231(a) and §9.952(a) resulted from comments submitted.

No groups or associations submitted comments. One individual submitted comments in favor of the proposal. Another individual submitted comments in favor of the proposal but offering two suggestions. As to the second sentence of §9.231(a), the comment suggests changing the word "certified" to the word "equipped" in order to make the intent of the section clearer. For §9.952(a), the comment suggests adding the phrase, "Except as provided for under §9.177 of this chapter," in order to clarify which LP-gas activities must be done by licensees and which may be done by customers. The commission agrees that both changes should be made; however, they are outside the scope of notice for this rulemaking and will be handled in a future rulemaking.

### Subchapter B. Basic Rules

#### • 16 TAC §9.184

The amendment is adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

The following is the statute, article, or code affected by the adopted amendment: Texas Natural Resources Code, §113.051.

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

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

TRD-9512639

Mary Ross McDonald  
Assistant Director, Legal  
Division, Gas  
Utilities/LP Gas  
Railroad Commission of  
Texas



Effective date: October 25, 1995

Proposal publication date: August 8, 1995

For further information, please call: (512) 463-7008

◆ ◆ ◆  
**Subchapter D. LP-Gas Appliances and Appurtenant Equipment**

◆ ◆ ◆  
**• 16 TAC §9.231**

The amendment is adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

The following is the statute, article, or code affected by the adopted amendment: Texas Natural Resources Code, §113.051.

*§9.231. Identification of Approved Appliances.*

(a) LP-gas appliances shall be approved by the commission or certified by a nationally recognized testing laboratory. If gas appliances are not certified for use with LP-gas, a licensee may convert the appliances to use LP-gas as a fuel, provided the licensee tests such appliances for proper operation before placing them in service.

(b) Upon completion of the conversion and testing of LP-gas appliances, the licensee shall attach to each such appliance a decal or tag of metal or other permanent material indicating the following information:

- (1) the licensee's name;
- (2) the LP-gas license number;
- (3) the year the appliance was converted; and
- (4) the wording, "Converted to LP-Gas."

(c) A single identification decal or tag may be used to satisfy the requirements in §§9.184, 9.462, 9.771, and 9.952 of this title (relating to uniform protection standards, containers manufactured for underground installation, vehicle identification labels, and piping installation identification, respectively) provided the decal or tag meets all the requirements of those sections.

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

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

TRD-9512642 Mary Ross McDonald  
Assistant Director, Legal  
Division, Gas  
Utilities/LP Gas  
Railroad Commission of  
Texas

Effective date: October 25, 1995

Proposal publication date: August 8, 1995

For further information, please call: (512) 463-7008

◆ ◆ ◆  
**Subchapter F. Consumer LP-Gas Systems**

◆ ◆ ◆  
**• 16 TAC §9.462**

The amendment is adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

The following is the statute, article, or code affected by the adopted amendment: Texas Natural Resources Code, §113.051.

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

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

TRD-9512640 Mary Ross McDonald  
Assistant Director, Legal  
Division, Gas  
Utilities/LP Gas  
Railroad Commission of  
Texas

Effective date: October 25, 1995

Proposal publication date: August 8, 1995

For further information, please call: (512) 463-7008

◆ ◆ ◆  
**Subchapter I. LP-Gas Motor Fuel and Mobile Fuel Containers**

◆ ◆ ◆  
**• 16 TAC §9.771**

The amendment is adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

The following is the statute, article, or code affected by the adopted amendment: Texas Natural Resources Code, §113.051.

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

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

TRD-9512641 Mary Ross McDonald  
Assistant Director, Legal  
Division, Gas  
Utilities/LP Gas  
Railroad Commission of  
Texas

Effective date: October 25, 1995

Proposal publication date: August 8, 1995

For further information, please call: (512) 463-7008

◆ ◆ ◆  
**Subchapter L. LP-Gas Piping and Piping Systems**

◆ ◆ ◆  
**• 16 TAC §9.952**

The amendment is adopted under the Texas Natural Resources Code, §113.051, which authorizes the commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

The following is the statute, article, or code affected by the adopted amendments: Texas Natural Resources Code, §113.051.

*§9.952. Piping Installation Identification.*

(a) LP-gas piping shall be installed, altered, repaired, and tested only by persons issued a valid license by the LP-Gas Division.

(b) Upon completion of the installation, alteration, repair, or testing of an LP-gas piping system, the licensee shall attach to the end of the piping nearest the container a decal or tag of metal or other permanent material indicating the following information:

- (1) the licensee's name;
- (2) the LP-gas license number; and
- (3) the year the piping was installed, altered, repaired, or tested.

(c) A single identification decal or tag may be used to satisfy the requirements in §§9.184, 9.231, 9.462, and 9.771 of this title (relating to uniform protection standards, identification of approved appliances, containers manufactured for underground installation, and vehicle identification labels, respectively) provided the decal or tag meets all the requirements of those sections.

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

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

TRD-9512643 Mary Ross McDonald  
Assistant Director, Legal  
Division, Gas  
Utilities/LP Gas  
Railroad Commission of  
Texas

Effective date: October 25, 1995

Proposal publication date: August 8, 1995

For further information, please call: (512) 463-7008

# Part III. Texas Alcoholic Beverage Commission

## Chapter 45. Marketing Practices

### Subchapter D. Advertising and Promotion-All Beverages

#### • 16 TAC §45.101

The Texas Alcoholic Beverage Commission adopts an amendment to §45.101, concerning rebates, coupons and premium stamps, with changes to the proposed text as published in the August 29, 1995, issue of the *Texas Register* (20 TexReg 6732).

The amendment is adopted to clarify confusing and potentially conflicting terms within the section. The amendment as initially proposed was changed by adding the phrase "except non-alcohol malt beverages and wines" to the second sentence of subsection (c).

Several comments were received pointing out that the amendment as originally proposed would apply to areas of commerce beyond the purview of the Alcoholic Beverage Commission.

The Texas Hotel and Motel Association, the Texas Restaurant Association and the Texas Package Stores Association were against the proposed amendment. The change incorporated into the adopted text resolved these objections.

The amendment is adopted pursuant to the authority granted by the Texas Alcoholic Beverage Code, §5.31.

The Texas Alcoholic Beverage Code, Chapter 102, Subchapter A, §102.07(d) and Chapter 108, Subchapter A, §108.06 are affected by this amendment.

#### §45.101. *Rebates, Coupons and Premium Stamps.*

(a) It shall be unlawful for the holder of a license or permit to give or offer to give to any person premium stamps or any other type of inducement with the purchase of alcoholic beverages. The term "premium stamp" is hereby declared to include but not be limited to the following: exchange stamps, trade stamps, green stamps, gold stamps, and cash register premium tapes.

(b) No holder of a manufacturing, wholesale, or retail level license or permit may give any rebate or coupon redeemable by the public for the purchase of or for a discount on the purchase of any alcoholic beverage.

(c) No holder of a manufacturing, wholesale, or retail level license or permit may offer or give away with or without the purchase of any alcoholic beverage, a coupon redeemable for a rebate, cents-off or for any free non-alcoholic beverage item or product. A retailer, manufacturer, or wholesaler may, however, offer a discount, re-

bate, or cents-off coupon on any non-alcohol product except non-alcohol malt beverages and wines that he sells if it does not require the purchase of any alcoholic beverage.

(d) None of the above prohibits any retailer from offering a complimentary drink or drink discount as part of a meal package, a hotel package or any airline frequent flier program or in conjunction with any airline ticket purchase, provided, however, that no discount or complimentary beverage shall be brand identified or redeemed by a wholesaler or manufacturer.

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 October 9, 1995.

TRD-9512902 Doyne Bailey  
Administrator  
Texas Alcoholic Beverage  
Commission

Effective date: October 26, 1995

Proposal publication date: August 29, 1995

For further information, please call: (512) 206-3204

## TITLE 22. EXAMINING BOARDS

### Part XXI. Texas State Board of Examiners of Psychologists

#### Chapter 473. Fees

#### • 22 TAC §473.3

The Texas State Board of Examiners of Psychologists adopts an amendment to §473.3, concerning Annual Renewal Fees, without changes to the proposed text as published in the August 15, 1995, issue of the *Texas Register* (20 TexReg 6187).

The rule is being amended to create a separate fee for those psychologists with health service provider status who are over the age of 70.

The amendment will adjust fees to reflect current professional practice.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to promulgate rules consistent with the Statute.

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 October 5, 1995.

TRD-9512798 Rebecca E. Forkner  
Executive Director  
Texas State Board of  
Examiners of  
Psychologists

Effective date: October 27, 1995

Proposal publication date: August 15, 1995

For further information, please call: (512) 305-7700

#### • 22 TAC §473.5

The Texas State Board of Examiners of Psychologists adopts an amendment to §473.5, concerning Miscellaneous Fees, without changes to the proposed text as published in the August 18, 1995, issue of the *Texas Register* (20 TexReg 6292).

The rule is being amended to remove a portion of the existing rule for incorporation into a new separate rule.

The amendment will better inform the public of open records requests costs.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to promulgate rules consistent with the Statute.

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 October 5, 1995.

TRD-9512799 Rebecca E. Forkner  
Executive Director  
Texas State Board of  
Examiners of  
Psychologists

Effective date: October 27, 1995

Proposal publication date: August 18, 1995

For further information, please call: (512) 305-7700

#### • 22 TAC §473.8

The Texas State Board of Examiners of Psychologists adopts new §473.8, concerning Open Records Fees, with changes to the proposed text as published in the August 15, 1995, issue of the *Texas Register* (20 TexReg 6187).

The new rule is being adopted to more accurately reflect the Board's requirements and to bring the rules into line with the requirements of the General Services Commission for all agencies.

The new rule will better inform the public of open records request costs.

The new rule is adopted under Texas Civil Statutes, 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to promulgate rules consistent with the Statutes.

§473.8. *Open Records Fees.* All fees shall conform with the General Services Commission schedule, and the fee schedule shall be available to the public during the Board's regular business hours.

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 October 5, 1995.

TRD-9512800

Rebecca E. Forkner  
Executive Director  
Texas State Board of  
Examiners of  
Psychologists

Effective date: October 27, 1995

Proposal publication date: August 15, 1995

For further information, please call: (512) 305-7700

## Part XIV. Texas Board of Veterinary Medical Examiners

### Chapter 573. Rules of Professional Conduct

#### Supervision of Personnel

##### • 22 TAC §573.10

The Texas Board of Veterinary Medical Examiners adopts the repeal of §573.10, concerning Direct Supervision of Lay Personnel, without changes to the proposed text as published in the April 4, 1995, issue of the *Texas Register* (20 TexReg 2504).

This rule is being replaced with a new version which defines acceptable levels of supervision and provides practitioners with guidelines as to what tasks a non-licensed employee may perform.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 8890, §7(a), which provide the Texas Board of Veterinary Medical Examiners with the authority to "...make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act."

The repeal affects the Veterinary Licensing Act, Article 8890, §7(c), which states the Board may adopt rules for the use of registered veterinary technicians working under the supervision of a licensee.

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 October 4, 1995.

TRD-9512627

Ron Allen  
Executive Director  
Texas Board of Veterinary  
Medical Examiners

Effective date: October 25, 1995

Proposal publication date: April 4, 1995

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

## TITLE 28. INSURANCE

### Part I. Texas Department of Insurance

#### Chapter 7. Corporate and Financial Regulation

##### Subchapter N. Services of Pro- cess

##### • 28 TAC §7.1404

The Commissioner of Insurance adopts an amendment to §7.1404, concerning service of process, the Commissioner's issuance of certificates of service, and fees, without changes to the proposed text as published in the August 18, 1995, issue of the *Texas Register* (20 TexReg 6294).

The amendment is necessary to provide greater uniformity with Article 1.36, §3(f) of the Insurance Code, as newly amended by the 74th Legislature in House Bill 2952. Article 1.36, §3(f) previously provided for the Commissioner's issuance of a certificate of service only upon request and provided for a \$10 fee for such a certificate of service. House Bill 2952 now provides that certificates of service will be automatically issued by the Commissioner to plaintiffs and court clerks. Certificates of service will be issued to other parties upon request. Article 1.36, §3(b) authorizes the Department to charge up to \$50 for service of process. The amended version of §7.1404(b) will raise the fee for service of process to \$50. The public will benefit from the uniformity of §7.1404(b) and (g) and Article 1.36, §3(b) and (f). There will be less confusion about the amount of the fee charged. There will be more certainty about whether and when service was achieved, as a certificate of service will now be provided as a matter of course. There will be less confusion about the Department's handling of citations, as at least two certificates of service will always be generated. The public will also benefit from streamlined administration within the Department.

Amended §7.1404(b) raises the fee for service of process to \$50 and amended §7.1404(g) reflects the automatic issuance of certificates of service to plaintiffs and court clerks.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to the Insurance Code, Articles 1.36, §13 and 1.03A. Article 1.36, §13, provides that the Department may promulgate rules as may be determined by it to be essential for the effective implementation of Article 1.36. 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 as authorized by statute.

The following articles are affected by this the amendments: Article 1.36, §3(b) and Article 1.36, §3(f) of the Insurance Code.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel

and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 6, 1995.

TRD-9512871

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

Effective date: October 27, 1995

Proposal publication date: August 18, 1995

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

## Chapter 19. Agent's Licensing

### Subchapter C. Written Exami- nation for Applicants for Li- cense to Write Insurance Upon Any One Life in Ex- cess of \$7,500 Under the Insurance Code Article 21.07, §4A.

##### • 28 TAC §19.201

The Commissioner of Insurance adopts an amendment §19.201, concerning the establishment of parameters for those written examinations required for the licensure of individuals who desire to write life insurance upon any one life in excess of \$7,500, without changes to the proposed text as published in the August 18, 1995, issue of the *Texas Register* (20 TexReg 6294).

Section 19.201 is amended to bring it into compliance with Insurance Code Article 21.07, §4A. Article 21.07, §4A increases from \$5,000 to \$7,500 the threshold amount of life insurance upon any one life relating to the written examination of individuals who desire to write such life insurance.

Amending §19.201 brings it into compliance with the increased threshold amount of life insurance written upon any one life, as set out in the Insurance Code, Article 21.07, §4A.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to the Insurance Code, Articles 21.07, §4A and 1.03A, and the Government Code, §§2001.004 et seq (Administrative Procedure Act). Article 21.07, §4A requires written examination of applicants who desire to write life insurance in excess of \$7,500 upon any one life, and authorizes the department to establish reasonable rules with regard to the written examination. 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 statute. The Government Code, §§2001.004 et seq authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirements of available procedures and prescribes the procedures for adoption of rules by a state administrative agency.

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 October 6, 1995.

TRD-9512890 Alicia M. Fachtel  
General Counsel and Chief  
Clerk  
Texas Department of  
Insurance

Effective date: October 30, 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 116. Control of Air Pollution by Permits for New Construction or Modification

##### Subchapter C. Permit Exemptions

##### Construction or Modification

##### • 30 TAC §116.211

(Editor's Note: Section 116.211 was adopted and published in the September 22, 1995, issue of the Texas Register (20 TexReg 7608). This section was adopted with changes and was republished. However, the graphic material which is adopted under subsection (f) of this section was inadvertently omitted from the September 22, 1995 issue. The graphic material is being published in this issue of the Texas Register in the tables and graphics section. Please see Figure 1: 30 TAC §116.211(f))

Figure 1: 30 TAC §116.211(f)

## TITLE 34. PUBLIC FINANCE

### Part I. Comptroller of Public Accounts

#### Chapter 3. Tax Administration

##### Subchapter GG. Insurance Tax

##### • 34 TAC §3.828

The Comptroller of Public Accounts adopts new §3.828, concerning the definition of workers' compensation insurance gross premium for the purpose of maintenance taxes, with changes to the proposed text as published in the July 18, 1995, issue of the *Texas Register* (20 TexReg 5205).

The proposal provides a clear definition of Workers' Compensation Insurance gross premiums to be used for maintenance tax purposes

as a result of House Bill 1461, 73rd Legislature, 1993. It also addresses the proper treatment of adjustments made to retrospectively rated policies.

Comments were received from Baker and Botts, L.L.P., representing the Texas Self-Insurance Association and the Texas Workers' Compensation Commission. Both commenters expressed their concern that the rule did not address the unique nature of Self-Insurers. While Certified Self-Insurers are required to pay workers' compensation maintenance taxes, they do not pay gross premiums. The Texas Self-Insurance Association suggested that the comptroller add a subsection either stating that the rule does not apply to certified self-insurers or include a definition of the tax base for certified self-insurers. The Texas Workers' Compensation Commission suggested that the comptroller add a subsection stating that the rule does not apply to certified self-insurers.

The comptroller agrees that the rule does not pertain to certified self-insurers. Therefore, subsection (d) has been added to the adopted rule.

The new section is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The new section implements the Texas Insurance Code, Article 5.68 and Article 5.76-5 and Texas Labor Code, §403.003 and §404.003.

*§3.828. Workers' Compensation Insurance Gross Premiums for the Purpose of Maintenance Taxes.*

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

(1) Basis of premium—Premiums shall be computed on the total remuneration paid or payable by the insured for services of employees covered by the policy as defined in Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance, Rule V.

(2) Classification codes—Classification codes group employers into classifications so that each class reflects the exposure common to those employers. Classification codes are listed in the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance.

(3) Deductible credit—The amount by which the modified premium is reduced as a result of the policyholder's election of a deductible option. The deductible credit shall be applied according to Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance, Rule XIX.

(4) Dividends paid to policyholders—Dividends paid to policyholders are a return of part of the premium paid for a policy issued on a participating basis.

(5) Expense constant—An expense constant is a premium charge which applies to a policy in addition to the premium. It covers issuing, recording and auditing expenses related to the policy. It is a flat charge and is not subject to premium discount, experience rating or retrospective rating adjustment.

(6) Modified premium—The modified premium is obtained by multiplying the insured's premium times the modifier (i.e., Modified Premium = Premium x Modifier).

(7) Modifier—A modifier adjusts the premium upward or downward. The modifier must be calculated in accordance with Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and §VII, Employers' Liability Insurance. The insured and the insurance company may negotiate the calculated modifier downward in accordance with §V, Texas Experience Rating Plan.

(8) Premium—The premium is determined by multiplying the basis of premium by the rate for each classification of employee, adjusted by any other charges that may be applicable, as provided for in the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance (i.e., Premium = (Basis of premium x Rate) Other charges).

(9) Premium discount—A premium discount is a reduction of the premium based on the economies of scale related to the size of the policy. A retrospectively rated policy includes premium discount in rating factors rather than as a separate item.

(10) Rate—The rate is the amount of premium for each \$100 of payroll for each classification of employee.

(11) Remuneration—Remuneration is money or substitutes for money.

(12) Retrospectively rated policies—Retrospectively rated policies are policies for which the final premium is based on losses incurred during the policy period. The final premium is not determined until either all claims are closed or the pre-selected maximum has been reached.

(13) Return premium—Return premium is the portion of a premium which is returned to the insured as a result of cancellation, rate adjustment, or a calculation that an advance premium was in excess of the actual premium.

(14) Standard premium—The premium before the application of premium discount. It is obtained by subtracting the deductible credit from the modified premium (i.e., Standard premium = Modified premium—Deductible credit).

(b) Gross premiums.

(1) For policies issued with an effective date prior to September 1, 1993, gross premiums shall be computed in the following manner: Standard Premium less Premium Discount plus Expense Constant less Return Premium less Dividends Paid on that direct business (i.e., Gross Premiums = (Standard Premium—Premium Discount + Expense Constant—Return Premium)—Dividends Paid).

(2) For policies issued with an effective date on or after September 1, 1993, gross premiums shall be computed in the following manner: Standard Premium less Premium Discount plus Expense Constant plus Deductible Credit less Return Premium less Dividends Paid on that direct business (i.e., Gross Premium = (Standard Premium—Premium Discount + Expense Constant + Deductible Credit—Return Premium)—Dividends Paid).

(c) Retrospectively rated policies. Any adjustments made to retrospectively rated policies are to be treated as premiums written in the year of the adjustment for the purpose of computing gross workers' compensation premiums.

(d) This section applies to licensed insurers only. The tax base for certified self-insurers is defined by the Labor Code, §407.104.

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 October 4, 1995.

TRD-9512626      Martin Cherry  
Chief, General Law  
Section  
Comptroller of Public  
Accounts

Effective date: October 15, 1995

Proposal publication date: July 18, 1995

For further information, please call: (512) 463-4028

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## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### Part I. Texas Department of Public Safety

#### Chapter 1. Organization and Administration

##### Fees for Copies of Records

###### • 37 TAC §1.122

The Texas Department of Public Safety adopts an amendment to §1.122, concerning fees for copies of records, without changes to the proposed text as published in the August 15, 1995, issue of the *Texas Register* (20 TexReg 6199).

The justification for the amendment is to clarify fee changes regarding driver's license records and to clarify the organizational unit of the department responsible for the collection of driver record fees.

The amendment changes the section title to Driver Records Bureau Fees and changes the fee for purchasing a copy of a complete driver's license basic record back-up tape from \$2.25 per 1,000 names to \$1,600. The fee for updates of the tape is changed from \$100 per week to \$57 per week.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Government Code, §411.004(3) and §411.006(4); and Texas Civil Statutes, Article 6687b, §1A, which provides the Public Safety Commission with the authority to adopt rules necessary for carrying out the department's work. The director, subject to the approval of the Commission, shall have the authority to adopt rules considered necessary for the control of the department. Also, the department may adopt rules that it determines are necessary to effectively administer the Act relating to Drivers License.

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 28, 1995.

TRD-9512738      James R. Wilson  
Director  
Texas Department of  
Public Safety

Effective date: October 26, 1995

Proposal publication date: August 15, 1995

For further information, please call: (512) 465-2890

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#### Chapter 17. Administrative License Revocation

###### • 37 TAC §§17.1, 17.11, 17.16

The Texas Department of Public Safety adopts amendments to §17.1 and §17.11, and new §17.16, concerning Administrative

License Revocation (ALR). Section 17.16 is adopted with changes to the proposed text as published in the June 6, 1995, issue of the *Texas Register* (20 TexReg 4119). The amendments to §17.1 and §17.11 are adopted without changes and will not be republished.

The justification for the amendments and new section will be clarification of statutory requirements and elimination of confusion regarding procedures required to effect and/or perfect service on the department of certain items allowed or required to be served upon, mailed to, or filed with the department.

The amendment to §17.1 adds language broadening the scope of ALR to include all discovery requests. Amendment to §17.11 adds new subsection (d) designating the department's agent for service and address in order that sensitive legal documents may be handled expeditiously. New §17.16 is amended based on comments received requesting that the department provide for documents to be delivered by facsimile transmission, hand delivered, or Federal Express.

The department received one comment regarding adoption of a change to §17.16, which was incorporated into the rules. This comment was received from the Texas Criminal Defense Lawyers Association.

The amendments and new section are adopted under Texas Civil Statutes, Article 6687b-1, §9, and Texas Civil Statutes, Article 6701-5, §4A, which provide for administrative license suspensions upon certain alcohol-related violations involving use of a motor vehicle. Such violations are the refusal or failure of breath or blood tests.

*§17.16. Service on the Department of Certain Items Required to be Served on, Mailed to, or Filed with the Department.*

(a) Where authorized, required or permitted by statute or rule, a Request for Production and/or any tangible/documentary evidence required to be served by the defendant on the department must be served on the department by one of the following methods:

(1) by first class mail, or by certified mail where required, addressed to Director of Hearings, ALR Program, Post Office Box 15327, Austin, Texas 78761-5327;

(2) by telephonic document transfer (fax) to (512) 706-7171 prior to December 4, 1995, and to (512) 424-7171, December 4, 1995, and following;

(3) by hand delivery, delivered during regular business hours directly to the Legal Services Department at the headquarters of the Department of Public Safety, Main Building, 5805 North Lamar Boulevard, Austin, Texas 78752.

(4) by courier receipted delivery through a commercial overnight express delivery service to the Department of Public Safety, Main Building, 5805 North Lamar Boulevard, Austin, Texas 78752.

(b). This section does not authorize or confer any discovery rights on a defendant.

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 27, 1995.

TRD-9512927 James R. Wilson  
Director  
Texas Department of  
Public Safety

Effective date: October 31, 1995

Proposal publication date: June 6, 1995

For further information, please call: (512) 465-2890

## Chapter 21. Equipment and Vehicle Standards

### Equipment and Vehicle Standards

#### • 37 TAC §21.5

The Texas Department of Public Safety adopts the repeal of §21.5, concerning Equipment and Vehicle Standards, without changes to the proposed text as published in the August 15, 1995, issue of the *Texas Register* (20 TexReg 6199).

The justification for repeal of the section is due to legislative transfer of the responsibility for hydraulic brake fluids to the Texas Department of Agriculture.

The repeal removes the responsibility for hydraulic brake fluids from the Texas Department of Public Safety. The function has not been eliminated but rather transferred to a different state agency.

No comments were received regarding adoption of the repeal.

The repeal is adopted pursuant to Texas Civil Statutes, Articles 6701c(3), 6701, 6687b, §12; and Article 6701d, §§108, 108A, 108C, 108E, 108F, and §139B, which authorize the Texas Department of Public Safety to adopt rules necessary for the administration and enforcement of this 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 28, 1995.

TRD-9512737 James R. Wilson  
Director  
Texas Department of  
Public Safety

Effective date: October 26, 1995

Proposal publication date: August 15, 1995

For further information, please call: (512) 465-2890

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 9. Refugee Social Services

The Texas Department of Human Services (DHS) adopts new §§9.101-9.109, concerning client information, §§9.201-9.213, concerning contractor requirements, and §§9.301-9.309, concerning service requirements, in its new Refugee Social Services chapter.

The justification for the new sections is to establish rules for the Refugee Social Services and Targeted Assistance contracts and to comply with federal regulations issued by the Office of Refugee Resettlement (ORR) in the Department of Health and Human Services (DHHS) under the Code of Federal Regulations (CFR), Title 45, Parts 400 and 401.

The new sections will function by authorizing services to refugees according to federal regulations.

#### Subchapter A. Client Information

##### • 40 TAC §§9.101-9.109

The new sections are adopted under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs; and under the Code of Federal Regulations (CFR), Title 45, Parts 400 and 401.

The new sections implement the Human Resources Code, §§22.001-22.024, and the Code of Federal Regulations (CFR), Title 45, Parts 400 and 401.

**§9.101. Eligibility.** Refugee social services are restricted to persons who possess Immigration and Naturalization Services documents which meet the criteria for client eligibility specified by the Office of Refugee Resettlement.

**§9.102. Required Registration.** All non-exempt Refugee Cash Assistance recipients are required to register for work with a refugee social services contractor providing employment services, if available in the community, participate in Job Search or employment services, go to all job interviews and comply with all requirements specified by the Office of Refugee Resettlement.

**§9.103. Time Frame.** In order to receive Refugee Cash Assistance, all non-exempt recipients must participate in employment services within 30 days of the receipt of assistance.

**§9.104. Residency.** Except for translation and referral services, refugee social services and targeted assistance services are restricted to refugees who have lived in the United States for five years or less, except refugees who are receiving employability services as of September 30, 1995, may continue to receive services without regard to their arrival date through September 30, 1996, or until the services are completed, whichever occurs first.

**§9.105. Right to Hearing.** Applicants for and recipients of services must be given an opportunity for a hearing to contest any adverse determinations using hearing procedures specified in 45 Code of Federal Regulations, §205.10(a). For adverse determinations based on the date of entry into the United States, in lieu of a fair hearing, disputes are resolved promptly through the examination of the individual's documentation issued by Immigration and Naturalization Services (INS) or information obtained from INS.

**§9.106. Acceptance of Services.** A non-exempt recipient of refugee cash assistance who is employed less than 30 hours per week must accept part-time employability services providing the services do not interfere with the recipient's job.

**§9.107. Inability to Communicate in English.** Inability to communicate in English does not exempt a refugee from accepting employment or participating in contracted employment services.

**§9.108. Claim of Adverse Effects.** Refugee cash assistance recipients who claim services or employment would cause adverse mental or physical effects must base the claim on adequate medical testimony from a physician or licensed or certified psychologist who indicates that participation would impair the individual's physical or mental health.

**§9.109. Confidentiality.** Except for client information shared with the Texas Department of Human Services, no information in the possession of a contractor about, or obtained from, an individual can be disclosed in a form identifiable with the individual without the individual's consent, or in the case of minors, the consent of a parent or legal guardian.

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 October 10, 1995.

Effective date: October 1, 1995

Proposal publication date: N/A

For further information, please call: (512)  
438-3765

## Subchapter B. Contractor Requirements

### • 40 TAC §§9.201-9.213

The new sections are adopted under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public and medical assistance programs; and under the Code of Federal Regulations (CFR), Title 45, Parts 400 and 401.

The new sections implement the Human Resources Code, §§22.001-22.024, and the Code of Federal Regulations (CFR), Title 45, parts 400 and 401.

**§9.201. Coordinated Services.** In providing services, contractors must take into account the reception and placement services provided by the refugee's resettlement agency and ensure the provision of seamless, coordinated services which are not duplicative.

**§9.202. Priority Groups.** Refugee social services and targeted assistance contractors must provide services according to the client priority groups established by the Office of Refugee Resettlement. First priority clients must not be placed on a waiting list for services.

**§9.203. Opportunity to Apply.** Contractors must provide any individual wishing to do so an opportunity to apply for services and must determine the eligibility of each applicant.

**§9.204. Equal Opportunity.** Contractors must give refugee women the same opportunities as men to participate in all services, including job placement services.

**§9.205. Required Records.** Contractors must maintain records necessary for federal and state monitoring which include, but are not limited to, documentation of services provided, including identification of individuals receiving those services; and statistical and programmatic information on services provided, including costs.

**§9.206. Time Period for Records.** Contractors must retain all records for the time period specified by federal regulations.

**§9.207. Federal Reporting.** Contractors must comply with federal reporting requirements.

**§9.208. Procedures and Requirements.** Contractor activities regarding eligibility determination, acting on applications and requests for services, and providing notification of the right to a fair hearing are subject to the same procedures and requirements governing state social services programs under Title XX of the Social Security Act.

**§9.209. Staff Requirements.** Contractors must employ or contract with staff who speak the native language and are either from the same background or are culturally knowledgeable of the refugee populations served.

**§9.210. Scheduling of Services.** Contractors must schedule and provide employment services for all non-exempt recipients of Refugee Cash Assistance in such a manner as to allow recipients to meet the 30-day participation requirement.

**§9.211. Individual Employability Plan.** The individual employability plan developed by employment services contractors must:

- (1) be designed to lead to the earliest possible employment of the refugee;
- (2) not be structured in such a way as to discourage or delay employment or job-seeking;
- (3) contain a definite employment goal, attainable in the shortest time period consistent with the employability of the refugee; and
- (4) address job search requirements, if determined appropriate.

**§9.212. Notice to the Texas Department of Human Services (DHS).** Refugee social services contractors who receive work registration referrals from DHS must notify DHS whenever a referred refugee:

- (1) fails or refuses to participate in the required services;
- (2) refuses to accept an offer of employment;
- (3) accepts a job; or
- (4) quits a job without good cause.

**§9.213. Compliance with Federal Definitions.** Contractors must comply with federal definitions of appropriate employability services and employment for refugees spec-

ified in 45 Code of Federal Regulations §400.81.

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 October 10, 1995.

TRD-9512936

Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

Effective date: October 1, 1995

Proposal publication date: N/A

For further information, please call: (512)  
438-3765

## Subchapter C. Service Requirements

### • 40 TAC §§9.301-9.309

The new sections are adopted under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public and medical assistance programs; and under the Code of Federal Regulations (CFR), Title 45, Parts 400 and 401.

The new sections implement the Human Resources Code, §§22.001-22.024, and the Code of Federal Regulations (CFR), Title 45, Parts 400 and 401.

**§9.301. Federal Regulations.**

(a) Refugee social services are restricted to those services defined and specified in 45 Code of Federal Regulation (CFR) Parts 400.154 and 400.155.

(b) Targeted assistance services provided by contractors must meet the requirements specified under 45 CFR Part 400, Subpart L.

**§9.302. Employment Services.** Employment services provided by contractors must include a family self-sufficiency plan as well as individual employability plans for each employable adult in the family needing services.

**§9.303. Employability Services.** Employability services provided by contractors must be designed to enable refugees to obtain jobs within one year of becoming enrolled in services.

**§9.304. Long-term Training.** Refugee social services may not include long-term training or educational programs which will not lead to employment within one year.

**§9.305. English Language Instruction and Vocational Training.**

(a) English language instruction and vocational training must be provided to the extent possible outside normal working hours to allow employed refugees to participate.

(b) English language instruction must be provided in a concurrent, rather than sequential, time period with employment or employment-related services.

**§9.306. Compatibility.** Refugee social services must be provided to the maximum extent feasible in a manner that is culturally and linguistically compatible with a refugee's language and cultural background.

**§9.307. Bilingual/Bicultural Women.** Services must be provided to the maximum extent feasible in a manner that includes the use of bilingual/bicultural women on service agency staffs.

**§9.308. Child Care.** All child care services must meet state standards.

**§9.309. Restrictions.** Except for part-time or summer jobs for students, all employment and training services and English language instruction services are restricted to refugees who are 16 years of age or older and who are not full-time students in elementary or secondary school.

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 October 10, 1995.

TRD-9512937

Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

Effective date: October 1, 1995

Proposal publication date: N/A

For further information, please call: (512) 438-3765

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**Part IV. Texas  
Commission for the  
Blind**

**Chapter 162. Criss Cole  
Rehabilitation Center**

• **40 TAC §§162.1-162.5**

The Texas Commission for the Blind adopts new §§162.1-162.5, concerning the commission's administration of Criss Cole Rehabilitation Center, with changes to the proposed text as published in the July 25, 1995, issue of the *Texas Register* (20 TexReg 5485).

The new chapter is needed in the agency's recodification efforts to establish an orga-

nized rule base that allows for orderly expansion. Previous rules on this subject were contained in Chapter 163, which has also been recodified.

The new chapter will function as the commission's criteria for admittance into the center, as standards of conduct for persons receiving services at the center, and as procedures for investigating reports of abuse, neglect, and exploitation at the center.

No comments were received by the Commission regarding adoption of the new sections. The text has been changed to correct the title of the chapter from Criss Cole Rehabilitation Program to Criss Cole Rehabilitation Center, which accurately reflects the subject of the rules. Section 162.2(a) has been changed to add a sentence to clarify that persons are required to meet the requirements of both the paragraph and subparagraphs.

The new sections are adopted under the Human Resources Code, Title 5, Chapter 91, which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs, and 29 United States Code, 701 et seq, Title I of the Rehabilitation Act of 1973, as amended, which authorizes the commission to prescribe policies and procedures for the administration of the state's vocational rehabilitation program in accordance with the Act.

**§162.1. Purpose.** Criss Cole Rehabilitation Center (CCRC) is a comprehensive rehabilitation facility operated by the commission for the purpose of assisting consumers to achieve their rehabilitation plans.

**§162.2. Criteria for Admission.**

(a) To be considered for admission to CCRC, a person must be blind as defined in §163.4 of this title (relating to Definitions). The person must also be:

(1) receiving services from and referred by one of the commission's service programs;

(2) able to care for daily self-needs independently, such as toileting, dressing, and eating;

(3) able to move about without assistance and have stamina to cover approximately one and one-half miles per day;

(4) willing and able to attend weekday classes;

(5) able to monitor own behavior (not injurious to self or others, nondestructive of property);

(6) able to evacuate building once oriented;

(7) psychologically and medically prepared for CCRC training;

(8) in stable health;

(9) willing to cooperate regarding dietary and medical needs and restrictions; and

(10) preliminarily adjusted to blindness.

(b) When vacancies occur, priority for admission is given to legally and totally blind consumers receiving services from the Vocational Rehabilitation Program.

**§162.3. Standards of Conduct.**

(a) Consumers are expected to abide by established guidelines and standards of conduct while receiving services at CCRC. These guidelines and standards of conduct are contained in a client handbook issued to consumers prior to admittance. A copy of the handbook is available for public viewing from 8:00 a.m. until 5:00 p.m. on work days at CCRC, 4800 North Lamar Boulevard, Austin, Texas, or by calling the commission's toll-free line, (800) 252-5204, and requesting a copy.

(b) Violation of any one of the following rules while on the premises is grounds for immediate dismissal. Premises is defined as any and all parts of CCRC, its surrounding grounds, and auxiliary facilities.

(1) The possession of weapons, illegal drugs, or alcohol on the premises is not allowed.

(2) Intimate sexual conduct on the premises is not allowed.

(3) Behavior on the premises that results in physical abuse of property or deliberate aggression towards self or others is not allowed.

(c) Violation of any one of the following rules while on the premises is grounds for official written warning. Two written warnings are grounds for suspension or dismissal from CCRC.

(1) Members of the opposite sex are allowed in residential rooms during posted hours.

(2) Infringement upon other people's rights, space, and property (for example, loud talking, loud music, harassment, stealing) is not allowed.

(3) Consumers may entertain outside visitors only in designated areas in accordance with posted hours.

(4) Pets are not allowed.

(5) Smoking is not allowed inside CCRC and auxiliary buildings.

(6) Consumers who are residing in the Avenue A apartments during their rehabilitation plans are to be in their apartments during posted hours unless prior arrangements have been made with their counselors.

(7) Minors and persons who have legal guardians must follow directions of staff while in training.



§162.4. *Scope of Services.* CCRC provides, as appropriate to the needs of individual consumers, services such as functional evaluations; individualized and small group training in communication, home and personal management, orientation and mobility, low vision, health management, nutrition, physical conditioning, social awareness, technology awareness; and career guidance. Special summer training is available for persons preparing for higher education. This list is not to be interpreted as comprehensive; ancillary services are also available.

§162.5. *Investigations of Abuse, Neglect, and Exploitation.* In compliance with Human Resources Code, Title 2, Subtitle D, Chapter 48, regarding protective services for the elderly, the commission will receive and investigate reports of abuse, neglect, and exploitation of disabled or elderly adults receiving training at CCRC. Investigations will be conducted and information will be gathered in accordance with specifications contained in Subchapter C, §48.036, in the following manner:

(1) Any staff person of the commission having reasonable cause to believe that any elderly or disabled person located at CCRC is in the state of abuse, exploitation, or neglect shall immediately report such information both verbally and in writing to their supervisor.

(2) The supervisor shall relay such information immediately to the center director and other appropriate supervisors.

(3) The center director, or designee, shall initiate an investigation of the alleged abuse, neglect, or exploitation within 24 hours from the time of receipt of the information.

(4) A copy of the final report and resulting investigation shall be sent to the Texas Department of Human Services.

(5) Staff of the commission will cooperate fully should the Texas Department of Human Services deem that further investigation of a report is desirable.

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 October 6, 1995.

TRD-9512729 Pat D. Westbrook  
Executive Director  
Texas Commission for the  
Blind

Effective date: October 26, 1995

Proposal publication date: July 25, 1995

For further information, please call: (512) 459-2611

## Chapter 163. Vocational Rehabilitation Program

### • 40 TAC §§163.1-163.32

The Texas Commission for the Blind adopts the repeal of §§163.1-163.32, without changes to the proposed text as published in the July 25, 1995, issue of the *Texas Register* (20 TexReg 5486).

The commission repeals these sections to reorganize the commission's rules into concise subchapters, which will allow for orderly expansion as new federal and commission procedures are implemented, and to comply with the agency's state mandate to provide vocational rehabilitation services according to federal guidelines.

The Commission received no comments regarding the repeals.

The repeals are adopted under the Human Resources Code, Title 5, Chapter 91, which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs, and 29 United States Code, 701 et seq, Title I of the Rehabilitation Act of 1973, as amended, which authorizes the commission to prescribe policies and procedures for the administration of the state's vocational rehabilitation program in accordance with 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 October 6, 1995.

TRD-9512727 Pat D. Westbrook  
Executive Director  
Texas Commission for the  
Blind

Effective date: October 26, 1995

Proposal publication date: July 25, 1995

For further information, please call: (512) 459-2611

The Texas Commission for the Blind adopts new §§163.1-163.4, 163.10-163.18, 163.25-163.40, 163.50-163.52, 163.75, and 163.80, concerning the commission's Vocational Rehabilitation Program, without changes to the proposed text as published in the July 25, 1995, issue of the *Texas Register* (20 TexReg 5486).

The commission adopts these sections to reorganize the commission's rules into concise subchapters, which will allow for orderly expansion as new federal and commission procedures are implemented, and to comply with the agency's state mandate to provide vocational rehabilitation services according to federal guidelines. The new sections are the commission's procedures for administering the state's Vocational Rehabilitation Program for individuals who are blind or visually impaired and include what is required of persons seeking and receiving vocational rehabilitation services from the commission

The Commission received no comments regarding the new rules.

## Subchapter A. General Information

### • 40 TAC §§163.1-163.4

The new sections are adopted under the Human Resources Code, Title 5, Chapter 91, which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs, and 29 United States Code, 701 et seq, Title I of the Rehabilitation Act of 1973, as amended, which authorizes the commission to prescribe policies and procedures for the administration of the state's program in accordance with 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 October 6, 1995.

TRD-9512730 Pat D. Westbrook  
Executive Director  
Texas Commission for the  
Blind

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For further information, please call: (512) 459-2611

## Subchapter B. Basic Program Requirements

### • 40 TAC §§163.10-163.18

The new sections are adopted under the Human Resources Code, Title 5, Chapter 91, which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs, and 29 United States Code, 701 et seq, Title I of the Rehabilitation Act of 1973, as amended, which authorizes the commission to prescribe policies and procedures for the administration of the state's program in accordance with the Act.

The new sections affect Human Resources Code, Title 5, Chapter 91, Subchapter D, §91.021, concerning Responsibility for Visually Handicapped Persons, §91.023, concerning Rehabilitation Services, §91.052, concerning the Vocational Rehabilitation Program for the Blind, §91.053, concerning Cooperation With Federal Government, and §91.056, concerning Eligibility for Vocational Rehabilitation Services.

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 October 6, 1995.

TRD-9512731 Pat D. Westbrook  
Executive Director  
Texas Commission for the  
Blind

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Proposal publication date: July 25, 1995

For further information, please call: (512) 459-2611

### Subchapter C. Vocational Rehabilitation Services

#### • 40 TAC §§163.25-163.40

The new sections are adopted under the Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs, and 29 United States Code, 701 et seq, Title I of the Rehabilitation Act of 1973, as amended, which authorizes the commission to prescribe policies and procedures for the administration of the state's program in accordance with the Act.

The new sections affect Human Resources Code, Title 5, Chapter 91, Subchapter D, §91.021, concerning Responsibility for Visually Handicapped Persons, §91.023, concerning Rehabilitation Services, §91.052, concerning the Vocational Rehabilitation Program for the Blind, §91.053, concerning Cooperation With Federal Government, and §91.056, concerning Eligibility for Vocational Rehabilitation Services.

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 October 6, 1995.

TRD-9512732 Pat D. Westbrook  
Executive Director  
Texas Commission for the  
Blind

Effective date: October 26, 1995

Proposal publication date: July 25, 1995

For further information, please call: (512) 459-2611

### Subchapter D. Order of Selection for Payment of Services

#### • 40 TAC §§163.50-163.52

The new sections are adopted under the Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs, and 29 United States Code, 701 et seq, Title I of the Rehabilitation Act of 1973, as amended, which authorizes the commission to adopt an order of selection based on serving first those individuals with the most severe disabilities when vocational rehabilitation services cannot be provided to all eligible individuals who apply for such services.

The new sections affect Human Resources Code, Title 5, Chapter 91, Subchapter D, §91.021, concerning Responsibility for Visually Handicapped Persons, §91.023, concerning Rehabilitation Services, §91.052, concerning the Vocational Rehabilitation Pro-

gram for the Blind, §91.053, concerning Cooperation With Federal Government, and §91.056, concerning Eligibility for Vocational Rehabilitation Services.

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.

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TRD-9512733 Pat D. Westbrook  
Executive Director  
Texas Commission for the  
Blind

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Proposal publication date: July 25, 1995

For further information, please call: (512) 459-2611

### Subchapter F. Maximum Affordable Payment

#### • 40 TAC §163.75

The new section is adopted under the Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs, and 29 United States Code, 701 et seq, Title I of the Rehabilitation Act of 1973, as amended, which authorizes the commission to establish a reasonable fee schedule designed to ensure the lowest reasonable cost to the program for each service.

The new section affects Human Resources Code, Title 5, Chapter 91, Subchapter D, §91.021, concerning Responsibility for Visually Handicapped Persons, §91.023, concerning Rehabilitation Services, §91.052, concerning the Vocational Rehabilitation Program for the Blind, and §91.053, concerning Cooperation With Federal Government.

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 October 6, 1995.

TRD-9512734 Pat D. Westbrook  
Executive Director  
Texas Commission for the  
Blind

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Proposal publication date: July 25, 1995

For further information, please call: (512) 459-2611

### Subchapter G. Service Providers

#### • 40 TAC §163.80

The new section is adopted under the Human Resources Code, Title 5, Chapter 91, §91.011(g), which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the

administration of its programs, and 29 United States Code, 701 et seq, Title I of the Rehabilitation Act of 1973, as amended, which authorizes the commission to enter into cooperative arrangements with other organizations with respect to the provision of services.

The new section affects Human Resources Code, Title 5, Chapter 91, Subchapter D, §91.021, concerning Responsibility for Visually Handicapped Persons, §91.023, concerning Rehabilitation Services, §91.052, concerning the Vocational Rehabilitation Program for the Blind, §91.053, concerning Cooperation With Federal Government, and §91.055, concerning Eligibility for Vocational Rehabilitation Services.

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 October 6, 1995.

TRD-9512735 Pat D. Westbrook  
Executive Director  
Texas Commission for the  
Blind

Effective date: October 26, 1995

Proposal publication date: July 25, 1995

For further information, please call: (512) 459-2611

### Subchapter E. Consumer Participation in Cost of Services

#### • 40 TAC §§163.60-163.66

The Texas Commission for the Blind adopts new §§163.60-163.66, concerning the commission's Vocational Rehabilitation Program, without changes to the proposed text as published in the July 28, 1995, issue of the *Texas Register* (20 TexReg 5610).

The commission adopts these sections to reorganize the commission's rules into concise subchapters, which will allow for orderly expansion as new federal and commission procedures are implemented, and to comply with the agency's state mandate to provide vocational rehabilitation services according to federal guidelines. The new sections are the commission's procedures for determining a consumer's participation, if any, in the cost of their services.

The Commission received no comments regarding the new rules.

The new sections are adopted under the Human Resources Code, Title 5, Chapter 91, which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its programs, and 29 United States Code, 701 et seq, Title I of the Rehabilitation Act of 1973, as amended, which authorizes the commission to consider the financial need of persons for the purpose of determining the extent of their participation in the costs of vocational rehabilitation services.

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 October 6, 1995.

TRD-9512728

Pat D. Westbrook  
Executive Director  
Texas Commission for the  
Blind

Effective date: October 26, 1995

Proposal publication date: July 28, 1995

For further information, please call: (512)  
459-2611

## TITLE 43. TRANSPORTATION

### Part I. Texas Department of Transportation

#### Chapter 1. Management

##### Substance Abuse Program

###### • 43 TAC §§1.100-1.111

The Texas Department of Transportation adopts the repeal of §§1.100-1.111, concerning the department's substance abuse program, without changes to the proposed text as published in the June 23, 1995, issue of the *Texas Register* (20 TexReg 4536).

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

On July 18, 1995, the department conducted a public hearing on the proposed repeal and no oral or written comments were received.

The repeals are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation.

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

Issued in Austin, Texas, on October 6, 1995.

TRD-9512828

Robert E. Shaddock  
General Counsel  
Texas Department of  
Transportation

Effective date: October 27, 1995

Proposal publication date: June 23, 1995

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

## Sick Leave Pool Program

### • 43 TAC §§1.300-1.305

The Texas Department of Transportation adopts the repeal of §§1.300-1.305, concerning the department's sick leave pool program, without changes to the proposed text as published in the July 11, 1995, issue of the *Texas Register* (20 TexReg 5054).

Government Code, Chapter 661 authorizes the department to establish a sick leave pool program and to adopt rules and prescribe procedures to provide additional sick leave for an employee when the employee or the employee's immediate family member has a catastrophic illness or injury which causes the employee to exhaust all leave time earned and lose compensation from the state. The General Appropriations Act, Fiscal Years 1994-1995, Article V, §8(2) defines family members and provides conditions when sick leave may be taken by an employee for illness of the employee or a family member.

The sections are adopted for repeal to provide ease of access to all rules relating to employment practices. Repeal of these sections is necessary because the subject matter of these sections falls within Chapter 4, Employment Practices. The subject matter will be reenacted in an amended form in new §§4.50-4.56, concerning the department's sick leave pool program, which are being contemporaneously adopted.

On July 25, 1995, the department conducted a public hearing on the proposed repeals and no oral or written comments were received.

The repeals are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation and Government Code, Chapter 661, which authorizes the department to adopt rules administering a sick leave pool 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 October 6, 1995.

TRD-9512830

Robert E. Shaddock  
General Counsel  
Texas Department of  
Transportation

Effective date: October 27, 1995

Proposal publication date: July 11, 1995

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

## Chapter 4. Employment Practices

### Subchapter D. Substance Abuse Program

#### • 43 TAC §§4.30-4.40

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

tions 4.30-4.34, 4.36-4.38, and 4.40 are adopted with changes to the proposed text as published in the July 11, 1995, issue of the *Texas Register* (20 TexReg 5055). Section 4.35 and §4.39 are adopted without changes and will not be republished.

These sections are adopted to comply with: 49 Code of Federal Regulations (C.F.R.) Part 382 which requires that the commission develop alcohol and controlled substance testing in compliance with the procedures set forth in 49 C.F.R. Part 40 in order to help prevent accidents and injuries resulting from the misuse of alcohol or controlled substances by employees who drive commercial motor vehicles for the department; and 49 C.F.R. Part 16 and 95 which require that the commission develop alcohol testing for commercial vessel personnel, concerning programs for chemical drug and alcohol testing. The new sections are also necessary to provide for pre-employment drug testing and post-accident alcohol and drug testing for employees in safety sensitive positions.

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

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

Section 4.31 defines terms used in the text of this subchapter.

Section 4.32 prohibits employees from: consuming an alcoholic beverage; possessing an open container of an alcoholic beverage; possessing dangerous drugs with the intent to distribute, dispense, transport, sell, or manufacture in the workplace; and possessing dangerous drugs with the intent to illegally distribute, dispense, transport, sell, or manufacture outside the workplace. This section prohibits the department from hiring a final applicant who has been convicted of felony charges related to selling, distributing, transporting or manufacturing dangerous drugs or possessing with the intent to sell, distribute, transport or manufacture dangerous drugs and who is still on probation or parole for that conviction. Supervisors are prohibited from allowing an employee who is under the influence from reporting to work or performing official duties. This section describes the disciplinary actions, including mandatory referral to the Employee Assistance Program (EAP), and termination from the department of an employee who consumes an alcoholic beverage, possesses an open container of an alcoholic beverage or is suspected of working under the influence, and the opportunity for the employee to offer an explanation. This section provides that the department will terminate an employee from employment if the department discovers that the employee has been convicted of felony charges and is on parole or has received a probated sentence related to the sale, distribution transportation, or manufacture of dangerous drugs or possession with the intent to sell, distribute, transport, or manufacture dangerous drugs

prior to employment with the department. An employee will be terminated from the department if the employee voluntarily admits to selling, distributing, transporting, or manufacturing dangerous drugs inside or outside the work place. This section requires an employee to report an arrest, charge, indictment or conviction for selling, distributing, transporting, or manufacturing dangerous drugs inside or outside the workplace, within three working days after its occurrence, and provides for suspension for three days without pay if an employee fails to report the arrest, charge, or indictment. Employees are required to contact the General Counsel Office if suspicious behavior is observed in the workplace. This section describes the mandatory referral process and treatment options for employees.

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

Section 4.34 requires that commercial drivers be subject to all the requirements of §4.32(a). It also describes the department's policy of prohibiting commercial drivers from possessing alcohol; driving within four hours after consuming alcohol; using alcohol for eight hours after an accident or until he or she undergoes a post-accident alcohol test; refusing a required drug or alcohol test; and having a positive drug test result. An applicant for a position as a commercial driver is required to pass a pre-employment drug test. This section prohibits a supervisor from allowing an employee who possesses alcohol from driving. This section also provides for drug testing of applicants for commercial driver positions, establishes a procedure for post-accident testing and guidelines to determine reasonable cause testing, and provides for the supervisor to submit a written report within twenty-four hours of suspecting substance abuse. It establishes a procedure for administering a test following a determination of reasonable suspicion, conducting an alcohol test for an employee who is suspected of

alcohol use, and conducting random alcohol and drug testing. This section: provides for the removal, reassignment, or transfer of an employee from driving a commercial motor vehicle if the employee fails an alcohol or drug test; describes the conditions under which an employee may return to work; allows mandatory referral to the EAP of an employee who violates these policies; and provides for disqualification of an applicant who has failed a pre-employment test.

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

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

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

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

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

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

On July 18, 1995, the department conducted a public hearing on the proposed new sections to receive comments, views, and/or testimony. Comments were received from one employee at the hearing. The total number of employees who submitted comments cannot be determined, since some of the comments were summarized into one response which was presented or sent in by one employee.

After further review of the content of §4.31, Definitions, the department has added, or otherwise modified, language to clarify the terms "dangerous chemicals or materials", "serious accident", and "successful completion of treatment" in this section.

Two commenters expressed concern about the vagueness of the term "inoperable" in the

definition for "serious accident." They were concerned that a vehicle could be inoperable because of a tire flattened upon impact or other non-serious problems. The department's intent is to exclude minor accidents. Therefore, the department is placing responsibility on the supervisors or SCOs present at the accident to determine whether the damage rendering a vehicle inoperable fits the situation defined as a serious accident. Supervisors or SCOs who may be placed in such situations will receive training to help them make these decisions.

Two commenters also expressed concern about the vagueness of the term "first aid" in the definition of "serious accident." They thought the phrase "requires treatment beyond first-aid" wasn't clear. They requested a definition of this term as it correlates to the severity of the accident. The department's intention was to draw a line between serious and nonserious injuries. To strengthen this definition, the department has added the phrase "treatment that can only be provided by a medical professional."

One commenter asked for clarification of the words "person" and "vehicle" in the definition of "serious accident", and questioned whether these terms are referring to any person and any vehicle involved in the accident. The answer is yes. The words "person" and "vehicle" do apply to any person and any vehicle involved in the accident.

Two commenters believed the definition of "serious accident" would increase the department's costs by causing more tests to be performed. They questioned why the definition changed from that required by federal law.

Since 45% of total highway fatalities involve alcohol (National Highway Traffic Safety Administration, "Traffic Safety Facts 1992- Alcohol"), the department has an additional responsibility to protect the public and other employees by attempting to prevent accidents that might involve substance abuse, before a major accident occurs. The commenter has a good point about increased costs; however, because of the frequent driving performed by employees, and the associated risk of imminent danger, it would be irresponsible to defer preventive measures such as testing until that imminent danger results in a catastrophic event. Therefore, the department believes that any additional expense caused by increased post-accident testing is negligible by comparison.

Three commenters questioned what the words "workplace" and "while on duty" mean in §4.32(a)(1), All Department Employees. They asked whether these words include lunch or traveling in any state vehicle or while accruing mileage in another vehicle.

The term "workplace" is defined in §4.31 as "all department offices, construction sites, temporary laboratory sites, maintenance sites, ferries, and any other location where an employee is performing assigned duties." "While on duty" includes any time an employee is on the clock, reporting or claiming time worked, or accruing mileage. Therefore, lunch time would not be included in these definitions unless the employee is eating

lunch while working or at the workplace. Traveling in a state vehicle would be included.

Two commenters requested a definition of "under the influence" in §4.32(a) (2) and asked "what is the limit" for having a beer at lunch for employees not in safety sensitive positions or driving. The department considers "under the influence" to occur if the employee's work performance is negatively affected. Regarding the limits for having a beer at lunch, lunch time is personal time and is not considered "while on duty." Employees may not work under the influence; therefore, employees must carefully judge whether consuming alcohol at lunch would place them under the influence and affect their performance.

One commenter wanted to know who is the department agency/person responsible for notifying the appropriate federal agency for convictions for criminal drug statute violations, and what is the appropriate federal agency discussed in §4.32(a)(3). The responsible reporting party is the executive director. The agency is the United States Department of Transportation.

Also in §4.32(a)(3), two commenters wanted to add the word "use" to the following sentence: "The distribution, dispensation, transportation, sale, or manufacture of dangerous drugs or the possession with the intent to distribute, dispense, transport, sell, or manufacture dangerous drugs is prohibited in the workplace or while on duty."

Adding the word "use" is not necessary. The use of dangerous drugs has already been addressed in paragraph (1) of this subsection.

Two commenters said it sounds as though legal prescriptions are included when the term "dangerous drug" is used in §4.32(a)(3)-(4). One commenter suggested adding "illegal" to this statement. Dangerous drugs are defined in §4.31, as "a narcotic drug, controlled substance, and marijuana as defined in the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. §802." This reference includes illegal drugs and legal, controlled drugs. Therefore, it is not necessary to add the term "illegal."

One commenter wanted to know if the drug Valium, with or without a prescription, is considered dangerous, under §4.32(a)(3)-(4). Using the drug Valium to the extent that the employee's performance is impaired could result in some action being taken with regard to the employee. If the employee's performance is impaired due to using Valium with a prescription, the employee would be required to take leave and not return to work until his or her performance is not impaired. If the employee is using Valium without a prescription and performance is impaired, the employee would be mandatorily referred to the EAP.

Regarding §4.32(a)(4)(A), one commenter stated that "conviction" as defined by law is a sentence ordered by a judge and served by the accused. The commenter stated that a person found guilty is sentenced by a judge but does not serve time if given probation, and therefore is not considered "convicted."

The commenter added that deferred adjudication has not been addressed and is not a conviction either. The commenter questioned how an applicant would communicate these non-convictions since they are not on the application for employment, and that attorneys sometimes advise their clients that if they have not served time in the state penitentiary to mark "No" to the question of conviction. They note that the failure to notify the employer subjects the applicant/employee to termination.

The department's legal counsel agrees that the commenter would be correct from a criminal justice standpoint, but our approach is that of setting public policy. The goal of the policy is to protect the safety of employees and the traveling public. To accomplish this, the department is attempting to deal with applicants and employees whose behavior negatively affects the department. Therefore, if the situation meets the definition of "conviction," the situations mentioned will be covered by the policy. The department's definition of "conviction" in §4.31, Definitions, currently includes convictions, probated sentences, and cases under appeal. The term "deferred adjudications" has been added to this definition and the definition of "receiving a DUI/DWI" for the purposes of clarification.

One commenter stated that applicants with convictions should be screened out before being granted an interview, and suggests that this incongruity appears in several areas of §4.32(a)(4)(A). If the applicant has addressed the conviction on the employment application and the applicant has been convicted of felony charges related to the illegal sale, distribution, transportation, or manufacture of dangerous drugs and is still on probation or parole for the conviction, the applicant would not be granted an interview. If an applicant does not address this issue on the application, the department has no way of screening these applicants out since we do not conduct criminal record checks at this time. Therefore, we have included language which allows us to terminate an employee under the described conditions if the conviction is discovered after the person becomes employed with the department.

One commenter wanted to add violations of state or federal laws concerning drugs and alcohol to the statement "supervisors cannot let an employee stay on the job..." in §4.32(a)(5). This recommendation requires additional study and will be considered for further action at a later date.

One commenter states that the word "program" is plural in §4.32(a)(7), and wanted to know if there is more than one program. The word "program" is used in singular form twice in this paragraph, once referring to the employee assistance program and once referring to a treatment program outside of the EAP. The word "programs" is used at the end of the paragraph to refer to both the EAP and/or any one or combination of programs as prescribed by the EAP.

One commenter asked if a "mandatory referral" in and of itself is a disciplinary action as described in §4.32(b). The commenter added that prior to August 1994, the disciplinary actions were oral, written and probation. On

August 26, 1994, the commenter says, probation became an adverse action, so is a mandatory referral a disciplinary action under the new rules? The commenter adds that §4.32(a)(6) states that in addition to or in lieu of disciplinary action, an employee will be referred to the EAP. An employee who violates §4.32 is subject to immediate termination; however, if an employee agrees to be mandatorily referred to the EAP, he or she will not be terminated as long as they successfully complete treatment. Therefore, mandatory referrals are not considered disciplinary actions, but rather opportunities to avoid disciplinary action. In some cases, mandatory referrals may also be used in conjunction with the department's informal disciplinary intervention policy. However, such decisions would be left up to the supervisor, the appropriate management team member, and the director of Human Resources, working within the direction of the disciplinary action and substance abuse policies, and would depend on the incident and the circumstances surrounding it.

Four commenters made similar comments regarding §4.32(b)(2). One commenter thought a mandatory referral to the EAP, without an investigation to confirm or deny suspicion, seemed excessive. One commenter suggested that suspicion is not enough to take disciplinary actions, unless "known by observation" or other guidelines and controls. Two commenters wanted to know what procedures exist to prove that an employee is, in fact, under the influence.

The rules set up guidelines for determining if employees are working under the influence. Supervisors or substance control officers cannot arbitrarily refer employees for suspicion of working under the influence, but must objectively document observable behavior as described in this section and must allow the employee to give a reasonable explanation. Further, a mandatory referral will only be made when conclusive evidence exists. No one person will make the decision to mandatorily refer employees. Generally, decisions will involve the supervisor, the substance control officer, and the Human Resources Division. In addition, everyone involved in such decisions has had and will continue to receive training to teach them how to identify substance abuse and how to deal with such situations.

Also concerning §4.32(b)(2), a commenter wanted to know who determines if a person is suspected of working under the influence of inappropriately used inhalants, and how do they determine this. A supervisor and substance control officer will determine if an employee is working under the influence of inhalants. They base their determination on objective, documentable evidence of the employee's behavior, appearance and functioning. Supervisors and substance control officers have received training and will continue to receive training in making this type of determination.

One commenter stated that if mandatory referrals to the EAP, as described in §4.32(b)(2), were made without proof, the department's liability due to wrongful termination and failure to control false accusations would

increase. Mandatory referrals are not made unless there is a strong indication, supported by documentation by a supervisor, that an employee is under the influence. Beyond the initial referral, the EAP alone is responsible for determining whether an employee has a problem that requires treatment. A mandatory referral is not equivalent to termination unless it exceeds the maximum number allowed.

One commenter wanted to know what is meant by "specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, body odors, or performance of the employee..." as described in §4.32(b)(2). This means that an employee will not be mandatorily referred to the EAP unless the supervisor or SCO has a reasonable belief, based on objective, documentable signs, that an employee may be under the influence of alcohol, dangerous drugs, or inhalants.

Again, concerning §4.32(b)(2), two commenters wondered if an employee denied being under the influence and it is subsequently discovered that he or she is working under the influence, how the employer would "later find out" and how credible that would be. They wondered if the evidence would be based on a drug/alcohol/blood test, a neighbor's opinion, or observation, how it would be verified, and whether a test would be performed.

The department could possibly find out either as a result of a test result, direct observation, or conclusive evidence. The rules state that if an employee denies working under the influence and the evidence is inconclusive, no further action will be taken against the employee except to warn him or her that "if it is subsequently discovered that he or she is working under the influence...he or she will be terminated..." This paragraph assumes that the evidence gathered for that particular incident was inconclusive. If the employee is later found to be working under the influence in a separate incident where the evidence is conclusive and the circumstances are similar or otherwise related to the first incident, that employee will be terminated instead of being mandatorily referred to the EAP for treatment. If the circumstances of the first and second incidents appear unrelated or dissimilar, other action, such as a mandatory referral, would be taken. A drug or alcohol test would only be performed if the suspected employee were subject to reasonable cause testing.

Regarding §4.32(b)(6)(B), one commenter questioned if the employee should be penalized if they are arrested and haven't any access to a phone. For example, if they are arrested out of state and can only make one or two calls. The commenter also questioned how the employee could be assured that his notification within the three days is properly noted or recorded and confidentiality maintained. The commenter suggested that an "agent" of the employee, for instance, a member of the family, a lawyer, etc., be allowed to call in for the employee and leave messages or talk with the appropriate person. The department concurs that allowing an agent to contact the employee's supervisor would be a good solution for situations in which the employee cannot contact the supervisor within

the time limit. Language allowing the employee's agent to contact the department is being added. In order for confidentiality to be maintained, the person calling to report the arrest would talk to only the employee's supervisor or, in his or her absence, the substance control officer. Both must follow procedures for maintaining the information in a confidential manner.

Three commenters thought statements in §4.32(b)(6)(B)-(E), contradict each other. In §4.32(b)(6)(C)-(D), if an employee is convicted or voluntarily admits to selling, distributing, transporting, or manufacturing dangerous drugs...etc., he or she will be terminated from the department. In §4.32(b)(6)(E), if an employee is "reasonably suspected" due to direct observation of such acts or due to arrest, charge, or indictment, an investigation will be conducted and the final determination will depend on the facts available. If an employee is arrested, charged, indicted, or convicted of the same offenses but doesn't report the arrest, charge or indictment, he or she only receives a three day suspension without pay. If this is true, why should the employee notify the department? Not reporting it might save the employee a lot of problems if there is no conviction. If the substance abuse officer or a court decides they are guilty, the employee will be terminated anyway. If the employee is convicted and will be terminated anyway, why tell the department? To avoid a three day suspension? One commenter suggested that the employee who does not report an arrest, charge, indictment, or conviction be suspended or terminated depending on the circumstances regarding the violations. The department agrees that these paragraphs are confusing, and has modified the language to make it consistent. The rules are being changed so that an employee who fails to report a conviction will receive the same penalty as an employee who does report a conviction. The three-day suspension will now apply only to employees who fail to report arrests, charges, or indictments. The reason the department requires employees to report all such incidents is so that appropriate disciplinary actions can be taken immediately.

One commenter asked what is the statute of limitations for terminating employees that voluntarily admit to selling, distributing, transporting, or manufacturing dangerous drugs under §4.32(b)(6)(D). If an employee voluntarily admits to having sold, distributed, transported, or manufactured dangerous drugs and is still on probation or parole for the offense or if the admission relates to a reasonably current action, although no arrest or charges have been made, that employee will be terminated.

One commenter wondered if terminating an employee for voluntarily admitting, pursuant to §4.32(b)(6)(D), without proof that he or she has sold, manufactured, distributed, etc. drugs is grounds for a lawsuit. Employees who voluntarily admit to selling, distributing, transporting, or manufacturing dangerous drugs and have not been arrested, convicted, or indicted will be required to sign a statement admitting their actions prior to termination. This is new language which is being added to ensure that no false accusations are

made and no employee is "coerced" into "confessing" to something he or she did not do. We want to ensure that employees will not be terminated without reasonable proof. The department does not feel that this policy will lead to lawsuits since the admission is voluntary.

One commenter asks whether the department should hold the employee's job open while they are awaiting conviction for selling drugs, as described in §4.32(b)(6)(E)? The answer is no. The employee will be terminated if an internal investigation under this section leads to a determination that the employee was, in fact, selling, transporting, distributing or manufacturing dangerous drugs, or if the employee fails to respond or to provide a reasonable explanation as outlined under that same subsection. The employee will be suspended from work during the internal investigation, which is not usually a lengthy process. If the internal investigation does not lead to a determination of the employee's guilt, the employee will return to work as usual unless he or she is convicted. At that point, the employee will be terminated.

Regarding §4.32(b)(8), one commenter asked how the department can terminate on third referrals for non-drivers and positions where no license is required. Under the substance abuse policy, even employees who are not drivers or in safety sensitive positions are subject to being terminated on the third need for a referral to the EAP for having violated the substance abuse policy. The department is obligated to establish policies to protect the department and its employees. To meet this obligation, it is not unreasonable to prevent employees who have a problem with alcohol, drugs, or inhalants from continuing their employment with the department. The department tries to balance the desire to help rehabilitate and be fair to employees with the need to keep the workplace safe. Employees with substance abuse problems are given two opportunities to be rehabilitated through substance abuse treatment.

Under §4.32(c)(2), one commenter questioned if there were a number of department paid visits to the EAP, or whether paid visits depended on the treatment plan prescribed by the EAP. An employee may receive up to seven free visits to the EAP, depending on the treatment plan the EAP prescribes. The EAP alone decides whether an employee would be better served by a referral to another source. If there is a need to refer an employee outside the EAP for other treatment before the seventh visit, the employee's insurance policy will usually cover part or all of the treatment outside the EAP. The employee is responsible for any remaining costs of treatment.

Also regarding §4.32(c)(2), another commenter addressed a situation in which the EAP referred an employee to an out-of-town facility for treatment, making it impossible for the employee to continue working while in treatment. In such cases, will the employee be terminated, or will his or her job be held open until treatment is completed?

This case should be considered highly unusual, as most cities have suitable treatment centers. If the EAP sends the employee to an

out-of-town treatment center, the employee would be given the opportunity to temporarily transfer to a location near the center if the employee was able to work while in treatment and if a position were available. If this were not possible, the employee would have to use their own leave until he or she was able to return to his or her regular duties. Under these circumstances, an employee would be able to return to their regular job.

Concerning §4.33(a), Employees Who Drive for the Department, one commenter thinks the DWI policy is burdensome to administer and inflicts needless punishment upon employees, when many employees would rather work with someone who has a DWI than someone convicted of premeditated felonies such as child molestation (and such offenders are not singled out for referral to counseling or additional punishment). The commenter added that the behavior of employees on the job differs than that off the job, and most lawyers could easily handle this defense for the department, should the department choose not to punish employees for DWIs committed while off the job. They asked, "isn't random testing and the no drinking on work time policy enough?" The answer is no. While the commenter's point of view is understandable, the department must reiterate that the DWI policy is necessary because of the risk to public safety associated with allowing a person who has engaged in unsafe behavior with a vehicle to continue to drive for the department without some action being taken. For the vast majority of jobs with the department, driving is a necessary part of the job. While felonies such as child molestation agreeably are heinous crimes, they usually do not directly relate to the employee's work duties with the department.

Also regarding §4.33(a), another commenter wondered if driving a "boat while intoxicated" or "operating aircraft while intoxicated" count toward the number of DWIs, since these offenses are counted in the assessment of penalties by the judge in a court of law. For the purposes of the department's policies, these offenses are not counted as DWIs. If, however, the presiding judge in an employee's case takes such offenses into consideration in suspending an employee's license or other action that disqualifies an employee from driving for the department, the department will deal with the employee based on that disqualification by the court, not necessarily on the reason(s) behind it.

One commenter failed to see why the department would hire an applicant with a DUI/DWI within three years if driving for the department was an essential function, pursuant to §4.33(b). If job applicants have a DUI/DWI on their record within the past three years, they would not be eligible for a driving position with the department unless they complete treatment as prescribed in subsection (f).

Two commenters asked why the department allows only one day to report a suspended license and three days to report convictions, as described in §4.33(d). They thought one day was harsh since there are three days to report a DWI conviction and also the employee is not terminated on the first DWI conviction. They believe it would be consis-

tent to give three days to report a suspended license.

In the case of a suspended license, it is the employee's duty to abstain from driving. However, an employee may not do so. Therefore, it is the department's duty to the traveling public and to other employees to make every effort to be sure that employees are not allowed to drive with suspended licenses. A one-day reporting period reduces the risk that employees will be driving with a suspended license.

Four commenters questioned the reasoning of not accepting a judge's work permit as it translates into an occupational driver's license, pursuant to §4.33(e). The department will accept an occupational driver's license as long as it does not limit the employee from driving on the job. The term "judge's work permit" is outmoded and will be removed from the rules.

Regarding §4.33(e), one commenter questioned how the employer is notified of the type of license given to the employee. They say, for current employees, what sense is there to notify the employer that licensing status has changed, since it only leads to termination?

The employee is responsible for notifying the department within one day after the employee's license status has changed. The employee will not necessarily be terminated.

Again, under §4.33(e), two employees had similar comments. One commenter asks how long will a position be held open when an employee's driving privileges are lost long term? And another commenter asks how long a job will be held open while an employee is on leave or leave without pay getting a fitness for duty letter. This depends on the situation. There are no definite time limits for these types of situations.

A commenter asks if an employee is convicted of a DWI and reassigned to non-driving duties in lieu of being placed on paid leave or LWOP pending clearance of the employee's driving record, could the department reassign the employee to another non-driving assignment for 60-90 days until driving clearance is obtained? The answer is yes. An employee taken off driving duties will be reassigned to non-driving duties or a non-driving assignment at his or her work location, if available. If not available, the employee will be offered the option of transferring to another work location. If the employee refuses a transfer, he or she will be placed on leave as outlined in the rules. If the reassignment lasts longer than 180 days, the employee's functional title may be reassessed and a reduction in pay may result. The length of time the employee's position will be held open depends on each individual situation.

One commenter stated that the following phrase from §4.33(f)(2)(D), is incomprehensible: "... if the EAP counselor is unable to locate a doctor or licensed practitioner who is covered by the employee's health insurance, then the EAP counselor will provide a letter to the employee's SCO stating the employee does not have an alcohol or drug addiction problem at this time." The commenter asks,

does this mean if there is no available doctors that the individual ceases to have a problem and have they completed treatment? Further, does the EAP certify to this fact and are they liable for legal actions?

The first part of the sentence that the commenter quotes reads: "If the employee is not referred for treatment beyond referral to the EAP...", which indicates that the EAP believes the employee does not need treatment beyond what is available through the EAP. EAP counselors, instead of providing fitness for duty letters themselves, normally will locate a doctor or other licensed practitioner to interview the employee and provide the fitness for duty letter. The employee is responsible for paying for this service, and for other services required before the employee can return to work. The EAP makes every effort to find services that will accept the employee's insurance. This subparagraph refers only to employees who are not referred beyond the EAP for treatment (i.e., the EAP determines that they do not have a serious drug or alcohol problem at that time). It states that the EAP may provide a fitness for duty letter in these cases if they cannot find a doctor or licensed practitioner covered by the employee's insurance to provide the letter. The EAP is liable for its actions in accordance with applicable law.

With regard to §4.33(f)(2)(D), one commenter asked whether the EAP contract requires them to have a psychiatrist on staff, and couldn't he or she certify to the employee's fitness for duty? The EAP is not required to have a psychiatrist on staff.

Four commenters submitted similar comments regarding §4.33(f)(4). Two commenters believe that relaxing the DWI policy from no more than two DWIs in a lifetime to two DWIs in five years creates an undue negligence liability and promotes the wrong image for the department. One commenter questions how the department can so strongly support MADD and Project Graduation and have a policy that allows routine violations of the DWI laws. A third commenter also believes the department is sending the wrong message and questions making it acceptable to get two DWIs every six years. This commenter asks whether an employee who receives two DWIs over a seven year period still be eligible for employment with the state? A fourth commenter questions if DWIs received prior to September 1, 1995 count toward the two in five years limit.

Based on the information available, the department believes that the current penalty for two DWIs in a lifetime is unduly harsh. No state laws currently are more stringent than to consider two DWIs within a five year period. The second DWI in five years would cause the employee to lose his or her job; however, employees are sent to the EAP and must complete treatment after the first DWI. The philosophy behind this policy is that the longer between DWIs received, the less likely the person is a liability because of an alcohol/drug problem. If a person did have a problem and has been rehabilitated, they should not be punished beyond a predetermined length of time. In response to the fifth ques-

tion, DWIs received before November 1, 1995 will not count toward the two in five years under this new policy, but employees who received them must still complete their treatment programs and are still subject to whatever disciplinary action has been determined necessary. The dates in §4.33(f)(4) have been changed due to the delay in adopting these rules in final form.

One commenter asked about the scope of drugs, including prescriptions, being tested for in pre-employment testing, as described in §4.34(c)(1)(a), Commercial Drivers.

The department only tests for those drugs required by federal regulations, which includes opiates, amphetamines, cocaine, marijuana, and PCP. If there is a positive drug test result, the MRO will contact the applicant/employee to determine whether there is a valid medical explanation for the result, such as a prescription. If there is, the MRO will then report the test result as negative.

One commenter asked whether a post-accident test would be given to a driver, pursuant to §4.34(c)(2), if the vehicle was hit while parked/standing, or would they have to be driving the car. The determination of whether or not to test an employee would depend on the circumstances surrounding the accident. The employee's supervisor or SCO will be responsible for determining when a post-accident test is necessary.

Regarding §4.34(c)(3), one commenter asked what would happen if an employee is in treatment with the EAP and comes up on the random test list during that time. The commenter also questioned if an employee can be sent for "probable cause" testing if the employee is already receiving treatment from the EAP. If employees have been taken off driving duties, they are no longer subject to testing for reasonable cause, random, or post-accident tests. Once back on driving duties, employees will be subject to testing as usual, even if they are still in some phase of treatment.

One commenter questions whether the department's random testing, as described in §4.34(c)(4)(A), is consistent with methods and procedures statistically defined and utilized by the scientific testing community.

The department's random selection of employees for testing is contracted to an outside vendor and is done according to established scientific methods.

Under §4.34(c)(4)(A), one commenter wanted to change the words "equal to" to "at least" concerning random testing. This wording is verbatim from federal regulations and cannot be changed.

Three commenters suggested other activities that might be added to the safety sensitive list under §4.36(a), Safety Sensitive Employees. They include: anyone operating gauges or devices utilizing radioactive materials, carpenters, electricians, automobile mechanics, sheet metal workers, and building constructions and maintenance personnel such as air conditioning and heating mechanics, construction workers involved in the construction or renovation of buildings, individuals who operate various types of vehicles to transport

mail, supplies, and equipment, and individuals who inspect hazardous waste spills.

The Human Resources Division reviews activities which may be considered safety sensitive on an on-going basis. All of these activities will be considered, and if appropriate, they will be added to the safety sensitive activities list the next time rule amendments are proposed.

Regarding §4.36(a), one commenter was concerned about the different interpretations of safety sensitive by the different districts and divisions and suggested the classification manual be used.

The Human Resources Division will determine which jobs are safety sensitive by using a certification form developed by HRD in accordance with Office of the General Counsel, Occupational Safety Division, and feedback received. The classification manual cannot be used at this time because the job descriptions currently do not identify safety sensitive activities.

One commenter suggested changing "employees drive in an unusual fashion" to "operate in a fashion not usual to normal traffic" in §4.36(a)(1), so it would be easier to understand. This is an excellent suggestion and this language is being added to clarify this paragraph.

After further review of the content of §4.36(a)(2), the department has deleted the word "activities" and added the phrase "job duties other than driving" in this paragraph to make it easier to understand.

After further review of the content of §4.36(a)(3), the department has deleted the reference to the activities of storing, maintaining and safeguarding dangerous chemicals or materials and added the term "combustible" to §4.36(a)(3)(A)-(E) and the terms "flammable, toxic and corrosive" to §4.36(a)(3)(C)-(E) in an effort to clarify this language. The department has also substituted the phrase "cuts materials" in place of "welding" in §4.36(a)(3)(E) to adequately describe those activities the department considers safety sensitive.

After further review of the content of §4.36(a)(4), the department has added the phrase "specialized maintenance/construction or heavy equipment" in order to clarify this paragraph. In paragraph (4)(A), we have deleted those pieces of equipment which must be operated by a commercial driver to avoid redundancies. Also in paragraph (4)(A), the word "forklifts" has been added to subparagraph (A) to clarify the term "heavy equipment" and related language has been deleted since it is redundant.

Regarding §4.36(c), one commenter said that requiring safety sensitive employees to abide by rules that apply to commercial drivers will be expensive (stand-by time) and delay emergency responses by requiring employees to abstain from consuming alcohol for four hours prior to working.

Any expense the department incurs by having to place a small number of employees on standby time pay after work hours to ensure that a sober crew is available to report to the

scene of an emergency will be negligible compared to the cost that could result from sending alcohol-impaired employees to handle an emergency. Setting a standard limit (such as four hours) for employees in safety sensitive positions helps ensure that no one will be working under the influence, thereby reducing the risk of injury to other employees and the public.

Five commenters made similar comments regarding §4.36(d). Three commenters asked why safety sensitive employees won't be tested for random and reasonable cause and why all employees are not tested, at least for pre-employment and post-accident. They suggest it would eliminate the discrimination issue raised that only some are singled out for testing. They also questioned why safety sensitive positions are only tested for pre-employment and post-accident. One commenter questioned why all employees whose major job functions require driving, such as courtesy patrollers, won't be subject to testing. One commenter questioned why all employees who drive are not randomly tested.

The commission recognizes that drug use may affect the job performance of any employee. It also recognizes the legal limits imposed upon the department concerning the testing of all employees. However, with these limits, privacy vs. safety issues come into play, and government entities are subject to additional restrictions. Urine tests, when compelled by the government, are searches and seizures within the meaning of the Fourth Amendment. Based on current court decisions and the limits of constitutional law, a governmental employer may only conduct drug testing of employees in very limited job functions, such as those where impaired performance may result in an imminent and immediate danger to the safety of the employees and others. Guidelines established by the Supreme Court have determined that testing employees in safety sensitive positions is essential to the health and safety of all employees and the traveling public; therefore, the safety interest is sufficient to override the privacy interest of the individual employee. In response to the fourth commenter, courtesy patrollers will be subject to pre-employment and post-accident testing.

One commenter says there is no provision for assisting disabled employees in completing drug and alcohol tests in §4.37, Test Procedures. The same assistance accorded to disabled employees in any area will also apply to completing alcohol and drug tests.

Regarding §4.37(b)(1)(B)(ix), one commenter asked for specific procedures when an employee is unable to provide a specimen, such as who notifies the MRO. Either the SCO or the Employee Relations section of the Human Resources Division will notify the MRO, depending on the circumstances.

Regarding §4.37(b)(1)(B)(ix), one commenter asked for specific procedures when an employee is unable to provide a specimen, such as what are the MRO's procedures and follow-up responsibilities.

The MRO will refer the employee for a medical evaluation to determine whether there is a



physical reason for the inability to produce a specimen. If there is, the employee will not be deemed to have refused to test. If no physical reason exists, the employee will be deemed to have refused to test and will be terminated.

Regarding §4.37(b)(1)(B)(ix), one commenter asked for specific procedures when an employee is unable to provide a specimen. What role and responsibilities does the SCO have?

The SCO is responsible for notifying the MRO and/or the Employee Relations section of the Human Resources Division and for handling the termination process, should it become necessary.

As a result of changes to federal regulations, the department has deleted the language in §4.37(b)(1)(B)(ix), which requires an employee to stay at a collection center for eight hours in cases where he or she is unable to give a specimen.

Under §4.39, Appeals, one commenter stated that the rules provide that any challenge made by an employee under the substance abuse program is deemed adverse for purposes of granting the employee a hearing on appeal. Given this, the commenter questions whether the department is expanding the category of adverse actions to include challenges herein.

The department will consider an action taken under the substance abuse program policy which is challenged by an employee as adverse so that appeals are conducted by the department's internal hearing officers and not through a contested case procedure. This was done to make it easier for employees to challenge actions they felt were unfair.

Also concerning §4.39, one commenter asked why the employee is allowed an appeal under the substance abuse program if there is documented evidence resulting in the employee's being guilty. They ask why waste time and dollars?

Employees must be given the opportunity to offer a reasonable explanation for evidence presented and to appeal decisions that cause action to be taken against them. Having an internal process helps avoid the necessity for outside appeals.

Regarding §4.39, one commenter asks if an employee is found guilty by a jury and then during the court appeal, TxDOT decides they are not guilty, would TxDOT overturn the court's decision by saying the court erred? Further, would the department give the employee his or her job back even though he is legally considered convicted?

Once an employee is convicted, the department will proceed based on that conviction. If the employee appeals the conviction in court, nothing will be done unless the verdict is overturned. If the verdict is overturned, depending upon the circumstances and the offense, the employee may or may not be reinstated. TxDOT will under no circumstances consider an employee innocent when a court declares him or her guilty.

Two commenters suggested format changes to the rules, including the use of bold type and underlining, and page numbers on references to make them easier to locate.

The department agrees that these changes could be done to make the rules easier to follow; however, the page numbers will change with publication and the format of the rules must remain consistent with *Texas Register* style.

One commenter thought 63 pages was "quite lengthy" and suggested that other laws not be summarized, only referenced. Although the document is lengthy, the information included is necessary to adequately communicate this policy. DHHS and Coast Guard drug testing procedures have been summarized, for example, to make sure employees have access to that information. If this information is more readily available to employees at a later date, the department will consider deleting these summaries and referencing them.

The new sections are adopted under Transportation Code, §201.101, which provide the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation.

*§4.30. Purpose.* The sections under this subchapter set forth the Texas Transportation Commission's policy and procedures for its implementation, evidencing the department's commitment to achieving an alcohol and drug-free workplace. An alcohol and drug-free workplace helps protect the health and safety of the department's most valuable resource, its employees, as well as the health and safety of the public. In addition, these sections are intended to demonstrate the department's commitment to rehabilitating and restoring employees whose performance may be impaired by alcohol or drug abuse. These sections also meet the outline policies and procedures required by 41 United States Code §§701-707, Title 46, Code of Federal Regulations, Part 16, Title 49, Code of Federal Regulations, Part 382, and Title 28, TAC, §169.2.

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

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

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

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

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

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

*Alcoholic beverage*—A beverage which contains alcohol.

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

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

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

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

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

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

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

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

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

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

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

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

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

Crewmember—An individual who is:

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

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

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

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

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

Dangerous chemical or material—A flammable, combustible, toxic, or corrosive chemical or material which has the potential to cause serious bodily harm to the traveling public and other employees if handled improperly.

Dangerous Drug—A narcotic drug, controlled substance, and marijuana as defined in the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. §802.

Department—The Texas Department of Transportation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Inappropriate use of an inhalant—The use of an inhalant in a manner other than that for which it was intended and which causes or is known to cause intoxication.

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

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

Investigation—The collection and analysis of information.

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

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

Medical Review Officer (MRO)—A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the department's program who has knowledge of substance abuse disorders, and appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.

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

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

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

Program—The department's substance abuse program.

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

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

Serious accident-Any accident that occurs while performing a safety sensitive function or driving a commercial motor vehicle and which results in: one or more deaths; an injury to an employee, passenger, or other person which requires treatment beyond first-aid that can only be provided by a medical professional and which renders the employee unfit to perform routine duties; damage to a vehicle which causes it to be inoperable; or receipt of a citation under state or local law for a moving traffic violation arising from the accident.

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

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

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

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

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

Successful completion of treatment-Completion of a treatment program, the composition and length of which is to be prescribed by the EAP counselor or the treatment program's staff physician, which may include aftercare. This includes compliance with all EAP treatment recommendations and requirements and passing all required drug and alcohol tests while in treatment.

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

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

Use of alcohol or a dangerous drug-The consumption of a beverage, mixture, or preparation, including a medication, containing alcohol or the taking of a dangerous drug (whether orally, by inhalation, or by injection), or being under the influence of alcohol or a dangerous drug.

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

#### §4.32. All Department Employees.

##### (a) Prohibited conduct.

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

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

(3) The department prohibits the distribution, dispensation, transportation, sale, or manufacture of dangerous drugs or the possession with the intent to distribute, dispense, transport, sell, or manufacture dangerous drugs in the workplace or while on duty. This prohibition includes any violation of state and federal controlled substances acts. Each employee must notify his or her supervisor of a conviction on charges of criminal drug statute violations occurring in the workplace, no later than three days after such conviction. Pursuant to the Drug Free Workplace Act 1988, 41 U.S.C. §§701-707, the department will in turn notify the appropriate federal agency of such conviction within 10 days of receipt of the notice.

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

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

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

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

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

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

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

(b) Disciplinary Actions.

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

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

(i) summarizes the observed circumstances and behavior;

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

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

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

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

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

(3) Impaired performance due to lawful use of drugs. When, due to the use of lawfully prescribed or over-the-counter substances, the employee is unable to perform his or her assigned duties or perform any duty in a safe manner, the employee will be subject to temporary reassignment of duties or be required to take sick leave, vacation leave, compensatory leave or leave without pay if the employee has exhausted his or her accrued leave.

(4) Voluntary admission of an alcohol, inhalant, or drug problem. An employee who voluntarily admits having a problem with alcohol, inhalant, or drug abuse will be mandatorily referred by his or her supervisor or substance control officer to the EAP and required to successfully complete treatment as described in subsection (c) of this section. Disciplinary action will not be taken against an employee who voluntarily admits having a problem with alcohol, inhalant, or drug abuse, provided, that in the case of a commercial driver, crewmember or an employee in a safety sensitive position, the admission occurs prior to a determination that the employee should be tested pursuant to §4.34, §4.35, or §4.36 of this title (relating to Commercial Drivers, Crewmembers, and Safety Sensitive Employees). The mandatorily referred employee must successfully complete treatment and provide a letter from the EAP staff or the treatment program's staff physician certifying successful completion to the substance control officer.

(5) Conviction of criminal drug statute violations in the workplace. Employees are prohibited from violating criminal drug statutes in the workplace. As soon as the department becomes aware of a criminal drug statute violation occurring in the workplace, the following procedure shall be followed within 30 days. If an employee

fails to report a criminal drug statute violation occurring in the workplace within three working days, he or she will be suspended for three days without pay.

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

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

(6) Sale, distribution, transportation, or manufacture of dangerous drugs inside and/or outside the workplace. The illegal sale, distribution, transportation, manufacture or possession with intent to sell, distribute, transport or manufacture dangerous drugs by any employee inside or outside of the workplace is prohibited. Employees who engage in such behavior shall be terminated from the department.

(A) If a final applicant for a department position has been convicted of felony charges related to the selling, distributing, transporting, or manufacturing of dangerous drugs and he or she is on probation or parole for that conviction, he or she will not be hired by the department. If an applicant is hired by the department, and it is later discovered that the employee had been convicted prior to employment with the department and is on probation or parole for selling, distributing, transporting, or manufacturing dangerous drugs, he or she will be immediately terminated from the department.

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

(C) If an employee is convicted of selling, distributing, transporting, or manufacturing dangerous drugs inside or

outside the workplace, he or she will be terminated from the department. The employee or his or her designated agent shall report the conviction immediately to his or her supervisor or substance control officer within three working days after its occurrence. If the conviction is not reported, the employee will be terminated when the department discovers the conviction.

(D) If an employee voluntarily admits to selling, distributing, transporting, or manufacturing dangerous drugs inside or outside the workplace, he or she will be terminated from the department. An employee must sign a statement admitting his or her actions prior to termination.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) Recurrence of Substance Abuse after Successful Completion of Treatment. Upon the need to mandatorily refer an employee to the EAP for the third time for treatment under the department's substance abuse program, including mandatory referrals made under §§4.34, 4.35, and 4.36 of this title (relating to Commercial Drivers, Crewmembers, and Safety Sensitive Employees), the employee will not be referred but will be terminated from the department.

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

must be certified by the EAP, in writing, to the employee's substance control officer.

(c) Mandatory Referral and Treatment.

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

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

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

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

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

(A) Intensive inpatient treatment program. Employees participating in an inpatient rehabilitation treatment program will not be able to work while enrolled in the program. After completing the initial phase of treatment, he or she will be conditionally reinstated contingent on the employee's willingness to follow through with the aftercare plan as prescribed by the treatment center's staff physician and successful completion of treatment.

(B) Outpatient treatment program. This program provides individual counseling, group therapy, and educational services for varying lengths of time, normally up to ten weeks, and also includes an aftercare program. Employees participating in an outpatient program will normally be able to continue to work while participating in the program. In such cases, the employee

will be conditionally reinstated, based on completion of the initial phase of the program and willingness to follow through with the aftercare treatment and successful completion of treatment.

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

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

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

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

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

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

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

(c) District engineers and division directors will maintain a current list of all

employees who are authorized to drive for the department. Each district engineer and division director will be responsible for checking each listed employee's driving record at least once every 12 months, and employees who drive for the department who are subject to this policy will be required to sign Form 1835, Statement of Notification.

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

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

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

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

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

(A) The department will immediately remove the employee from driving until he or she obtains a fitness-for-duty letter or a letter from the Employee Assistance Program (EAP) counselor, as provided in subparagraphs (C) and (D) of this paragraph. If the employee is able to work while in treatment, the department will assign non-driving duties, if available, at his or her current work location. If unavailable, the department will offer the employee the option of transferring to another work location. If the employee refuses a transfer, he or she will be required to take all available vacation and/or compensatory time. Once

this is exhausted, the employee will be required to take leave without pay until he or she is able to provide a fitness-for-duty letter as provided in subparagraphs (C) and (D) of this paragraph.

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

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

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

(E) The employee must have a valid Texas driver's license or an occupational driver's license that allows them to perform his or her usual driving duties before being reinstated to driving for the department.

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

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

#### *§4.34. Commercial Drivers.*

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

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

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

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

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

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

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

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

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

(1) Pre-employment testing.

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

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

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

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

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

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

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

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

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

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

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

(A) The decision to test must be based on a reasonable and articulable

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

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

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

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

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

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

(G) If a drug test is not administered within 32 hours following an incident, the department will cease attempts

to administer a drug test, and prepare and maintain a record stating the reasons the test was not promptly administered

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

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

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

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

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

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

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

(d) Disciplinary Action. In addition to being subject to disciplinary actions described in §4.32 and §4.33 of this title (relating to All Department Employees and Employees Who Drive for the Department), a commercial driver who violates subsection (b) of this section will be subject to the procedures described in paragraphs (1)-(4) of this subsection.

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

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

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

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

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

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

(D) If the employee is not referred for any type of treatment beyond referral to the EAP and if the EAP counselor is unable to locate a doctor or licensed practitioner who is covered by the employ-

ee's health insurance, then the EAP counselor will provide a letter to the employee's substance control officer stating that the employee does not have an alcohol or drug addiction problem at this time.

(E) The commercial driver will undergo follow-up testing for alcohol or dangerous drugs for a period of up to 60 months and which consists of at least 6 tests in the first 12 months following the employee's return-to-duty. The number and frequency of follow-up testing shall be as directed by the EAP staff following the employee's return-to-duty. The EAP may determine that return-to-duty and follow-up testing for both alcohol and dangerous drugs is necessary for the employee. The EAP may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if it determines that such testing is no longer necessary.

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

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

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

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

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

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

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

(f) Mandatory Referral and Treatment.

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

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



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

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

#### §4.36. Safety Sensitive Employees.

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

(1) The employee routinely operates a motor vehicle along a roadway in traffic in a fashion not usual to normal traffic patterns. This includes driving slowly along the roadway or right of way, frequently pulling in and out of traffic, making frequent turns and stops, and getting in and out of a vehicle near traffic. Vehicle operation in this unusual manner in high speed traffic produces a high risk of causing immediate, catastrophic consequences. Examples of activities that fit this description include:

(A) inspecting roadways and bridges for repairs;

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

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

(D) assisting stranded motorists;

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

(F) inspecting vegetation growing along roadways;

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

(H) inspecting driveway placements;

(I) inspecting restorations of state rights of way;

(J) supervising the installation of signals;

(K) supervising sign installation;

(L) monitoring ramp meters;

(M) inspecting barrier fences;

(N) inspecting for damaged signs; or

(O) inspecting draw bridges.

(2) The employee performs job duties other than driving on highways or rights of way, in or around traffic on a routine basis, such as:

(A) repairing signals;

(B) installing signals;

(C) flagging traffic and assisting with traffic control;

(D) installing reflective pavement markings;

(E) repairing roadway surfaces and bridges;

(F) performing water blasting;

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

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

(I) removing encroachments from state rights of way;

(J) cleaning road signs;

(K) replacing signs;

(L) repairing sign illumination; or

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

(3) The employee uses dangerous chemicals/materials around other employees and/or the traveling public on a routine basis in the following manner.

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

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

(C) operates photoprocessing equipment used in a laboratory to process film which requires the use of materials which are combustible, flammable, toxic or corrosive;

(D) silkscreens signs which requires the use of materials which are combustible, flammable, toxic or corrosive; or

(E) cuts materials using combustible, flammable, toxic or corrosive materials.

(4) The employee operates specialized maintenance/construction or heavy equipment in and around traffic or around one or more other employees on a routine basis. Examples of activities that fit this description include, but are not limited to the following:

(A) large/heavy equipment such as hole diggers, rotary brooms, front end loaders, aerial buckets, snow plows, pony blades, epoxy machines, ladder trucks, cable lift hysters, rollers, cranes, paint machines, bulldozers, chip spreaders, rotomillers, backhoes, drilling augers, steel wheel pneumatic compacters, maintainers, wing plows, bucket trucks, drag lines, mechanical rig runners, maze meters, and forklifts; and

(B) trucks and automobiles that are operated in support of road crews or that are driven along the roadway in traffic in a fashion not usual to normal traffic patterns (examples of trucks may include, service, litter, fuel, paint, supply, sign, and herbicide trucks).

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

(6) The employee conducts or assists with underwater bridge inspections on a routine basis. The performance of this activity carries with it a high risk of potential harm such that a single alcohol or drug related lapse could have immediate, irremediable, and calamitous consequences to other employees.

(b) An employee in a safety sensitive position is subject to §§4. 32(a), 4.33, and 4.34(a) of this title (relating to All Department Employees, Employees Who Drive for the Department, and Commercial Drivers) as well as the requirements of this section.

(c) Prohibitions. An employee in a safety sensitive position is subject to the prohibitions in subsections §§4. 32(b), 4.33, and 4.34(b) of this title (relating to All Department Employees, Employees Who Drive for the Department, and Commercial Drivers)

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

(1) Pre-employment testing. Pre-employment testing shall be conducted pursuant to §4 34(c)(1) of this title (relating to Commercial Drivers)

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

(e) Disciplinary Action. In addition to being subject to disciplinary actions described in §4 32 and §4 33 of this title (relating to All Department Employees and Employees Who Drive for the Department), employees in safety sensitive positions who violate subsection §4 34(c)(1)-(5) of this title (relating to Commercial Drivers) will be subject to the procedures described in §4.34(d) of this title (relating to Commercial Drivers). The only exception is that the employee's supervisor will assign non-safety sensitive duties to the employee, if available, at his or her current work location

(f) Refusal to consent to testing. A safety sensitive employee will be terminated if he or she engages in any of the behaviors described in §4 34(e) of this title (relating to Commercial Drivers).

(g) Mandatory Referral and Treatment

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

(2) Treatment. Treatment is described in §4 32(c) of this title (relating to All Department Employees).

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

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

#### §4.37. Test Procedures.

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

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

(1) Specimen collection procedures.

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

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

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

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

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

(ii) To deter the dilution of specimens at the collection site, toilet bluing agents will be placed in toilet tanks wherever possible, so the reservoir of water in the toilet bowl always remains blue. There will be no other source of water (e.g., no shower or sink) in the enclosure where urination occurs.

(iii) When an individual arrives at the collection site, the collection

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Laboratory analysis procedure.

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

- (i) marijuana;
- (ii) cocaine;
- (iii) opiates;

(iv) phencyclidine (PCP);  
and

(v) amphetamines.

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

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

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

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

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

(3) Reporting and reviewing of drug test results.

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

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

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

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

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

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

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

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

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

(OCMI) pursuant to 46 C.F.R. §16.201, Application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(viii) The BAT will instruct the employee to blow forcefully into the mouthpiece for at least 6 seconds or until the EBT indicates that an adequate amount of breath has been obtained.

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

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

(xi) If the result of the initial test is a breath alcohol concentration of less than 0.02, the BAT and employee will complete the form. No further testing is authorized.

(xii) If the result of the initial test is an alcohol concentration of 0.02 or greater, the BAT will conduct a confirmation test within 20 minutes of the completion of the screening test. The BAT will instruct the employee not to eat, drink, put any object or substance in his or her mouth, and, to the extent possible, not

beach. The BAT will explain to the employee the reason for this requirement (to prevent any accumulation of mouth alcohol leading to an artificially high reading) and the fact that it is for the employee's benefit. The BAT will also explain that the test will be conducted at the end of the waiting period, even if the employee has disregarded the instruction. The results of the confirmatory test are final.

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

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

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

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

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

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

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

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

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

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

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

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

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

#### §4.38. Confidentiality.

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

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

(2) required by applicable law;

(3) requested in writing by the employee;

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

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

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

§4.40. *Records and Retention.* The substance control officer will be responsible for retaining all confidential records relating to the substance abuse program which include training, testing, disciplinary actions, documentation of post-accident and reasonable cause determinations, consent forms, treatment, appeals, and litigation. All documentation which contains information related to an employee's positive test result, such as documentation of disciplinary actions, should be maintained in a locked file separ-

ate and apart from that employee's standard personnel file. All records of individuals who pass a test will be retained for at least one year. All records of individuals who do not pass a test will be retained for at least five years.

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 October 6, 1995

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Robert E. Shaddock  
General Counsel  
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Transportation

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

### Subchapter E. Sick Leave Pool Program

#### • 43 TAC §§4.50-4.56

The Texas Department of Transportation adopts new §§4.50-4.56, concerning the department's sick leave pool program. Sections 4.50, 4.51, and 4.54-4.56 are adopted with changes to the proposed as published text in the July 11, 1995, issue of the *Texas Register* (20 TexReg 5055). Section 4.52 and §4.53 are adopted without changes and will not be republished.

Government Code, Chapter 661 authorizes the department to establish a sick leave pool program and to adopt rules and prescribe procedures to provide additional sick leave for an employee when the employee or the employee's immediate family member has a catastrophic illness or injury which causes the employee to exhaust all leave time earned and lose compensation from the state. The General Appropriations Act, Fiscal Years 1994-1995, Article V, §8(2) defines family members and provides conditions when sick leave may be taken by an employee for illness of the employee or a family member.

Adoption of §§4.50-4.56 is necessary to replace, in an amended form, the provisions of §§1.300-1.305, concerning the department's sick leave pool program which are being contemporaneously repealed because the subject matter of these sections fall within Chapter 4, Employment Practices

New §§4.50-4.56 allow for greater control of the pool balance by allowing for the recertification of an employee's or employee's immediate family member's illness or injury; setting emergency procedures for controlling the balance of hours in the sick leave pool program when it reaches 7,200 hours or below; limiting the employee's use of hours from the sick leave pool for family members not residing in that employee's household to the time necessary to provide care and assistance to a spouse, child, or parent who needs such care as a direct result of a documented medical condition; identifying the specific criteria used

to determine if an illness or injury is catastrophic and allowing the patient's health care provider to make that determination based on this criteria, and allowing the department to seek a second and third opinion by a health care provider other than the patient's health care providers, if the validity of the certification is questioned.

On July 25, 1995, the department conducted a public hearing on the proposed repeal and new sections, no oral comments were received. Five employees submitted written comments concerning the proposed new sections.

Regarding §4.51, Definitions, two commenters suggested that the definition of "immediate family" mirror the definition in the departments Human Resources Manual; more specifically, it should include restrictions related to family members not living in the same household. In response, this definition simply defines what is meant by "immediate family" throughout the text. This definition, in conjunction with the stipulation in §4.56(a)(5) related to the use of sick leave pool hours for an immediate family member not residing in the employee's home, is essentially the same as the definition included in the Human Resource Manual. One commenter suggested that the department elaborate on the definition of "permanent disability" and determine who will interpret this definition. In response, the department felt that the Americans With Disabilities Act (ADA) definition of "permanent disability" was most applicable. Furthermore, §4.52, administration of the pool, stipulates that the pool administrator shall issue interpretations and clarifications related to this program, which includes interpretations of all definitions.

Regarding §4.55(a)(5), Contribution Returns, one commenter asked what is meant by "re-funded" in this subsection. In response, it means the returning of hours contributed by an employee to the pool.

Regarding §4.56(a)(6), Withdrawals, one commenter expressed concerns that this subsection contains no language regarding the confidentiality of the information received by the medical certification. In response to the comment, the department agrees that an additional sentence is needed and has been added to this paragraph stating that employee medical information related to requests for withdrawals from the sick leave pool may only be released to the human resources officer and for a legitimate business necessity unless otherwise required by law.

Also regarding §4.56(a)(4), one commenter asks how the department will monitor or enforce this subsection which restricts the use of hours granted from the pool for a condition resulting in a permanent disability to time necessary for treatment of the illness and not the rehabilitation or training needed as a result of the disability. Though monitoring and enforcing this paragraph does pose a challenge, it is necessary to maintain the integrity of the pool. The pool administrator will utilize monthly recertification and information gained from the human resources officer, the employee, and the employee's doctor to meet this challenge.

Also regarding §4.56(a)(6), one commenter stated that this subsection is confusing and requested further clarification. In response, the first sentence specifies the maximum number of hours which can be granted per request. The second sentence specified the maximum number of hours which can be granted per catastrophic condition. Government Code, Chapter 661, Subchapter A, State Employee Sick Leave Pool, prohibits granting more than one-third the balance of the pool or 90 days (720 hours), whichever is less. Because the department allows multiple requests for hours from the pool, it is necessary to separate the maximum hours allowed per request and per catastrophic condition. The maximum hours allowed per request cannot exceed one-third the balance of the pool at the time of the request nor can it exceed 90 days (720 hours). However, the employee is not limited to one-third the balance of the pool per catastrophic condition. The only limitation in this case is 90 days (720 hours). For example, if an employee suffers a catastrophic condition, requests hours from the sick leave pool, and the pool balance is 420 at the time of the request, he or she may be granted 140 hours (one-third of pool balance) maximum. However, he or she may request additional hours, up to a total of 720 hours, when the pool balance can better accommodate his or her need.

Another commenter suggested that the department specify the criteria for which the pool administrator may require monthly recertification. The department believes this is a good idea and has amended this subsection to specify that the pool administrator may require a monthly recertification when the necessary information to make a definite determination of the employee's need for pool hours is changed, uncertain, or not available. For instance, if an employee's health care provider cannot give a definite estimate of when the employee will be able to return to work, yet his or her condition meets the criteria for a catastrophic condition, it may be necessary to require a monthly certification.

A commenter also suggested that the department include sending a copy of the employee's medical certification to the Human Resources Officers (HRO) in our procedures. For the sake of confidentiality, it has been our practice to not routinely send HROs a copy of the doctor's medical certification. However, if the district, division, or special office can demonstrate a legitimate business necessity for this information, the pool administrator may authorize its release.

Section 4.54(a)(2) stated that contributions may not be specified for a certain individual. For further clarification, the department has included specific office or work unit.

Section 4.54(b)(1) stated that the department would encourage retirees and separating employees to contribute to the pool. So that the department's efforts to encourage contributions are made clear, this sentence was reworded to show that all employees will be encouraged to contribute, including retirees and separating employees.

Section 4.56(a)(2) provides for the written certification of a health condition by a health care provider. For the sake of clarity, a sen-

tence has been added to acknowledge the confidentiality of this information.

In §4.56(a)(6), the word "transferred" was replaced with "granted" for clarity to indicate the distribution of the sick leave pool hours.

Section 4.56(a)(13) gave the pool administrator the authority to approve the use of a withdrawal on an intermittent basis. The department feels that a less burdensome method of monitoring and controlling the pool balance would be to grant hours in a block of time. Unused hours shall be returned at the end of the time unless an immediate need for such leave still exists. This clause would be less burdensome for the employee because he or she would not have to provide justification for the intermittent uses. It would also be less burdensome for the pool administrator who would not have to judge whether the justification is acceptable.

Section 4.56(a)(14), as proposed, allows the pool administrator to require recertification of a health condition by a health care provider on a monthly basis. For the sake of clarity, the department has modified this paragraph to specify the conditions that recertification on a monthly basis will only be required when the necessary information to make a definite determination of the employee's need for pool hours is changed, uncertain, or unavailable.

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation and Government Code, Chapter 661, which authorizes the department to adopt rules administering a sick leave pool program.

*§4.50. Purpose.* The purpose of the sick leave pool program is to provide additional sick leave for an employee when the employee or the employee's immediate family member has a catastrophic illness or injury which causes the employee to exhaust all leave time earned and lose compensation from the state. Authority for the creation of the sick leave pool program is contained in Government Code, Chapter 661, Subchapter A, State Employee Sick Leave Pool.

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

Accrued leave time—Vacation leave, sick leave, and compensatory time.

Catastrophic illness or injury—A severe condition or combination of conditions affecting the mental or physical health of an employee or an employee's immediate family member that requires the services of a health care provider for a prolonged period of time and that forces the employee to exhaust all leave time earned by that employee and to lose compensation from the state.

Contribute—To give sick leave from an employee's personal sick leave account to the department sick leave pool.

Employee—A person, other than the executive director, who is employed by the department.

Health care provider—A practitioner as defined by Texas Civil Statutes, Article 4590i, who is practicing within the scope of his or her license.

Human resources officer—An employee in a district, division, or special office who is responsible for verifying the accuracy of all employee leave time records, and for the district, division, or special office extended sick leave program. If more than one employee has these responsibilities, their activities will be coordinated for the purpose of this subchapter.

Immediate family—Those individuals who are related by kinship, adoption, or marriage, as well as foster children certified by the Texas Department of Protective and Regulatory Services.

Permanent disability—A physical or mental impairment that substantially limits one or more major life activities.

Pool administrator—The Director of the Human Resources Division or his or her designee who administers the department's sick leave pool program.

Request—An initial application for withdrawal from the sick leave pool or an application for an extension of a withdrawal due to a catastrophic illness or injury.

Severe condition—Any illness or injury that poses an imminent threat to the life of the patient, results in a permanent disability, or causes the employee to be off work for three continuous months or more for the current episode.

Sick leave pool—A department-wide pool that receives voluntary contributions of sick leave from employees and which transfers approved amounts of sick leave to eligible employees.

Withdrawal—An approved transfer of sick leave hours from the department sick leave pool.

#### §4.54. Contributions.

##### (a) Restrictions.

(1) An employee may voluntarily contribute any amount of sick leave hours allowed by Government Code, Chapter 661, Subchapter A, State Employee Sick Leave Pool.

(2) Contributions may not be specified for use by a certain individual.

##### (b) Procedures.

(1) The department will encourage an employee who is planning to retire, terminate employment, or resign to contribute sick leave hours upon separation, if the employee has not already contributed the amount allowed.

(2) An employee who wishes to contribute sick leave to the pool shall sub-

mit a contribution form prescribed by the pool administrator to his or her human resources officer.

(3) After verifying the accuracy of information on the application, the human resources officer shall sign the application and submit it to the pool administrator.

(4) Once the application is approved by the pool administrator, the pool administrator shall transfer hours from the employee's account to the sick leave pool account.

#### §4.55. Contribution Returns.

##### (a) Restrictions.

(1) An employee or employee's immediate family member must suffer an illness or injury, not necessarily catastrophic, to have the employee's contribution returned.

(2) The number of hours that may be returned to an employee shall not exceed the total number of hours he or she has contributed since the beginning of the program, June 1, 1990.

(3) All accrued leave time must be exhausted by the employee before hours will be returned from a previous contribution.

(4) The maximum number of hours that may be returned per request shall not exceed the amount needed. The amount needed is determined by the amount of unpaid leave incurred because of the illness or injury.

(5) If the pool balance cannot accommodate the amount needed, the employee shall be refunded one-third the balance of the pool.

(6) An employee who is planning to retire and who has contributed sick leave to the pool may not have his or her contributions returned in order to receive a retirement credit.

##### (b) Procedures.

(1) The employee shall complete a withdrawal of contribution form prescribed by the pool administrator.

(2) The human resources officer shall verify leave balances and the date and time all accrued leave time was or will be exhausted.

(3) The pool administrator shall review the contribution form and approve or deny the transfer of hours from the sick leave pool to the employee's personal sick leave account.

#### §4.56. Withdrawals.

##### (a) Restrictions.

(1) An employee or an employee's immediate family must have a catastrophic illness or injury to be eligible to withdraw from the pool. The patient's health care provider must certify in writing that the illness or injury of the employee or member of the employee's immediate family is catastrophic.

(2) A written certification from a health care provider must be submitted with all requests for withdrawals. The certification should include the diagnosis and prognosis of the condition or combination of conditions and the date the employee or employee's immediate family member will be able to return to normal activities. If the certification is for the employee's immediate family member, it should also include the amount of time the employee will be needed to provide primary care. The health care provider certification shall be in a form prescribed by the pool administrator.

(3) The employee must submit an updated health care provider's certification that certifies that the catastrophic illness or injury still exists or that it is necessary for the employee to be off work to recover or assist in the recovery from the treatment of the catastrophic illness or injury before an extension may be approved.

(4) Hours transferred from the pool for an illness or injury resulting in a permanent disability may be used solely for the treatment of the illness or injury and not for rehabilitation or training needed as a result of the disability.

(5) An employee's use of a transfer from the sick leave pool for family members not residing in that employee's household is strictly limited to the time necessary to provide assistance to a spouse, child, or parent of the employee who needs such care and assistance as a direct result of a documented medical condition.

(6) The maximum hours that may be transferred per request is 720 hours (90 calendar days) or one third of the balance of the pool, whichever is less at the time request is received. The maximum number of hours that may be transferred per catastrophic condition is 720 hours (90 calendar days).

(7) When the pool balance is below 7,200 hours, an employee may not be transferred more than 340 hours (approximately two months) per request, unless unpaid leave is incurred before the request is approved. If unpaid leave is incurred, the employee may not be transferred more than the sum of the unpaid leave and 340 hours. The time transferred will begin on the date and time the employee exhausted all accrued leave. Additionally, the pool administrator will approve or deny all requests in the order in which they are received.

(8) An employee who uses pool sick leave in accordance with this subchapter is not required to pay back that leave.

(9) An employee must exhaust all accrued leave time before being eligible to use hours approved for a particular catastrophic illness or injury from the sick leave pool.

(10) All withdrawals from the pool must be used solely for the catastrophic illness or injury for which they were granted.

(11) An employee who is in need of additional sick leave after exhausting all accrued leave time shall exhaust all available extended sick leave before using time granted from the sick leave pool.

(12) An employee who is injured on the job, who is entitled to receive worker compensation payments, and who chooses to integrate his or her sick leave, and vacation leave, or compensatory time is also eligible to receive a withdrawal in accordance with this subchapter.

(13) The pool administrator may approve the use of a withdrawal on an intermittent basis provided that the employee justifies his or her need for such use and support the amount of time the employee expects to use within a three month period, with documentation from his or her health care provider. The employee may request an extension of time used intermittently if the need still exists after the three month period is over.

(14) The pool administrator may require the patient's condition to be recertified by a health care provider on a monthly basis. If the employee is determined to be able to return to work sooner than a previous certification, the pool administrator may require the unused portion of a withdrawal to be returned to the pool. If the employee fails to cooperate with recertification requirements and reevaluation procedures, the pool administrator may deny the request or require that the unused portion of a withdrawal be returned to the sick leave pool.

(15) Unused sick leave from the pool shall be returned to the pool when the need for such leave ceases to exist or the pool administrator requires it in accordance with this subchapter.

(16) The estate of a deceased employee is not entitled to payment for unused sick leave from the pool.

##### (b) Procedures.

(1) The employee shall complete the application for withdrawal. The human resources officer shall assist the employee by verifying leave balances and the date and time all accrued leave time was or will be exhausted.

(2) The employee shall submit the application and the health care provider's certification form to his or her health care provider no earlier than 15 workdays before the need for the withdrawal. The health care provider will complete the certification and mail it, with the completed application, directly to the pool administrator.

(3) The pool administrator will consider applications for withdrawal in the order in which they are received. The pool administrator shall stamp the date and time of receipt on each application, and shall approve or deny the request within five working days of that date.

(4) If the pool administrator questions the validity of the certification completed by the employee's health care provider, based on the average expected duration or severity of the condition, the administrator may request a health care provider, contracted by the department, to review the patient's medical records. The contracted health care provider may consult with the patient's health care provider if more information is needed. If the determination of the contracted health care provider differs from the patient's health care provider, the pool administrator may request that the patient's medical records be reviewed by a third health care provider who is not under contract with the department. The pool administrator and the employee must agree on the third health care provider. The determination of the third health care provider is binding. The department will pay for both reviews. If the employee fails to cooperate with the medical records review, the pool administrator may deny the request or require that the unused portion of the withdrawal to be returned to the sick leave pool.

(5) The pool administrator will determine the amount of sick leave transferred for each request based on:

(A) the number of hours requested by the employee;

(B) the health care provider's certification which indicates the approximate date the patient will be able to return to light and normal duties or the amount of time that the employee is needed to provide primary care for the immediate family member;

(C) the date and time all accrued leave time was or will be exhausted; and

(D) the balance of the pool.

(6) The pool administrator shall approve or deny the transfer of hours from the sick leave pool to the employees personal sick leave account.

(7) The human resources officer shall inform the pool administrator of the amount of leave the employee used for the illness or injury at the end of each month, and, if he or she has returned to work, the total number of hours used and how many hours are being returned.

(8) The pool administrator shall return all unused hours to the pool.

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.

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## Chapter 5. Finance

### • 43 TAC §5.10

The Texas Department of Transportation adopts new §5.10, concerning the collection of debts, without changes to the proposed text as published in the August 11, 1995, issue of the *Texas Register* (20 TexReg 6109).

The new section is necessary to comply with Government Code, §2107.002, which requires the department to establish procedures by rule for collecting a delinquent obligation, and Title 1, Texas Administrative Code, §59.2 which establishes the attorney general guidelines for state agencies concerning the collection process.

Section 5.10 defines terms, and establishes procedures for determination of liability, collection from contractors, demand letters, record retention, referrals of a delinquent obligation to the attorney general, and supplemental and alternative collection procedures.

On August 21, 1995, the department conducted a public hearing on the proposed new section and no oral or written comments were received.

The new section is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation and Government Code, §2107.002, which requires the department to establish procedures by rule for collecting a delinquent obligation and a reasonable period for collection and requires the department's collection procedures to conform to the guidelines established by the attorney general.

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

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## Chapter 17. Vehicle Title and Registration

### Motor Vehicle Registration

#### • 43 TAC §17.22

The Texas Department of Transportation adopts an amendment to §17.22, concerning motor vehicle registration, with changes to the proposed text as published in the June 23, 1995, issue of the *Texas Register* (20 TexReg 4551).

The only changes to the rule are to the citations to the Transportation Code in accordance with Senate Bill 971, 74th Legislature, 1995, which re-codified the statutes relating to transportation.

The amendment is necessary due to the passage of Senate Bill 178, 74th Legislature, 1995, which was signed by the governor on May 1, 1995. Senate Bill 178 eliminated the need for a vehicle emissions certificate or evidence of residency as a prerequisite to motor vehicle registration. The amendment removes references to §17.80, concerning vehicle emission verification system, which is being simultaneously adopted for repeal. Senate Bill 178 removed the department's authority to implement a vehicle emission verification system as previously required by the Health and Safety Code, Chapter 382; the Texas Uniform Act Regulating Traffic on Highways, Texas Civil Statutes, Article 6701d, §142; and Texas Civil Statutes, Articles 6675a-2 and 6675a-3.

No oral or written comments were received on the amendment.

The amendment is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation; and Transportation Code, Chapter 502, which authorizes the department to promulgate rules necessary to carry out the provision of laws governing the issuance of motor vehicle registration.

#### §17.22. Motor Vehicle Registration.

(a) Registration. Unless otherwise exempted by law or this chapter, a vehicle to be used upon the public highways of this state must be registered in accordance with Transportation Code, Chapter 502, and the provisions of this section.

(b) Initial application for vehicle registration.



(1) An applicant for initial vehicle registration must file an application on a form prescribed by the department. The form shall at a minimum require:

(A) the signature of the owner;

(B) the motor vehicle description which includes, but is not limited to, the motor vehicle's year, make, model, vehicle identification number, body style, manufacturer's rated carrying capacity in tons for commercial motor vehicles, and empty weight;

(C) the license plate number;

(D) the odometer reading, or the word "exempt" if the motor vehicle is exempt from federal and state odometer disclosure requirements;

(E) the name and complete address of the applicant; and

(F) the name, mailing address, and date of any liens.

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

(A) evidence of vehicle ownership as specified in Transportation Code, §501.030,

(B) registration fees as may be prescribed by law;

(C) any local fees or other fees as may be prescribed by law and collected in conjunction with registering a vehicle;

(D) evidence of financial responsibility as required by Transportation Code, §502.153, unless otherwise exempted by law; and

(E) any other documents or fees required by law.

(3) Place of registration. An initial application for registration shall be filed with the tax assessor-collector of the county in which the owner resides; provided, however:

(A) registration involving the transfer of vehicle ownership by a motor vehicle dealer shall be governed by §17.74(c) of this title (relating to Records of Sales and Inventory); and

(B) an application for registration as a prerequisite to filing an application for certificate of title may be filed with the county tax assessor-collector in the county in which the motor vehicle is purchased or encumbered.

(c) Vehicle registration insignia.

(1) Upon receipt of a complete initial application for registration with the accompanying documents and fees, the department will issue vehicle registration insignia to be displayed on the vehicle for which the registration was issued for the current registration period.

(A) If the vehicle has a windshield, the symbol, tab or other device prescribed by and issued by the department must be attached to the inside lower left corner of the vehicle's front windshield directly above the vehicle inspection sticker in a manner that will not obstruct the vision of the driver.

(B) If the vehicle has no windshield, the symbol, tab, or other device prescribed by and issued by the department shall be attached to the rear license plate.

(2) Unless otherwise prescribed by law, each vehicle registered under this undesignated head must display two license plates, one at the front and one at the rear of the vehicle.

(3) The provisions of paragraph (1) of this subsection do not apply to vehicles registered with annual license plates issued by the department.

(d) Vehicle registration renewal.

(1) A vehicle owner shall apply to the tax assessor-collector of the county in which the owner resides for registration renewal prior to the expiration of the vehicle's registration.

(2) The department will mail a license plate renewal notice, indicating the proper registration fee and the month and year the registration expires to each vehicle owner approximately six to eight weeks prior to the expiration of the vehicle's registration.

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

(A) registration renewal fees as may be prescribed by law;

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

(C) evidence of financial responsibility as required by Transportation Code, §502.153, unless otherwise exempted by law.

(4) If a renewal notice is lost, destroyed, or not received by the vehicle owner, the vehicle may be registered if the owner presents personal identification acceptable to the tax assessor-collector. Failure to receive the notice does not relieve the owner of the responsibility to renew the vehicle's registration.

(5) Renewal of expired vehicle registrations.

(A) In accordance with Transportation Code, §502.407, a vehicle with expired registrations may not be operated upon the highways of the state after the fifth day after the date a vehicle registration expires.

(B) A 20% delinquency penalty is due any time a vehicle is operated upon the public streets or highways without the required registration.

(C) If an owner renews the registration of a vehicle more than one month after the previous registration has expired and the vehicle has not been operated upon the public streets or highways, the vehicle owner will be required to execute a non-use affidavit stating such, and the registration fee will be prorated for the balance of the registration year.

(D) If an owner renews the registration of a vehicle more than one month after the previous registration has expired and cannot execute the non-use affidavit because the vehicle has been operated, the full annual fee shall be collected plus a 20% delinquency penalty as provided by Transportation Code, §502.176.

(6) License plate reissuance and recall program.

(A) The county tax assessor-collectors are authorized to issue new multi-year license plates at no additional charge upon request by the owner at the time of registration renewal, provided the current plates are over five years old.

(B) The county tax assessor-collectors shall issue new multi-year license plates at no additional charge at the time of registration renewal provided the current plates are over eight years old.

(e) Out-of-state vehicles. A vehicle brought to Texas from out-of-state must be

registered within 30 days of the date which the owner establishes residence or secures gainful employment. Accompanying a completed application, an applicant shall provide:

(1) an application for certificate of title as required by the Certificate of Title Act, Transportation Code, Chapter 501, if the vehicle to be registered has not been previously titled in this state; and

(2) an identification certificate required by the Transportation Code, §§472.202 and §501.030.

(f) Enforcement of traffic warrant. The department or a county tax assessor-collector may, pursuant to the provisions of a contract entered into under Transportation Code, §702.003, refuse to register a vehicle owned by a person for whom a warrant of arrest is outstanding for failure to appear or pay a fine on a complaint involving a violation of a traffic law.

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

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TRD-9512833 Robert E. Shaddock  
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For further information, please call: (512) 463-8630

## Vehicle Emissions Verification System

### • 43 TAC §17.80

The Texas Department of Transportation adopts the repeal of §17.80, concerning vehicle emissions verification system, without changes to the proposed text as published in the June 23, 1995, issue of the *Texas Register* (20 TexReg 4552).

The section is no longer necessary due to the passage of Senate Bill 178, 74th Legislature, 1995, which was signed by the governor on May 1, 1995. Senate Bill 178 eliminated the need for a vehicle emissions certificate or evidence of residency as a prerequisite to motor vehicle registration. Senate Bill 178 removed the requirement that the department implement a vehicle emission verification system as previously required by the Health and Safety Code, Chapter 382, the Texas Uniform Act Regulating Traffic on Highways, Texas Civil Statutes, Article 6701d, §142; and Texas Civil Statutes, Articles 6675a-2 and 6675a-3.

No oral or written comments were received on the repeal.

The repeal is adopted under Transportation Code, §201.101, which provides the Texas

Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation; and Transportation Code, Chapter 502, which authorizes the department to promulgate rules necessary to carry out the provision of laws governing the issuance of motor vehicle registration.

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

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TRD-9512834 Robert E. Shaddock  
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For further information, please call: (512) 463-8630

## Chapter 25. Traffic Operations General

### • 43 TAC §25.7

The Texas Department of Transportation adopts new §25.7, concerning removal and storage of spilled cargo and personal property, with changes to the proposed text as published in the August 8, 1995, issue of the *Texas Register* (20 TexReg 6010).

The only changes to the rule are the citations to the statutory authority that have been changed to the Transportation Code, §§472.011-472.014 in accordance with Senate Bill 971, 74th Legislature, 1995, which re-codified the statutes relating to transportation.

The new section is necessary to comply with Transportation Code, §§472.011-472.014, which provides authorization for the department to remove, store, and dispose of cargo and personal property spilled on the state highway system and state right of way

Section 25.7 defines the department's criteria for removal of this property, the procedures for contacting the owner of the property, the procedures for storage of the property if necessary, and the owner's responsibilities in regard to reimbursement for storage and removal costs.

On September 6, 1995, the department conducted a public hearing on the proposed new section; and no comments were received regarding adoption of the new section.

The new section is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation and more specifically, Transportation Code, §§472.011-472.014, which authorizes the Texas Department of Transportation to remove and dispose of spilled cargo and other personal property, on state highways and right of way.

## §25.7. Removal and Storage of Spilled Cargo and Personal Property.

(a) Purpose. Transportation Code, §§472.011-472.014, authorize the Texas Department of Transportation to remove and dispose of spilled cargo or other personal property on state rights of way or a portion of the roadway of the state highway system. This section prescribes the requirements and procedures for the removal of spilled cargo or other personal property from the highway system.

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

(1) Department—The Texas Department of Transportation.

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

(3) Hazardous material—Material as defined by the Hazardous Material Transportation Act (49 U.S.C. §1801).

(4) Hazardous substance—Material as defined by the Texas Hazardous Substances Spill Prevention and Control Act (Water Code, §26.263).

(5) Spilled cargo or personal property—Material that separates from the vehicle in which it is being transported and which comes to rest within state right of way or a portion of the roadway of the state highway system.

(c) General conditions warranting removal of spilled cargo or personal property.

(1) The department may, without the consent of the owner or carrier, remove spilled cargo or other personal property from the state's right of way if the department considers this cargo or property to be blocking the roadway or endangering public safety.

(2) For each occurrence, the department will determine whether the removal of the cargo or property is warranted based on the following considerations:

(A) the safety of department employees;

(B) the safety of the public;

(C) the operation of the highway facilities;

(D) the protection of the state investment;

(E) the availability of resources for removal operations; and

(F) the availability of storage space at a department facility.

(3) If the department determines that removal is necessary, it will remove the cargo or property with as much care as is practical under the existing conditions.

(4) The department will remove cargo or property that it believes is a hazardous material or a hazardous substance in compliance with Government Code, §411.018, and the Texas Hazardous Substances Spill Prevention and Control Act, Water Code, Chapter 26, Subchapter G.

(5) The department and its employees do not assume responsibility for damage to the cargo or property resulting from removal.

(d) Notification of property owner.

(1) The department, through its local districts, will attempt to contact the owner or carrier of the cargo or property through information obtained from the property or through inquiries from the owner or carrier.

(2) If the department is unable to ascertain the identity of the property owner within 30 days of the removal, the department will dispose of the property in the manner the department deems most suitable.

(e) Storage of Cargo and Property.

(1) Removal of cargo or property may include transportation to and/or storage of the property at a site other than the spill location.

(2) The owner or carrier is responsible for the security of the cargo or property and the integrity of any perishable goods at all times.

(3) The owner or carrier will claim and take possession of the cargo or property as soon as possible after its relocation from the spill site. The department may dispose of the cargo or property if the owner, after notification, fails to take possession of the cargo within ten days.

(4) The owner or carrier is responsible for the costs of removal and disposing of the cargo or property. The department will bill the responsible party for all costs and the responsible party shall remit the costs to the department within 30 days of the date of billing. If the responsible party fails to remit all costs, the department may refer the matter to the Office of the Attorney General for collection.

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 October 6, 1995.

TRD-9512835

Robert E. Shaddock  
General Counsel  
Texas Department of  
Transportation

Effective date: October 27, 1995

Proposal publication date: August 8, 1995

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

### Information Logo Sign Program

#### • 43 TAC §§25.400-25.407, 25.409

The Texas Department of Transportation adopts amendments to §§25.400-25.407 and new §25.409 concerning the information logo sign program, with changes to the proposed text as published in the August 11, 1995, issue of the *Texas Register* (20 TexReg 6111). Section 25.403 is adopted with changes and §§24.400-25.402, 25.404-25.407, and 25.409 are adopted without changes.

These revisions are adopted under Texas Civil Statutes, Article 4477-9a as amended by Senate Bill 882 of the 74th Texas Legislature. Senate Bill 882 expanded the existing information logo sign program and created a new category of logo sign, the major shopping area guide sign.

Section 25.400 is amended to expand the eligible areas of the logo sign program and provide signing for major shopping areas within urbanized areas of greater than 200,000 population.

Section 25.401 is amended to include the definitions of close proximity interchange, multiple crossroad interchange, driveway access, eligible highway, eligible urban highway, gross building area, information logo sign, major shopping area, major shopping area guide sign, major shopping area ramp sign, multiple crossroad interchange, and retail shopping mall.

Section 25.402 is amended to allow the contractor to priority market the specific information logo signs to those commercial establishments that are located within the first one mile within the initial three mile radius of the interchange. If adequate participation is not found, the contractor may increase the radius in one mile increments. In addition, this amendment requires the contractor to develop an inventory of the retail shopping malls, determine eligibility for major shopping guide signs, and determine if ground mount or overhead signing will be needed. If overhead signing is needed, the signing for the retail shopping mall becomes the responsibility of the department. For specific information logo signs, the contractor is required to obtain department approval before developing site plans at close proximity or multiple crossroad interchanges to insure fair and equitable chance of participation for all eligible commercial establishments at these interchanges, as well as the needs of the motorists. The contractor is required to cooperate and transfer the names of potential commercial estab-

lishments to the other contractors of information logo sign programs operating in the area, attend meetings as required by the department, and refund advance payments for logo sign or major shopping area signing if the department creates a situation where the existing logo signs or major shopping area guide signs at an interchange are permanently removed. The amendments explain the different fees and how they affect the commercial establishment or retail shopping mall.

Section 25.403 is amended to lengthen the page limits allowed for a statement of interest.

Section 25.404 is amended to include additional terms and a revised bidding formula to include major shopping area guide signs. The numbers resulting from this formula are the final criteria for the department's selection of a contractor to operate the information logo sign program.

Section 25.405 is amended to provide specifications for design, content, placement, and relation to existing signs for specific information logo signs and ramp signs, allow the maximum number of business logos allowed per sign to increase from four to six per sign, limit the maximum number of services to three, and allow the department the approval authority before signs are fabricated. This section includes the specifications for design, content, placement, and relation to existing signs of major shopping area guide signs and ramp signs.

Section 25.406 is amended to include a visibility requirement for commercial establishment eligibility. This allows only those businesses that can be easily located by the motorists to participate in the specific information logo sign program. This section also give priority to those commercial establishments that are located within the first one mile radius of the interchange. The contractor may market commercial establishments, in increments up to fifteen miles, outside the initial three mile radius if no commercial establishment within the three miles of the interchanges is willing to participate.

Section 25.407 is amended to prioritize the arrangement of the six commercial establishment logo spaces within the sign based on the results of a random drawing if the logo sign will contain two or more services. This section also includes responsibilities and rights of commercial establishment and the retail shopping mall with regard to multi-year participation agreements between the contractor and commercial establishment or retail shopping mall, and removal of business logo and forfeiture of advance payments if the commercial establishment or retail shopping mall defaults on the participation agreement.

New §25.409 defines the parameters of major shopping area eligibility for signing.

On August 22, 1995, the department conducted a public hearing to seek comments concerning the proposed amendments to §§25.400-25.407 and new §25.409 concerning the information logo sign program for Texas eligible highways and eligible urban highways. Representatives of Texas Logos, Inc., and 3M Corporation were in attendance

and indicated they were in favor of the amended rules. One commenter gave oral testimony at this hearing. The department also received one written response by mail from the same commenter.

Concerning §25.403, one commenter requested that the department reevaluate its method of contract prequalification and selection and suggested that the department select a contractor based upon an evaluation of the various contractors and then enter negotiations with the top-ranked firm instead of selecting a contract through low bid.

The department is required to use the competitive bid process for highway improvement projects under Transportation Code, §223.001. The low bid selection procedure for choosing a contract complies with Transportation Code, §223.001, and the department believes it is also in the best interest of the department and the public. The department method is comprised of a two step process. First, the contractor must become prequalified through a selection committee that evaluates each contractor's proposal based on criteria related to the qualification, experience, and financial resources. Second, those prequalified contractors then submit bids for operating the program. The contract is awarded to the low bidder. The selection by low bid recognizes all prospective prequalified contractors on an equal basis, and allows them a fair and equitable chance. Furthermore, the final selection by low bid method eliminates any possible bias for or against a contractor.

The commenter also suggested that the department inform any prospective contractors that the amount of fees currently charged to the businesses may not be raised for additional contracts.

Consideration of the amount of fees that will be charged to the businesses is included in the low bid process.

The commenter requested that the department allow expansion of the current logo sign contract to include the newly added interchanges. The department considers this option to be a viable alternative with many advantages and chooses to amend the existing contract for the following reasons: the existing logo contractor has completed the necessary sign construction well in advance of the required schedule, the participating businesses will contract with the same contractor and pay the same amount of fees statewide, the fees are competitive with the other states' fees for similar programs, and the department believes the contractor will complete the signing in less than one year.

The amendments and new section are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation and more specifically, Transportation Code, §§391.091-391.096, as amended, which authorizes the Texas Department of Transportation to erect and maintain information logo signs within eligible highways and urban rights of way.

#### §25.403. Prequalification.

(a) Eligibility. If the department elects to let a contract for the implementation of the information logo sign program, a contractor must prequalify by submitting an introductory letter and a statement of interest to be eligible to submit a bid under Transportation Code, Chapter 223. A committee of department employees appointed by the director of the division of traffic operations will evaluate and score each statement of interest. To prequalify, a contractor must receive a final score of not less than 70 points on the statement of interest.

(b) Introductory letter. The introductory letter shall be addressed to Director of Traffic Operations, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701-2483, and shall contain:

(1) an expression of the contractor's interest in the project;

(2) a summary of the contractor's qualifications to do the work; and

(3) any other summary information concerning the project team or the contractor that may be useful or informative to the department, contractors, or subcontractors.

(c) Statement of interest. The statement of interest shall contain the following components in the order listed.

##### (1) Staffing.

(A) The contractor shall specify the identity of key individuals, including subcontractors, who are proposed to be part of the contractor's project team together with their respective qualifications and experience on similar or related projects, the expected amount of involvement, and the time commitment for each individual and subcontractor.

(B) Evaluation will be on the basis of the qualifications, experience, and time allocation of the members of the project team as they relate to the specific project, with a maximum of 20 points.

##### (2) Capability.

(A) The contractor's capability for actually undertaking and performing the work shall be described, to include the types and locations of similar work performed in the last three years that best characterizes the quality and cost control of the contractor as well as the names, addresses, and phone numbers of knowledgeable individuals who can be contacted. This component shall also include a discussion of the contractor's internal policies and procedures that are related to work quality, cost

control, and resources, including management and organization capabilities currently available for performing the work for the project.

(B) Evaluation will be on the basis of the contractor's capability to perform the work, including internal quality and cost control procedures, with a maximum of 15 points.

(3) Understanding of the project.

(A) The contractor's understanding of the project, based on information available from the department, site visits by the contractor, and applicable regulations or requirements known and as understood by the contractor, shall be discussed.

(B) Evaluation will be on the basis of the contractor's demonstrated knowledge of the required work as contained in a clear and concise explanation, with a maximum of 15 points.

##### (4) Approach to the project.

(A) The approach or course of action by which the contractor proposes to meet the goals and objectives of the project shall be described. The approach must be realistic, clear and concise, and shall identify potential impacts, impediments, or conflicts.

(B) Evaluation will be on the basis of how well the contractor has planned a preliminary or basic course of action, what alternative and/or innovative approaches are proposed, and what provisions are identified for dealing with potential impacts, impediments, or conflicts, with a maximum of 15 points.

##### (5) Schedule control.

(A) Internal methods that will be used by the contractor for schedule control must be fully described. Current references must be listed that confirm the contractor's ability for the timely completion of project work. The intent of this section is to make sure that the project is expedited.

(B) Evaluation will be on the basis of the internal measure used by the contractor to ensure timely completion along with his or her demonstrated reputation for project completion, with a maximum of ten points.

##### (6) Location of the work.

(A) The location or locations where the work will be accomplished by the contractor and any subcontractor, the identities of those who will be involved at each work location for the major work elements on the project, the location of the business offices, and the location where the signs will be fabricated shall be identified.

(B) Evaluation will be on the basis of the contractor's ability to erect, maintain, and replace signs in a timely and effective manner, with a maximum of 15 points.

(7) Audited financial statement.

(A) The contractor must furnish audited financial statements as required dated no later than the fiscal year immediately preceding the date of the introductory letter.

(B) Evaluation will be on the basis of the contractor's financial ability to implement and operate the program, with a maximum of ten points.

(8) Supporting information.

(A) The contractor may provide supporting information, such as graphs, charts, photos, resumes, and references.

(B) This component will not be evaluated or scored as part of the statement of interest.

(d) Page limits. The entire statement of interest including the eight sections listed in subsection (c) of this section should not exceed 25 pages. A page is defined as an 8.5 by 11 inch or 11 by 17

inch sheet containing text, pictures, graphs, charts, plan sheets, or any other graphics. Not more than five 11 by 17 inch sheets may be used in conjunction with pictures, graphs, charts, plans, and other graphics. If 11 by 17 inch sheets contain text only, they will be counted as two pages.

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 October 6, 1995.

TRD-9512836

Robert E. Shaddock  
General Counsel  
Texas Department of  
Transportation

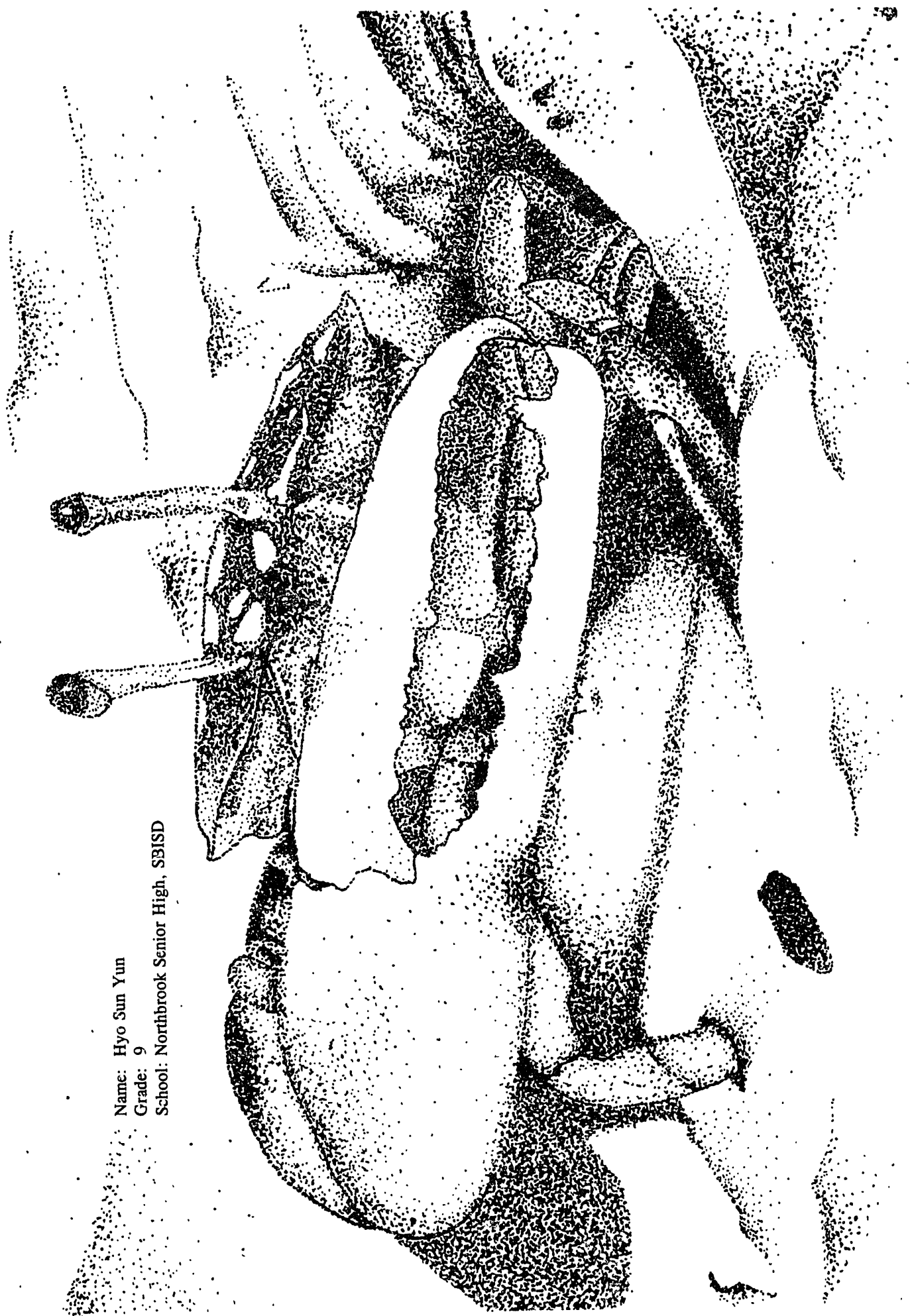
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Grade: 9  
School: Northbrook Senior High, SBISD



# TABLES AND GRAPHICS

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Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

# Texas Historical Commission

## Title 13, Chapter 26. Practice and Procedure *formerly Title 13, Chapter 41*

<u>Old Number</u>	<u>New Number</u>
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41.2	26.2 <i>Scope</i>
41.3	26.3 <i>Compliance with Rules and Regulations</i>
41.4	26.4 <i>Amending of Rules</i>
41.5	26.5 <i>Definitions</i>
41.6	26.7 <i>Specific Criteria for Evaluating Historic Structures</i>
41.7	26.8 <i>Specific Criteria for Evaluating Archeological Sites</i>
41.8	26.9 <i>Specific Criteria for Evaluating Caches and Collections</i>
41.9	26.10 <i>Specific Criteria for Evaluating Shipwrecks</i>
41.10	26.6 <i>Antiquities Advisory Board</i>
41.11	26.11 <i>Location and Discovery of Cultural Resources and Landmarks</i>
41.12	26.12 <i>Designation Procedure</i>
41.13	26.13 <i>Designation of Private Property</i>
41.15	26.15 <i>Memoranda of Understanding and Agreement</i>
41.17	26.17 <i>Issuance of Permits</i>
41.18	26.18 <i>Permit Monitoring</i>
41.20	26.20 <i>Archeological Permit Categories</i>
41.21	26.21 <i>Application for Archeological Permit</i>
41.22	26.22 <i>Historic Structures Permits</i>
41.24	26.24 <i>Reports Relating to Historic Structures Permits</i>
41.25	26.25 <i>Reports Relating to Historic Structures Permits</i>
41.27	26.27 <i>Disposition of Archeological Artifacts and Data</i>

## Title 13, Chapter 27. Procedure *formerly Title 13, Chapter 43*

<u>Old Number</u>	<u>New Number</u>
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43.2	27.2 <i>Definitions</i>
43.3	27.3 <i>Filing Documents</i>
43.4	27.4 <i>Computing Time</i>
43.5	27.5 <i>Agreements to Be in Writing</i>
43.6	27.6 <i>Conduct and Decorum</i>
43.7	27.7 <i>Procedures Not Otherwise Provided</i>
43.8	27.8 <i>Severability</i>

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**Old Number****New Number****Participants**

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43.35	27.35 <i>Party Designations and Appearances</i>
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43.91	27.91 <i>Examiner</i>
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<u>Old Number</u>	<u>New Number</u>
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43.189	27.189 <i>Oral Argument Before the Committee</i>
43.191	27.191 <i>Pleading Before Final Decision</i>
<b>Orders</b>	
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**Subchapter C. Proceedings Regarding Permit for Survey and Discovery, Excavation, Restoration, Demolition or Study and State Archeological Landmark Designation**

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**Title 13, Chapter 28. State Archeological Landmarks  
formerly Title 13, Chapter 45**

<u>Old Number</u>	<u>New Number</u>
45.1	28.1 <i>Purpose and Scope</i>
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§9.6. Examination and Course of Instruction Requirements for Licenses by Category  
Table 1

	Fee	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
<b>A. Management Level Exams:</b>																
1. Company Representative Management Exam	\$25	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
2. Operations Supervisor (Branch Manager) Management Exam	\$25	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
<b>B. Employee Level Exams:</b>																
1. Delivery Truck/Service and Installation Exam (includes Transport Driver, DOT Cylinder Filling, and Motor/Mobile Fuel exams)	\$10			*	*	*	*	*	*	*	*	*	*	*	*	*
2. Transport Driver Exam	\$10			*		*										
3. Engine Fuel Exam	\$10					*							*			
4. DOT Cylinder Filling Exam	\$10					*	*	*	*	*	*	*				
5. Recreational Vehicle Technician Exam	\$10					*								*		
6. Manufactured Housing Technician Exam	\$10					*									*	
7. Service and Installation Exam																
a. prior to 11/15/90	\$10				*	*	*	*	*	*	*	*	*	*	*	*
b. after 11/15/90	\$10				*	*	*	*	*	*	*	*	*	*	*	*
8. Motor/Mobile Fuel (Fuel Dispenser) Exam	\$10					*	*	*	*	*	*	*	*	*	*	*
<b>C. Forms to be Filed:</b>																
1. LPG Form 16 (including required exam fees)		*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
2. LPG Form 16B	\$15				*				*			*			*	

An asterisk (\*) indicates the requirement applies.

	Fee	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
<b>D. Courses:</b>																
1. 64-hour course of instruction (company representative and operations supervisor only)						*										
2. One-hour course of instruction (company representative and operations supervisor only)					*		*	*		*	*	*	*			
3. Requalification seminar every 4 years					*	*	*	*		*						
<b>E. Other:</b>																
1. Special exemption from course of instruction and examination for company representative or operations supervisor in qualified status for minimum three years with active licensee prior to taking management exam					*	*	*	*		*	*	*	*			
2. Conditional qualifications for company representative or operations supervisor after passing management exam if course of instruction completed within 100 days					*	*	*	*		*	*	*	*			

An asterisk (\*) indicates the requirement applies.

§9.19. INSURANCE REQUIREMENTS.  
TABLE 1

Category of License	Type of Coverage	Insurance Policy Endorsement Required	Form Required	Statement in Lieu of Required Insurance Filing
All	Workers' Compensation, including Employer's Liability	WC42 06 01, Texas Notice of Material Change	LPG Form 996A	LPG Form 996B
All	Alternative to Workers' Compensation including Employer's Liability, or Accident/Health insurance coverage: Medical expenses in the principal amount of at least \$150,000; accidental death benefits in the principal amount of at least \$100,000; loss of limb or sight on a scale based on principal amount of at least \$100,000; loss of income based on at least 60% of employee's pre-injury income for at least 52 weeks, subject to a maximum weekly wage calculated annually by the Texas Employment Commission	N/A	LPG Form 996A	N/A
A, B, C, E, O, H, J	General liability coverage including: premises and operations in an amount of at least \$300,000 per occurrence and \$300,000 aggregate	CG 02 05, Texas Changes Amendment, Cancellation Provisions, or Coverage Change Endorsement	LPG Form 998A	LPG Form 998B
A, B, C, E, O	Completed operations or products liability insurance, or both, in an amount of at least \$300,000 aggregate	CG 02 05, Texas Changes Amendments or Coverage Change Endorsement	LPG Form 998A	LPG Form 998B
D, F, I, G, K, L, M, N	General liability coverage including: premises and operations in an amount of at least \$25,000 per occurrence with a \$50,000 policy aggregate	CG 02 05, Texas Changes Amendments or Coverage Change Endorsement	LPG Form 998A	LPG Form 998B
C, E, H, J, Ultimate Consumer	Motor vehicle coverage: minimum \$500,000 (\$300,000 for state agencies) combined single limit for bodily injuries to or death of all persons injured or killed in any one accident, and loss or damage to property of others in any one accident	TE2326A, Liquefied Petroleum Gas Licensed Motor Vehicle Endorsement Texas Railroad Commission Form Endorsement	LPG Form 997A	LPG Form 997B

**TEXAS POLICY FORM CERTIFICATIONS**  
**Multi - Use Form**

**Figure No. 1**

This certification is on behalf of and is binding to **(Provide Insurance Company Name Here)**. The person, a duly authorized agent of the company, certifies they have reviewed the filing as indicated by their initials to the left of the type(s) of filing to which this certification applies:

Initial [File and Use under Article 3.42, paragraph (c)] To the best of my knowledge and belief, such filed form, contract, or policy complies in all respects with the provisions of the Texas Insurance Code and the adopted rules and regulations that are applicable to such policy contract, certificate, application, rider, endorsement, or other form being filed.

Initial [Exempt Form] Such filed form, contract, or policy complies in all respects with all applicable laws and rules. I certify that none of these forms is deceptive or misleading and none contains exceptions or conditions that unreasonably or deceptively affect the risk purported to be assumed in the general coverages of the policy. I also certify that the use of these forms will be discontinued in the event of future change in laws or rules which would prohibit the use of such forms.

Initial [Correction] No changes have been made to the forms previously submitted other than those identified and marked. A summary of changes, including a description of any deleted text, is attached.

Initial [Resubmission] No changes have been made to the forms previously submitted other than those identified and marked. A summary of changes, including a description of any deleted text, is attached.

Initial [Exact Copy] The form is an exact copy of Form [insert form number] for [insert company name] which was approved for use in the State of Texas on [insert date of approval]. No changes or modifications have been made to this form other than the company information. Additionally, I certify that the form complies with all applicable laws and rules.

Initial [Similar to Previously Approved Form] The form is an exact copy of Form [insert form number] for [insert Company Name] for use in the State of Texas on [insert date of approval]. No changes have been made to this form other than those identified and marked. A summary of changes, including a description of any deleted text, is attached. Additionally, I certify that, other than the noted changes, the form complies in all respects with all applicable laws and rules.

Initial [Substitution] The form is a substitution for Form [insert form number] which was approved or filed as exempt in the State of Texas on [insert date]. A summary of changes, including a description of any deleted text, is attached. No changes or modifications have been made to the form other than those identified and marked. The original version of this form has not been issued or otherwise used in Texas and will not be used in Texas at anytime.

Signature of President, Actuary, Attorney or other Designated Representative

Please type or print the name and title of the signature appearing above.

Name

Title

Date

**Other certifications required for filings made under the Small Employer Health Insurance Availability Act are addressed under Section 26.19, (relating to Small Employer Health Insurance/Filing Requirements), Texas Administrative Code.**

CERT FR

**STANDARD EXEMPTION LIST**

1.- 61. (No change.)

62. Animal feeding operations which confine animals in numbers specified below and any associated on-site feed handling and/or feed milling operations which satisfy the following conditions:

(a) Operations designed to feed no more than:

- (1) 1,000 cattle,
- (2) 1,000 horses and mules,
- (3) 2,500 swine weighing more than 55 pounds,
- (4) 10,000 sheep and goats, or
- (5) 1,000 animal equivalents.

Where a combination of cattle, swine weighing over 55 pounds, horses and mules, or sheep and goats are present, animal equivalents shall be calculated by adding the following numbers:

$$\begin{aligned} & 1.0 \times (\text{number of cattle}) \\ + & 0.4 \times (\text{number of swine weighing over 55 pounds}) \\ + & 2.0 \times (\text{number of horses and mules}) \\ + & 0.1 \times (\text{number of sheep and goats}) \end{aligned}$$

=====  
Total = animal equivalents.

- (b) In determining the number of animals or animal equivalents, mothers with nursing young shall be counted as a single animal while the young are nursing. Once removed from the mother, the young animals shall be counted when determining the number of animals or animal equivalents. Swine weighing 55 pounds or less shall be allowed, but not counted in determining the number of animals or animal equivalents. Animals on pasture are not considered as part of the animal feeding operation.
- (c) Operations designed to feed no more than 55,000 turkeys or other birds, excluding ducks, concentrated on open lots.
- (d) Operations designed to feed no more than 5,000 ducks.
- (e) All caged poultry operations designed to feed no more than 30,000 birds.
- (f) All housed poultry operations when wood shavings or similar material is used as litter.
- (g) All caged poultry operations designed to feed more than 30,000 birds when a dry manure storage and handling system is used and when located at least  $\frac{1}{4}$  mile from any recreational area or residence or other structure not occupied or used solely by the owner of the egg laying or



caged pullet operation. Before construction of the caged laying and caged pullet operations begins, written site approval shall be received from the Executive Director of the TNRCC and the facility shall be registered with the the TNRCC Office of Air Quality using Form PI-7.

- (h) For the associated on-site feed handling and/or feed milling operations to be covered under this exemption, no products from the feed handling and or feed milling shall be shipped off-site.

63.- 124. (No change.)

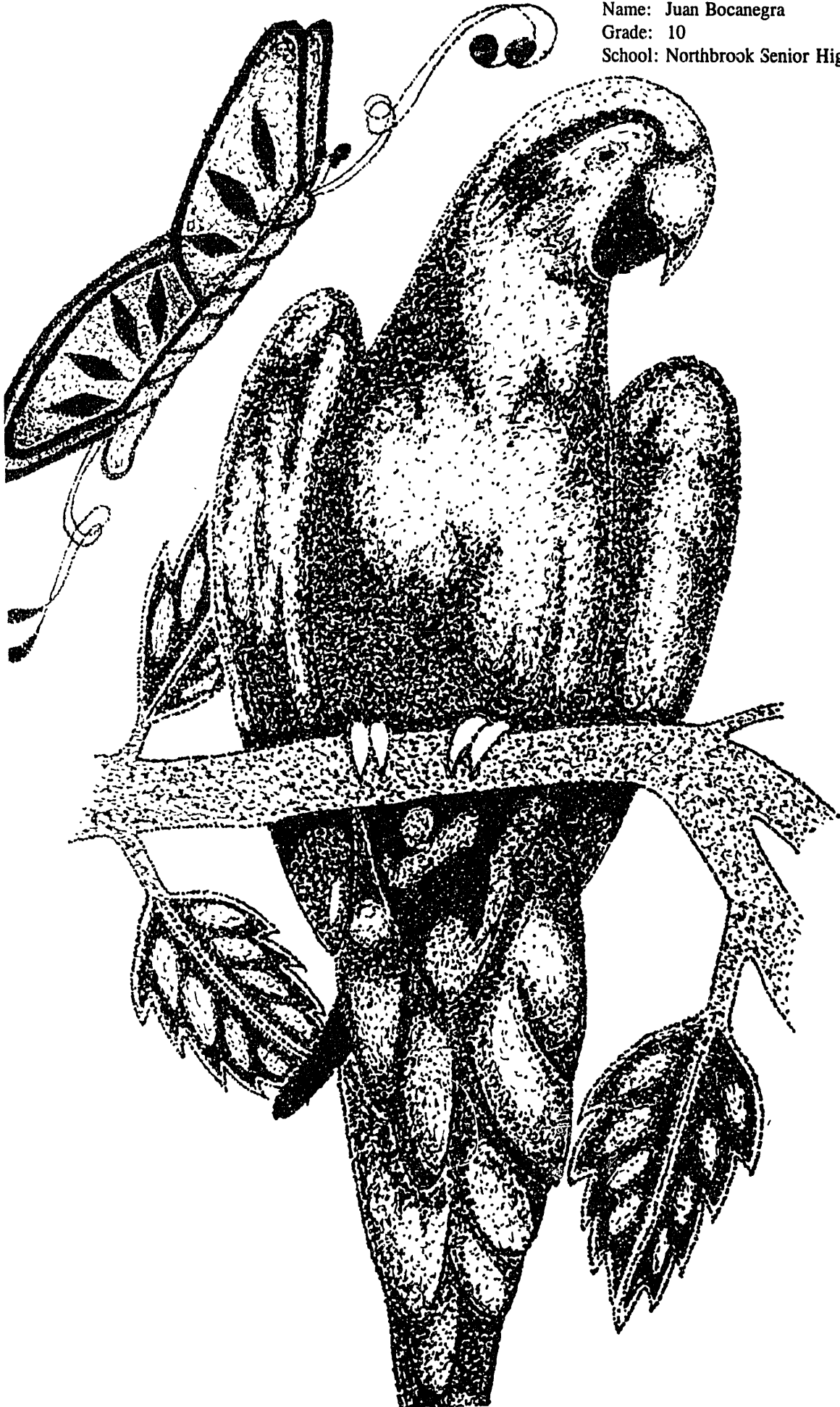
**FIGURE 1: 37 TAC §6.16(b)(1)**  
**FEDERAL POVERTY GUIDELINES**

<b>Size of Family</b>	<b>Unit Poverty Guideline</b>
1	\$ 7,470
2	10,030
3	12,590
4	15,150
5	17,710
6	20,270
7	22,830
8	25,390

Figure 1: 43 TAC §4.37(b)(2)(B)

DRUG	CONFIRMATORY TEST LEVEL
	(ng/ml)
Marijuana metabolite	15
(Delta-9-tetrahydrocannabinol-9-carboxylic acid)	
Cocaine metabolite	150
(Benzoylecgonine)	
Opiate metabolite	300
(25 ng/ml if immunoassay specific for free morphine)	
Phencyclidine	25
Amphetamines	500
(including methamphetamines)	

Name: Juan Bocanegra  
Grade: 10  
School: Northbrook Senior High, SBISD



# 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).

## State Office of Administrative Hearings

Tuesday, November 21, 1995, 10:00 a.m.  
(Rescheduled from October 19, 1995.)

7800 Shoal Creek Boulevard  
Austin

Utility Division

### AGENDA:

The hearing on the merits is rescheduled to the above date and time in PUC Docket Number 14293 (SOAH Docket Number 473-95-1194); complaint of Michael M. Phillips Farms, Inc. against Houston Lighting and Power Company.

Contact: J. Kay Trostle, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0233.

Filed: October 11, 1995, 10:35 a.m.

TRD-9512998

## Texas Department of Agriculture

Thursday, October 26, 1995, 10:30 a.m.  
Board Room, Texas Sheep and Goat Raisers, 233 West Twohig

San Angelo

Texas Sheep and Goat Commodity Board

### AGENDA:

Opening remarks and welcome-Appointment of replacement for Allen Turner; swearing in of new director

Review and approval on minutes of last meeting

Review and approval of fiscal affairs

Reports of officers and directors

Discussion and action: New business-Review of telephone messages; review "hot spots" procedures; review "hot spots" proposals.

Unfinished business-Review status on various projects; Castleberry referral to Attorney General's Office; Progress of Coyotes in Texas Symposium; reprinting publication; reports from "hot spot hunting" projects; review reports from Gary Nunley on animal damage control; scheduling of next meeting.

Discussion: Other business

Adjourn

Contact: Minnie Savage, 233 West Twohig, San Angelo, Texas 76902-3543, (915) 659-8777.

Filed: October 11, 1995, 1:46 p.m.

TRD-9513001

Tuesday, November 14, 1995, 10:30 a.m.  
(Rescheduled from Thursday, October 19, 1995, 1:30 p.m.)

Texas Department of Agriculture, 900-B East Expressway 83

San Juan

Office of Hearings

### AGENDA:

Administrative hearing to review alleged violation of Texas Agriculture Code, §§101.001-101.021 and/or §§102.001-102.172 (Vernon 1995) by Pardi Produce, Incorporated as petitioned by Texas Western Company.

Contact: Joyce C. Arnold, P.O. Box 12847, Austin, Texas 78711, (512) 475-1668.

Filed: October 11, 1995, 4:21 p.m.

TRD-9513026

Thursday, December 7, 1995, 10:00 a.m.

Texas Department of Agriculture, 1700 North Congress Avenue, Room 924A

Austin

Office of Hearings

### AGENDA:

Administrative hearing to review alleged violation of Texas Administrative Code, §6.4, by Victor Cavazos.

Contact: Joyce C. Arnold, P.O. Box 12847, Austin, Texas 78711, (512) 475-1668.

Filed: October 11, 1995, 2:54 p.m.

TRD-9513013

## Texas Bond Review Board

Thursday, October 19, 1995, 10:00 a.m.

300 West 15th Street, Committee Room #5, Clements Building, Fifth Floor

Austin

**AGENDA:**

I. Call to order

II. Approval of minutes

III. Consideration of proposed issues

A. Texas Public Finance Authority-Tax-Exempt General Obligation Paper Notes for projects for Texas Department of Mental Health and Mental Retardation

B. Texas Public Finance Authority-Tax-Exempt General Obligation Commercial Paper Notes for projects for Texas Youth Commission

IV. Other business

Report on action related to management control audit for Bond Finance Office

V. Adjourn

Contact: Albert L. Bacarisse, 300 West 15th Street, Suite 409, Austin, Texas 78701, (512) 463-1741.

Filed: October 11, 1995, 2:50 p.m.

TRD-9513010

**Texas Department of Criminal Justice**

Thursday, October 19, 1995, 11:00 a.m.

Price Daniel Building, Fifth Floor

Austin

Programs Committee

**AGENDA:**

I. Approve committee goals and program goals

II. Sobriety as an Option Program-Thomas Henderson

III. Diagnostic process-Charles Smith

IV. Windham School District

a) General discussion

b) Approval of Strategic Plan

V. Sex Offender Treatment Program

a) General discussion

b) Report on consultant's recommendations

VI. Substance Abuse Treatment Program

a) General discussion

b) Report on Substance Abuse Program re-organization

VII. Discussion of next meeting

Persons with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact Amanda Ogden (512) 463-9472 at least two

work days prior to the meeting so that appropriate arrangements can be made.

Contact: Meredith Johnson, P.O. Box 13084, Austin, Texas 78711, (512) 463-9693.

Filed: October 10, 1995, 10:49 a.m.

TRD-9512938

**Texas School for the Deaf**

Friday, October 13, 1995, 9:30 a.m.

601 Airport Boulevard

Austin

Governing Board Policy Committee

**AGENDA:**

I. Policy adoption

II. Policy deletion

III. Policy amendments

Contact: Marvin B. Sallop, P.O. Box 3538, Austin, Texas 78764, (512) 440-5332.

Filed: October 5, 1995, 3:31 p.m.

TRD-9512745

Friday, October 13, 1995, 1:00 p.m.

601 Airport Boulevard

Austin

Governing Board

**AGENDA:**

1. Call to order

2. Approval of minutes of July 28, 1995

3. Business for information purposes

4. Business requiring board action

5. Comments by board members

6. Adjournment

Contact: Marvin B. Sallop, P.O. Box 3538, Austin, Texas 78764, (512) 440-5332.

Filed: October 5, 1995, 3:30 p.m.

TRD-9512744

**State Board of Dental Examiners**

Friday, October 20, 1995, 8:30 a.m.

333 Guadalupe, William Hobby Building (main lobby area-Hearing Room 102)

Austin

Settlement Conference Hearings

**AGENDA:**

I. Call to order

II. Discuss and consider the following complaints

A. #94-552-0818B

B. #95-012-0906S

C. #94-398-0526R

D. #94-253-0222B

E. #94-458-06276S

F. #94-065-1025B

G. #94-292-0319K

III. Executive session to discuss pending contemplated litigation pursuant to Texas Civil Statutes, Article 551.071, Texas Government Code, 1994

A. #94-552-0818B

B. #95-012-0906S

C. #94-398-0526R

D. #94-253-0222B

E. #94-458-06276S

F. #94-065-1025B

G. #94-292-0319K

IV. Adjourn

Contact: Douglas A. Beran, 333 Guadalupe, Tower III, Suite 800, Austin, Texas 78701, (512) 463-6400.

Filed: October 10, 1995, 2:46 p.m.

TRD-9512952

Saturday, October 21, 1995, 8:30 a.m.

333 Guadalupe, William Hobby Building (main lobby, Hearing Room 102)

Austin

Settlement Conference Hearings

**AGENDA:**

I. Call to order

II. Discuss and consider the following complaints

A. #94-075-1028K

B. #94-104-1115B

C. #93-562-0804K

D. #94-379-0509B

E. #94-216-0124K

F. #94-282-0316S

III. Executive session to discuss pending contemplated litigation pursuant to Texas Civil Statutes, Article 551.071, Texas Government Code, 1994

A. #94-075-1028K

B. #94-104-1115B

C. #93-562-0804K

D. #94-379-0509B

E. #94-216-0124K

F. #94-282-0316S

IV. Adjourn

Contact: Douglas A. Beran, 333 Guadalupe, Tower III, Suite 800, Austin, Texas 78701, (512) 463-6400.

Filed: October 10, 1995, 2:46 p.m.

TRD-9512953

Monday, October 23, 1995, 9:00 a.m.

SBDE Offices, 333 Guadalupe, Tower 3, Suite 800

Austin

Enforcement Committee

AGENDA:

I. Call to order

II. Roll Call

III. Discuss and propose first draft rules as prescribed in Texas Civil Statutes, Article 4548h

IV. Discuss and propose first draft rules as prescribed in Texas Civil Statutes, Article 4548j

V. Discuss and propose first draft rules as prescribed in Texas Civil Statutes, Article 4549b

VI. Announcements

VII. Adjourn

Contact: Douglas A. Beran, 333 Guadalupe, Tower III, Suite 800, Austin, Texas 78701, (512) 463-6400.

Filed: October 10, 1995, 2:46 p.m.

TRD-9512951

### Texas Planning Council for Developmental Disabilities

Tuesday, October 17, 1995, 11:30 a.m.

Holiday Inn South, 3401 South IH-35

Austin

Executive Committee Meeting

AGENDA:

Tuesday, October 17, 1995

11:30 a.m.—Call to order

1. Introductions

2. Public comments

3. Approval of minutes

4. Review of fiscal year 1996 budget status

A. Cost of council and committee meetings

5. Consideration of stipend application

6. Review of council travel expense guidelines

7. Presentation: Ability Resources, Inc.

8. Discussion of Grants Committee responsibilities

9. Chair's report

A. Texas Council on Offenders with Mental Impairments (TCOMI)

B. Other

10. Executive director's report

A. Lelsz order

B. Co-sponsorship of conferences

C. Multicultural initiatives

D. Handout: What Texans Say About TPCDD

1:00 p.m.—Adjourn

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 Rosalinda Lopez at (512) 483-4094.

Contact: Roger Webb, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4080.

Filed: October 9, 1995, 2:24 p.m.

TRD-9512905

Tuesday, October 17, 1995, 1:30 p.m.

Holiday Inn South, 3401 South IH-35, Junior Ballroom

Austin

Committee Meeting of the Whole

AGENDA:

Tuesday, October 17, 1995

1:30 p.m.—Call to order

1. Introductions

2. Public comments

3. Discussion of the impact of expanding the definition of developmental disabilities for councils

5:00 p.m.—Adjourn

Persons with disabilities who plan to attend the 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 Rosalinda Lopez at (512) 483-4094.

Contact: Roger Webb, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4080.

Filed: October 9, 1995, 2:25 p.m.

TRD-9512906

Wednesday, October 18, 1995, 8:30 a.m.

Holiday Inn South, 3401 South IH-35, Friendship Room

Austin

Planning Committee

AGENDA:

I. Introduction of council members, staff and guests

II. Approval of minutes of July 7, 1995

III. Public comments

IV. Consideration of proposed RFPs

V. Review of state plan tactics and activities

VI. Discussion of future funding activities

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 Marilyn Simpson at (512) 483-4085.

Contact: Roger Webb, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4081.

Filed: October 10, 1995, 4:46 p.m.

TRD-9512963

### Texas Diabetes Council

Thursday, October 19, 1995, 1:00 p.m.

Room T-607, Texas Department of Health, 1100 West 49th Street

Austin

Industry Advisory Committee

AGENDA:

The committee will discuss and possibly act on: managed care working committees; continuing medical education workshops for physicians; and other business not requiring committee action.

Contact: Amy Pearson, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7534. 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: October 6, 1995, 1:30 p.m.

TRD-9512811

### Interagency Council on Early Childhood Intervention

Thursday-Friday, October 19-20, 1995, 10:00 a.m.

4412 Spicewood Springs Road, Building 600

Austin

Advisory Committee

AGENDA:

October 19, 1995, at 10:00 a.m.

Call to order. Approval of July 13-14, 1995 meeting minutes. Public comment. Chair

report. Briefings and staff updates. Lunch. Briefings and staff updates continued. Subcommittee meetings.

October 20, 1995, at 8:00 a.m.

Subcommittee meetings. Subcommittee reports. Executive Director's report. Council report. Adjournment.

Contact: Linda Hill, 1100 West 49th Street, Austin, Texas 78756-3199, (512) 502-4900.

Filed: October 6, 1995, 9:09 a.m.

TRD-9512772

## Texas Education Agency

Thursday, October 19, 1995, 10:00 a.m.

Room 2-170, William B. Travis Building, 1701 North Congress Avenue

Austin

School Report Card Focus Group

AGENDA:

(1) Overview of the accountability system and the Academic Excellence Indicator System; (2) Discussion of the statutory requirements regarding content for the School Report Card; (3) Discussion of the required dissemination for the School Report Card; (4) Review of the 1993-1994 School Report Card; and (5) Discussion of the elements and format of future School Report Cards.

Contact: Edward Tasch, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9704.

Filed: October 10, 1995, 2:45 p.m.

TRD-9512948

Sunday-Monday, October 22-23, 1995, 8:30 a.m.

Worthington Hotel, 200 Main Street

Fort Worth

Social Studies Essential Knowledge and Skills Clarification Team

AGENDA:

Note: The clarification team meeting coincides with the Texas Council for the Social Studies (TCSS) annual conference.

Saturday, October 21, 1995

10:15-11:30 a.m. and 2:45-4:00 p.m.: Team members will attend open hearings at TCSS.

Sunday, October 22 and Monday, October 23, 1995

8:30 a.m.-4:30 p.m.: Team members will discuss feedback from TCSS open hearings and will continue development/revision of essential knowledge and skills in the social studies curriculum in small groups.

Contact: Helen Bass, 3332 Montgomery Road, Huntsville, Texas 77340, (409) 295-9161; Marilyn Korhonen, The Write Technology, (903) 626-6044; Ann Rogers, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9580.

Filed: October 9, 1995, 4:15 p.m.

TRD-9512915

Sunday-Tuesday, October 22-24, 1995, Noon (Sunday), 8:00 a.m. (Monday), and 8:30 a.m. (Tuesday), respectively.

Austin North Hilton Hotel and Towers, 6000 Middle Fiskville Road, Peach, Pine, and Sycamore Rooms

Austin

Fine Arts Essential Knowledge and Skills Clarification Team

AGENDA:

Sunday, October 22, 1995-noon-8:30 p.m.: Work in groups and as a whole to revise essential knowledge and skills in the fine arts curriculum.

Monday, October 23, 1995-8:00 a.m.-5:00 p.m.: Work in groups and as a whole to revise essential knowledge and skills in the fine arts curriculum.

Tuesday, October 24, 1995-8:30 a.m.-1:00 p.m.: Work in groups and as a whole to revise essential knowledge and skills in the fine arts curriculum.

Contact: Jeanne Rollins, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-4341.

Filed: October 9, 1995, 4:15 p.m.

TRD-9512916

## Texas State Board of Registration for Professional Engineers

Tuesday, October 17, 1995, 2:00 p.m.

1917 IH-35 South, Board Room

Austin

Ad Hoc Committee on Rules

AGENDA:

1.A. Meeting called to order by Committee Chair Pillar at 2:00 p.m.

B. Roll call

C. Welcome visitors

2. Review and take action on petition from James B. Randall, P.E., concerning Board Rule §131.11.

3. Review and take action on petition from Burton Kahn, P.E., concerning Board Rule §131.152(j)(2).

4. Review comments received concerning proposed amendments to Board Rule §131.138.

5. Consider modifications to Board Rule §131.138 for recommendation to the full board.

6. Adjourn.

Contact: John R. Speed, 1917 IH-35 South, Austin, Texas 78741, (512) 440-7723.

Filed: October 6, 1995, 11:46 a.m.

TRD-9512805

Wednesday, October 18, 1995, 8:30 a.m.

1917 IH-35 South, Board Room

Austin

AGENDA:

Call to order; roll call; recognize visitors; discuss and approve minutes of the June 14, 1995 regular quarterly board meeting and the September 6, 1995 meeting of the Ad Hoc Committee on NAFTA; receive board member activity reports; discuss and possibly act on: directors' reports on financial matters, applications and examinations; staff members' activity reports; disciplinary matters including administrative report, status of court cases and individual disciplinary matters; correspondence received regarding Board Rules §131.11 and §131.152(j)(2); personal appearances by various applicants; old business including future meetings, committee reports on NAFTA and rules, recommendations on Board Rule §131.138 for final consideration, report on NCEES Pittsburgh meeting; new business including discussion of nominations for NCEES awards, confirmation and approval of board contracts, discussion of Washington Accord degrees, confirmation of Memorandum of Agreement with the Texas Natural Resource Conservation Commission, discussion and approval of executive policies on unlawful practice by applicants and acceptance of examinations and discussion and authorization of executive director to sign for board on subpoenas; adjourn.

Contact: John R. Speed, 1917 IH-35 South, Austin, Texas 78741, (512) 440-7723.

Filed: October 6, 1995, 1:40 p.m.

TRD-9512813

Thursday, October 19, 1995, 1:30 p.m.

Omni Hotel, Justice Room, 700 San Jacinto

Austin

Ad Hoc Committee on Professional Development

AGENDA:

1.A. Meeting called to order by Acting Committee Chair at 1:30 p.m.

B. Roll call



C. Welcome visitors

2. Meet with the Industry Advisory Committee to discuss the following:

A. Ethics workshops and seminars

B. Peer review concepts

C. Issues relating to responsible supervision and sealing of engineering work

D. Future meetings.

3. Adjourn.

Contact: John R. Speed, 1917 IH-35 South, Austin, Texas 78741, (512) 440-7723.

Filed: October 6, 1995, 11:46 a.m.

TRD-9512806

## Texas Ethics Commission

Friday, October 13, 1995, 9:30 a.m.

1101 Camino La Costa, Room 235

Austin

AGENDA:

The commission will take roll call; hear comments by the commissioners and the executive director, and communications from the public; approve the minutes of the September 8, 1995, meeting; briefing, discussion, and possible action to waive certain fines assessed for late filing of a report; public discussion and possible action on proposed rule for debt retirement by Judicial Candidates and Officeholders not participating in the 1996 election; discussion and possible action in response to the following Advisory Opinions Requests Numbers 311 and 313-321; adjourn.

Contact: Tom Harrison, 1101 Camino La Costa, Austin, Texas 78711, (512) 463-5800.

Filed: October 5, 1995, 2:44 p.m.

TRD-9512723

## General Land Office

Tuesday, October 17, 1995, 10:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Room 831

Austin

School Land Board

AGENDA:

Approval of previous board meeting minutes; pooling applications, Canadian Hunter Field, Harris County; Wildcat Field, Galveston County; consideration and approval of bids received with clerical error at the October 3, 1995 oil, gas and other minerals lease sale; consideration of schedule and procedures for the April 2, 1996 oil, gas

and other minerals lease sale; applications to lease highway rights of way for oil and gas, Wilson County, Grimes County, Cherokee County, Victoria County, Brazos County, Goliad County, Lee County, Fayette County, and Washington County; consideration and approval of bids received for oil and condensate, Yates Field Unit, Pecos and Crockett counties; East Cowden Unit, Ector County; Gulf of Mexico, Clear Field, Aransas County; North McElroy Unit, Crane and Upton counties; consideration of policy on placing value on minerals on sales of excess acreage; applications to purchase excess acreage, Frio/Zavalla counties; and Dimmit County; consideration of final adoption of rules relative to compliance program, Chapter 33, Texas Natural Resources Code; coastal public lands—commercial easement applications, Clear Lake, Galveston County; Old Brazos River, Brazoria County; lease renewals, Laguna Madre, Nueces County; Laguna Madre and Corpus Christi Bay, Nueces County; structure (cabin) permit renewals and amendments, Laguna Madre, Kleberg County; Laguna Madre, Kenedy County; Laguna Madre, Cameron County; Bastrop Bay, Brazoria County; Espiritu Santo Bay, Calhoun County; Laguna Madre, Willacy County; bulkhead alignment agreement, Copano Bay, Aransas County; executive session—pending and proposed litigation.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: October 9, 1995, 3:49 p.m.

TRD-9512912

## Office of the Governor, Criminal Justice Division

Friday, November 10, 1995, 8:30 a.m.

Capitol Extension, House of Representatives, Hearing Room, Room Number E2. 010

Austin

Governor's Juvenile Justice Advisory Board

AGENDA:

I. Call to order and introductions; II. Cultural diversity training; break; III. Approval of the minutes; IV. Governor's CJD Plan; V. Title V as Part of CJD Plan and review of guidelines for Title V and explanation of scoring process; VI. Review of grants as prioritized; VII. Public hearings; VIII. Procedure of recommendations by board to governor; IX. Update on JJDP funding and challenge grants; X. Setting of next meeting.

Contact: Jim Kester, P.O. Box 12428, Austin, Texas 78711, (512) 463-1916.

Filed: October 9, 1995, 3:38 p.m.

TRD-9512911

## Texas Department of Health

Wednesday, October 18, 1995, 10:30 a.m.

Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Board of Health, Board Briefing

AGENDA:

The board will receive a briefing on: the Texas Department of Health's role in the joint hearing of the Public Health Committee, Human Services Committee, and Appropriations Subcommittee on Health and Human Services scheduled for October 18, 1995; and the current activities of the Texas Department of Health by the Commissioner.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, contact Richard Butler at (512) 458-6410 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: October 10, 1995, 2:58 p.m.

TRD-9512955

Thursday, October 19, 1995, 9:00 a.m.

Texas Center for Infectious Disease, Medical Conference Room, 2303 Southeast Military Drive

San Antonio

Texas Board of Health, Health Financing Committee

AGENDA:

The committee will discuss and possibly act on: approval of the minutes of the September 14, 1995 meeting; withdrawal of proposed rules concerning the Medicaid vendor drug program reimbursement methodology for the pharmacy dispensing fee; recommendation to the State Medicaid director to propose amendments to the Medicaid utilization and review procedures rules, and to repeal the attestation statement for Texas Medical review program hospitals; recommendation to the State Medicaid director concerning final adoption of rules regarding Medicaid utilization review procedures; recommendation to the State Medicaid director concerning final adoption of rules regarding Medicaid selective contracting; recommendation to the State Medicaid director concerning final adoption of rules relating to provider reimbursement rate in the Medicaid medical transportation program; recommendation to the State Medicaid director concerning final adoption of rules relating to cost-of-living adjustments to hospital services; Texas Medicaid reimbursement methodology; in-home total parenteral hyperalimentation services, and in-home

services; and in-home respiratory therapy services for ventilator-dependent persons; and presentation regarding monitoring activities for the National Heritage Insurance Company contract.

**Contact:** Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7424. 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:** October 11, 1995, 4:27 p.m.

TRD-9513027

**Thursday, October 19, 1995, 1:30 p.m.**

Texas Center for Infectious Disease, Medical Conference Room, 2303 Southeast Military Drive

San Antonio

Texas Board of Health, Strategic Management Committee

**AGENDA:**

The committee will discuss and possibly act on: approval of the minutes of the September 14, 1995 meeting; approval of Department of Informational Resources biennial operating plan for automation; monthly report; strategic financial issues; Office of Border Health update; congressional update; and Coalition Task Force report.

**Contact:** Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, contact Richard Butler at (512) 458-6410 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

**Filed:** October 11, 1995, 4:27 p.m.

TRD-9513030

**Thursday, October 19, 1995, 3:30 p.m.**

Texas Center for Infectious Disease, Medical Conference Room, 2303 Southeast Military Drive

San Antonio

Texas Board of Health, Human Resources Committee

**AGENDA:**

The committee will discuss and possibly act on: approval of the minutes of the September 14, 1995 meeting; appointments to the Hospital Data Advisory Committee; proposed rules concerning Device Distributors and Manufacturers Advisory Committee; proposed rules concerning the Prostate Cancer Advisory Committee; and final adoption of rules concerning hospital and medical staff bylaws for the Texas Center for Infectious Disease and South Texas Hospital.

**Contact:** Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, contact Richard Butler at (512) 458-6410 or T.D.D.

(512) 458-7708 at least two days prior to the meeting.

**Filed:** October 11, 1995, 4:27 p.m.

TRD-9513029

**Thursday, October 19, 1995, 4:30 p.m.**

Texas Center for Infectious Disease, Medical Conference Room, 2303 Southeast Military Drive

San Antonio

Texas Board of Health, Regulatory Committee

**AGENDA:**

The committee will discuss and possibly act on: approval of the minutes from the September 15, 1995 meeting; proposed rules concerning licensure and regulation of fitting and dispensing of hearing instruments; proposed rules concerning reporting of charity care and community benefits data by nonprofit hospitals; final adoption of rules concerning investigations of abuse, neglect, or exploitation of children, elderly, or disabled persons in facilities regulated by the Texas Department of Health; final adoption of rules concerning meat safety assurance inspection fees; discussion concerning device distributors and manufacturers; discussion concerning proposed rules relating to medical radiologic technologists to implement House Bill 1200, 74th Legislature; and comments and announcements not requiring committee action.

**Contact:** Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, contact Richard Butler at (512) 458-6410 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

**Filed:** October 11, 1995, 4:27 p.m.

TRD-9513028

**Friday, October 27, 1995, 10:00 a.m.**

Room T-607, Texas Department of Health, 1100 West 49th Street

Austin

Texas HIV Medication Program Advisory Committee

**AGENDA:**

The committee will discuss and possibly act on: election of officers; draw for terms; staff reports (overview; and budget); set formulary priorities; review formulary requests procedures; review formulary requests received; and set date and formulary requests agenda for next meeting.

**Contact:** SHERAL SKINNER, 1100 West 49th Street, Austin, Texas 78756, (512) 409-2510. For ADA assistance, call Richard Butler at (512) 458-7695 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

**Filed:** October 10, 1995, 2:58 p.m.

TRD-9512954

◆ ◆ ◆  
**State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments**

**Tuesday, October 17, 1995, 2:00 p.m.**

Room S-402, Exchange Building, 8407 Wall Street

Austin

Complaints Subcommittee/Telephone Conference Call

**AGENDA:**

The subcommittee will discuss and possibly act on: complaint #FD/94-0025; public comment; and announcement of next meeting date.

**NOTE:** The telephone conference call will be audible to the public at the location indicated above.

**Contact:** Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6484. For ADA assistance, contact Richard Butler (512) 458-6410 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

**Filed:** October 6, 1995, 4:56 p.m.

TRD-9512855

◆ ◆ ◆  
**Texas Department of Housing and Community Affairs**

**Wednesday-Friday, October 18-20, 1995, and Monday-Thursday, October 23-26, 1995, 11:00 a.m.**

811 Barton Springs Road, Suite 500

Austin

Finance Committee Meeting

**AGENDA:**

The Finance Committee will meet to consider and possibly act on the following: Action on resolutions concerning 1995 bond transaction; selection of bond insurer, GIC provider or broker, or an investment provider or broker; approval of final form of documents; selection of master servicer; and other matters relating to the transaction; action on resolution approving pricing; recess.

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: October 10, 1995, 3:08 p.m.

TRD-9512956

◆ ◆ ◆  
**Texas Department of Insurance**

Monday, October 23, 1995, 9:00 a.m.

State Office of Administrative Hearings,  
300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0873.C

To consider whether disciplinary action should be taken against Robert Stephen Hoback, Arlington, Texas, who holds a Group I, Legal Reserve Life Insurance agent's license and a Local Recording Insurance agent's license issued by the Texas Department of Insurance (continued from September 11, 1995).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: October 10, 1995, 8:47 a.m.

TRD-9512919

Monday, October 23, 1995, 9:00 a.m.

State Office of Administrative Hearings,  
300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-1228

To consider whether disciplinary action should be taken against Jimmy G. Locklear, Dallas, Texas, who holds a Group I, Legal Reserve Life Insurance agent's license issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: October 10, 1995, 8:48 a.m.

TRD-9512920

Tuesday, October 24, 1995, 9:00 a.m.

State Office of Administrative Hearings,  
300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0721.E

To consider an appeal of American Security Insurance Company from a decision of the Texas Department of Insurance regarding Rejection of a Rate and Form Filing (continued from August 31, 1995).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: October 10, 1995, 8:48 a.m.

TRD-9512921

Tuesday, October 24, 1995, 1:00 p.m.

State Office of Administrative Hearings,  
300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0674.c

To consider whether disciplinary action should be taken against Roy Brown Bertrand, Jr., Waco, Texas, who holds a Group I, Legal Reserve Life Insurance agent's license issued by the Texas Department of Insurance (continued from September 5, 1995).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: October 10, 1995, 8:48 a.m.

TRD-9512922

Friday, October 27, 1995, 9:00 a.m.

State Office of Administrative Hearings,  
300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-1275.c

To consider whether disciplinary action should be taken against Ronald S. Combs, El Paso, Texas, who holds a Group I, Legal Reserve Life Insurance agent's license issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: October 10, 1995, 8:48 a.m.

TRD-9512923

Tuesday, November 28, 1995, 9:00 a.m.

State Office of Administrative Hearings,  
300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-1218.G

In the matter of the Private Passenger and Commercial Automobile Insurance Benchmark Rate and Flexible Bands Hearing (Prehearing Conference to be held October 17, 1995, at 9:00 a.m.)

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: October 10, 1995, 8:48 a.m.

TRD-9512924

◆ ◆ ◆  
**Texas Board of Professional Land Surveying**

Friday, October 20, 1995, 9:00 a.m.

Adam's Mark Hotel, Meadow Glen Room,  
2900 Briarpark Drive

Houston

Board Meeting

AGENDA:

The board will meet to approve the minutes of the previous meeting; to consider and act upon presentations from Charles Styron concerning certifications and Houtan Jalayer concerning examinations and expired status; to hear a report from the executive director and adopt resolutions; to consider and act upon active complaints and show cause actions, recommendations from committee reports, to propose revisions to board rule 661.41 concerning applications and 661.50 concerning surveyor-in-training experience requirements; to proposed new Board Rule 661.48 concerning applicants failing three examinations; to consider and act upon correspondence to and from the Board-correspondence from Robert Ellis concerning reinstatement to active status and Mike Daniel concerning preparation of maps from records; to address old business; to consider items to be added to future agendas and to receive comments from the public. 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 Sandy Smith at (512) 452-9427 two work days prior to the meeting so that appropriate arrangements can be made.

Contact: Sandy Smith, 7701 North Lamar Boulevard, Suite 400, Austin, Texas 78752, (512) 452-9427.

Filed: October 10, 1995, 2:45 p.m.

TRD-9512949

## Board of Law Examiners

Friday, October 20, 1995, 8:30 a.m.

Suite 500, Tom C. Clark, 205 West 14th Street

Austin

Hearings Panel

### AGENDA:

The hearings panel will hold public hearings and conduct deliberations, including the consideration of proposed orders, on character and fitness of the following applicants and/or declarants: Henry B. Gonzalez; Emmanuel I. Ibenakwe; Kevin R. Sims; Susan E. Anderson; William D. George; Don L. Scott, Jr.; Michael, Q. Webber (Character and fitness deliberations may be conducted in executive session, pursuant to §82.003(a), Texas Government Code).

Contact: Rachael Martin, P.O. Box 13486, Austin, Texas 78711-3486, (512) 463-1621.

Filed: October 6, 1995, 4:42 p.m.

TRD-9512853

## Texas Department of Licensing and Regulation

Friday, October 13, 1995, 9:00 a.m.

920 Colorado, E. O. Thompson Building, Fourth Floor, Conference Room, Room 420

Austin

Enforcement Division, Air Conditioning

### AGENDA:

According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of administrative penalties against respondent, Mike Miller doing business as Mike's Air Conditioning and Heating Service, for engaging in air conditioning and refrigeration contracting without a license in violation of the Texas Civil Statutes, Article 8861 (the Act), §3B, and for advertising air conditioning and refrigeration contracting services without a license in violation of 16 Texas Administrative Code (TAC), §75.22(a), pursuant to the Act, Article 9100, the Government Code, Chapter 2001 (APA), and 16 TAC, Chapter 75.

Contact: Paula Hamje, 920 Colorado, E. O. Thompson Building, Austin, Texas 78701, (512) 463-3192.

Filed: October 5, 1995, 3:38 p.m.

TRD-9512750

Friday, October 13, 1995, 10:30 a.m.

920 Colorado, E. O. Thompson Building, Fourth Floor, Conference Room, Room 420

Austin

Enforcement Division, Air Conditioning

### AGENDA:

According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of administrative penalties against respondent, Jerry Dominguez doing business as Jerry's Air Conditioning and Appliance, for engaging in air conditioning and refrigeration contracting without a license in violation of the Texas Civil Statutes, Article 8861 (the Act), §3B, and for advertising air conditioning and refrigeration contracting services without a license in violation of 16 Texas Administrative Code (TAC), §75.22(a), pursuant to the Act, Article 9100, the Government Code, Chapter 2001 (APA), and 16 TAC, Chapter 75.

Contact: Paula Hamje, 920 Colorado, E. O. Thompson Building, Austin, Texas 78701, (512) 463-3192.

Filed: October 5, 1995, 3:38 p.m.

TRD-9512749

Tuesday, October 17, 1995, 9:00 a.m.

920 Colorado, E. O. Thompson Building, First Floor, Room 108

Austin

Enforcement Division, Air Conditioning

### AGENDA:

According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of administrative penalties against respondent, Daniel Ortiz doing business as Dan's Repair Service, for engaging in air conditioning and refrigeration contracting without a license in violation of 16 Texas Administrative Code (TAC), §75.1(b), and for advertising air conditioning and refrigeration contracting services without a license in violation of 16 TAC, §75.70(f) pursuant to the Texas Civil Statutes, Article 8861 (the Act), Article 9100, the Government Code, Chapter 2001 (APA), and 16 TAC, Chapter 75.

Contact: Paula Hamje, 920 Colorado, E. O. Thompson Building, Austin, Texas 78701, (512) 463-3192.

Filed: October 6, 1995, 3:13 p.m.

TRD-9512815

Wednesday, October 18, 1995, 9:00 a.m.

920 Colorado, E.O. Thompson Building, Fourth Floor, Room 420

Austin

Enforcement Division, Air Conditioning

### AGENDA:

According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of license for the respondent, William Nolan doing business as Cool Air Sales and Service Company, for violation of the Texas Civil Statutes, Articles 8861, §5(a) and 9100; 16 Texas Administrative Code (TAC) §75.40(d) and §75.70(d); and the Texas Government Code, Chapter 2001.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

Filed: October 9, 1995, 3:49 p.m.

TRD-9512913

## Texas Lottery Commission

Thursday, October 19, 1995, 9:15 a.m.

6937 North IH-35, American Founders Building, First Floor Auditorium

Austin

Bingo Advisory Committee

### AGENDA:

Thursday, October 19, 1995, at 9:15 a.m.

According to the complete agenda, the Bingo Advisory Committee will call the meeting to order; consideration and possible approval of the minutes of the October 6, 1995 meeting; consideration and possible action on the interpretation of laws and Texas Lottery Commission staff's proposed rules relating to bingo, including but not limited to bingo pulltabs and electronic cardminding devices and their effect on charities conducting bingo; consideration and possible action relating to the definition and services or activities of a system service provider as described in House Bill 3021, 74th Legislature, Regular Session; consideration and possible designation of future Bingo Advisory Committee meetings; and adjournment.

For ADA assistance, call Rene McCoy at (512) 371-4823 at least two days prior to meeting.

Contact: Kimberly L. Kiplin, P.O. Box 16630, Austin, Texas 78761-6630, (512) 323-3791.

Filed: October 10, 1995, 3:25 p.m.

TRD-9512957

## Texas State Board of Examiners of Marriage and Family Therapists

Sunday, October 15, 1995, 1:00 p.m.

Magnolia Room, Austin North Hilton and Towers, 6000 Middle Fiskville Road

Austin

Application Review Committee

### AGENDA:

The committee will discuss and possibly act on pending applications: application issues (Elizabeth Gwin; Debra Muse; Dianne Pingree; and Sheri Schoenbaum); inactive status (Lynn Cavanaugh; Bonnie Jean Holleman; Sheryl Jordon; Clayton Kennedy; and Lillian Mabry); other pending applications; and request for ratification of approved/renewed files since June 26, 1995 meeting.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657. For ADA assistance, contact Richard Butler at (512) 458-6410 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: October 5, 1995, 1:58 p.m.

TRD-9512718

Sunday, October 15, 1995, 2:30 p.m.

Magnolia Room, Austin North Hilton and Towers, 6000 Middle Fiskville Road

Austin

Ehtics Committee

### AGENDA:

The committee will discuss and possibly act on pending complaints: MFT-95-2; MFT-95-4; MFT-95-9; MFT-95-15; MFT-95-16; and MFT-95-21; and other pending complaints.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657. For ADA assistance, contact Richard Butler at (512) 458-6410 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: October 5, 1995, 1:58 p.m.

TRD-9512717

Monday, October 16, 1995, 9:00 a.m.

Room S-402, the Exchange Building, 8407 Wall Street

Austin

### AGENDA:

The committee will discuss and act on: approval of minutes from the June 26, 1995, meeting; application review committee report (Cavanaugh; Gwin; Holleman; Jordan; Kennedy; Mabry; Muse; Pingree;

and Schoenbaum) ethics committee report (MFT-95-2; MFT-95-4; MFT-95-9; MFT-95-15; MFT-95-16; and MFT-95-21); petition for rule change-telephone counseling; lawsuit concerning CS, RPM, PG, and JD; board chairman report and comments; executive director report; additional topics and topics for next meeting; and setting of next meeting date.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657. For ADA assistance, contact Richard Butler at (512) 458-6410 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: October 15, 1995, 1:58 p.m.

TRD-9512716

## Texas State Board of Medical Examiners

Thursday, October 12, 1995, 2:00 p.m.

1812 Centre Creek Drive, Suite 300

Austin

Emergency Revised Agenda

Reciprocity Committee

### AGENDA:

In addition to previously posted agenda, the committee will interview several additional applicants for licensure by reciprocity.

Reason for emergency: Information has come to the attention of the agency and requires prompt consideration.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, Fax (512) 834-4597.

Filed: October 11, 1995, 4:11 p.m.

TRD-9513024

Friday, October 13, 1995, 10:00 a.m.

1812 Centre Creek Drive, Suite 300

Austin

Emergency Revised Agenda

Executive Committee

### AGENDA:

Call to order

Roll call

Review of Texas retired physician referred to the Executive Committee by the executive director for a determination of eligibility to return to the active practice of medicine\*:

Edward V. Stazler, M.D.

Consideration, discussion, and possible action regarding proposed amendments to rule 166.3, Retired Physician Exception

### Adjourn

\* Executive session under the authority of the Open Meetings Act, §551. 071 of the Government Code, to consult with counsel regarding pending or contemplated litigation.

Reason for emergency: Information has come to the attention of the agency and requires prompt consideration.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, Fax (512) 834-4597.

Filed: October 11, 1995, 4:11 p.m.

TRD-9513025

Friday-Saturday, October 13-14, 1995, 10:30 a.m. and 8:30 a.m., respectively.

1812 Centre Creek Drive, Suite 300

Austin

### AGENDA:

The agenda includes executive sessions to consult with counsel regarding pending or contemplated litigation, executive session to review the jurisprudence examination, requests for termination of suspension of license, request for reinstatement, approval of orders and minutes, discussion and possible action related to electromyographic and nerve condition velocity studies, public hearing to receive comments and consider final adoption of proposed rule changes, executive director's report, appointment of representative to Advisory Commission for the Texas Board of Chiropractic Examiners, discussion and possible action on resolutions and nominations to the Federation of State Medical Boards annual meeting, and approval of medical schools.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, or Fax (512) 834-4597.

Filed: October 5, 1995, 1:59 p.m.

TRD-9512722

Friday-Saturday, October 13-14, 1995, 10:30 a.m. and 8:30 a.m., respectively.

1812 Centre Creek Drive, Suite 300

Austin

Emergency Revised Agenda

### AGENDA:

In addition to previously posted agenda, the board will consider approval of additional agreed board orders.

Reason for emergency: Information has come to the attention of the agency and requires prompt consideration.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, Fax (512) 834-4597.

Filed: October 11, 1995, 4:11 p.m.

**Texas Mental Health and  
Mental Retardation Board**

Thursday, October 19, 1995, 9:00 a.m.

Holiday Inn, Emerald Beach, 1102 South  
Shoreline Boulevard

Corpus Christi

Business and Asset Management Commit-  
tee

**AGENDA:**

1. Citizens comments
2. Consideration of approval of fiscal year 1996 operating budget adjustments
3. Consideration of approval of a capital improvement project at Richmond State School
4. Consideration of items related to Central Park
5. Consideration of items related to the conveyance of 200 acres at Travis State School to Vision Village, Inc.
6. Consideration of a resolution authorizing the development of a recommendation for the lease of a portion of the Corpus Christi State School

7. Consideration of approval of the Community MHMR Center Bond report

8. Consideration of approval of the issuance of bonds pursuant to §534.022 of the Texas Health and Safety Code

9. Discussion of the process established by Senate Bill 1262 regarding the review and disposition of State-owned real property

10. Update on real property transactions previously approved by the board

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 206-4506 (voice or RELAY TEXAS), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 208-4506.

Filed: October 5, 1995, 10:45 p.m.

TRD-9512706

Thursday, October 19, 1995, 9:00 a.m.

Holiday Inn-Emerald Beach, 1102 South  
Shoreline Boulevard

Corpus Christi

Revised Agenda

Business and Asset Management Commit-  
tee

**AGENDA:**

1. Citizens comments

2. Consideration of approval of fiscal year 1996 operating budget adjustments

3. Consideration of approval of a Capital Improvement Project at Richmond State School

4. Consideration of items related to Central Park

5. Consideration of items related to the conveyance of 200 acres at Travis State School to Vision Village, Inc.

6. Consideration of a resolution authorizing the development of a recommendation for the lease of a portion of the Corpus Christi State School

7. Consideration of approval of the conveyance of the Community MHMR Center Bond report

8. Discussion of the process established by Senate Bill 1262 regarding the review and disposition of State-owned real property

9. Update on real property transactions previously approved by the board

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 206-4506 (voice or RELAY TEXAS), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206-4506.

Filed: October 10, 1995, 10:25 a.m.

TRD-9512932

Thursday, October 19, 1995, 1:00 p.m.

Holiday Inn, Emerald Beach, 1102 South  
Shoreline Boulevard

Corpus Christi

Planning and Policy Development Commit-  
tee

**AGENDA:**

1. Citizens comments
2. State school closure update
3. Update regarding state facility governing body activities
4. Consideration of approval of an implementation plan for supported employment
5. Consideration of approval of the adoption of new Chapter 401, Subchapter C, concerning TDMHMR rulemaking, with contemporaneous repeal of existing sections
6. Consideration of approval of adoption of amendments to §401.462 of Chapter 401, Subchapter G, concerning community MHMR centers
7. Consideration of approval of new Chapter 402, Subchapter C, concerning determination of manifest dangerousness, with contemporaneous repeal of existing sections
8. Consideration of approval of an implementation plan for the recommendations

contained in the CPAC addendum on of-  
fenders with mental retardation in the criminal justice system

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 206-4506 (voice or RELAY TEXAS), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206-4506.

Filed: October 5, 1995, 10:45 a.m.

TRD-9512707

Thursday, October 19, 1995, 2:00 p.m.

Holiday Inn, Emerald Beach, 1102 South  
Shoreline Boulevard

Corpus Christi

Audit and Financial Oversight Committee

**AGENDA:**

1. Citizens comments
2. Financial status report
3. Audit activity update
4. Update on State Auditor's review of management controls at TDMHMR
5. Internal audit fiscal year 1995 annual report
6. Consideration of approval of the fiscal year 1996 budget for the Office of Internal Audit

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 206-4506 (voice or RELAY TEXAS), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206-4506.

Filed: October 5, 1995, 10:45 a.m.

TRD-9512708

Friday, October 20, 1995, 10:00 a.m.

Holiday Inn, Emerald Beach, 1102 South  
Shoreline Boulevard

Corpus Christi

**AGENDA:**

- I. Call to order; roll call
  - II. Citizens comments; presentations are limited to three minutes per person. Citizens wishing to address the board must complete a "Citizens Comment Card" prior to the start of the meeting.
  - III. Approval of minutes of September 15, 1995, meeting
  - IV. Issues to be considered
    1. Chairman's report
    2. Commissioner's report
- AmeriCorp presentation  
Medical director's report

Additional items to be considered.

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 206-4506 (voice or RELAY TEXAS), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206-4506.

Filed: October 5, 1995, 10:45 a.m.

TRD-9512709

Friday, October 20, 1995, 10:00 a.m.

Holiday Inn-Emerald Beach, 1102 South Shoreline Boulevard

Corpus Christi

Revised Agenda

AGENDA:

I. Call to order; roll call

II. Citizens comments; presentations are limited to three minutes per person. Citizens wishing to address the board must complete a "Citizens Comment Card" prior to the start of the meeting.

III. Approval of minutes of September 15, 1995 meeting

IV. Issues to be considered

1. Chairman's report

2. Commissioner's report

AmeriCorp presentation

Medical director's report

Additional items to be considered.

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 206-4506 (voice or RELAY TEXAS), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 208-4506.

Filed: October 10, 1995, 10:25 a.m.

TRD-9512933

◆ ◆ ◆  
**Texas Natural Resource Conservation Commission**

Monday, October 16, 1995, 9:00 a.m.

State Office of Administrative Hearings, William B. Clements Building, 300 West 15th-Room 507

Austin

AGENDA:

A Public Hearing on an Application by Travis County Water control and Improvement District has been remanded to the State Office of Hearing Examiners. A public hearing will be held on a Board Resolution authorizing application for amendment to the impact fees previously approved by

the Texas Natural Resource Conservation Commission (Commission) on March 18, 1992 to be levied against new development in Travis County Water Control and Improvement District Number 17's (the District) service area. The March 18, 1992 impact fee of \$2,779 per equivalent single family connection (ESFC) was approved for properties not within the Steiner Ranch or Apache Shores/Comanche Trails defined areas. The district is requesting an impact fee of \$2,700 per ESFC for all areas except the existing Steiner Ranch defined area and other defined areas for which voters have approved bonds for facilities included in the capital projects plan under which this fee is based.

Contact: Gloria A Vasquez, P.O. Box 13087, Austin, Texas 78753, (512) 239-4100.

Filed: October 6, 1995, 3:55 p.m.

TRD-9512846

Monday-Tuesday, October 16-17, 1995, 9:00 a.m.

12118 North Interstate 35, Building E, Room 201S

Austin

AGENDA:

The commission will meet with the staff of the various offices, divisions, and sections of the TNRCC.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: October 6, 1995, 1:30 p.m.

TRD-9512810

Wednesday, October 18, 1995, 9:00 a.m.

12100 Park 35, Building A, Room 257, Second Floor

Austin

Irrigators Council

AGENDA:

Meeting called to order; election of chairman and vice chairman of the Irrigators Advisory Council; recommend approval of successful candidates, dates and sites of next two council meetings and examinations; reports by TNRCC staff on items of interest to program and council; report by Attorney General's office on status of complaints; referral of files to Attorney General's office against non-licensees filed prior to September 1, 1995; various items of interest to the program by chairman of council and/or general public.

Contact: Bettye Jean Urban, P.O. Box 13087, Mail Code 178, Austin, Texas 78711, (512) 239-6719 or (512) 239-6659.

Filed: October 11, 1995, 8:59 a.m.

TRD-9512979

Wednesday, October 18, 1995, 9:30 a.m.

12118 North Interstate 35, Building E, Room 201S

Austin

AGENDA:

The Commission will consider approving the following matters: district matter; water utility matter; contracts; petroleum storage tank enforcements; hearing request denials; rules; State Office 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 for 9:30 a.m. Agenda Starts 8:45 until 9:25 a.m.) Addendum: 1:30 p.m. Motion for Rehearing, concerning Waste Water Inc. (Registration begins at 1:00 p.m. for this item).

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas, 78753, (512) 239-3317.

Filed: October 9, 1995, 10:25 a.m.

TRD-9512891

Wednesday, October 18, 1995, 9:30 a.m.

12118 North Interstate 35, Building E, Room 201S

Austin

Revised Agenda

AGENDA:

Second addendum to October 18, 1995 agenda. Consideration of Bexar Metropolitan Water District, to transfer and to cancel water CCN Number 10664 from Hill Country S.A., Limited doing business as Hill Country Water Systems and to amend CCN Number 10675.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: October 10, 1995, 2:46 p.m.

TRD-9512950

Thursday, October 19, 1995, 1:00 p.m.

Texas Electric Co-Op Headquarters Building, Steck and Burnet Road

Austin

Agriculture Advisory Committee

AGENDA:

The Texas Natural Resource Conservation Commission Agriculture Advisory Committee will meet to discuss the Subchapter K Concentrated Animal Feeding Operation Permitting Program; Clean Rivers Project; Edwards Aquifer Situation; State of Texas Environmental Priorities Project; Watershed Texas Project; and an update from the

TNRCC Agriculture Chemical Subcommittee of the Groundwater Protection Committee.

Contact: Darrell Williams, P.O. Box 13087, Austin, Texas 78711, (512) 239-4480.

Filed: October 10, 1995, 9:58 a.m.

TRD-9512930

Tuesday, October 24, 1995, 10:00 a.m.

12124 Park 35 Circle, Building C-Room 107W

Austin

AGENDA:

The Texas Natural Resource Conservation Commission has referred Bryan-Stewart, Inc., to the State Office of Administrative Hearings. (SOAH). SOAH has scheduled a public hearing on the assessment of administrative penalties and requiring certain actions of Bryan-Stewart, Inc., SOAH Docket Number 582-95-1129.

Contact: Susan Prior, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: October 5, 1995, 1:59 p.m.

TRD-9512721

Thursday, November 9, 1995, 7:00 p.m.

Lakeside Assembly of God Church, 7750 Spring Cypress Road

Houston

AGENDA:

On an application by BMFS, Inc. (Spring-Cypress Landfill), Proposed Permit Number MSW2249, to authorize a Type IV (Landfill) municipal solid waste management facility. The proposed site covers approximately 53 acres of land and is to daily receive 2,000 cubic yards of municipal solid waste. The facility is to be 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 Stuebner Airline Road, near the city of Houston, in Harris County, Texas.

Contact: Charles Stavley or Ann Scudday, P.O. Box 13087, Austin, Texas 78711, (512) 239-6687 or (512) 239-4756.

Filed: October 12, 1995, 9:09 a.m.

TRD-9513039

Friday, November 10, 1995, 10:00 a.m.

Building F, Room 31034, 12100 Park 35 Circle (TNRCC Complex)

Austin

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on an application by North Alamo

Water Supply Corporation for Proposed Permit Number 13747-01 to authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 100,000 gallons per day. The wastewater treatment facility is to be approximately 1/3 mile south of State Highway 186 and 1/2 mile west of FM Road 1015 in Willacy County, Texas. The effluent is discharged into a series of ditches and drains; thence into the Laguna Madre in Segment Number 2491 of the bays and estuaries. SOAH Docket Number 582-95-1148.

Contact: Susan Prior, Mail Code 102, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: October 12, 1995, 8:42 a.m.

TRD-9513037

### Board of Nurse Examiners

Thursday, October 26, 1995, 10:00 a.m.

9101 Burnet Road, Suite 104

Austin

ANP Advisory Committee

AGENDA:

1. Rule 222, proposed as emergency rules, September 26, 1995
2. National regulatory issues (Core competency exam for Nps; and curriculum for Rx. Authority)
3. Charges from the board (educational requirements for CNSs; and policies concerning petition for waiver for CNSs in Psych/Metal Health Nursing)

Contact: Diane E. Powers, Box 140466, Austin, Texas 78714, (512) 835-8661.

Filed: October 12, 1995, 8:39 a.m.

TRD-9513035

### State Pension Review Board

Monday, October 23, 1995, 10:30 a.m.

2809 Ross Avenue, First Floor, Wholesale Electronic Building

Actuarial Study Committee

Dallas

AGENDA:

1. Consideration of Proposed State Pension Review Board Guidelines for Board Approval of Benefit Increases when Required by Statute.
2. Discussion of Procedures for PRB Actuary to Notify Retirement Plans of Potential Actuarial Problems.

Contact: Lynda Baker, P.O. Box 13498, Austin, Texas 78711, (512) 463-1736.

Filed: October 6, 1995, 12:02 p.m.

TRD-9512808

Monday, October 23, 1995, 10:30 a.m.

2809 Ross Avenue, First Floor, Wholesale Electronic Building

Dallas

Actuarial Study Committee

Revised Agenda:

AGENDA:

1. Discussion and Possible Action on Houston Fire Fighter Proposed Benefit Plan.
2. Consideration and Proposed State Pension Review Board Guidelines for Board Approval of Benefit Increases when Required by Statute.
3. Discussion of Procedures for PRB Actuary to Notify Retirement Plans of Potential Actuarial Problems.

Contact: Lynda Baker, P.O. Box 13498, Austin, Texas 78711, (512) 463-1736.

Filed: October 10, 1995, 9:58 a.m.

TRD-9512929

### Texas Department of Protective and Regulatory Services

Friday, October 13, 1995, 9:30 a.m.

701 West 51st, Public Hearing Room

Austin

Texas Board of Protective and Regulatory Services

AGENDA:

1. Call to order.
2. Reading, correction, and approval of the minutes of September 15, 1995.
3. Public testimony.
4. Report by the chairman.
5. Report by the interim executive director.
6. Reports. A. Committee reports. 1. Budget. a. report of committee. b. financial update. 2. Personnel. a. update on executive director search. b. reconsideration of selection process for executive director and consideration and approval of revised process. c. consideration and approval of additional selection criteria for the position of executive director. 3. Managed care. B. Staff reports. 1. Program management update. 2. Report on reduction in force. 7. New business. a. presentation by state auditor. b. recommendation of the Youth Advisory Committee. c. consideration and approval of proposed rules 40 TAC Chapter 700, Subchapter &, §§700.2501-700.2505 relating to contracting with licensed residential child care providers. d. presentation



on the Child Abuse Program Evaluation Committee. 8. Executive session. The board will meet in closed executive session to discuss selection of an executive director pursuant to §551.074 of the Texas Government Code. At the conclusion of the executive session, the board will return to open session to continue with the remainder of the agenda. 9. Announcements. 10. Adjournment.

Contact: Michael Gee, P.O. Box 149030, Mail Code E-554, Austin, Texas 78714-9030.

Filed: October 5, 1995, 3:34 p.m.

TRD-9512748

### Texas Public Finance Authority

Wednesday, October 18, 1995, 10:30 a.m.

300 West 15th Street, Committee Room 5, Fifth Floor

Austin

Board Meeting

AGENDA:

1. Call to order.
2. Approval of Minutes of the September 20, 1995, Board Meeting.
3. Selection of underwriters for the negotiated sale of \$46,000,000 of tax exempt revenue bonds to be issued on behalf of the General Services Commission to finance construction of the Robert E. Johnson Building.
4. Consider requests for financing from the General Services Commission and select the method of sale for the following projects: \$7,000,000 to construct a building in Fort Worth for the Department of Mental Health and Mental Retardation; \$2,304,000 for various air quality improvement projects in state office buildings in Austin; and \$9,600,000 for new construction for the Texas Department of Health in Austin.
5. Delegation of contracting authority to the Executive Director for contracts up to \$5,000.
6. Other Business.
7. Adjourn.

Persons with disabilities, who have special communication or other needs, who are planning to attend the meeting should contact Jeanine Barron or Patricia Logan at (512) 463-5544. Requests should be made as far in advance as possible. If you need any additional information contact Jeanine Barron, (512) 463-5544, 300 West 15th Street, Suite 411, Austin, Texas 78701.

Contact: Anne L. Schwartz, 300 West 15th Street, Austin, Texas 78701, (512) 463-5544.

Filed: October 10, 1995, 10:14 a.m.

TRD-9512931

### Public Utility Commission of Texas

Tuesday, October 17, 1995, 10:00 a.m.

Harvey Hotel, 400 North Olive Street, North Ball Room

Dallas

AGENDA:

The commission will hold an open meeting for the purpose of meeting with Texas Utilities Electric Company's Service Area Advisory Group concerning the integrated resource plan pilot project in Docket Numbers 13575 (application of Texas Utilities Electric Company for approval of demand side management programs, renewable resources agreement, and requests regarding cost recovery mechanisms, and other relief) and 14570 (application of Texas Utilities Electric Company for approval of notices of intent, Low Income Demand-Side Management Program, demand-side management contracts, and other relief).

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0241.

Filed: October 9, 1995, 2:25 p.m.

TRD-9512908

Friday, October 20, 1995, 1:00 p.m.

7800 Shoal Creek Boulevard

Austin

Relay Texas Advisory Committee

AGENDA:

The Relay Texas Advisory Committee will meet at the above date and time. The Advisory Committee was appointed by the Public Utility Commission pursuant to House Bill 174, passed by the 71st Texas Legislature. At this meeting the Committee will welcome and make opening remarks; consider minutes; PUC report; and Sprint report.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0241.

Filed: October 10, 1995, 4:10 p.m.

TRD-9512961

### Railroad Commission of Texas

Wednesday, October 11, 1995, 5:00 p.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

Emergency Meeting

AGENDA:

Consideration of and possible action on containment of contaminated oil and gas waste near Winnie, Texas.

Reason for emergency: The waste is contaminated with radionuclides and must be contained prior to remediation.

Contact: Terri Eaton, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6977.

Filed: October 11, 1995, 2:21 p.m.

TRD-9513007

Tuesday, October 17, 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: October 6, 1995, 11:04 a.m.

TRD-9512789

Tuesday, October 17, 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: October 6, 1995, 11:04 a.m.

TRD-9512790

**Tuesday, October 17, 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: October 6, 1995, 11:04 a.m.

TRD-9512791

**Tuesday, October 17, 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, Procedure, and Personnel Matters.

Contact: Brian W. Schaible, P.O. Box 12967, Austin, Texas 78701, (512) 463-6710.

Filed: October 6, 1995, 11:04 a.m.

TRD-9512792

**Tuesday, October 17, 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: October 6, 1995, 11:04 a.m.

TRD-9512793

**Tuesday, October 17, 1995, 9:30 a.m.**  
1701 North Congress Avenue, First Floor  
Conference Room 1-111

Austin

**AGENDA:**

The Commission will consider various applications and other matters within the jurisdiction of the agency including oral arguments at the time specified. The Railroad

Commission of Texas may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received.

The Commission may meet in Executive Session on any items listed above as authorized by the Open Meetings Act.

Contact: Mary Ross McDonald, P.O. Box 12967, Austin, Texas 78711, (512) 463-7033.

Filed: October 6, 1995, 11:05 a.m.

TRD-9512795

**Tuesday, October 17, 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 Butler-Weddington 2A regrade contract Contingency Notice of Award. 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.E., P.O. Box 12967, Austin, Texas 78711, (512) 463-6901.

Filed: October 6, 1995, 11:05 a.m.

TRD-9512794

**Texas Rehabilitation Commission**

**Thursday, October 26, 1995, 9:00 a.m.**

Brown-Heatly Building, 4900 North Lamar  
Boulevard

Austin

Texas Rehabilitation Advisory Council

**AGENDA:**

Call to order/roll call/agenda review/announcements/TRC efforts to ensure cultural sensitivity/break/commissioner's report/update: TEA transition grant/lunch/public comment/review of relationship between TRC counselors/clients and providers of contract services/break/Supported Employment Grant update/approval of July 1995 meeting minutes/chairperson's report/TRAC staff report/adjourn.

Contact: Barbara Ritter, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4160.

Filed: October 10, 1995, 11:57 a.m.

TRD-9512940

**Friday, October 27, 1995, 9:00 a.m.**  
Brown-Heatly Building, 4900 North Lamar  
Boulevard

Austin

Texas Rehabilitation Advisory Council

**AGENDA:**

Rehabilitation services update/re-engineering update/subcommittee meetings/lunch/subcommittee reports/council discussion re: 1995 Annual Report/break/recommendations/action items/agenda items for next meeting/adjourn.

Contact: Barbara Ritter, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4160.

Filed: October 10, 1995, 11:57 a.m.

TRD-9512941

**Texas Residential Property Insurance Market Assistance Program**

**Tuesday, October 17, 1995, 9:00 a.m.**

333 Guadalupe, Room 1264, Tower I

Austin

Executive Committee

**AGENDA:**

1. Welcome and introductions  
Reading of the anti-trust statement  
Public input forum
2. Administrative overview  
Members' expenses  
Timeline/meeting dates
3. Review of House Bill 1367
4. Update on TDI Staff Committee
5. Underserved areas
6. Plan of operation

Purpose

Approval process

Subcommittees

Contact: Lyndon Anderson, 333 Guadalupe Street, Austin, Texas 78701, (512) 322-2235.

Filed: October 5, 1995, 11:42 a.m.

TRD-9512713

## Texas Senate

Thursday, October 19, 1995, 9:30 a.m.

1100 Congress Avenue, Senate Chamber  
Austin

Criminal Justice Committee

AGENDA:

To discuss the role of the Executive Director of the Texas Department of Criminal Justice.

Contact: Diana Lolley, P.O. Box 12068,  
Austin, Texas 78703, (512) 463-0115.

Filed: October 6, 1995, 4:59 p.m.

TRD-9512869

Monday, October 23, 1995, 10:00 a.m.

1100 Congress Avenue, Room E1.036

Austin

Education Committee

AGENDA:

I. Opening remarks

II. Discussion of interim charges

III. Update on implementation of Senate Bill 1-committee staff

IV. Invited testimony

V. Public testimony on Higher Education charges

VI. Adjournment

Contact: Pat Hicks, P.O. Box 12068,  
Austin, Texas 78711, (512) 463-0070.

Filed: October 10, 1995, 4:46 p.m.

TRD-9512964

Thursday, November 2, 1995, 9:30 a.m.

1000 Throckmorton

Fort Worth

Criminal Justice Committee

AGENDA:

I. Review of parole issues regarding sex offenders including available treatment and the statutory requirements as to which county the Parole Board may release an offender.

Contact: Diana Lolley, P.O. Box 12068,  
Austin, Texas 78711, (512) 463-0115.

Filed: October 6, 1995, 4:58 a.m.

TRD-9512868

Thursday, December 7, 1995, 9:30 p.m.

1100 Congress Avenue, Senate Chamber

Austin

Criminal Justice Committee

AGENDA:

I. Review the progress of state jails; review cost and effectiveness of construction and operations, including programming of Mode I and Mode II state jails and any correctional facilities operated by private entities; study of alternatives to incarceration; determine whether the prison system's budget should be tied to its efforts at reducing recidivism; review of substance abuse treatment programs.

Contact: Diana Lolley, P.O. Box 12068,  
Austin, Texas 78711, (512) 463-0345.

Filed: October 6, 1995, 4:58 p.m.

TRD-9512866

Friday, December 8, 1995, 9:30 a.m.

1100 Congress Avenue, Senate Chamber

Austin

Criminal Justice Committee

AGENDA:

I. Review the progress of state jails; review cost and effectiveness of construction and operations, including programming of Mode I and Mode II state jails and any correctional facilities operated by private entities; study of alternatives to incarceration; determine whether the prison system's budget should be tied to its efforts at reducing recidivism; review of substance abuse treatment programs.

Contact: Diana Lolley, P.O. Box 12068,  
Austin, Texas 78711, (512) 463-0115.

Filed: October 6, 1995, 4:58 p.m.

TRD-9512867

## Council on Sex Offender Treatment

Sunday, October 15, 1995, 9:30 a.m.

Sam Houston State University, Criminal Justice Center, Strecher Room 204

Huntsville

Joint Meeting of the Council on Sex Offender Treatment and the Interagency Advisory Committee

AGENDA:

I. Convene, Dr. Collier M. Cole, chairperson

II. Adoption of the minutes

III. Executive director's report

IV. Discussion and possible action on council's retreat report

V. Discussion and possible action on 1995-1996 budget

VI. Discussion and possible action on Policy and Procedures Manual

A. Standards of conduct

B. Procedures for allegations of sexual harassment

VII. Discussion and possible action on committee reports

A. Clinical Issues Committee

B. IAC proposal to NIC

VIII. Other business

IX. Public comment

X. Adjourn

Contact: Evelyn Nichols, P.O. Box 12546,  
Austin, Texas 78711, (512) 463-2323.

Filed: October 6, 1995, 9:20 a.m.

TRD-9512774

Monday, October 16, 1995, 11:45 a.m.

Sam Houston State University, Criminal Justice Center, Strecher Room 204

Huntsville

Clinical Issues Committee of the Joint Meeting of the Council on Sex Offender Treatment and the Interagency Advisory Committee

AGENDA:

I. Convene, Dr. Collier M. Cole, chairperson

II. Review and comment of applicant protest (Stilson)

III. Review and comment on RSOTP renewals

IV. Review and comment on RSOTP renewal form

V. Review and comment on ASOTP request (Baley letter)

VI. Review and comment on non-licenses juvenile sex offender service providers (Payne letter)

VII. Review and comment on treatment referrals (Sutton letter)

VIII. Public comment

IX. Adjourn

Contact: Evelyn Nichols, P.O. Box 12546,  
Austin, Texas 78711, (512) 463-2323.

Filed: October 6, 1995, 9:20 a.m.

TRD-9512775

Monday, October 16, 1995, 1:00 p.m.

Sam Houston State University, Criminal Justice Center, Strecher Room 204

Huntsville

Meeting of the Council on Sex Offender Treatment

AGENDA:

I. Convene, Dr. Collier M. Cole, chairperson

II. Discussion and possible action on Clinical Issues Committee recommendations

III. Discussion and possible action on items not completed during the joint meeting of the Council on Sex Offender Treatment and the Interagency Advisory Committee, posted for October 15, 1995

IV. Public comment

V. Adjourn

Contact: Evelyn Nichols, P.O. Box 12546, Austin, Texas 78711, (512) 463-2323.

Filed: October 6, 1995, 9:20 a.m.

TRD-9512773

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**Stephen F. Austin University**

Monday, October 16, 1995, 1:30 p.m.

1936 North Street, Room 307, Austin Building

Nacogdoches

Board of Regents

AGENDA:

I. Open session—Committee of the Whole

II. Executive session

A. Report on pending litigation

1. Bakewell v. SFA, et al

2. Parrish v. SFA, et al

3. Ginn v. SFA, et al

4. Weber v. NAH, Inc., et al

5. State of Texas v. LUDCO

6. Montalvo v. Caldwell, et al

7. Bennett v. SFA, et al

III. Open discussion of Tuesday board items

Contact: Dan Angel, P.O. Box 6078, Nacogdoches, Texas 75962-6078, (409) 468-2201.

Filed: October 11, 1995, 2:51 p.m.

TRD-9513012

Tuesday, October 17, 1995, 9:00 a.m.

1936 North Street, Room 307, Austin Building

Nacogdoches

Board of Regents

AGENDA:

I. Open session

II. Approval of minutes

III. Personnel

A. Faculty and staff appointments for 1995-1996

B. Change of status

C. Retirements

IV. Academic and student affairs

A. Underenrolled class report for Fall, 1995

B. Faculty workload report

C. Curriculum

D. Order of band uniforms

E. Sesquicentennial scholarships

F. Writing classroom designation

G. Top Ten Scholarship Program

V. Financial affairs

A. Review of 1995-1996 HEAF projects

B. Austin building renovations

C. Request for architectural services

D. SFA Theatre renovation preliminary design estimates

E. Request for architectural services for Utility Loop, Intramural Field lighting and air handlers in residence halls

F. Relocation of electrical and telecommunications cable

G. Upgrade of energy-management capabilities

H. University Wellness Center

I. Budget changes—Ratification of items less than \$50,000

J. Computer cluster

K. Network upgrade

L. PC/Apple Microcomputer Replacement Fund

VI. Reports

A. Fall 1995 enrollment report

B. 1996 admissions report

C. Faculty Senate

D. Student Government Association

Contact: Dan Angel, P.O. Box 6078, Nacogdoches, Texas 75962-6078, (409) 468-2201.

Filed: October 11, 1995, 2:51 p.m.

TRD-9513011

◆ ◆ ◆  
**The Texas A&M University System, Board of Regents**

Thursday, October 12, 1995, 9:00 a.m.

Texas A&M University, MSC, Board of Regents Meeting Room, Clark Street

College Station

System Policies Committee

AGENDA:

The purpose of the meeting is to review and possibly take action on the following poli-

cies for recommendation to the full board: implementing tenure, post-tenure review, scope and authority of policies, appointing power and terms and conditions of employment, office of the chancellor, patents, contract administration, legislative budget requests, vending machines, pay-station telephones, employee complaints and appeal procedures, real property management policy, mineral lease policy, delegations of authority on construction projects, control of fraud and fraudulent actions.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: October 6, 1995, 8:34 a.m.

TRD-9512763

Thursday, October 12, 1995, 3:00 p.m. (or upon adjournment of the meeting of the System Policies Committee) Reconvene Friday, October 13, 1995, 10:35 a.m. (or upon adjournment of the meeting of the Committee for Land and Mineral Resources)

Thursday: Board of Regents Meeting Room, Clark Street; Friday: Room 292, MSC, Joe Routt Boulevard

College Station

Board of Regents

AGENDA:

Increase project budget for University Center; initiate project for Garcia Plaza; project for the Natural Resources Informatics Lab; project to demolish Law and Puryear Halls; project for the athletics facilities renovations/additions; select Project Architect/Engineer; appropriation for design and construction of Fort Crockett facility renovation; naming of facilities at system academic institutions and service agencies; adopt resolutions, new and revised policies; approve change title of Dean of Student Services to Vice President for Student Services and promote Dr. Don Albrecht to position of Vice President of Student Services; change title of Interim Dean of Graduate School and Research to Dean of Graduate School, Research and Information Technology, and promote Dr. Vaughn Nelson to position of Dean of Graduate School, Research and Information Technology; tenure; employment contract; closing of centers and institutes; report of appropriations by the Chancellor or CEOs; appoint Dean of the College of Arts and Sciences; Deputy Chancellor for academic institutions and agencies, Vice Chancellor for Research, Planning and Continuing Education; grant Emeritus titles; confirm appointments and promotions, terminations of employment, field trip fees; budget and fiscal transfers, salary increases and new positions, gifts, grants, loans and bequests; establish centers; quasi-endowment; authorize degrees;

memorandum of agreement; oil, gas and sulphur lease auctions, easements; overview of system activities; remarks from directors of service agencies; report regarding the capital campaign.

Closed session discussions: consultation with system attorneys on pending and threatened litigation and matters recognized as attorney/client confidential and privileged; acquisition, lease, exchange, disposition and value of real estate; negotiated contracts for prospective gifts or donations; matters involving the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal, or to hear complaints or charges against an officer or employee; appointments of Vice President of Student Services, and Dean of Graduate School, Research and Information Technology; appointment of Dean of the College of Arts and Sciences; appointments of Deputy Chancellor for academic institutions and agencies, and Vice Chancellor for Resource, Planning and Continuing Education; approval of employment contract for system CEO.

Closed session conferences: including but not limited to reports from the Chancellor and General Counsel.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: October 6, 1995, 4:01 p.m.

TRD-9512849

Friday, October 13, 1995, 8:00 a.m.

Texas A&M University, MSC, Room 292, Joe Routt Boulevard

College Station

Facilities Planning and Building Committee

AGENDA:

Increase project budget for the University Center and initiate project for Garcia Plaza; Texas A&M University-Corpus Christi; initiation of project for Natural Resources Informatics Laboratory; Blacklands Research Center, Texas Agricultural Experiment Station; initiation of project to demolish Law and Puryear Halls; initiation of project for the athletic facilities renovations/additions and selection of Project Architect/Engineer for the conversion of Kyle Field to Grass and the Practice Field in Artificial Turf, appropriation for design and construction of the Fort Crockett facility renovation, Texas A&M University; status report on the proposed Southwest Regional Animal Biocontainment Facility, Texas A&M University; status reports of construction projects.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: October 6, 1995, 8:34 a.m.

TRD-9512764

Friday, October 13, 1995, 9:00 a.m. (or upon adjournment of the meeting of the Facilities Planning and Building Committee)

Texas A&M University, MSC, Room 292, Joe Routt Boulevard

College Station

Executive Committee

AGENDA:

Naming of facilities at system academic institutions and service agencies; adoption resolution honoring Dr. Kenneth R. Dirks, Texas A&M University; adopt resolution honoring the late Carl A. Erdman, Texas Engineering Experiment Station; approve change of title of Dean of Student Services to Vice President for Student Services and promote Dr. Don Albrecht to position of Vice President of Student Services, West Texas A&M University; change of title of Interim Dean of Graduate School and Research to Dean of Graduate School, Research and Information Technology, and promote Dr. Vaughn Nelson to position of Dean of Graduate School, Research and Information Technology, West Texas A&M University; appointment of Dean of the College of Arts and Sciences, Texas A&M University-Kingsville; grant Emeritus titles, confirm appointments and promotions, confirm terminations of employment; approve academic tenure; appoint Deputy Chancellor for academic institutions and agencies, The Texas A&M University System; appoint Vice Chancellor for Research, Planning and Continuing Education, The Texas A&M University System; adopt resolution for Christi Adams, Texas A&M University-Corpus Christi; adopt resolution for John H. Lindsey, Texas A&M University; adoption resolution for Bill McCord, Texas A&M University; approve employment contract, The Texas A&M University System.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: October 6, 1995, 8:34 a.m.

TRD-9512765

Friday, October 13, 1995, 9:15 a.m. (or upon adjournment of the meeting of the Executive Committee)

Texas A&M University, MSC, Room 292, Joe Routt Boulevard

College Station

Committee for Academic Campuses

AGENDA:

Establishment of the center for the study and implementation of Collaborative Learning Communities, Texas A&M University;

authorization for a Master of Science Degree, a Master of Engineering Degree, and a Doctor of Philosophy Degree in Computer Engineering, Texas A&M University; establishment of the Manning Center for professional ethics, Texas A&M University-Kingsville.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: October 6, 1995, 8:34 a.m.

TRD-9512766

Friday, October 13, 1995, 9:45 a.m. (or upon adjournment of the meeting of the Committee for Academic Campuses)

Texas A&M University, MSC, Room 292, Joe Routt Boulevard

College Station

Committee for Service Units

AGENDA:

Establishment of the center for Grazinglands and Ranch Management, Texas Agricultural Experiment Station/Texas Agricultural Extension Service; establishment of the Mary Kay O'Connor Process Safety Center, Texas Engineering Experiment Station; approve formal closing of the Center for Packaging Technology, Remote Sensing Center, Propane Gas Research Institute and Institute for Ventures in New Technology (INVENT), Texas Engineering Experiment Station; authorization to execute memorandum of agreement to establish a regional division of Texas Transportation Institute at West Texas A&M University.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: October 6, 1995, 8:35 a.m.

TRD-9512767

Friday, October 13, 1995, 10:15 a.m. (or upon adjournment of the meeting of the Committee for Service Units)

Texas A&M University, MSC, Room 292, Joe Routt Boulevard

College Station

Finance and Audit Committee

AGENDA:

Authorization to establish a Quasi-Endowment entitled "Hoblitzelle Farm Foundation," Texas A&M University; report of appropriations by the Chancellor or Chief Executive Officers, The Texas A&M University System; confirmation of field trip fees at Texas A&M University at Galveston, The Texas A&M University System; confirmation of budget and fiscal transfers, salary increases and new positions, The Texas A&M University System;

confirmation of gifts, grants, loans and bequests, The Texas A&M University System.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: October 6, 1995, 8:35 a.m.

TRD-9512768

Friday, October 13, 1995, 10:20 a.m. (or upon adjournment of the meeting of the Finance and Audit Committee)

Texas A&M University, MSC, Room 292, Joe Routh Boulevard

College Station

Committee for Academic Campuses

AGENDA:

Authorization for oil, gas and sulphur lease auctions, 177.29 acres, Washington County, Texas, The Texas A&M University System; authorization to execute a right-of-way pipeline easement for a four-inch underground natural gas pipeline on Texas A&M University property in Brazos County, The Texas A&M University System; authorization to execute right-of-way easement for a six-inch natural gas pipeline and surface basement across Texas A&M University property in Brazos County, The Texas A&M University System; authorization to execute a runway protection zone easement for the Lubbock International Airport, Lubbock County, Texas, The Texas A&M University System; authorization to execute a sanitary sewer easement across the Hensel Park/Candy Hill Tract, Brazos County, Texas, The Texas A&M University System.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: October 6, 1995, 8:35 a.m.

TRD-9512769

### Texas State Technical College System

Friday, October 13, 1995, 10:00 a.m.

Texas State Technical College System Conference Room, 3801 Campus Drive

Waco

Board of Regents Executive Committee

AGENDA:

The Board of Regents Executive Committee will discuss and act on the following agenda item: discuss wind damage at TSTC Sweetwater and authorize the award of bid to repair roof damage.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-4890.

Filed: October 9, 1995, 10:17 a.m.

TRD-9512885

### University Interscholastic League

Sunday-Monday, October 15-16, 1995, 8:00 a.m.

Hilton Hotel, 6000 Middle Fiskville Road  
Austin

Legislative Council Meeting

AGENDA:

Policy, athletic, music and academic related items will be presented by individuals to the 24-member Legislative Council and referred to standing committees. Final action will be taken by the Legislative Council on Academic and Music items on Monday and action on Athletic and Policy items on Tuesday.

The Legislative Council will consider and then take action on items listed on the agenda.

Contact: Bonnie Northcutt, 23001 Lake Austin Boulevard, Austin, Texas 78713, (512) 471-5883.

Filed: October 11, 1995, 4:32 p.m.

TRD-9513031

### Texas Water Development Board

Wednesday, October 18, 1995, 4:00 p.m.

Stephen F. Austin Building, Room 513F,  
1700 North Congress Avenue

Austin

Finance Committee

AGENDA:

1. Consider approval of the minutes of the meeting of September 20, 1995.

2. Consider a grant/loan to Starr County Water Control and Improvement District Number 2 (Starr County) for the design and construction of water and wastewater improvements to the existing system (Economically Distressed Areas Account).

3. Briefing and discussion on the results of the \$19,564,955.75 State of Texas Water Development Board Refunding Bonds, Series 1995, senior managed by Rauscher Pierce Refanes, Inc.

4. Briefing on present and future EDAP projects.

5. Briefing on the reporting status to the Finance Committee regarding Cash and Securities activity.

6. Report on the status of approved contracts.

7. May consider items on the agenda of the October 19, 1995 board meeting.

Additional non-committee board members may be present to deliberate but will not vote in the committee meeting.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: October 10, 1995, 3:39 p.m.

TRD-9512958

Thursday, October 19, 1995, 9:00 a.m.

Stephen F. Austin Building, Room 118,  
1700 North Congress Avenue

Austin

AGENDA:

The board will consider: minutes; executive, financial and committee reports; extension of loan commitments for Lower Valley Water District; financial assistance for United Water Supply Corporation, Harris County Fresh Water Supply District Number 1-A, Glenlake Water Supply Corporation, cities of Sinton and Mission, Commodore Cove Improvement District, Webb County, El Paso Water Utilities Public Service Board, and Starr County Water Control and Improvement District Number 2; reconstitution of the Innovative/Alternative Technology Pool; contracts for water research studies, flood protection planning grants, and regional water supply and/or wastewater planning grants and transfer of funds; amendments to 31 TAC Chapter 365, 363, and 375; amendments and revisions to financing agreements and bond resolutions for San Jacinto River Authority; changes to the method for establishing SRF lending rates; selection of financial advisor; contracts with Bureau of Economic Geology, Bexar-Medina-Atascosa Counties Water Control and Improvement District Number 1, Brazos River Authority, and High Plains Underground Water Conservation District Number 1 and transfer of funds; master agreement with Upper Trinity Regional Water District; and executive session to consider appointments to the San Jacinto River Authority.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: October 11, 1995, 3:54 p.m.

TRD-9513020

## Texas Water Resources Finance Authority

Thursday, October 19, 1995, 9:00 a.m.

Stephen F. Austin Building, Room 118,  
1700 North Congress Avenue

Austin

### AGENDA:

1. Consider approval of the minutes of the meeting of July 20, 1995.
2. Consider selection of a firm to act as financial advisor on all items related to financing for the Texas Water Resources Finance Authority.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: October 11, 1995, 3:54 p.m.

TRD-9513022

## Texas Workers' Compensation Insurance Facility

Wednesday, October 18, 1995, 9:45 a.m.

DoubleTree Guest Suites Hotel, 303 West 15th Street

Austin

### Governing Committee Meeting

#### AGENDA:

Approval of minutes from the August 22, 1995 Governing Committee meeting. Discussion and possible action on the 1994 management letter. Consideration and possible action on recommendations from the Appeals Committee and/or Hearings Officer. Consideration and possible action on servicing company request for reimbursement of legal fees and expenses. Discussion and possible action on Texas Workers' Compensation Insurance Fund/Texas Workers' Compensation Insurance Facility transition activities. Executive director's report. Executive session(s) regarding personnel matters and pending legal matters. Following the closed executive session(s), the Governing Committee will reconvene in open and public session and take any action as may be desirable or necessary as a result of the closed deliberations, including possible approval of settlements of potential or existing litigation, possible approval of facility transition plans and personnel policies.

Contact: Peter E. Potemkin, 8303 MoPac Expressway North, Suite 310, Austin, Texas 78759, (512) 345-1222.

Filed: October 6, 1995, 8:33 a.m.

TRD-9512762

## Texas Workers' Compensation Insurance Fund

Friday-Saturday, October 13-14, 1995,  
8:30 a.m.

500 Padre Boulevard, Ballroom A

South Padre Island

Board of Directors

### AGENDA:

Call to order; roll call; review and approval of the minutes of the September 27, 1995, board meeting; report of the Finance Committee; review and discussion of Management Consultant recommendations; public participation; executive session; action items resulting from executive session deliberations; call to order; executive session; action items resulting from executive session deliberations; announcements; adjourn.

Contact: Jeanette Ward, 100 Congress Avenue, Austin, Texas 78701, (512) 404-7142.

Filed: October 5, 1995, 1:58 p.m.

TRD-9512720

Friday, October 13, 1995, 7:00 p.m.

The Grill Room, 708 Padre Boulevard

South Padre Island

Board of Directors

### AGENDA:

The Board of Directors of the Texas Workers' Compensation Insurance Fund ("Fund") will have an informal dinner at 7:00 p.m. on Friday, October 13, 1995. The dinner is intended to be a social event, and there is no formal agenda. No formal action will be taken, but it is possible that discussions could occur which could be construed to be "deliberations" within the meaning of the Open Meetings Act; therefore, the dinner will be treated as an "open meeting" and the public will be allowed to observe. However, dinner will be provided only for the Board of Directors of the Fund and invited guests. No dinner or refreshments will be provided for members of the public who may wish to attend.

Contact: Jeanette Ward, 100 Congress Avenue, Austin, Texas 78701, (512) 404-7142.

Filed: October 5, 1995, 1:58 p.m.

TRD-9512719

## Texas Workforce Commission

Tuesday, October 17, 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 execu-

tive director; actions, if any, resulting from executive session; staff reports; internal procedures of commission appeals; consideration and action on higher level appeals in unemployment compensation cases listed on Commission Docket 42; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: October 9, 1995, 4:08 p.m.

TRD-9512914

Thursday, October 19, 1995, 9:00 a.m.

101 East 15th Street, Room 644, TEC Building

Austin

### AGENDA:

Executive Session to Discuss Qualifications and Duties of Executive Director; Actions, if any, resulting from executive session.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: October 11, 1995, 4:07 p.m.

TRD-9513017

## Regional Meetings

### Meetings Filed October 5, 1995

The Bandera County Appraisal District Board of Directors met at the Bandera County Appraisal District, 1116 Main Street, Bandera, October 10, 1995, at 4:00 p.m. Information may be obtained from P. H. Coates, IV, P.O. Box 1119, Bandera, Texas 78003, (210) 796-3039, Fax: (210) 796-3672. TRD-9512759.

The Brazos Valley Development Council Personnel Committee met at 1706 East 29th Street, Bryan, October 11, 1995, at Noon. Information may be obtained from Tom Wilkinson, Jr., P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 775-4244. TRD-9512752.

The Brazos Valley Development Council Executive Committee met at 1706 East 29th Street, Bryan, October 11, 1995, at 1:30 p.m. Information may be obtained from Tom Wilkinson, Jr., P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 775-4244. TRD-9512754.

The Cass County Appraisal District Board of Directors met at 502 North Main Street, Linden, October 10, 1995, at 7:00 p.m. Information may be obtained from Janelle Clements, P.O. Box 1150, Linden, Texas 75563, (903) 756-7545. TRD-9512760.

**The Colorado River Municipal Water District Board of Directors** met at 400 East 24th Street, Big Spring, October 11 1995, at 10:00 a.m. Information may be obtained from John W. Grant, P.O. Box 869, Big Spring, Texas 79720, (915) 267-6341. TRD-9512715.

**The Eastland County Appraisal District Board of Directors** will meet at 100 Main Street, Eastland County Courthouse, Eastland, October 18, 1995, at 1:00 p.m. Information may be obtained from Steve Thomas, P.O. Box 914, Eastland, Texas 76448, (817) 629-8597. TRD-9512714.

**The Education Service Center, Region X Board of Directors** met at 400 East Spring Valley Road, Richardson, October 11, 1995, at 12:30 p.m. Information may be obtained from Joe Farmer, 400 East Spring Valley Road, Richardson, Texas 75081, (214) 231-6301, Ext. 302. TRD-9512755.

**The El Oso Water Supply Corporation Board of Directors** met at FM 99, Karnes City, October 10, 1995, at 7:30 p.m. Information may be obtained from Judith Zimmermann, P.O. Box 309, Karnes City, Texas 78118, (210) 780-3539. TRD-9512701.

**The Grayson Appraisal District Appraisal Review Board** will meet at 205 North Travis, Sherman, October 19, 1995, at 8:30 a.m. Information may be obtained from Angie Keeton, 205 North Travis, Sherman, Texas 75090, (903) 893-9673. TRD-9512712.

**The Texas Municipal Power Agency (TMPA) Special Board Meeting for Board Retreat** met at the Sheraton Park Central Hotel, Marsalis Room-Second Floor, 12720 Merit Drive (LBJ and Coit), Dallas, October 9, 1995, at 1:00 p.m. Information may be obtained from Carl Shahady, P.O. Box 7000, Bryan, Texas 77805, (409) 873-2013. TRD-9512756.

**The Texas Municipal Power Agency (TMPA) Special Board Meeting for Board Retreat** met at the Sheraton Park Central Hotel, Marsalis Room-Second Floor, 12720 Merit Drive (LBJ and Coit), Dallas, October 10, 1995, at 9:00 a.m. Information may be obtained from Carl Shahady, P.O. Box 7000, Bryan, Texas 77805, (409) 873-2013. TRD-9512757.

**The Texas Municipal Power Agency (TMPA) Board of Directors (Annual Meeting)** met at the Sheraton Park Central Hotel, Salon D-Second Floor, 12720 Merit Drive (LBJ and Coit), Dallas, October 10, 1995, at 4:00 p.m. Information may be obtained from Carl Shahady, P.O. Box 7000, Bryan, Texas 77805, (409) 873-2013. TRD-9512758.

**The Nortex Regional Planning Commission Executive Committee** will meet at the Galaxy Center, #2 North, Suite 200, 4309

Jacksboro Highway, Wichita Falls, October 19, 1995, at Noon. Information may be obtained from Dennis Wilde, P.O. Box 5144, Wichita Falls, Texas 76307, (817) 322-5281, Fax: (817) 322-6743. TRD-9512711.

**The Sulphur-Cypress Soil and Water Conservation District #419** met at 1809 West Ferguson, Suite D, Mt. Pleasant, October 12, 1995, at 8:30 a. m. Information may be obtained from Beverly Amerson, 1809 West Ferguson, Suite D, Mt. Pleasant, Texas 75455, (903) 572-5411. TRD-9512705.

**The Taylor County Central Appraisal District Board of Directors** met at 1534 South Treadaway, Abilene, October 11, 1995, at 3:30 p.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381, Ext. 24 or Fax: (915) 676-7877.

**The West Texas Municipal Power Agency Board of Directors** will meet at 600 Municipal Drive, Distribution Conference Room, Lubbock, October 17, 1995, at Noon. Information may be obtained from J. Robert Massengale, P.O. Box 2000, 916 Texas Avenue, Lubbock, Texas 79457, (806) 767-2500. TRD-9512751.

**The Wise County Appraisal District Board of Directors** met at 206 South State Street, Decatur, October 10, 1995, at 8:00 p.m. Information may be obtained from Freddie Triplett, 206 South State Street, Decatur, Texas 76234, (817) 627-3081. TRD-9512736.

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**Meetings Filed October 6,  
1995**

**The Austin Travis County MHMR Center Human Resources Committee** met at 1700 South Lamar Boulevard, Building #3, Suite 312, Austin, October 11, 1995, at 4:30 p.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9512761.

**The Bi-County WSC** met at the Office, FM Road 2254, Pittsburg, October 10, 1995, at 7:00 p.m. Information may be obtained from Freeman Phillips, P.O. Box 848, Pittsburg, Texas 75686, (903) 856-5840. TRD-9512771.

**The Brazos Valley Development Council Solid Waste Advisory Committee** met at 1706 East 29th Street, Bryan, October 12, 1995, at 1:30 p.m. Information may be obtained from Linda McGuill, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 775-4244. TRD-9512788.

**The Coleman County Water Supply Corporation Board of Directors** met at 214 Santa Anna Avenue, Coleman, October 11,

1995, at 1:30 p.m. Information may be obtained from Davey Thweatt, 214 Santa Anna Avenue, Coleman, Texas 76834, (915) 625-2133. TRD-9512809.

**The Denton Central Appraisal District Appraisal Review Board** will meet at 3911 Morse Street, Denton, October 18-20, 1995, at 9:00 a.m. Information may be obtained from Kathy Williams, P.O. Box 2816, Denton, Texas 76202-2816, (817) 566-0904. TRD-9512807.

**The Dewitt County Appraisal District Board of Directors** will meet at 103 Bailey, Cuero, October 17, 1995, at 7:30 p.m. Information may be obtained from Kay Rath, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753. TRD-9512770.

**The Hickory Underground Water Conservation District Number 1 Board and Advisors** met at 2005 South Bridge Street, Brady, October 12, 1995, at 7:00 p.m. Information may be obtained from Lorna Moore, P.O. Box 1214, Brady, Texas 76825, (915) 597-2785. TRD-9512844.

**The Hockley County Appraisal District Board of Directors** met at 1103 Houston, Levelland, October 9, 1995, at 7:00 p.m. Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654. TRD-9512814.

**The Hunt County Appraisal District Board of Directors** met at 4801 King Street, Greenville, October 12, 1995, at Noon. Information may be obtained from Shirley Smith, P.O. Box 1339, Greenville, Texas 75403, (903) 454-3510. TRD-9512780.

**The Kempner Water Supply Corporation Board of Directors** met at Highway 190, Kempner, October 12, 1995, at 6:30 p.m. Information may be obtained from Donald W. Guthrie, P.O. Box 103, Kempner, Texas 76539, (512) 932-3701. TRD-9512782.

**The Lower Colorado River Authority Planning and Public Policy Committee** met at 3701 Lake Austin Boulevard, Hancock Building, Board Conference Room, Austin, October 10, 1995, at 10:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, 3701 Lake Austin Boulevard, Austin, Texas 78767, (512) 473-3287. TRD-9512786.

**The Lower Colorado River Authority Investment Subcommittee of the Board of Trustees for LCRA's benefit plans** met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, October 10, 1995, at 1:00 p.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, 3701 Lake Austin Boulevard, Austin, Texas 78767, (512) 473-4043. TRD-9512787.

**The Lower Colorado River Authority Energy Operations Committee** met at Thomas C. Ferguson Power Plant, Multi-purpose Room, located on Ferguson Road at the



edge of Lake LBJ (approximately seven miles west of Marble Falls by way of RR 2147), Llano, October 11, 1995, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, 3701 Lake Austin Boulevard, Austin, Texas 78767, (512) 473-3287. TRD-9512785.

**The Lower Rio Grande Valley Tech Prep Associate Degree Consortium Board of Directors** met in Room N-217, North Building, Texas Southmost College, 80 Fort Brown, Brownsville, October 11, 1995, at Noon. Information may be obtained from Pat Bubb, Tech Prep of the Rio Grande Valley, Inc., TSTC Conference Center, Harlingen, Texas 78550-3697, (210) 425-0729. TRD-9512784.

**The Montague County Tax Appraisal District Board of Directors** met at 312 Rusk Street, Montague, October 11, 1995, at 5:00 p.m. Information may be obtained from Wanda Russell, 312 Rusk Street, Montague, Texas 76251, (817) 894-6011. TRD-9512845.

**The Sabine Valley Center Board of Trustees** met at the Administration Building, 107 Woodbine Place, Longview, October 12, 1995, at 7:00 p.m. Information may be obtained from Inman White or Laverne Moore, P.O. Box 6800, Longview, Texas 75608, (903) 237-2362. TRD-9512873.

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**Meetings Filed October 9, 1995**

**The Barton Springs/Edwards Aquifer Conservation District Board of Directors (Regular Meeting)** met at 1124A Regal Row, Austin, October 12, 1995, at 5:30 p.m. Information may be obtained from Bill E. Couch, 1124A Regal Row, Austin, Texas 78748, (512) 282-8441 or Fax: (512) 282-7016. TRD-9512886.

**The Brazos River Authority Board of Directors** met at 4400 Cobbs Drive, Waco, October 16, 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-9512904.

**The Central Plains Center for MHMR and SA (Emergency Meeting.) Board of Trustees** met at 208 South Columbia, Tommy Lewis Industries, Plainview, October 10, 1995, at 6:00 p.m. (Reason for emergency: Gail Davis, Executive Director, resigned her position effective October 7, 1995.) Information may be obtained from Janet L. Dollins, 2700 Yonkers, Plainview, Texas 79072, (806) 293-2406. TRD-9512897.

**The Deep East Texas Council of Governments Board of Directors and Grants Application Review Committee** will meet at the Iris and Anne Howard Civic Center, Court

Street, Newton, October 23, 1995, at 11:00 a.m. Information may be obtained from Walter G. Diggles, 274 East Lamar Street, Jasper, Texas 75951, (409) 384-5704. TRD-9512895.

**The Northeast Texas Rural Rail Transportation District Board** met at 100 Jefferson Street, Sulphur Springs, October 12, 1995, at 4:00 p.m. Information may be obtained from Sue Ann Harting, P.O. Box 306, Commerce, Texas 75428-0306, (903) 450-0140. TRD-9512894.

**The Sabine Valley Center Finance Committee** met at 107 Woodbine Place, Administration Building, Judson Road, Longview, October 12, 1995, at 6:30 p.m. Information may be obtained from Mack Blackwell or LaVerne Moore, P.O. Box 6800, Longview, Texas 75608, (903) 237-2362. TRD-9512876.

**The San Antonio River Authority Audit Committee** will meet at 100 East Guenther Street, Boardroom, San Antonio, October 18, 1995, at 1:30 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0027, (210) 227-1373. TRD-9512893.

**The San Antonio River Authority Board of Directors** will meet at 100 East Guenther Street, Boardroom, San Antonio, October 18, 1995, at 2:00 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0027, (210) 227-1373. TRD-9512892.

**The Southeast Texas Regional Planning Commission Executive Committee** will meet at 801 Main, Beaumont City Council Chambers, Beaumont, October 18, 1995, at 7:00 p.m. Information may be obtained from Jackie Vice Solis, P.O. Drawer 1387, Nederland, Texas 77627, (409) 727-2384. TRD-9512907.

**The Trinity River Authority of Texas Resources Development Committee** met at 5300 South Collins Street, Arlington, October 13, 1995, at 10:30 a.m. Information may be obtained from James L. Murphy, P.O. Box 60, Arlington, Texas 76004, (817) 467-4343. TRD-9512909.

**The Trinity River Authority of Texas Legal Committee** met at 5300 South Collins Street, Arlington, October 16, 1995, at 10:30 a.m. Information may be obtained from James L. Murphy, P.O. Box 60, Arlington, Texas 76004, (817) 467-4343. TRD-9512896.

**The West Central Texas Council of Governments Criminal Justice Advisory Committee** will meet at 1125 E.N. Tenth Street, Abilene, October 20, 1995, at 11:00 a.m. Information may be obtained from Les Wilkerson, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544. TRD-9512917.

**Meetings Filed October 10, 1995**

**The Austin-Travis County MHMR Center Board of Trustees (Community Quarterly Forum)** will meet at 1430 Collier Street, Board Room, October 17, 1995, at 5:45 p.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9512947.

**The Bell County Tax Appraisal District Board of Directors** will meet at 411 East Central Avenue, Belton, October 18, 1995, at 7:00 p.m. Information may be obtained from Mike Watson, P.O. Box 390, Belton, Texas 76513, (817) 939-5841. TRD-9512965.

**The Golden Crescent Regional Planning Commission Board of Directors** will meet at 568 Big Bend Drive, Regional Airport, Building 102, Victoria, October 18, 1995, at 5:00 p.m. Information may be obtained from Rhonda G. Stastny, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587. TRD-9512946.

**The Jones County Appraisal District Board of Directors** will meet at 1137 East Court Plaza, Anson, October 19, 1995, at 8:30 a.m. Information may be obtained from Susan Holloway, P.O. Box 348, Anson, Texas 79501, (915) 823-2422. TRD-9512934.

**The Limestone County Appraisal District Board of Directors** will meet at 200 State Street, LCAD Office, Ground Floor, County Courthouse, Groesbeck, October 17, 1995, at 1:30 p.m. Information may be obtained from Karen Wietzikoski, P.O. Drawer 831, Groesbeck, Texas 76642, (817) 729-3009. TRD-9512944.

**The Lower Neches Valley Authority Board of Directors** will meet at LNVA Sam Rayburn Conference Center, Jasper, October 17, 1995, at 10:30 a.m. Information may be obtained from A. T. Hebert, Jr., P.O. Drawer 3464, Beaumont, Texas 77704, (409) 892-4011. TRD-9512959.

**The Mills County Appraisal District Board of Directors** will meet at the Mills County Courthouse, Jury Room-Fisher Street, Goldthwaite, October 17, 1995, at 6:30 p.m. Information may be obtained from Bill Presley, P.O. Box 565, Goldthwaite, Texas 76844, (915) 648-2253. TRD-9512928.

**The Nortex Regional Planning Commission North Texas Private Industry Council** will meet at 4309 Jacksboro Highway, Suite 200, Wichita Falls, October 25, 1995, at 12:15 p.m. Information may be obtained from Kelly Couch, 3917 Texas Street, Vernon, Texas 76384, (817) 322-5281. TRD-9512939.

**The Rio Grande Council of Governments (Emergency Revised Agenda.)** Board of Directors will meet at the Rio Grande Council of Governments, 1100 North Stanton, Fourth Floor, El Paso, October 20, 1995, at 1:00 p.m. Information may be obtained from Lidia Flynn, 1100 North Stanton, Suite 610, El Paso, Texas 79902, (915) 533-0098. TRD-9512945.

**The Trinity River Authority of Texas Administration Committee** will meet at 5300 South Collins Street, Arlington, October 17, 1995, at 10:30 a.m. Information may be obtained from James L. Murphy, P.O. Box 60, Arlington, Texas 76004, (817) 467-4343. TRD-9512942.

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**Meetings Filed October 11,  
1995**

**The Cash Water Supply Corporation Board of Directors** met at the Corporation Office, FM 1564, at Highway 34, Greenville, October 16, 1995, at 7:00 p.m. Information may be obtained from Eddy W. Daniei, P.O. Box 8129, Greenville, Texas 75404-8129, (903) 883-2695. TRD-9513016.

**The Central Texas MHMR Center Board of Trustees** met at 3401 Milam Drive, Brownwood, October 16, 1995, at 6:15 p.m. Information may be obtained from Saul Pullman, 408 Mulberry Drive, Brownwood, Texas, (915) 646-9574, Ext. 102. TRD-9512975.

**The Education Service Center, Region XII Board of Directors** will meet at 2101 West Loop 340, Waco, October 19, 1995, at 10:00 a.m. Information may be obtained from Harry J. Beavers or Vivian L. McCoy, P.O. Box 23409, Waco, Texas 76702-3409, (817) 666-0707. TRD-9513000.

**The Edwards Aquifer Authority Board** met in the Board Room, San Antonio River Authority, 100 East Guenther, San Antonio, October 14, 1995, at 10:00 a.m. Information may be obtained from Mike Beldon, P.O. Box 15830, San Antonio, Texas 78212, (210) 222-2204. TRD-9512966.

**The Guadalupe-Blanco River Authority Retirement and Benefit Committee** will meet at the Lake Canyon Yacht Club, HC4, Box 178, Yard Arm off Mt. Lookout Road, Canyon Lake, October 17, 1995, at 1:00 p.m. Information may be obtained from W. E. West, Jr., P.O. Box 271, Seguin, Texas 78156-0271, (210) 379-5822. TRD-9513002.

**The Guadalupe-Blanco River Authority Policy Committee** will meet at the Lake Canyon Yacht Club, HC4, Box 178, Yard Arm off Mt. Lookout Road, Canyon Lake, October 17, 1995, at 3:00 p.m. Information may be obtained from W. E. West, Jr., P.O. Box 271, Seguin, Texas 78156-0271, (210) 379-5822. TRD-9513003.

**The Guadalupe-Blanco River Authority Legal Committee** will meet at the Lake Canyon Yacht Club, HC4, Box 178, Yard Arm off Mt. Lookout Road, Canyon Lake, October 18, 1995, at 8:00 a.m. Information may be obtained from W. E. West, Jr., P.O. Box 271, Seguin, Texas 78156-0271, (210) 379-5822. TRD-9513004.

**The Guadalupe-Blanco River Authority Board of Directors** will meet at the Lake Canyon Yacht Club, HC4, Box 178, Yard Arm off Mt. Lookout Road, Canyon Lake, October 18, 1995, at 9:00 a.m. Information may be obtained from W. E. West, Jr., P.O. Box 271, Seguin, Texas 78156-0271, (210) 379-5822. TRD-9513005.

**The Lamar County Appraisal District Board of Directors** will meet at 521 Bonham, Paris, October 17, 1995, at 4:00 p.m. Information may be obtained from Joe A. Welch, P.O. Box 400, Paris, Texas 75460, (903) 785-7822. TRD-9512995.

**The Liberty County Central Appraisal District Appraisal Review Board** will meet at 315 Main Street, Liberty, October 19, 1995, at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575, (409) 336-5722. TRD-9513021.

**The North Central Texas Council of Governments Executive Board** will meet at the Star Brand Ranch Executive Retreat, US Highway 175, Kaufman, October 20, 1995, at 1:30 p.m. Information may be obtained from Edwina J. Shires, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 640-3300. TRD-9512967.

**The Trinity River Authority of Texas Utility Services Committee** will meet at 5300 South Collins Street, Arlington, October 18, 1995, at 10:00 a.m. Information may be obtained from James L. Murphy, P.O. Box 60, Arlington, Texas 76004, (817) 467-4343. TRD-9512999.

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**Meetings Filed October 12,  
1995**

**The Atascosa County Appraisal District Board of Directors** will meet at Fourth and Avenue J, Poteet, October 19, 1995, at 1:30 p.m. Information may be obtained from Vernon A. Warren, P.O. Box 139, Poteet, Texas 78065, (210) 742-3591. TRD-9513036.

**The Houston-Galveston Area Council Projects Review Committee** will meet at 3555 Timmons Lane, Conference Room A, Second Floor, Houston, October 17, 1995, at 9:00 a.m. Information may be obtained from Rowena Ballas, P.O. Box 22777, Houston, Texas 77227, (713) 627-3200. TRD-9513034.

**The Houston-Galveston Area Council Board of Directors** will meet at 3555 Timmons Lane, Conference Room A, Second Floor, Houston, October 17, 1995, at 10:00 a.m. Information may be obtained from Cynthia Marquez, P.O. Box 22777, Houston, Texas 77227, (713) 627-3200. TRD-9513033.

**The Jack County Appraisal District Board of Directors** met at 210 North Church Street, Jacksboro, October 16, 1995, at 7:00 p.m. Information may be obtained from Gary L. Zeitler or Vicky L. Easter, P.O. Box 958, Jacksboro, Texas 76458, (817) 567-6301. TRD-9513038.

# IN ADDITION

The **Texas Register** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Title 79, Texas Civil Statutes, Article 1.04, as amended (Texas Civil Statutes, Article 5069-1.04).

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer <sup>(1)</sup>/Agricultural/ Commercial <sup>(2)</sup> thru \$250,000</u>	<u>Commercial<sup>(2)</sup> over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	10/09/95-10/15/95	18.00%	18.00%

<sup>(1)</sup>Credit for personal, family or household use. <sup>(2)</sup>Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on October 2, 1995.

TRD-9512632      Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner

Filed: October 4, 1995

## Texas Department of Criminal Justice Request for Professional Services

**Invitation:** The Texas Department of Criminal Justice (TDCJ) invites offers to provide professional Mediation Services. In order to enhance existing dispute resolution practices, TDCJ shall offer Independent Mediation to employees recommended for dismissal or who have been dismissed. These mediations should be designed to be conducted by experienced, professional Mediators with the expertise appropriate for each individual case. It will be most cost effective for the Agency to use an Alternative Dispute Resolution organization, that can assist the Agency in obtaining the Mediator best suited for each specific case. The organization should possess actual experience writing and/or reviewing the Internal policies and procedures governing the requesting of mediation, assisting in determining the allocation of the costs of mediation, and in actually training, selecting, and assigning Mediators and in evaluating their performance. It should regularly provide Neutrals to conduct the mediations of employment disputes, both before and after they have been filed in the

federal and state courts. This will ensure that the system's design and operation function as intended, and will be in full compliance with the appropriate federal and state laws. Since many of the disputes anticipated will involve federally protected rights, the required expert assistance must include reviewing the proposed program to ensure full compliance with all federal, constitutional, and statutory requirements, in addition to those mandated by the Texas Legislature.

**Scope of Services.** Services to be provided shall comply with applicable federal law, regulations, and guidelines as well as the following.

1. Provide mediation as requested for TDCJ employees.
2. Provide mediation services in counties where the employee is currently assigned.
3. Provide consultation to the TDCJ concerning mediation and its processes.
4. Provide monthly activity reports to the TDCJ.
5. Provide assistance in the development of record keeping systems maintaining all necessary logs, records, and statistics in accordance with applicable federal and state regulations and appropriate guidelines. Make such records available to TDCJ's authorized representative within 48 hours of request.
6. Provide documentation of mediation results to the TDCJ within 24 hours of completion of the mediation.

**Payment for Services.** Payments will be made within 30 days from the date of receipt of invoice. Late payments

charges shall be in accordance with Texas Government Code, §2251.021.

**Insurance and Indemnification.** Successful proposer will be required to provide liability insurance coverage for its work under a resulting contract and will additionally be required to agree to indemnify TDCJ and its officers and employees for any and all claims and liability due to the negligent acts of itself, its agents or employees.

**Contract Term.** Any resulting contract will commence on January 1, 1996, and terminate on December 31, 1996, unless sooner terminated in accordance with applicable provisions of the contract.

**Further Information.** Further information may be obtained by contacting Yolanda Harrell, Program Administrator, Labor Relations, 2503 Lake Road, Huntsville, Texas 77342-0099, (409) 293-3184.

**Proposal Submission.** Sealed Proposals must be submitted to Yolanda Harrell, Program Administrator, Labor Relations at the previously listed address or in person at the same address not later than 5:00 p.m. on Friday, November 3, 1995.

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

TRD-9512875 Carl Reynolds  
General Counsel  
Texas Department of Criminal Justice

Filed: October 9, 1995

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**Request for Proposals**

Pursuant to authority granted by Texas Code of Criminal Procedure, Article 42.18, §25, the Texas Department of Criminal Justice (TDCJ) hereby requests all interested parties to submit a proposal for the location(s) (in the State of Texas), operation, and management of Community Residential Facilities which shall house Parole and Mandatory Supervision Sex Offenders. Releasees who have a documented history of convictions for sex offenses and whose treatment needs are more specialized than other offender populations are considered to be sex offenders. The TDCJ is anticipating the need for 200 parole and mandatory sex offender beds. The Community Residential facilities shall include associated programs focusing on employment, treatment, and placement services for convicted sex offenders under the jurisdiction of the TDCJ pursuant to Article 42.18, §§8(g), 14(a), and 25 of the Texas Code of Criminal Procedure. Applicants shall include in their proposals various options regarding types of and levels of services, number of beds, and number of locations. The TDCJ reserves the right to make multiple awards to various public and/or private vendors and geographical locations throughout the State of Texas; or award the total number of available beds to one location in the State of Texas and one public or private vendor. The TDCJ reserves the right to make awards based upon need and geographical area. The TDCJ's determination regarding how the beds shall be awarded shall be based on the needs of the TDCJ. All Proposers shall provide for facilities and stand alone services. The Contracts as well as any extensions shall be subject to appropriations for such purpose by the Texas Legislature.

A Technical Assistance Workshop will be held on October 27, 1995, at 8100 Cameron Road, Building B, Suite 600, Austin, beginning at 9:30 a.m. The Technical Assistance Workshop will be devoted to the discussion of Request for

Proposal requirements. The intent is that all applicants receive the same information and assistance. The Division requests that interested vendors submit questions in writing prior to the convening of the workshop to: Marsh McLane, Director, Specialized Supervision, TDCJ-Parole Division, 8610 Shoal Creek Boulevard, Austin, Texas 78757, Fax: (512) 406-5765.

A request for a copy of the Request for Proposal may be obtained by calling (512) 406-5750. Questions relating to the RFP should be addressed in writing to Marsha McLane, Director, Specialized Supervision (address previously noted). Questions relating to the workshop may be directed via telephone (512) 406-5750. Sealed Proposals will be received by the Texas Department of Criminal Justice until 5:00 p.m., Friday, December 22, 1995. Such proposals must be typed or printed on standard (8 1/2 inch by 11 inch) paper, pages numbered, a table of contents included in the required format and submitted to: Marsha McLane, Section Director, Specialized Supervision, Texas Department of Criminal Justice, Parole Division, 8610 Shoal Creek Boulevard, Austin, Texas 78757, Attention: "Community Residential Facilities for Housing Parole and Mandatory Sex Offender Releasees."

The Texas Department of Criminal Justice reserves the right to reject any and all proposals or portions of proposals received in response to this request for proposal. Submission of proposal has the effect of waiving proprietary rights or confidentiality. TDCJ reserves the right to use for its benefit, ideas contained in the proposals submitted. TDCJ is not liable for any costs incurred by applicants or prospective applicants in the preparation, formulation, or presentation of proposals.

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

TRD-9512874 Carl Reynolds  
General Counsel  
Texas Department of Criminal Justice

Filed: October 9, 1995

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**East Texas Council of Governments  
Software Maintenance Invitation for  
Proposals**

The East Texas Council of Governments is accepting proposals for Software Maintenance for its Prime 4050 Computer.

Deadline for receipt of proposals is 5:00 p.m., Monday, October 23, 1995. The proposals will be reviewed by staff and one selected by the ETCOG Executive Committee at their November 2, 1995 meeting. The Executive Committee reserves the right to reject any or all bids. HUB firms are encouraged to submit a proposal.

Firms interested in submitting a proposal should request an RFP package for detailed information on the services requested and the proposal process. Contact Michael Cook at the East Texas Council of Governments, 3800 Stone Road, Kilgore, Texas, 75662, (903) 984-8641.

Issued in Kilgore, Texas, on October 5, 1995.

9512724 Glynn Knight  
Executive Director  
East Texas Council of Governments

Filed: October 5, 1995

## Texas Education Agency

### Request for Applications Concerning Texas School Assistance Program

Filing Authority. Request for Applications (RFA) #701-95-045 is authorized under the Texas Education Code, Subchapter H, School Facilities Assistance Program.

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications from all eligible Texas public school districts and/or education service centers (ESCs) representing those districts.

Description. The purpose of this project is to provide financial assistance to eligible school districts for acquiring, constructing or improving instructional facilities. A district or an ESC may submit materials describing programs, provide cost and financial information to support the district's eligibility, and identify the process of work, both in quality and quantity, and its value to the educational process.

Dates of Project. Applicants should plan for a starting date of no earlier than May 30, 1995, and an ending date of no later than December 31, 1998.

Project Amount. Districts will be selected to receive a maximum aggregate amount of \$170 million during the contract period. Subsequent project funding will be based on legislative appropriations.

Selection Criteria. Applications will be selected based on the eligibility by legal formulas of each district to carry out all requirements contained in the RFA. Specific criteria required by law include a district's wealth, total effective tax rate, debt tax rate and program description. Districts shall be prioritized according to statute by the percentage of project cost for which the state will grant funds. Eligible districts shall be selected by priority until all funds are committed. Grants shall be made only to applicants that address all requirements in the RFA.

The TEA is not obligated to execute a resulting contract, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs incurred before a contract is executed. The issuance of this RFA does not obligate TEA to award a contract or pay any costs incurred in preparing an application.

Requesting the Application. A complete copy of RFA #701-95-045 may be obtained by writing the: Division of State Funding, School Facilities, Room 6-120, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, or by calling (512) 463-9238. Please refer to the RFA number in your request.

Further Information. For clarifying information about the RFA, contact Otto Grove, Division of State Funding and School Facilities, Texas Education Agency, (512) 463-9238; fax: (512) 463-9233 or E-Mail: OTTO GROVE @ MAIL 3. TEA. TEXAS. GOV.

Deadline for Receipt of Application. Applications must be received in the Texas Education Agency, Room 6-120 by 5:00 p.m., Central Standard Time, Thursday, November 30, 1995, to be considered.

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

TRD-9512884

Cris Cloudt  
Associate Commissioner for Policy Planning  
and Research  
Texas Education Agency

Filed: October 9, 1995

## Texas Ethics Commission

### List of Late 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 Jim Mathieson at (512) 463-5800.

Deadline: Personal Financial Statement, Due June 30, 1995

The Honorable Teri Mata-Pistokaches, UT Pan American, Department of Communications, 1201 West University Drive, Edinburg, Texas 78539, and The Honorable Juan Magallanes, Magallanes and Sokat, P.O. Box 4901, Brownsville, Texas 78520

Deadline: Monthly PAC Report, Due July 5, 1995

The Honorable G. Daniel Mena, El Paso County Democratic Party (CEC), 400 East Overland, El Paso, Texas 79901; Rhonda G. Evans, Texas Education PAC, 5407 Oak Haven, Houston, Texas 78230; Octavino Rodriguez, Webb County Deputy Sheriffs PAC, P.O. Box 2903, Laredo, Texas 78044; LeRoy Bruner, International Longshoremen's Association Local #24, 7811 Harrisburg, Houston, Texas 77012; and Patricia N. Woodard, Vocational PAC, 11202 Janet Lee, San Antonio, Texas 78230.

Issued in Austin, Texas, on October 2, 1995.

TRD-9512854

Lucia Dodson  
Executive Assistant  
Texas Ethics Commission

Filed: October 6, 1995

## Texas Commission on Fire Protection

### Correction of Error

The Texas Commission on Fire Protection proposed amendment to §§439.5, 439.7, 439.9, 439.15, and 439.17, concerning examinations for fire protection personnel certification. The rules appeared in the September 8, 1995, issue of the *Texas Register* (20 TexReg 7030).

Due to publication a change in language showing "iv." replacing "vi." was omitted in the published text.

Section 439.15(3)(A)(iv)[(vi)] should read as follows: (iv)[(vi)] *Fire Prevention Personnel*;

## The General Services Commission

### Correction of Error

The General Services Commission adopted new §§111.11-111.23, concerning utilization of historically underutilized businesses ("HUBs"), based upon the results of the Texas Disparity Study. The rules appeared in the September 19, 1995, issue of the *Texas Register* (20 TexReg 7473).

In §111.23(a)(1) the following error was submitted for publication: "(1) for heavy construction other than is building construction. \$17,000,000;" it should have read "(1) for heavy construction other than building construction. \$17,000,000;"

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## Governor's Office of Budget and Planning

### Consultant Contract Award

The Governor's Office of Budget and Planning furnishes this notice of a consulting services contract award to prepare and negotiate with the federal government, under the provisions of OMB Circular A-87, the State of Texas' consolidated statewide cost allocation plan for the fiscal year ending August 31, 1997, and to prepare a full cost recovery plan under the provisions of state law. The notice for request for proposals was published in the September 12, 1995, issue of the *Texas Register* (20 TexReg 7222).

**Description of Services.** The contractor will develop a cost allocation plan that enables eligible state agencies to recover the maximum indirect costs possible from federal programs and ascertain indirect costs from state funds to provide state services.

**Effective Date and Value of Contract.** The contract will be effective from the date of signing on or about October 23, 1995, until August 31, 1996. The total cost of the contract is \$30,000.

**Name of Contractor.** The contract has been awarded to David M. Griffith and Associates, Ltd., 13601 Preston Road, Suite 400W, Dallas, Texas 75240.

Persons who have questions concerning this award may contact Tom Adams, Governor's Budget and Planning Office, P.O. Box 12428, Austin, Texas 78711, (512) 463-1771.

Issued in Austin, Texas, on October 6, 1995.

TRD-8512776        Albert Hawkins  
Director  
Governor's Budget and Planning Office

Filed: October 6, 1995

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## Texas Department of Health

### Correction of Errors

The Texas Department of Health adopted amendments to §289.116 and §289.122 and new §289.230. 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 6670, §289.230(c)(1) and (2) there are references to §289.112 of this title. The correct site should be §289.122.

Page 6670, §289.230(e), the sentence "Except for paragraph (1)(I)(ii) and (iii) of this subsection, these requirements are effective October 1, 1995," should be deleted.

Page 6670, §289.230(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).

Page 6670, §289.230(e)(1)(H), the fifth line of the subparagraph reads "shall be >/- kVp/100..." The statement should read "shall be ≥k Vp/100"

Page 6670, 289.230(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, 289.230(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, §289.230(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, §289.230(o)(1)(A)(IV), add the word "and" after "lactating;"

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## Designation of Sites Serving Medically Underserved Populations

The Department of Health is required under Texas Civil Statutes, Article 4495b, §3.06, to designate sites serving medically underserved populations. In addition, the department is required to publish notice of its designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has designated the following as sites serving medically underserved populations: Southlawn Clinic, located at 4400 South Washington, Amarillo (Potter County), Texas; and West Hills Community Clinic, located at 407 South Western Street, Amarillo (Potter County), Texas. Designation is based on proven eligibility as a site serving a disproportionate number of clients eligible for federal, state or locally funded health care programs.

Oral and written comments on this designation may be directed to Demetria Montgomery, M.D., Chief, Bureau of Community Oriented Primary Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756; (512) 458-7771. Comments will be accepted for 30 days from the date of this notice.

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

TRD-9512960

Susan K. Steeg  
General Counsel  
Texas Department of Health

Filed: October 10, 1995

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**Request for Proposals—Coyote/Gray Fox  
Oral Rabies Vaccine Delivery**

**Purpose.** The Texas Department of Health (department), Zoonosis Control Division (ZCD) is requesting proposals for the aerial delivery of approximately 2.5 million vaccine/bait units over 39,652 square miles in South and Central Southwest Texas in an attempt to control and eventually eradicate canine and gray fox rabies from the state.

**Description.** The department is seeking a contractor to distribute vaccine/bait units in specified areas of Texas for the control of rabies. The bait delivery will cover approximately 39,652 square miles and will last no longer than seven weeks. The department will use the competitive procurement process to select a contractor to deliver these vaccine/bait units.

**Eligible Applicants.** Eligible offerors include any applicant capable of meeting the performance requirements.

**Limitations.** Funding for the selected proposal will depend upon available state appropriations. The department reserves the right to reject any and all offers received in response to the RFP and cancel the RFP if it is deemed in the best interest of the department.

**Term.** The tentative effective date for the contract is January 2, 1996.

**Deadlines.** All proposals to be considered for funding through this RFP must be received by 5:00 p.m., central standard time, October 31, 1995, at the Texas Department of Health, Zoonosis Control Division, Attention: M. G. Fearneyhough, D.V.M., 1100 West 49th Street, Austin, Texas 78756, (512) 458-7255. Proposals received after this deadline will not be accepted.

**Evaluation and Selection.** An internal evaluation selection panel designated by (ZCD) will rank and score the proposals. The evaluation of the RFP will be based upon the following criteria: ability to meet Performance Requirements, ability to meet specified time lines, cost per flight hour and evidence that the applicant has the capacity and resources to accomplish the project.

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

TRD-9512898

Susan K. Steeg  
General Counsel  
Texas Department of Health

Filed: October 9, 1995

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## Texas Department of Housing and Community Affairs

### Notice of Public Hearing—Texas Department of Housing and Community Affairs Single Family Mortgage Revenue Bonds 1995 Series A and B

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Department") at 811 Barton Springs Road, Suite 100, Austin, Texas, at 10:00 a.m. on Tuesday, October 31, 1995, with respect to an issue of single family mortgage revenue bonds (the "Bonds") to be issued in one or more series in an aggregate face amount of not more than \$95,760,000 by the Department, the proceeds of which will be used to finance an estimated 1500 single family residential mortgage loans made to eligible very low, low and moderate income first-time home buyers for the purchase of homes located within the States of Texas. Approximately \$10 million of the funds are being made available a result of the refunding of the Department's Single-Family Mortgage Revenue Refunding Tax-Exempt Commercial Paper Notes, Series B. For purposes of the Department's mortgage loan finance programs, eligible borrowers generally will include individuals and families whose family income does not exceed, (i) for families of three or more persons, 115% (140% in certain targeted areas) of the area median income; and (ii) for individuals and families of two persons, 100% (120% in certain targeted areas) of the area median income. The Department anticipates setting aside approximately 40% of the funds made available for borrowers of low and very low income for approximately one year. In addition, substantially all of the borrowers under the programs will be required to be persons who have not owned a principal residence during the proceeding three years. Further, residences financed with loans under the programs will be subject to certain other limitations, including limits on the purchase prices of the residences being acquired. All the limitations described in this paragraph are subject to revision and adjustment from time to time by the Department pursuant to applicable federal law and Department policy.

All interested parties are invited to attend such public hearing to express their views with respect to Department's mortgage loan finance program and the issuance of the Bonds. Questions or requests for additional information may be directed to Wiley Hopkins at the Texas Department of Housing and Community Affairs, 811 Barton Springs Road, Suite 100, Austin, Texas 78704, (512) 475-2116.

Persons who intend to appear at the hearing and express their views are invited to contact Wiley Hopkins in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Wiley Hopkins prior to the date scheduled for the hearing.

This notice is published and the above-described hearing is to be held in satisfaction of the requirements of §147(f) of the Internal Revenue Code of 1986, as amended, regarding the public approval prerequisite to the exemption from federal income taxation of the interest on the Bonds.

Individuals who require auxiliary aids for this meeting should contact Aurora Carvajal, ADA Responsible Employee, at (512) 475-3822, of Relay Texas at 1-800-735-

2989 at least two days before the meeting so that appropriate arrangements can be made.

Issued in Austin, Texas, on October 11, 1995.

TRD-9512994      Larry Paul Manley  
Executive Director  
Texas Department of Housing and  
Community Affairs

Filed: October 11, 1995

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**Texas Department of Information  
Resources**

**Public Notice of Open Solicitation**

The Department of Information Resources (DIR) is soliciting offers from qualified information systems vendors to administer its Cooperative Contracts program pursuant to Texas Government Code, Chapter 2157, Subchapter B.

Background. DIR's Cooperative Contracts program helps state agencies and local governments acquire information resource technologies at low cost by combining the purchasing power of those entities to achieve substantial pricing discounts. The current process normally occurs in this manner: DIR negotiates with a supplier (usually the equipment manufacturer or the software publisher) for deeply-discounted wholesale prices after having determined that an appropriate level of demand for an item exists within the state. DIR then issues a blanket purchase order to an approved reseller or retailer that has agreed to provide the item to the state at the lowest markup. DIR offers the item at the discounted price to state agencies and local governments. An agency or local government wishing to make a purchase submits a completed order form to DIR, usually by fax. There are no minimum quantity requirements. DIR processes the order and the retailer ships the merchandise directly to the purchasing agency. The retailer bills DIR for the goods purchased, and DIR invoices the purchasing agency.

DIR is obligated to pay the retailer or supplier for all items received and accepted by participants in the program; however, due to budget constraints, DIR is generally unable to make those payments before it has received payments from the participants. DIR receives no general revenue for operation of the program, and has no source of funds from which it can draw to cover the cash-flow problems which naturally develop. The program has been operating with no working capital. The program is funded entirely through nominal per-transaction charges calculated to recover the cost of operations.

Fiscal year 1994 represented the first full year of operation for the program. In that period, the program processed more than 10,000 orders representing approximately \$27 million in sales. In fiscal year 1995 the program processed approximately 16,000 orders representing approximately \$50 million in sales. With no working capital, cash-flow problems often make it impossible to pay vendors in a timely manner. As a result, vendors have become less willing to offer their best pricing and deliver merchandise in a timely manner.

Invitation to Negotiate. The Contractor will, under a contract to be negotiated with DIR, be required to perform the following tasks, among others:

1) Assist DIR in negotiating and establishing contract with suppliers of computer equipment and software, including

but not limited to manufacturers, publishers or approved resellers.

2) Receive and process orders for computer equipment and software from state agencies and local governments (customers).

3) Submit orders to suppliers.

4) Ensure delivery of goods directly to customers without charge anywhere within the state of Texas.

5) Receive invoices from suppliers for delivered goods.

6) Submit new billings and credit invoices to customers for delivered goods.

7) Pay suppliers promptly for goods delivered to customers.

8) Provide customers with initial telephone support in connection with problems encountered.

9) Assist in collection of amounts due from customers.

10) Ensure that HUB purchases made through the program are properly credited to the customer.

Customers will continue to submit payment to DIR, and DIR will then remit to Contractor all sums received minus a pre-determined percentage of amounts collected to cover DIR's cost of administering the contract and other related costs.

The Contractor will be prohibited from selling any information resources technology goods or services on its own behalf to the State of Texas or any of its political subdivisions. The Contractor must agree to limit its role in the sale of such goods to the state to the functions described above. This restriction will apply to the Contractor as well as any parent corporation or other business entity or individuals that own or control the Contractor.

Because an essential element of the contract will be to pay all suppliers promptly, the Contractor will be required to demonstrate to DIR's satisfaction that it has sufficient resources, including appropriate lines of credit as applicable, to make such payments as required.

Evaluation Criteria. DIR will negotiate with qualified information systems vendors and will evaluate offers on the basis of the vendor's demonstrated ability to perform the required services, the vendor's financial stability and solvency, the sufficiency of bonds or other credit instruments to guarantee performance and payment of suppliers, the amount of the Contractor's markup over the cost of goods sold, the means of ensuring that state agencies and local governments continue to receive the lowest possible prices for computer hardware and software, and the amount of the negotiated percentage of funds to be retained by DIR to cover its costs.

Deadline for receipt of offers: October 20, 1995.

To obtain a copy of the Invitation to Negotiate or to obtain more information, please contact Bill Miller, DIR Purchasing Manager, at (512) 463-3358, Fax (512) 475-4896 or Internet Bill.Miller@DIR.Texas.Gov.

Issued in Austin, Texas, on October 6, 1995.

TRD-9512812      C. J. Brandt, Jr.  
General Counsel  
Texas Department of Information  
Resources

Filed: October 6, 1995  
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## 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 a name change in Texas for Providers Fidelity Life Insurance Company, a foreign life, accident and health company. The proposed new name is London Life Reinsurance Company. The home office is in Blue Bell, Pennsylvania.
2. Application for a name change in Texas for Penn Casualty Insurance Company, a foreign fire and casualty company. The proposed new name is The Travelers Indemnity Company of Missouri. The home office is in St. Louis, Missouri.

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 October 6, 1995.

TRD-9512870

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

Filed: October 6, 1995

### Notice of Public Hearing Residential Property Insurance Benchmark Rate Setting and Catastrophe Property Insurance Association Rate Setting

Notice is hereby given that a hearing under Docket Number 454-95-1280.G will be held before an administrative law judge (ALJ) of the State of Administrative Hearings at 9:00 a.m. on December 13, 1995, and continuing thereafter at dates, times and places designated by the ALJ until conclusion. The purpose of the hearing is to establish benchmark rates for Residential Property, Homeowners, Dwelling, Farm and Ranch, and Farm and Ranch Owners Insurance and the setting of rates for residential and commercial insurance written by the Texas Catastrophe Property Insurance Association. The hearing will be held at the State Office of Administrative Hearings, Suite 502 of the William Clements State Office Building at 300 West 15th Street, Austin, Texas 78701.

Authority, Jurisdiction and Statutes and Rules Involved.

The hearing is being held under the statutory authority of Article 5.101 of the Texas Insurance Code (Flexible Rating Program for Certain Insurance Lines) and Article 21.49 of the Texas Insurance Code. Pursuant to Article 1.33B (b) of the Texas Insurance Code, the State Office of Administrative Hearings shall conduct the hearing. Statutes involved include Article 5.101, Subchapter C of Chapter 5, and Article 21.49.

The procedure of the hearing will be governed by the Rules of Practice and Procedure For Industry-Wide Rate Cases before the department (Texas Administrative Code, Title 28, Chapter 1, Subchapter L), the Rules of Practice and Procedure before the department (Texas Administrative Code, Title 28, Chapter 1, Subchapter A), the Memorandum of Understanding between the department and the State Office of Administrative Hearings (Texas Adminis-

trative Code, Title 28, Chapter 1, §1.90) and the Administrative Procedure Act (Texas Government Code, Chapter 2001).

Matters to be Considered.

The commissioner will consider testimony presented and information filed by insurers, the Office of Public Insurance Counsel and other interested parties relating to the determination of benchmark rates for Residential Property, Homeowners, Dwelling, Farm and Ranch, and Farm and Ranch Owners Insurance and the setting of rates for residential and commercial insurance written by the Catastrophe Property Insurance Association. The commissioner has the statutory authority and duty pursuant to Article 5.101 to promulgate a benchmark rate for each line of insurance subject to Article 5.101, including Residential Property, Homeowners, Dwelling, Farm and Ranch, and Farm and Ranch Owners Insurance, after notice and hearing. The commissioner has the statutory authority and duty pursuant to Article 21.49 to promulgate rates, rating plans, and rate rules for the Catastrophe Property Insurance Association. Relevant data to be used in the rate case are currently available from the department.

The commissioner shall set the benchmark rate for each subject line of insurance to produce a range that promotes stability and produces rates that are just, reasonable, adequate and not excessive for the risks to which they apply, and not confiscatory. In determining the benchmark rate the commissioner may give due consideration to the factors listed in Article 5.101, §3(c). The rating factors for insurance written by the Texas Catastrophe Property Insurance Association are set out in Article 21.49, §8.

The commissioner requests evidence on the following additional matters to be adduced at the hearing:

1. Factors other than actuarial rate indications which may be relevant in the setting of benchmark rates including, but not limited to, the extent and nature of competition in Texas residential property insurance markets; the availability or lack of availability in Texas residential property insurance markets; the level and range of rates and rate changes among insurers in Texas residential property insurance markets; the extent of denials and restrictions of coverage in Texas residential property insurance markets; and the number, nature and impact of new entries, mergers and exits by insurers from Texas residential property insurance markets.

2. Historical premiums written in rate-regulated, non-rate regulated and surplus lines markets by coverage (for example, homeowners, farm and ranch owners, tenants, dwelling, extended coverage) from 1988 through 1994.

3. Recommendations for changes to the liability limits of coverages offered through the Texas Catastrophe Property Insurance Association pursuant to Article 21.49, §8D.

4. Recommendations for appropriate credits and/or relativities for various deductible amounts including those currently authorized in the Texas Personal Lines Manual and those authorized for use by recent amendments to the Texas Personal Lines Manual through Commissioner's Docket Number 2170.

5. Recommendations for appropriate credits and/or relativities for large deductibles (1 and 1/2%, 2.0%, 2 and 1/2%, 3.0%, 4.0% and 5.0%) for policies written through the Texas Catastrophe Property Insurance Association. The department expects to publish, take public comments, hold a public hearing on and adopt a rule to implement

large deductibles for such policies in a time frame which allows parties to the hearing to provide necessary analysis and recommendations.

6. Analysis of actuarial indications, and recommendations for benchmark rates, for new residential property insurance policies and new additional coverage endorsements, to be promulgated pursuant to Article 5.35-3 of the Texas Insurance Code. The department expects to publish, take public comments, hold a public hearing on and adopt these new policies and endorsements in a time frame which allows parties to the hearing to provide necessary analysis and recommendations.

7. Analysis of actuarial indications, and recommendations for benchmark rates, for new endorsements limiting the coverage for the cost of tearing out and replacing any part of the building or land necessary to access, repair, or replace any part of a plumbing drain system located within or under the slab or foundation of the insured dwelling. The department expects to publish, take public comments, hold a public hearing on and adopt these new endorsements in a time frame which allows parties to the hearing to provide necessary analysis and recommendations.

8. Analysis and recommendations for geographically-based rate relativities, including, but not limited to, territorial relativities, by coverage. Analysis and recommendations for the appropriate weight for state, zone, and territory experience in selecting geographically-based rate relativities.

9. Review of the actual historical rate of return of the property/casualty insurance industry on both a statutory accounting principles (SAP) and generally accepted accounting principles (GAAP) basis in comparison to prevailing short, medium and long-term interest rates, actual return on investments earned by investors in property/casualty insurance stock companies, actual GAAP return on equity earned by other industries, and actual GAAP return on equity by all industries combined. Provide the available data with any associated calculations and analyses.

10. The relative risk of the property/casualty insurance industry in comparison to other industries and all industries combined as viewed by an investor, as defined as either a purchaser of stock or some other contributor of capital to the insurance enterprise.

11. The impact of the property/casualty insurance industry's debt to equity ratio and liabilities to equity ratio currently and over time on the recommendation for a target rate of return.

12. The required rate of return for stock companies versus mutual companies, including any discussion of differences between these types of insurance operations, including, for example, differences in debt to equity ratios, which would justify a different target rate of return.

13. Review of the actual historical net investment income earned, including interest and dividends earned, and realized and unrealized capital gains, by the property/casualty insurance industry in comparison to prevailing short, medium and long-term interest rates. Provide the available data with any associated calculations and analyses.

14. Review of the historical premium to surplus and reserves to surplus ratios of the property/casualty insurance industry. Provide recommendations with justification for the use of actual premium to surplus leverage ratios in developing a recommended underwriting profit or some other standard. Compare the recommended leverage ratios

with those that would result from an allocation of total property/casualty industry surplus by line of insurance based upon the combination of net premiums earned plus mean net reserves. Discuss any additional adjustments necessary for Texas-specific variations in countrywide relationships.

15. Review of historical underwriting profit results from 1960 through 1994 for Texas and countrywide in the coverages for which underwriting profit provisions are recommended.

16. Analysis and recommendations regarding catastrophe load methodologies and catastrophe load provisions by location in Texas, including, but not limited to, 10, 20, 30, and 40 years of actual historical catastrophe losses.

17. Analysis of the impact of changing mix of deductibles on historical losses used for evaluating loss trends by coverage.

18. Review and comparison of at least ten years of actual historical claim frequency and severity (internal data) with relevant cost indices, such as the Boeckh or Consumer Price indices (external data), for developing historical and prospective loss trends by coverage. Provide recommendations and justification for appropriate historical period to serve as basis for selected loss trends.

#### Motions for Admission as a Party.

Anyone who wishes to participate in the hearing as a party must file a motion for admission as a party by October 30, 1995. Pre-Hearing Conference

An initial prehearing conference will be held before the ALJ at 9:00 a.m. on November 1 1995, at the State Office of Administrative Hearings, Suite 502 of the William Clements State Office Building at 300 West 15th Street, Austin, Texas 78701. The prehearing conference will be held for the following purposes:

- (1) ruling on the motions for admission of parties;
- (2) setting the procedural deadlines for discovery, motions, and prefiled testimony;
- (3) such other matters as may aid in the simplification of the proceedings.

Additional prehearing conferences will be scheduled as the ALJ deems necessary to rule on other matters as may aid in the simplification of the proceedings.

Pursuant to Texas Government Code, §2001.058(c), the commissioner is required to provide the ALJ with a written statement of applicable rules and policies. The applicable procedural rules are set out above. The commissioner's policies regarding the setting of benchmark rates under Article 5.101 of the Texas Insurance Code are set out below. The purpose of this policy statement is to provide the ALJ and parties with notice regarding the types of evidence parties should present in the hearing. This policy statement, however, is not intended to limit the type of evidence a party may offer at the hearing. The pertinent commissioner's policies are as follows:

1. It is the commissioner's policy to consider all relevant evidence and issues in making a determination of rates. To assure a complete record, the commissioner requests the ALJ to:

- a take judicial notice of i data and reports made available by the department to the parties; and ii new 28 Texas

Administrative Code §§5. 14000-5.14010 (frequently referred to as the "Temporary Rate Reduction Rules") as adopted by the commissioner; and

b ensure that exhibits accompanying testimony from the parties' witnesses be made available in both paper and electronic format. The electronic format should be 3.5 inch high-density diskette in a DOS or Windows spreadsheet or other format readable by a machine running DOS or Windows. Parameters, assumptions and references to underlying data should be identifiable in the electronic exhibits.

2. It is the commissioner's policy that the promulgated benchmark rate for each affected liability line be determined in conformity with 28 Texas Administrative Code §§5.14000-5.14010 which will be effective for coverages on or after January 1, 1996. In order to correctly apply the rate reduction factor to the benchmark rate, it will be necessary for the commissioner to first determine the benchmark rates without consideration of prospective tort reforms; and second, determine an "adjusted benchmark rate" following the application of the adopted tort reform rate reduction factor. Therefore, the benchmark rate to be promulgated will not take into consideration, at this time, the effects of tort reform, except upon the application of the rate reduction factors, as determined by the Rules.

3. It is the commissioner's policy that the benchmark rate need not equal the actuarial indication for any particular coverage, class and territory. The actuarial indication is an important consideration, but other factors, such as those specified in Article 5.101, may be used if such action better achieves the goal of promoting stability and producing rates that are just, reasonable, adequate, and not excessive for the risks to which they apply, and not confiscatory.

4. It is the commissioner's policy that so-called "Fast Track" data reports not be used directly in the rate development analysis. To the extent trend analysis relies upon actual historical loss experience, such analysis should rely upon trend data reported to the department and provided by the department to the parties. Fast Track data are not intended for ratemaking and represent only portion of industry's experience.

5. It is the commissioner's policy that if underwriting profit provisions are calculated to reflect a target return on equity measured under GAAP, estimates of future expense ratios, to the extent these estimates are based upon historical expense experience, shall be based upon historical ratios of expenses to written premiums. Alternatively, if estimates of future expenses are based upon historical ratios of expenses to earned premium, then the underwriting profit provision shall be adjusted in consideration of expected increases in prepaid expenses which are recognized as an asset under GAAP.

6. It is the commissioner's policy that prospective premium and loss trends should be of equal periods of time. Conduct of the Hearing

Each page of any exhibit offered in evidence at a hearing before the commissioner, including prefiled testimony, must be numbered consecutively at the center of the bottom margin, be on 8 1/2" by 11" paper, and must be three-hole-punched along the left margin. The front page of each exhibit should indicate that the exhibit would be part of the record of a public hearing before the Commissioner of Insurance and should identify the subject of the hearing, the docket number, the date of the hearings, and

the party offering the exhibit. On the front page, the party offering the exhibit should also describe the exhibit and leave a space for numbering the exhibit. For example: Public Hearing before the Commissioner of Insurance Subject of Hearing: Residential Property Insurance Benchmark Rate Setting And Catastrophe Property Insurance Association Rate Setting Docket Number 454-95-1280.G Date: \_\_\_\_\_ Exhibit # \_\_\_\_\_ Description of Exhibit \_\_\_\_\_

Parties offering exhibits into evidence at the hearing should be prepared with sufficient copies of each proposed exhibit to furnish the following:

1. the original exhibit, which will be tendered to the ALJ for marking and retention for the official record, after which the attorneys shall use an exact photocopy of such marked exhibit in the examination of the witness;

2. one copy each for every other party admitted to the hearing.

All deadlines in this notice are subject to change at the ALJ's discretion to the extent permitted by statute and rule.

In contested cases, all parties are entitled to the assistance of their counsel before administrative agencies. This right may be expressly waived.

Issued in Austin, Texas, on October 6, 1995.

TRD-9512887 Alicia M. Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: October 6, 1995

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**Commission on Jail Standards  
Consultant Contract Award**

Pursuant to the provisions of the Government Code, Chapter 2254, the Texas Commission on Jail Standards furnishes this notice of consultant contract award.

The request for proposals was published in the August 18, 1995, issue of the *Texas Register* (20 TexReg 6364).

The consultant will advise and assist the Texas commission on Jail Standards in a survey of approximately 60 municipal and county jails to verify compliance information regarding the removal of juveniles from the facilities.

The consultant contract has been awarded to June Scogin, 212 Nuthatch, Buda, Texas 78610.

The total value of the contract shall not exceed \$19,175. The contract period is October 2, 1995-March 1, 1996.

All jail analysis reports are due to the Commission by March 2, 1996.

Issued in Austin, Texas, on October 6, 1995.

TRD-9512781 Jack E. Crump  
Executive Director  
Commission on Jail Standards

Filed: October 6, 1995

**Texas State Library and Archives  
Commission**

**Consultant Contract Reports—Quarterly  
Report**

By law (Texas Civil Statutes, Government Code 2254, Subchapter B), state agencies and regional councils of governments are required to file with the Office of the Secretary of State invitations to bid and details on bidding on private consultant contracts expected to exceed \$10,000. Within ten days of the award of the contract, the agency must file with the Secretary of State a description of the study to be conducted, the name of the consultant, the amount of the contract, and the due dates of the reports. Additionally, Article 6252-11c, directs the contracting agencies to file copies of all documents, films, recordings, or reports developed by the private consultants with the Texas State Library. The Library is required to compile a list of the materials received and submit the list quarterly for publication in the *Texas Register*.

The following is a list of materials received for the third quarter of 1995. These materials may be examined in Room 300, Texas State Library, 1201 Brazos Street, Austin, Texas.

Agency: Comptroller of Public Accounts.

Consultant: Andersen Consulting.

Title: Investment practices and processing methods related to investments made by state agencies.

Agency: Comptroller of Public Accounts.

Consultant: MGT of America, Inc.

Title: School performance review, Waco Independent School District.

Agency: Education Agency.

Consultant: Riverside Publishing Company.

Title: National comparative results for Texas students 1994.

Agency: Governor, Office of Budget and Planning.

Consultant: David M. Griffith and Associates.

Title: Cost allocation plan for the state of Texas statewide cost allocation plan, Fiscal Year 1995.

Agency: Library and Archives Commission.

Consultant: David B. Gracy and Associates.

Title: Too lightly esteemed in the past, archival enterprise, records management, and preservation administration in Texas.

Agency: Natural Resource Conservation Commission.

Consultant: ERM-Southwest Inc.

Title: Beyond the border.

Agency: Natural Resource Conservation Commission.

Consultant: TechLaw, Inc.

Title: Superfund, the Pollution Cleanup Division and you.

Agency: Office of the Governor, Criminal Justice Division.

Consultant: June Scogin.

Title: 2 v. : (Report of CJD Grant Number JA-94-CO4-07267); Directory of adult jails and lockups operating in Texas, February, 1995.

Agency: Texas Education Agency.

Consultant: Psychology Corporation.

Title: National comparative results for Texas students 1994.

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

TRD-9512910

Raymond Hitt  
Assistant State Librarian  
Texas State Library and Archives  
Commission

Filed: October 9, 1995

**Texas Department of Mental Health  
and Mental Retardation**

**Correction of Error**

The Texas Department of Mental Health and Mental Retardation adopted amendments to §404.10 and §404.15. The rules appeared in the September 26, 1995, issue of the *Texas Register* (20 TexReg 7840).

The phrase "in writing" was inadvertently added to §404.15 upon submission of the adoption; in actuality, §404.10 should have been revised to include the term "written" instead. In addition, reference to the fact that paragraph (a) of §404.15 contained no change was deleted upon publication; the implied paragraph (a) as published should actually be designated paragraph (b).

Upon correction, the sections would read as follows (corrections are highlighted, and uncorrected paragraphs are not included):

**§404.10. Disciplinary Action.**

(4) When disciplinary action is taken against an employee based on abuse, neglect, or exploitation, the head of a facility shall notify the disciplined employee in writing of the disciplinary action and any right to a grievance hearing the employee may have under the department's internal policies and procedures relating to employee grievances. If the employee files a complaint in response to a written reprimand resulting from an investigation of abuse, neglect, or exploitation, on if the employee files a grievance in response to disciplinary action resulting from an investigation of abuse, neglect, or exploitation, the head of the facility will, upon written request, provide the employee with a copy of the investigative report...

**§404.15. Confidentiality of Investigative Report.**

(a) (No change.)

(b) Some information may be released as follows:

(2) When an allegation is determined to involve the clinical practice of a physician, registered nurse, vocational nurse, or dentist, the person served, legal guardian, or parent (if the person is a minor) shall be informed [in writing] that the allegation has been referred for peer review as described in §404.8 of this title (relating to Peer Review).

## Texas Natural Resource Conservation Commission

### Notice of Public Hearing

Notice is hereby given that pursuant to the requirements of the Texas Government Code, Subchapter B, Chapter 2001, the Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct a public hearing to receive testimony concerning the development of regional and local solid waste management plans.

The Texas Natural Resource Conservation Commission (commission or TNRCC) proposes the repeal of §§330.568, amendments to §§330.561-330.567, and new §§330.568 and §330.569, concerning the development of regional and local solid waste management plans, and financial assistance to regional planning commissions and local governments. The proposed amendments specify requirements for the preparation and approval of regional and local solid waste management plans and the provisions of a planning fund for providing financial assistance to prepare those plans. The new §330.569 establishes a new regional solid waste grants program. The title of the subchapter will therefore be changed from "Guidelines for Regional and Local Solid Waste Management Plans" to "Regional and Local Solid Waste Management Planning and Financial Assistance".

The proposed rule changes update the regional and local planning requirements in the existing rules to include a requirement to conduct an inventory of existing and closed landfills, and to otherwise update the rule language to account for changes in agency responsibilities and plan approval policies. The new grants program provides for financial assistance to regional planning commissions and local governments to conduct local and regional projects consistent with state, regional, and local solid waste management plans, and to update and maintain those plans. The allocation of funds under the new grants program is to be according to a formula established by the commission that takes into account population, area, solid waste fee generation, and public health needs.

A public hearing on the proposal will be held on Friday, October 27, 1995, at 10:00 a.m. in Room 254 of Building E of the TNRCC park 35 Office Complex located at 12118 North IH-35, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments on the proposal should mention Rule Log Number 95141-330-WS and may be submitted to Bettie Mabry Bell, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 201, Post Office Box 13087, Austin, Texas 78711-3087. Written comments must be received by 5:00 p.m., 30 days from the date of publication of this proposal in the *Texas Register*. For further information or questions concerning this proposal, please contact Stephen Dayton, Waste Planning and Assessment Division, at (512) 239-6824.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-1459.

Requests should be made as far in advance as possible.

Issued in Austin, Texas, on October 11, 1995.

TRD-9512974

Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation  
Commission

Filed: October 11, 1995

### Public Notice-Notice of Availability and Request for Comments on a Proposed Local Solid Waste Management Plan

Texas Natural Resource Conservation Commission (TNRCC) announces notice and availability of a local solid waste management plan for Gillespie and Kerr Counties and a 30 day period for public comment on the plan.

Notice is hereby given that the document entitled, *AACOG SUBREGION IIIa (Gillespie and Kerr Counties)*, is available for public review and comment. The plan was undertaken as a voluntary initiative, and the planning process was supported with a solid waste management grant from TNRCC, as enabled under Chapter 363 of the Texas Health and Safety Code (*Comprehensive Municipal Solid Waste Management, Recovery, and Conservation Act, 1990*). The plan has been determined to be consistent with and supportive of the goals and objectives of the regional solid waste management plan of the Alamo Area Council of Governments.

The plan describes current solid waste management efforts in the planning area, assesses problems and needs, and provides recommendations for future action. The plan was developed with 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, a formal public hearing was held in the planning area in accordance with TNRCC guidelines. 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 and local solid waste management plans in the state.

The interested public is invited to submit written comments on the proposed regional plan to TNRCC. Written comments must be received by no later than 30 days from the publication 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 local plan document are available for public review at the following two locations: Alamo Area Council of Governments, 118 Broadway, Suite 400, San Antonio, Texas 78205, (210) 225-520; 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 local plan at a regular agenda meeting, after the close of the comment period.

Issued in Austin, Texas, on October 11, 1995.

TRD-9512980

Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation  
Commission

Filed: October 11, 1995

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**Public Notices**

The Texas Natural Resource Conservation Commission (TNRCC) announces notice and availability of a local solid waste management plan for Bandera and Kendall counties and a 30-day period for public comment on the plan.

Notice is hereby given that the document entitled, *AACOG SUBREGION IIIb (Bandera and Kendall counties)*, is available for public review and comment. The plan was undertaken as a voluntary initiative, and the planning process was supported with a solid waste management grant from TNRCC, as enabled under the Texas Health and Safety Code, Chapter 363 (*Comprehensive Municipal Solid Waste Management, Recovery, and Conservation Act, 1990*). The plan has been determined to be consistent with and supportive of the goals and objectives of the regional solid waste management plan of the Alamo Area Council of Governments.

The plan describes current solid waste management efforts in the planning area, assesses problems and needs, and provides recommendations for future action. The plan was developed with 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, a formal public hearing was held in the planning area in accordance with TNRCC guidelines. 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 and local solid waste management plans in the state.

The interested public is invited to submit written comments on the proposed regional plan to TNRCC. Written comments must be received by no later than 30 days from the publication 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 local plan document are available for public review at the following two locations: Alamo Area Council of Governments, 118 Broadway, Suite 400, San Antonio, Texas 78205, (210) 225-5201; 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 local plan at a regular agenda meeting, after the close of the comment period. Issued in Austin, Texas, on October 11, 1995.

TRD-9512988      Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation  
Commission

Filed: October 11, 1995

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The Texas Natural Resource Conservation Commission (TNRCC) announces notice and availability of a local solid waste management plan for the Gold-Cap Planning Area and a 30 day period for public comment on the plan.

Notice is hereby given that the document entitled, *Gold-Cap Planning Area Solid Waste Management Plan, 1994-2014*, is available for public review and comment. The plan was undertaken as a voluntary initiative, and the planning process was supported with a solid waste management grant from TNRCC, as enabled under Chapter 363 of the Texas Health and Safety Code (*Comprehensive Municipal Solid Waste Management, Recovery, and Conservation Act, 1990*). The planning area includes several local governments in Gonzales, Lavaca, DeWitt and Caldwell counties. The plan has been determined to be consistent with and supportive of the goals and objectives of the regional solid waste management plans of both the Golden Crescent Regional Planning Commission and the Capital Area Planning Council.

The plan describes current solid waste management efforts in the planning area, assesses problems and needs, and provides recommendations for future action. The plan was developed with 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, a formal public hearing was held in the planning area in accordance with TNRCC guidelines. 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 and local solid waste management plans in the state.

The interested public is invited to submit written comments on the proposed regional plan to TNRCC. Written comments must be received by no later than 30 days from the publication 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 local plan document are available for public review at the following two locations: City of Gonzales, Municipal Building, 820 Joseph Street, Gonzales, Texas 78629, (512) 672-2815; and the Texas Natural Resource Conservation Commission, Library, 12100 Park 35 Circle, Building A, 1st Floor Austin, Texas 78753, (512) 239-0020.

The Texas Natural Resource Conservation Commission will consider formal adoption of this local plan at a regular agenda meeting, after the close of the comment period.

Issued in Austin, Texas, on October 11, 1995.

TRD-9512989      Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation  
Commission

Filed: October 11, 1995

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**Texas Department of Protective and  
Regulatory Services**

**Correction of Error**

The Texas Department of Protective and Regulatory Services published an invitation for Consultant Proposal Request in the October 3, 1995, issue of the *Texas Register* (20 TexReg 8091). The contact person and his phone number was published incorrectly. The contact person is Robert Morris and his phone number is (512) 438-3834, Mail Code E-672.

Issued in Austin, Texas, on October 6, 1995.

TRD-9512783 Nancy Murphy  
Section Manager, media and Policy  
Services  
Texas Department of Protective and  
Regulatory Services

Filed: October 6, 1995

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**Public Utility Commission of Texas**  
**Notice of Application to Amend**  
**Certificate of Convenience and**  
**Necessity**

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on September 20, 1995, to amend a certificate of convenience and necessity pursuant to the Public Utility Regulatory Act of 1995, §§1.101, 3.051(b), 3.251, 3.253, and 3.254, Senate Bill 319, 74th Legislature, Regular Session 1995 (PURA). A summary of the application follows.

Docket Title and Number: APPLICATION OF SOUTHWESTERN BELL TELEPHONE COMPANY TO AMEND CERTIFICATE OF CONVENIENCE AND NECESSITY WITHIN DEWITT AND LAVACA COUNTIES, Docket Number 14742, before the Public Utility Commission of Texas.

The Application: In Docket Number 14742, Southwestern Bell Telephone Company seeks approval to amend the Cuero, Yoakum, and Hallettsville exchange area boundaries in order to reflect the manner in which telecommunications service is presently being administered.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas, 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf on or before November 16, 1995.

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

TRD-9512703 Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: October 5, 1995

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**Notices of Intent to File Pursuant to**  
**Public Utility Commission Substantive**  
**Rule 23.27**

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for First National Bank-Edinburg in Edinburg, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for First National Bank-Edinburg pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 14788.

The Application. Southwestern Bell Telephone Company is requesting approval of a 75-station addition to the existing PLEXAR-Custom service for First National Bank-Edinburg. The geographic service market for this specific service is the Edinburg, 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 October 5, 1995.

TRD-9512704 Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: October 5, 1995

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Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Nacogdoches ISD, Nacogdoches, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for Nacogdoches ISD pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 14791.

The Application. Southwestern Bell Telephone Company is requesting approval of a 75-station addition to the existing PLEXAR-Custom service for Nacogdoches ISD. The geographic service market for this specific service is the Nacogdoches, 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 October 5, 1995.

TRD-9512702 Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: October 5, 1995

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**Teacher Retirement System of Texas**  
**Consultant Contract Award**

This consultant contract information is filed in compliance with the notice requirement under the Government Code, §2254.30.

The Teacher Retirement System of Texas (TRS) has contracted with a private consultant to assist TRS in carrying out its fiduciary responsibilities and maintaining a qualified plan by monitoring and tracking key federal legislation, analyzing important federal legislative initiatives and monitoring federal executive branch actions relating to public pension and group insurance plans and reporting on these key legislative and administrative developments and other related activities.

TRS executed a contract with Don Kennard whose address is 1005 Congress Avenue, Suite 500, Austin, Texas 78701, to provide the services listed in this notice.

The agreed compensation set forth in the contract is \$20,000 payable in eleven monthly installments of \$1,665 and one final installment of \$1,685. The contract is effective from September 1, 1995-August 31, 1996.

Issued in Austin, Texas, on October 6, 1995.

TRD-9512847      John R. Mercer  
Interim Executive Director  
Teacher Retirement System of Texas

Filed: October 6, 1995

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**Texas Department of Transportation**  
**Correction of Error**

The Texas Department of Transportation adopted on an emergency basis new §§18.50-18.61, concerning the protection of consumers who use the services of household goods carriers. The rules appeared in the September 8, 1995, issue of the *Texas Register* (20 TexReg 6992).

On page 6997, §18.54(d)(1)(G)(i), the first sentence begins: "The owner or consignee shall pay the freight and arrearage if any, and all other lawful charges accruing on said property;..." The word "arreage" should be changed to "average."

Page 7010, §18.92(a)(2), the first sentence should read: "If a VSF does not accept vehicles 24 hours a day, such facility must have vehicles available for release within one hour between the hours of 8:00 a.m. and Midnight, Monday-Saturday and from 8:00 a.m. to 5:00 p.m. on Sundays except for nationally recognized holidays." The word "Midnight" should have been published instead of the word "Noon."

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**Public Hearing Notice**

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will hold a series of four public hearings on the proposed repeal and new §17.23, concerning temporary registration. Notice of the proposed repeal and new section and their text were published in the October 6, 1995, issue of the *Texas Register* (20 TexReg 8194).

The dates, places, and locations for the respective hearings are as follows: Monday, October 23, 1995, Ysleta Independent School District Administration Building Auditorium, 9600 Sims Drive, El Paso; Tuesday, October 24, 1995, Laredo Civic Center Meeting Room, 2400 San Bernardo Avenue, Laredo; Wednesday, October 25, 1995, McAllen International Civic Center Convention Hall Number 3, 1300 South Tenth Street, McAllen; and Friday, October 27, 1995, first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin.

The hearings will be conducted in accordance with the procedures specified in 43 TAC §1.5. Each hearing will convene at 1:00 p.m. Those desiring to make oral comments or presentations may register starting at 12:30 p.m. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course

of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive comment. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc., for proper reference. Any suggestions or requests for alternative language or other revisions in the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. Persons with disabilities who plan to attend these hearings and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing-impaired, readers, large print or braille, are requested to contact Eloise Lundgren, Director of Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588 at least two working days prior to the hearing so that appropriate arrangements can be made.

Written comments may also be submitted to Jerry L. Dike, Director, Vehicle Titles and Registration Division, 11th and Brazos Streets, Austin, Texas 78701. Copies of the proposed repeal and new section are available from the department's district offices in each of the named cities and from Mr. Dike. The deadline for submitting all comments is 5:00 p.m. on November 7, 1995.

Issued in Austin, Texas, on October 11, 1995.

TRD-9512973      Robert E. Shaddock  
General Counsel  
Texas Department of Transportation

Filed: October 11, 1995

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**Requests for Proposals**

Notice of Invitation. The Texas Department of Transportation (TxDOT) intends to engage an architect/engineer, pursuant to Texas Government Code, Chapter 2254, Subchapter A, to provide the following services. The selected architect/engineer must perform a minimum of 30% of actual contract work to qualify for contract award.

Contract Number 02-645P8001 to complete design and plans, specifications and estimate development, and right-of-way plans for the Tarrant Traffic Management Center (TTMC) to be constructed at the TxDOT Headquarters at McCart Street and I.H. 20, Tarrant County, Texas.

Deadline. A letter of interest notifying TxDOT of the architect's intent to submit a proposal shall be either hand-delivered to TxDOT, Fort Worth District Office, 2501 S.W. Loop, Fort Worth, Texas 76133 or mailed to TxDOT, Fort Worth District Office, P.O. Box 6868, Fort Worth, Texas 76115. Letters of interest will be received until 5:00 p.m. on Tuesday, October 24, 1995. The letter of interest must include the architect's firm name, address, telephone number, name of architect's contact person and number of TxDOT contract. Upon receipt of the letter of interest a Request for Proposal packet will be issued.

Pre-proposal Meeting. A pre-proposal meeting will be held on Tuesday, October 31, 1995, at the TxDOT Fort Worth District Office in the District 2 Meeting Room, 2501 S.W. Loop, Fort Worth, Texas at 10:00 a.m. (TxDOT will not



accept a proposal from an architect who has failed for any reason to attend the mandatory pre-proposal meeting.)

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Charles R. Burkett, P.E. at (817) 370-6530 at least two work days prior to the meeting so that appropriate arrangements can be made.

**Proposal Submittal Deadline.** Proposals for contract number 02-645P8001 will be accepted until 5:00 p.m. on Tuesday, November 14, 1995 at the TxDOT, Fort Worth District Office, 2501 S.W. Loop, Fort Worth, Texas 76133.

**Agency Contact.** Requests for additional information regarding this notice of invitation should be addressed to Charles R. Burkett, P.E. or Sam Hickam at (817) 370-6530 or fax: (817) 370-6698.

**Contract Numbers 02-645P5002 and 02-645P5003** for public involvement process, complete design and plans, specifications and estimate development, and right-of-way plans for Rosedale Street from I.H. 35W to U.S. 287, Tarrant County, Texas and Vickery Boulevard from Loop 496 east to U.S. 287 in Tarrant County, Texas.

**Deadline.** A letter of interest notifying TxDOT of the provider's intent to submit a proposal shall be either hand-delivered to TxDOT, Fort Worth District Office, 2501 S.W. Loop, Fort Worth, Texas 76133 or mailed to TxDOT, Fort Worth District Office, P.O. Box 6868, Fort Worth, Texas 76115. Letters of interest will be received until 5:00 p.m. on Tuesday, October 24, 1995. The letter of interest must include the engineer's firm name, address, telephone number, name of engineer's contact person and number of TxDOT contract. Upon receipt of the letter of interest a Request for Proposal packet will be issued.

**Pre-proposal Meeting.** A pre-proposal meeting will be held on Tuesday, October 31, 1995, at the TxDOT Fort Worth District Office in the District 2 Meeting Room, 2501 S.W. Loop, Fort Worth, Texas at 2:00 p.m. (TxDOT will not accept a proposal from an engineer who has failed for any reason to attend the mandatory pre-proposal meeting.)

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Charles R. Burkett, P.E. at (817) 370-6530 at least two work days prior to the meeting so that appropriate arrangements can be made.

**Proposal Submittal Deadline.** Proposals for contract numbers 02-645P5002 and 02-645P5003 will be accepted until 5:00 p.m. on Tuesday, November 14, 1995 at the TxDOT, Fort Worth District Office, 2501 S.W. Loop, Fort Worth, Texas 76133.

**Agency Contact.** Requests for additional information regarding this notice of invitation should be addressed to Charles R. Burkett, P.E. or Sam Hickam at (817) 370-6530 or fax: (817) 370-6698.

**Contract Number 09-6XXP5009** to perform On-System Bridge Scour Studies in the Waco District.

**Deadline.** A letter of interest notifying TxDOT of the provider's intent to submit a proposal shall be either hand-delivered to TxDOT, Waco District Office, Attn: Kevin W. Dickey, P.E., Bridge Design, 100 South Loop Drive,

Waco Texas, mailed to P.O. Box 1010, Waco, Texas 76703-1010 or faxed to (817) 867-2738. Letters of interest will be received until 5:00 p.m. on Thursday, October 26, 1995. The letter of interest must include the engineer's firm's name, address, telephone number, name of engineer's contact person and number of TxDOT contract. Upon receipt of the letter of interest a Request for Proposal packet will be issued.

**Pre-proposal Meeting.** A pre-proposal meeting will be held on Tuesday, November 14, 1995 at 10:00 a.m. at the TxDOT, Waco District Office, 100 South Loop Drive, Waco, Texas. (TxDOT will not accept a proposal from an engineer who has failed for any reason to attend the mandatory pre-proposal meeting.)

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Kevin W. Dickey, P.E. at (817) 867-2865 at least two work days prior to the meeting so that appropriate arrangements can be made.

**Proposal Submittal Deadline.** Proposals for contract number 09-6XXP5009 will be accepted until 5:00 p.m. on Monday, December 4, 1995 at the TxDOT, Waco District Office mentioned address.

**Agency Contact.** Requests for additional information regarding this notice of invitation should be addressed to Kevin W. Dickey, P.E. at (817) 867-2865 or fax: (817) 867-2738.

**Contract Numbers 10-6XXP5001, 10-6XXP5002, 10-6XXP5003** to perform bridge scour evaluations in eight counties within the Tyler District. The providers will be evaluated and selected based on their knowledge and experience in performing bridge scour evaluations.

**Deadline.** A letter of interest notifying TxDOT of the Provider's intent to submit a proposal shall be either hand-delivered TxDOT, Tyler District Office, Attn: George Grantham, 2709 West Front Street, Tyler, Texas or mailed to P.O. Box 2031, Tyler, Texas 75710-2031. Letters of interest will be received until 5:00 p.m. Friday, October 27, 1995. The letter of interest must include the engineer's firm name, address, telephone number, name of engineer's contact person and number of TxDOT contract. Upon receipt of the letter of interest a Request for Proposal packet will be issued.

**Pre-proposal Meeting.** A pre-proposal meeting will be held at 2:00 p.m. on Thursday, November 2, 1995, at the TxDOT Tyler District Office. (TxDOT will not accept a proposal from an engineer who has failed for any reason to attend the mandatory pre-proposal meeting.)

Persons with disabilities who plan to attend this meeting and who may need auxiliary services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact George Grantham at (903) 510-9288 at least two days prior to the meeting so that appropriate arrangements can be made.

**Proposal Submittal Deadline.** Proposals for contract numbers 10-6XXP5001, 10-6XXP5002, 10-6XXP5003 will be accepted until 5:00 p.m. Wednesday, November 15, 1995, at the Tyler District Office.

**Agency Contact:** Requests for additional information regarding this notice of invitation should be addressed to George Grantham, (903) 510-9288 or fax: (903) 510-9254.

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

TRD-9512678

Robert E. Shaddock  
General Counsel  
Texas Department of Transportation

Filed: October 5, 1995



Pursuant to Government Code, Chapter 2254, Subchapter B, Consulting Services, the Texas Department of Transportation publishes this notice for Request for proposals.

**Introduction:** The Texas Department of Transportation (TxDOT) intends to enter a contract for a consulting service to provide a classification study of approximately 320 director levels, salary group 21 positions, and approximately 32 positions in the Human Resources Division. The consultant must use the Professional Managerial Position Questionnaire (PMPQ) and the Position Analysis Questionnaire (PAQ) system, which has been correlated to TxDOT's existing classification pay structure in accordance with the State Position Classification Act. The value of the contract will be \$125,000.

**Invitation and Disclosure:** As required by the Consulting Services Act, it is hereby disclosed that TxDOT intends to engage Jeanneret and Associates, Inc., Vieux Carre Building, 3223 Smith Street, Suite 212, Houston, Texas 77006-6685, unless a better offer is submitted to provide these services. Previously, a contract was entered with Jeanneret and Associates, Inc., which related to the review and recommendations on approximately 90 positions at salary group 21 and director level, and the development of a plan, based on a reduced set of criteria that could be readily communicated to managers for reviewing the remaining 320 positions at salary group 21 and director level.

**Agency Contact:** Additional information regarding this Request for Proposals may be obtained by contacting Jeanne Huston, Section Director, Classification and Staffing Section, Human Resources Division, 125 East 11th Street, Austin, Texas 78701-2483. Telephone Number (512) 706-6338 or Fax Number (512) 706-6392.

**Closing Date:** Proposals that are mailed must arrive at 125 East 11th Street, Austin, Texas 78701-2483, before 5:00 p.m. on November 13, 1995. Hand delivered proposals must be received at 1101 East Anderson Lane, Austin, Texas, before 3:00 p.m. on November 13, 1995. Proposals received after 3:00 p.m. on November 13, 1995, will not be considered.

**Selection Criteria:** TxDOT will award this contract on the basis of demonstrated competence, reputation, knowledge and qualifications, proposed project plan, and cost. Final selection will be made by the TxDOT Consultant Approval Team.

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

TRD-9512679

Robert E. Shaddock  
General Counsel  
Texas Department of Transportation

Filed: October 5, 1995



In accordance with 43 TAC §§25.901, et seq, the Texas Department of Transportation is requesting proposals from state and local government agencies for the Texas Highway Safety Plan (HSP) for fiscal year (FY) 1997 (October 1, 1996-September 30, 1997).

The Texas HSP is developed through a process beginning the preceding fiscal year through the collection of project proposals from local jurisdictions, as well as agencies with statewide responsibility. The program of work developed in the HSP is intergovernmental in nature and functions, either directly or indirectly, through Grants-in-Aid agreements and contracts awarded to local jurisdictions, other state agencies, educational institutions and public contractors. Contracts with vendors will be made through the state purchasing process.

**Authority and Responsibility:** Federal grant involvement in traffic safety dates from the passage of the National Highway Safety Act of 1966 (Title 23 United States Code, §§401, et seq). Texas passed supporting legislation, the Texas Traffic Safety Act, in 1967 (Transportation Code, Chapter 723). The Texas Traffic Safety Program was made an integral part of the Texas Department of Transportation in 1979, and the department's districts assumed responsibility for local projects. The program operates within the department's Traffic Operations Division. The executive director of the department is the designated Governor's Highway Safety Representative.

**HSP Review and Approval:** The HSP is prepared and submitted to the Transportation Commission for approval in May or June of each year. Upon approval, it is submitted to the Governor's office for review and comment and then forwarded to the federal government for approval. The HSP becomes operational on October 1 of every year. Two federal agencies provide funding to implement the HSP, the Federal Highway Administration (FHWA) and the National Highway Traffic Safety Administration (NHTSA).

**HSP Program Area:** The FY 1997 HSP will be divided into 12 program areas. One is approved and funded by FHWA, ten are mostly funded and approved by NHTSA, and one is funded primarily from state sources. In addition to federal and state funds, some participating local governments provide matching funds.

The first six program areas were designated by federal regulation in 1982 (Title 23, Code of Federal Regulations, Part 12040). The seventh—motorcycle safety—was added in 1986 and received federal designation as a national priority area in 1988. Currently, the 12 programs with planned federal or state funding for FY 1997 are:

1. **Police Traffic Services:** selective traffic enforcement projects to apprehend reckless drivers, enforce posted speed limits including the national maximum speed limit, specialized training for law enforcement officers, and an assessment.
2. **Alcohol and Other Drug Countermeasures:** selective traffic enforcement projects to apprehend impaired drivers, comprehensive programs to support anti-driving while intoxicated (DWI) activities from apprehension through adjudication, public information programs on alcohol/other drug use and driving, education programs for convicted DWI offenders, and education for youth.
3. **Emergency Medical Services:** training for emergency medical services technicians, local projects, and public education.
4. **Occupant Protection:** surveys to identify high-risk non-users, comprehensive programs to promote child safety seats and occupant protection, selective traffic enforcement projects, and evaluations.

5. Traffic Records: perform problem identification, develop countermeasures, analyze vehicular crash occurrences and causal factors, support the Traffic Records Council, support joint efforts with other agencies to improve the state's traffic record system. Project proposals for activities that are not information resource-related will be accepted. All information resource-related activities will be subject to TxDOT procurement Procedures.

6. Roadway Safety: course development and training, consulting engineering services, traffic surveillance, problem, identification and pedestrian/bicycle safety design.

7. Motorcycle Safety: public awareness.

8. Planning and Administration: operation of the Traffic Safety Program and traffic safety functions in 25 Texas Department of Transportation district offices.

9. Community/corridor/college Traffic Safety Programs: problem identification, plan development, and program implementation for selected city, county, or college campuses.

10. Public Information and Education: state and local media campaigns, material development and production, statewide theme and conference support, drug-free project celebration support, and newsletter production and distribution.

11. School Bus Safety: school bus administration support, driver education, and training materials.

12. Pedestrian/bicycle Safety: Community school zone safety training, public education and community programs.

**Project Selection Process:** shortly after the project proposal due date, traffic safety program managers review each proposal for applicability to Texas' traffic safety problems. Each project proposal is then scored against a number of selection criteria. Typical criteria includes: cost effectiveness, program quality, subgrantee/contractor resources, innovative project, and agency matching funds. Point values are assigned to each criterion so that each project proposal can be scored and placed in a rank order. Once the ranking process is complete, priorities are assigned in order for available funding to be recommended first for those projects awarded the highest priority. Those projects receiving the lowest priority will either not be funded or be deferred until additional federal monies become available during the particular fiscal year. The traffic safety project selection process is explained in greater detail in Chapter 2 of the Highway Traffic Safety Volume of the Department's Traffic Operations Manual. A copy of this description of the project selection process can be obtained by contacting John McKay at (512) 416-3170.

**Project Proposals:** Proposal submission should include the following information: name of submitting agency/organization; project title; a problem statement, i.e., what is the problem, statistical data which will indicate a need for the project, where is the effort to be done, which of the federal priority areas is applicable to the project; objectives; action plan; evaluation (how will the project results be measured); cost estimate (budget to include labor, other direct costs, and indirect costs); additional information such as who will supervise or coordinate the project, years of experience or knowledge of subject.

HSP Project Proposals should be submitted by November 15, 1995, to the nearest TxDOT District Office, attention, Traffic Safety Specialist or Susan N. Bryant, Traffic

Safety Director, Traffic Operations Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483.

Issued in Austin, Texas, on October 6, 1995.

TRD-9512848

Robert E. Shaddock  
General Counsel  
Texas Department of Transportation

Filed: October 6, 1995

## Texas Turnpike Authority Requests for Qualifications

The following request for qualifications for providing major consulting services is filed under the provisions of Texas Government Code, Chapter 2254, Subchapter B.

The Texas Turnpike Authority (the "TTA") is soliciting statements of interest and qualifications of firms for executive search consulting services. Such services will include development of a position description, a national research of individuals meeting that position(s) description, in-depth interviews with selected candidates, and recommendations of not less than three nor more than five final candidates fully qualified for the position.

Work will be done on a basis of a fixed fee plus expenses. Fees will be negotiated with the selected firm.

A summary of qualifications should include the firm name, address, phone number, person to contact, regarding the submitted proposal, references and personnel who will work on Authority account. It should also include any executive searches done previously for toll authorities, major cities, or state transportation authorities. Proposals should be submitted by October 31, 1995, and the selected firm will be expected to produce its recommended candidates no later than June, 1996.

Proposals will be reviewed by a selection committee of the TTA staff and/or Board of Directors, who will recommend a firm to the entire Board.

Questions concerning this assignment shall be directed to Jerry Shelton, Director of Administration, Texas Turnpike Authority, (214) 522-6200.

Issued in Dallas, Texas, on October 6, 1995.

TRD-9512925

James W. Griffin, P.E.  
Executive Director  
Texas Turnpike Authority

Filed: October 10, 1995.

The following request for qualifications for providing professional civil engineering/architectural services is filed under the provisions of Texas Government Code, Chapter 2254, Subchapter A.

The Texas Turnpike Authority (the "TTA") is soliciting statements of interest and qualifications for professional civil engineering/architectural design services for preparation of final architectural renderings, detailed designs, plans, and specifications for toll plazas/operations buildings for Turnpike Projects. Such engineering assignments can occur over the next two years with the first assignments being on the proposed 190 turnpike within Dallas, Collin, and Denton counties and the Addison Airport Toll Tunnel.

Proposed fees or budgets shall not be submitted with any initial response or other communication of a firm. A civil engineer/architect qualification packet is being prepared for the civil consulting engineering/architectural services and will be issued to each firm filing a written notice that it desires to respond and which requests the packet which will be available October 10, 1995.

When a firm responds by filing its qualifications later, it shall include a statement regarding the affirmative action program of the firm and shall include a statement that the responding consulting engineer has familiarized itself with the TTA Historically Underutilized Business Policy and will conform with that policy.

Qualifications filed will be reviewed by a staff consulting engineer/architect selection committee to identify those most qualified and experienced respondents who will be interviewed by the committee for capabilities best suited to specific assignments. The final selection will be made following completion of the interviews and negotiation of a satisfactory fee.

Questions concerning this assignment shall be directed to Pete Davis, Director of Engineering, Texas Turnpike Authority, (214) 522-6200.

Issued in Dallas, Texas, on October 6, 1995.

TRD-9512926 James W. Griffin, P.E.  
Executive Director  
Texas Turnpike Authority

Filed: October 10, 1995

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## Texas Workers' Compensation Commission

### Charges for Medical Dispute Resolution (TWCC Advisory 95-08)

The Texas Labor Code, §413.015 and §413.020 provide the Texas Workers' Compensation Commission (the commission) with statutory authority to assess fees for the review of health care treatment, fees, or charges. This authority is interpreted to include, but not be limited to, assessing charges when the following situations occur:

The commission shall charge a health care provider a fee if: the dispute involves a health care provider who has exceeded a fee or treatment guideline and who has not provided adequate documentation of the procedure to support and justify the disputed level of service, or the dispute involves a health care provider who has billed for a service not covered by a fee or treatment guideline or is DOP (documentation of procedure) in a guideline and has not provided adequate documentation of the procedure to support the disputed level of service.

The commission shall charge an insurance carrier a fee if: the dispute involves an insurance carrier who has, absent an agreement with the health care provider, incorrectly applied fee or treatment guidelines and as a result, has denied or reduced payment for health care services provided, or the dispute involves an insurance carrier who has denied or reduced payment for a health care service provided which is not covered by a fee or treatment guideline or is DOP in a guideline but which has been adequately supported by the health care provider's documentation of procedure.

The commission shall commence assessing charges for dispute resolution cases on November 1, 1995. In assessing charges, the commission shall use the following fee schedule: \$25 per hour for disputes received between June 1, 1992 and February 28, 1993. \$33 per hour for disputes received between March 1, 1993 and August 31, 1993. \$34 per hour for disputes received between September 1, 1993 and August 31, 1994. \$35 per hour for disputes received between September 1, 1994 and August 31, 1995. \$41 per hour for disputes received on or after September 1, 1995.

Issued in Austin, Texas, on October 6, 1995.

TRD-9512851 Elaine Cresso  
Program Assistant, General Counsel's  
Office  
Texas Workers' Compensation Commission

Filed: October 6, 1995

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## Extension of Public Comment Period

The Texas Workers' Compensation Commission published proposed new §134.1002, the Upper Extremity Treatment Guideline, in the September 22, 1995 issue of the *Texas Register* (20 TexReg 7574).

In the request for comments portion of the preamble, the ending date of the public comment period was incorrectly stated as October 20. The commission will accept comments on this proposed new rule until 5:00 p.m. on October 23, 1995.

The earliest possible date that the commission could file an adoption for publication in the *Texas Register* was also printed incorrectly as October 20, 1995. The correct date is October 23, 1995.

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TRD-9512852 Elaine Cresso  
Program Assistant, General Counsel's  
Office  
Texas Workers' Compensation Commission

Filed: October 6, 1995

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