TEXAS REGISTER

IN THIS ISSUE

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Texas Register

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How to Use the Texas Register

Information Available: The 11 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 20 (1995) is cited as follows: 20 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "20 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 20 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Texas Administrative Code

The ***Texas Administrative Code*** (***TAC***) is the official compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***. West Publishing Company, the official publisher of the ***TAC***, publishes on an annual basis.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency. The ***Official TAC*** also is available on WESTLAW, West's computerized legal research service, in the TX-ADC database.

To purchase printed volumes of the ***TAC*** or to inquire about WESTLAW access to the ***TAC*** call West: **1-800-328-9352.**

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19 Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

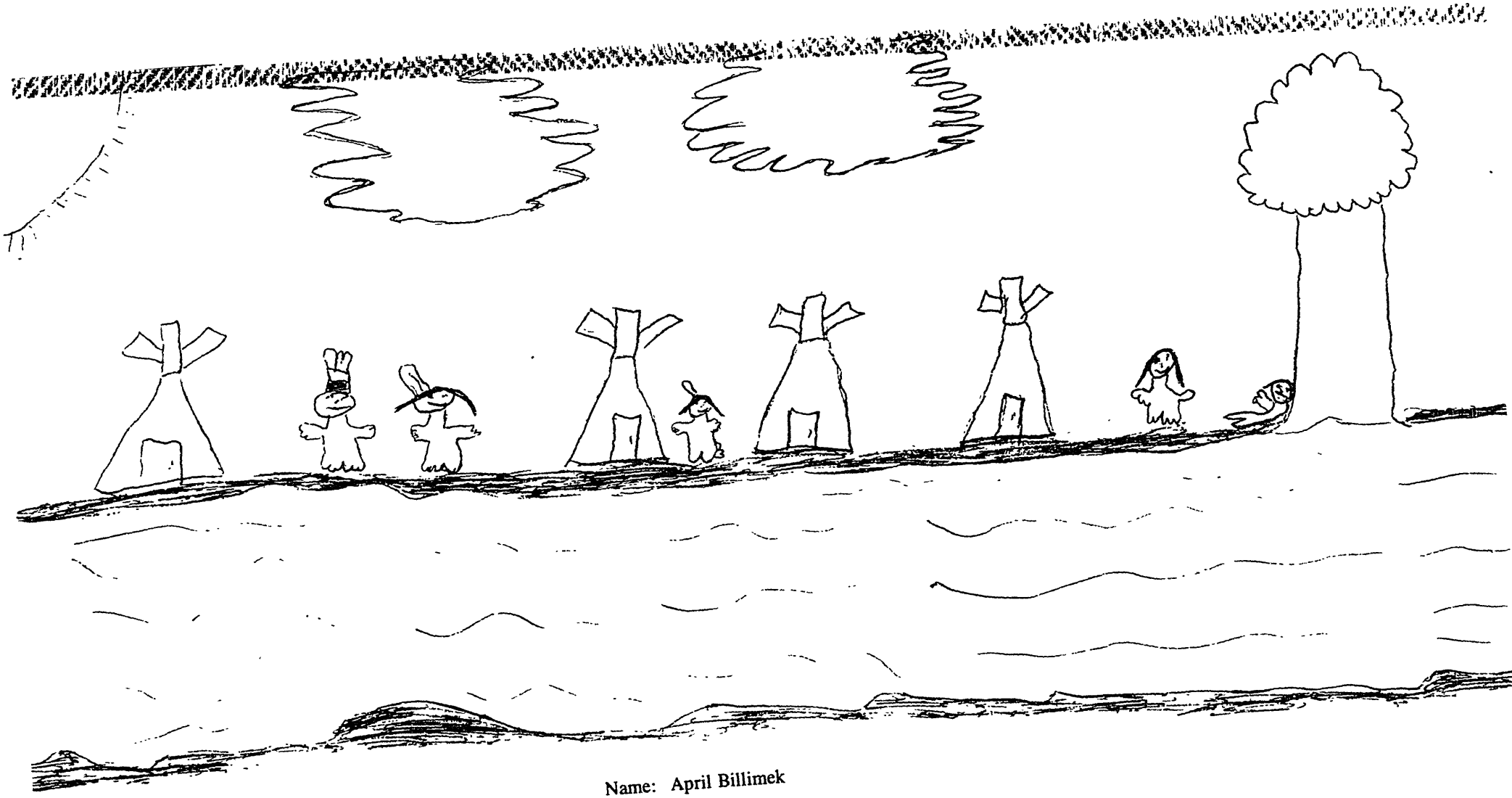
1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected.*** The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 12, and October 11, 1994). In its second issue each month the ***Texas Register*** contains a cumulative ***Table of TAC Titles Affected*** for the preceding month. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

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

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



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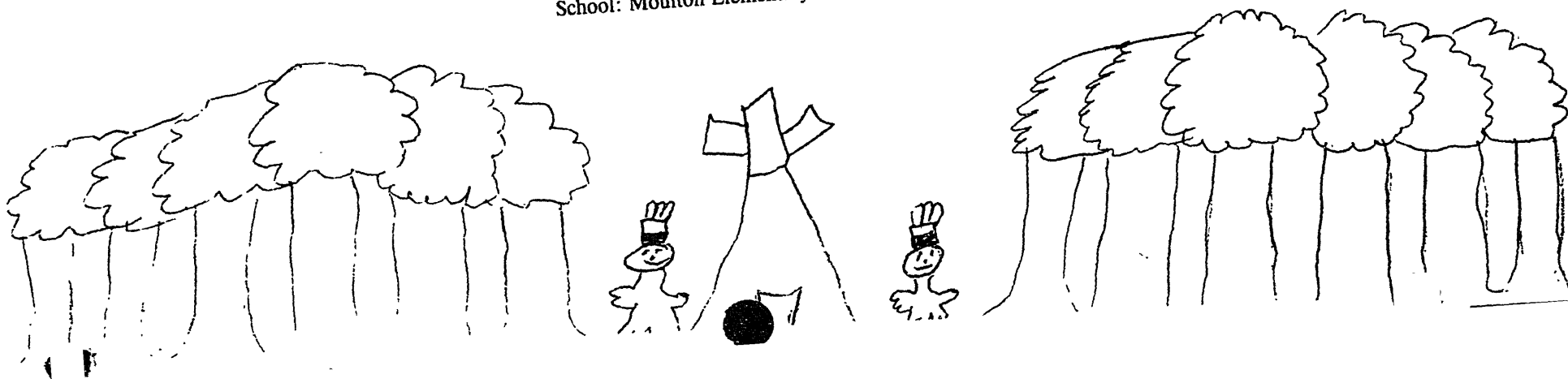

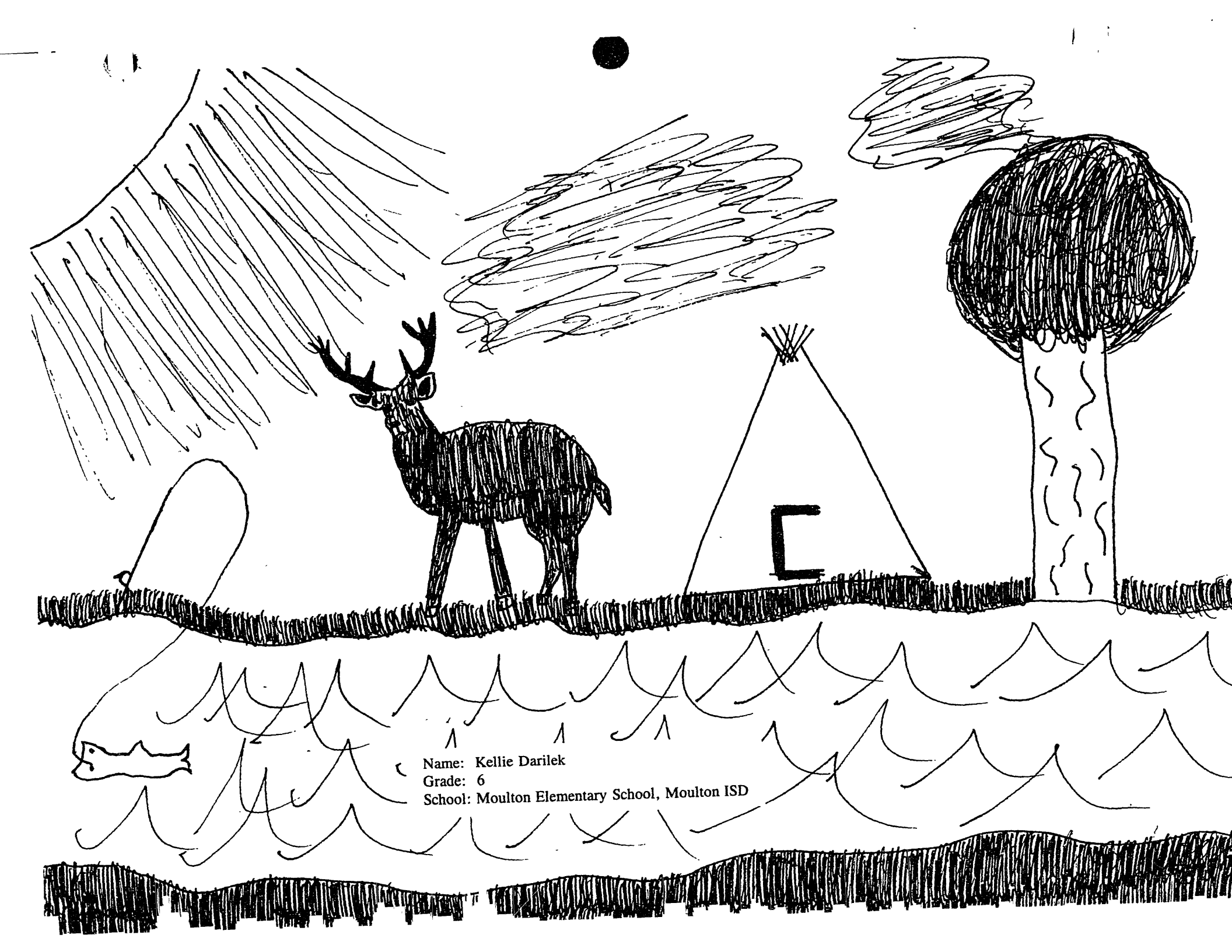

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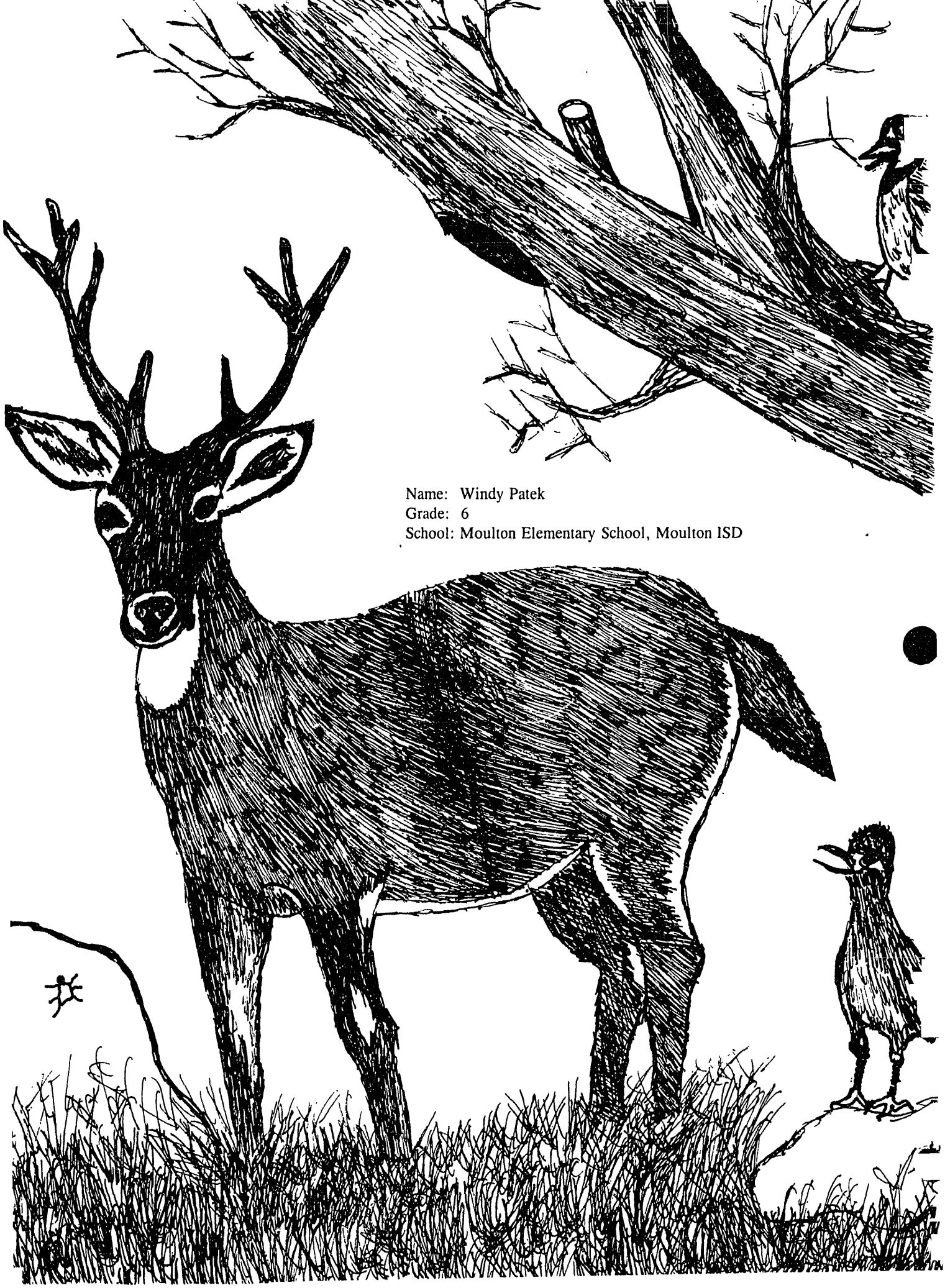

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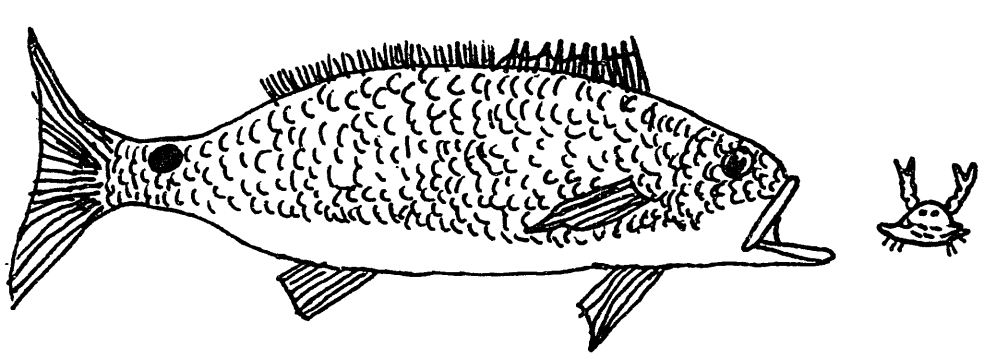

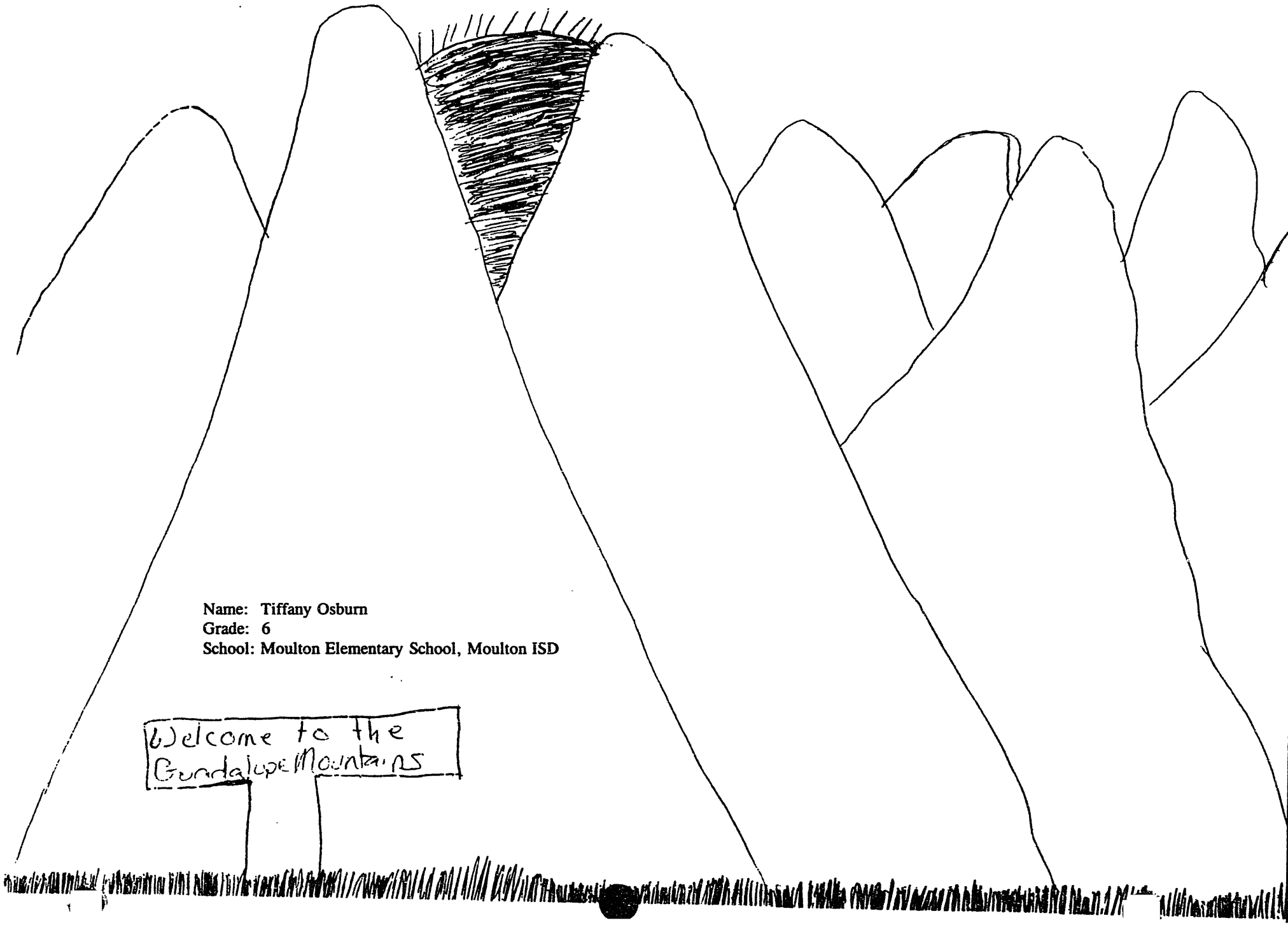

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THE GOVERNOR

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

Executive Orders

GWB 95-12

Relating to the formation of the Governor's Ad Hoc Committee to Revise the Code of Criminal Procedure.

WHEREAS, the Code of Criminal Procedure is the primary statutory guide to the conduct of fair criminal trials in the State of Texas;

WHEREAS, the Code of Criminal Procedure has not been significantly revised or recodified since 1965;

WHEREAS, the present Code of Criminal Procedure is overly long, complex, outmoded, and contains provisions which are not conducive to the effective and efficient administration of the criminal justice system;

WHEREAS, trial and appellate judges, prosecutors, and defense attorneys all recognize the need to modernize and simplify that Code;

WHEREAS, the achievement of this goal can best be accomplished by forming an Ad Hoc Committee to Revise the Code of Criminal Procedure to recommend specific statutory changes to the Texas Legislature;

NOW THEREFORE, I, George W. Bush, Governor of the State of Texas, under the authority vested in me, do hereby order that the Governor's Ad Hoc Committee to Revise the Code of Criminal Procedure, be formed.

The committee will consist of no more than 21 members appointed by the Governor for a two-year term. The membership shall be composed of active practitioners in the criminal justice system with roughly equal numbers of judges, prosecutors, and defense attorneys. Members shall serve at the pleasure of the Governor. The Governor shall designate a Chair from the membership who shall hold such designation at the pleasure of the Governor. The Governor shall fill any vacancy on the committee caused by death, resignation, or inability to serve. Inability to serve shall include failure to attend two consecutive meetings, either in person or by designee.

The Committee shall have as its principal charge the formulation of a revised Code of Criminal Procedure for consideration by the Texas Legislature.

The Committee shall meet at least quarterly or at the call of the Chair. A majority of the membership shall constitute a quorum for the purpose of conducting the business of the Committee.

The members of the Committee shall serve without salary. Necessary travel and per diem expenses may be reimbursed when such expenses are incurred in direct performance of official duties, but not to exceed $80 per day as permitted in Article IX, Section 33 of House Bill 1, the Texas General Appropriations Act.

This executive order shall be effective immediately and shall remain in full force and effect until modified, amended, or rescinded by me.

Issued in Austin, Texas, on October 20, 1995.

TRD-9513714 George W. Bush
Governor of Texas

♦ ♦ ♦

GWB 95-13

Relating to the formation of the Governor's Juvenile Justice Task Force.

WHEREAS, violent juvenile crime in Texas has risen more than 280% in the past decade;

WHEREAS, the 74th Texas Legislature enacted major reforms of the state's Juvenile Justice Code to combat this rising tide of juvenile crime;

WHEREAS, this newly enacted code provides significant opportunities and challenges to state and local criminal justice officials and

community leaders to develop programs and strategies to meet the needs of the Texas juvenile justice system;

WHEREAS, this goal can best be achieved by forming a Juvenile Justice Task Force;

NOW THEREFORE, I, George W. Bush, Governor of the State of Texas, under the authority vested in me, do hereby order that the Governor's Juvenile Justice Task Force be formed.

The Task Force will consist of no more than 30 members appointed by the Governor for a two-year term. Members shall serve at the pleasure of the Governor. The Governor shall designate a Chair from the membership who shall hold such designation at the pleasure of the Governor. The Governor shall fill any vacancy on the Committee caused by death, resignation, or inability to serve. Inability to serve shall include failure to attend two consecutive meetings, either in person or by designee.

The task force shall have as its principal charge the achievement of the following:

(a) Monitoring the implementation of the new Juvenile Justice Code;

(b) Recommending any necessary fine-tuning of the Code;

(c) Recommending methods to ensure sufficient state and local resources are allocated to the expanding juvenile justice system; and

(d) Developing a long-term strategy to meet the coming influx of youth at risk.

The Task Force shall meet quarterly or at the call of the Chair. A majority of the membership shall constitute a quorum for the purpose of conducting the business of the Task Force.

The members of the task force shall serve without salary. Necessary travel and per diem expenses may be reimbursed when such expenses are incurred in direct performance of official duties, but not to exceed $80 per day as permitted in Article IX, Section 33 of House Bill 1, the Texas General Appropriations Act.

All agencies of state and local governments are hereby directed to cooperate and assist the Task Force in the performance of duties.

This executive order shall be effective immediately and shall remain in full force and effect until modified, amended, or rescinded by me.

Issued in Austin, Texas, on October 20, 1995.

TRD-9513715 George W. Bush
Governor of Texas

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ATTORNEY GENERAL

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

Open Records Request

ORQ-3 (ID# 30374). Request from Mary Keller, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, regarding scope of the term "underwriting guidelines" for purposes of the Insurance Code, Article 1. 24D; whether the Insurance Code, Article 17.22 exempts county mutual insurance companies from the application of Article 1.24D.

TRD-9513699

♦ ♦ ♦

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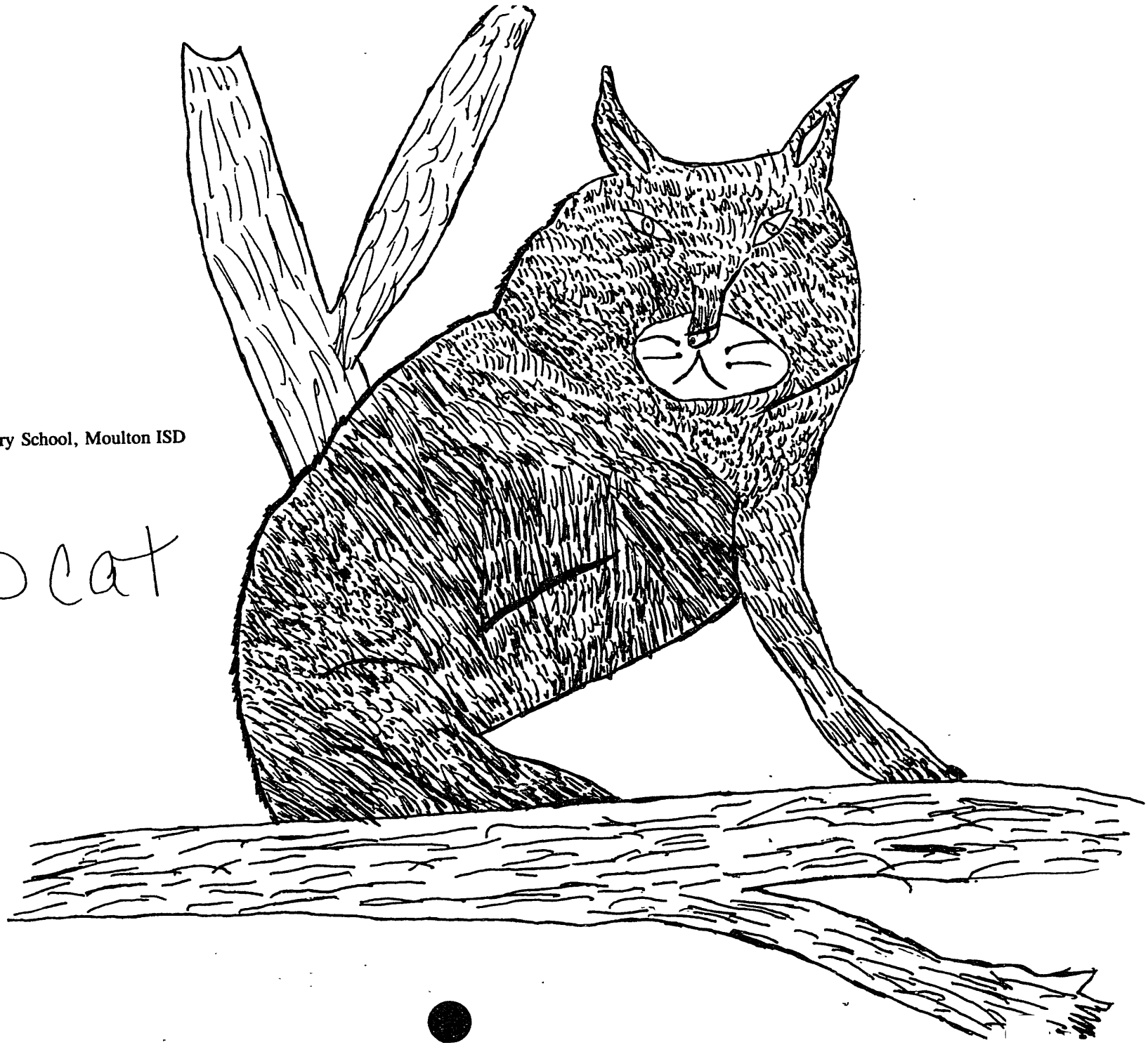
Bobcat



PROPOSED RULES

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

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

TITLE 22. EXAMINING BOARDS

Part XI. Board of Nurse Examiners

Chapter 217. Licensure and Practice

• 22 TAC §217.2

The Board of Nurse Examiners proposes an amendment to §217.2, concerning Licensure by Examination for Graduates of Basic Nursing Education Programs.

The Board of Nurse Examiners' Advisory Committee on Education has been reviewing current rules regarding education. Current rules limit the number of times a candidate can retest and require reeducation. The reeducation portion was previously handled by guidelines written by the Board and the individual nursing program; however, the term "in its entirety" was confusing and was being interpreted differently by programs and students, alike. The committee received input from deans/directors who are considering developing programs of reeducation and recommended the proposed rule to the full Board.

Kathy Thomas, MN, RN, CPNP, interim executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Thomas also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide protection for the people of Texas by establishing the number of times a candidate can take the NCLEX-RN and the length of time from graduation to testing without reeducation. Clarification of the reeducation requirements will assist deans/directors and applicants in interpreting and implementing the rule. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Kathy Thomas, Interim Executive Director, Board of Nurse Examiners, Box 140466, Austin, Texas 78714.

The amendment is proposed under the Nursing Practice Act (Texas Civil Statutes, Article 4514), §1, which provides the Board of Nurse Examiners with the authority and power to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

Article 4519 is affected by this amendment.

§217.2. Licensure by Examination for Graduates of Basic Nursing Education Programs.

(a) (No change.)

(b) Applicants for licensure by examination shall pass the examination within three attempts and within four years of graduation.

(1) (No change.)

(2) A candidate who is unsuccessful after three attempts, within four years of graduation, must complete a nursing curriculum [in its entirety].

(3) An applicant who graduated more than four years from the date of application must complete a nursing program [in its entirety].

(c) (No change.)

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

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

TRD-9513605 Kathy Thomas, MN, RN, CPNP
Interim Executive Director
Board of Nurse Examiners

Earliest possible date of adoption: December 1, 1995

For further information, please call: (512) 835-8675

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 13. Health Planning and Resource Development

Data Collection

• 25 TAC §§13.13, 13.17, 13.18

The Texas Department of Health proposes amendments to §§13.13, 13.17, and 13.18, concerning the reporting of charity care and community benefits data from nonprofit hospitals. The amendments define terms commonly used in reporting this information, clarify reporting requirements and procedures, and standardize terminology regarding non-compliance with reporting requirements. The amendments will implement Senate Bill 1190, 73rd Legislature, which amends the Texas Health and Safety Code, Chapter 311.

Dora McDonald, Chief, Bureau of State Health Data and Policy Analysis, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. McDonald also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the availability of information necessary to assess the level of charity care and community benefits provided by nonprofit hospitals. There is no anticipated economic cost to small or large businesses. There will be no costs to persons who are required to comply with the sections as proposed. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Ann Henry, Bureau of State Health Data and Policy Analysis, 1100 West 49th Street, Austin, Texas 78756-3199, (512) 458-7261. Comments will be accepted for 30 days following the publication of this proposal in the *Texas Register.*

The amendments are authorized under the Health and Safety Code, Chapters 104 and 311. Chapter 104 authorizes the collection and dissemination of data from health care

facilities necessary to facilitate health planning and resource development. Chapter 311 mandates the collection and reporting of hospital financial, utilization, and services data to determine the impact of the provision of indigent care on hospitals in the state and assess the adequacy of charity care and community benefits provided by nonprofit hospitals. Sections 104.042(a) and 311.032(b) provide the Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health and the Commissioner of Health.

These amendments affect the Health and Safety Code, Chapter 311.

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

Charity care–The unreimbursed cost to a hospital of providing, funding, or otherwise financially supporting health care services on an inpatient or outpatient basis to a person classified by the hospital as financially or medically indigent and/or providing, funding or otherwise financially supporting health care services provided to financially indigent **persons** [patients] through other nonprofit or public outpatient clinics, hospitals or health care organizations.

Health care organization–A nonprofit or public organization that provides, funds, or otherwise financially supports health care services provided to financially indigent persons.

Hospital system–A system of local nonprofit hospitals under the common governance of a single corporate parent that are located within a radius of not more than 125 linear miles of the corporate parent.

Unreimbursed costs–The costs a hospital incurs for providing services after subtracting payments received from any source for such services including but not limited to the following: third-party insurance payments; Medicare payments; Medicaid payments; Medicare education reimbursements; state reimbursements for education; payments from drug companies to pursue research; grant funds for research; and disproportionate share payments. For purposes of this definition, the term "costs" shall be calculated by applying the cost to charge ratios derived in accordance with generally accepted accounting principles for hospitals to billed charges. The calculation of the cost to charge ratios shall be based on the most recently completed and audited prior fiscal year of the hospital or hospital system. For fiscal years beginning prior to January 1, 1996, for purposes of this definition, charitable contributions and grants to a hospital, including transfers from endowment or other funds controlled by the hospital or its nonprofit supporting entities, shall not be subtracted from the costs of providing services for purposes of determining unreimbursed costs. For fiscal years beginning after January 1, 1996, for purposes of this definition, charitable contributions and grants to a hospital, including transfers from endowment or other funds controlled by the hospital or its nonprofit supporting entities, shall not be subtracted from the costs of providing services for purposes of determining the unreimbursed costs of charity care and government-sponsored indigent health care.

§13.17. Duties of Nonprofit Hospitals.

(a) **Report of the annual** [Annual] community benefits plan.

(1) For reports required to be submitted to the Texas Department of Health (department) on or after September 1, 1995, the annual report of the community benefits plan may be filed on a hospital or hospital system basis.

(2)[(1)] **A nonprofit hospital or hospital system** [Nonprofit hospitals] shall file an annual report of the community benefits plan, as required by Health and Safety Code, §311.046, with the **department** [Texas Department of Health (department)] no later than 120 days after the [end of the] hospital's **or hospital system's** [first complete] fiscal year **ends** [beginning after September 1, 1993].

(3)[(2)] The nonprofit hospital's **or hospital system's** annual report of the community benefits plan must include, at a minimum, the hospital's **or hospital system's** mission statement, a disclosure of the health care needs of the community that were considered in developing the community benefits plan and a disclosure of the amount and types of community benefits, including charity care, actually provided. Charity care shall be reported as a separate item from other community benefits.

(b) Annual statement of community benefits standard.

(1) For statements required to be submitted to the department on or after September 1, 1995 the annual statement of community benefits standard may be filed on a hospital or hospital system basis.

(2)[(1)] **A nonprofit hospital or hospital system** [Nonprofit hospitals] shall file an annual statement with the department no later than 120 days after the end of the hospital's **or hospital system's** fiscal year, stating which of the standards for providing community benefits have been satisfied. The annual statement filed under this subsection shall be based on the most recently completed and audited prior fiscal year [of the hospital]. A nonprofit hospital **or hospital system** may elect to provide community benefits according to any of the following standards:

(A) charity care and government-sponsored indigent health care are provided at a level which is reasonable in relation to the community needs, as determined through the community needs assessment, the available resources of the hospital **or hospital system**, [and] the tax-exempt benefits received by the hospital **or hospital system, and other factors that may be unique to the hospital or hospital system, such as the hospital's or hospital system's volume of Medicare and Medicaid patients;**

(B) charity care and government-sponsored indigent health care are provided in an amount equal to at least 4.0% of the hospital's **or hospital system's** net patient revenue;

(C) charity care and government-sponsored indigent health care are provided in an amount equal to at least 100% of the hospital's **or hospital system's** tax-exempt benefits, excluding federal income tax;

(D) prior to January 1, 1996, charity care and community benefits are provided in a combined amount equal to at least 5.0% of the hospital's **or hospital system's** net patient revenue, provided that charity care and government-sponsored indigent health care are provided in an amount equal to at least 3.0% of net patient revenue; or

(E) **beginning with the hospital's or hospital system's fiscal year starting** after December 31, 1995, charity care and community benefits are provided in a combined amount equal to at least 5.0% of the hospital's **or hospital system's** net patient revenue, provided that charity care and government-sponsored indigent health care are provided in an amount equal to at least 4.0% of net patient revenue.

(3) For purposes of satisfying paragraph (2)(E) of this subsection, a hospital or hospital system may not change its existing fiscal year unless the hospital or hospital system changes its ownership or corporate structure as a result of a sale or merger.

(4)[(2)] **A nonprofit hospital or hospital system** [Nonprofit hospitals] shall use the form developed by the department for reporting under this section and shall submit the form as part of the annual report of the community benefits plan.

(5)[(3)] The department will accept written revisions of the annual statement of community benefits standard for 30 days after the filing date.

(6) A nonprofit hospital that has been designated as a disproportionate share hospital under the state Medicaid program in the current fiscal year or in either of the previous two fiscal years shall be deemed in compliance with these standards.

(7) A hospital that satisfies paragraphs (2)(A) or (6) of this subsection shall be excluded in determining a hospital system's compliance with the standards provided by in paragraph (2)(B)-(E) of this subsection.

(c) Reporting.

(1) The department shall notify nonprofit hospitals in writing that the annual report of a community benefits plan and the statement of community benefits standard must be filed within 120 days after the end of the hospital's **or hospital system's** fiscal year. The notification will include a form to be used by nonprofit hospitals **or hospital systems** to file the annual statement of community benefits standard.

(2) Nonprofit hospitals changing to a hospital system reporting basis shall report for a continuous period of time. [The department shall determine each nonprofit hospital's filing date based on the fiscal year reporting period used in its 1992 survey form required under §13.15 of this title (relating to Survey Forms). A nonprofit hospital may change its filing date by providing written notification to the department at the initiation of a new fiscal year reporting basis.)]

(3) All hospitals or hospital systems shall report as required under this title if the hospital or hospital system, for the previous fiscal year, reported as a nonprofit hospital or hospital system under §13.15 of this title (relating to Survey Forms).

(4) All hospitals or hospital systems shall report to the department any change of ownership or control which may effect the nonprofit status of the hospital or hospital system.

(5) A nonprofit hospital that is located in a county with a population under 110,000 which has a hospital district created pursuant to Section 5, Article IX, Texas Constitution, and Chapter 136, Acts of the 55th Legislature, 1957, shall not be required to comply with one or more of the standards set forth in this subsection. This exemption expires with a hospital's fiscal year starting on or after September 1, 1996.

(6) A nonprofit hospital is exempt from this requirement if the hospital is located in a county with a population under 50,000 and in which the entire county or the population of the entire county has been designated as a health professional shortage area during the current or any previous fiscal year.

(d) (No change.)

§13.18. Non-Compliance with Reporting Requirements.

(a) (No change.)

(b) Community benefit plans.

(1) A nonprofit hospital **or hospital system** that does not timely submit a report of the community benefits plan to the Texas Department of Health (department) according to the requirements and procedures established in these sections is subject to a civil penalty of not more than $1,000 for each day of non-compliance, under the provisions of Health and Safety Code, Chapter 311.

(2) If a nonprofit hospital **or hospital system,** does not submit a report of the community benefits plan to the department within the 120-day reporting period established in §13.17 of this title (relating to Duties of Nonprofit Hospitals), the department may institute the following procedures.

(A) The department will notify the entity in writing by certified mail, return receipt requested, that the entity is in non-compliance with department reporting requirements and may be in violation of Health and Safety Code, Chapter 311. The written notification will also state that the commissioner of health will request that the attorney general institute and conduct a suit in the name of the state to recover civil penalties if the hospital **or hospital system** fails to submit the report to the department within ten days after receipt of the written notification letter.

(B) If the department does not receive the report of the community benefits plan from the non-responding hospital **or hospital system** within the specified time frame, the commissioner of health will notify the attorney general in writing of the entity's non-compliance. The department will send a copy of the written notification to the hospital **or hospital system.**

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

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

TRD-9513636 Susan K. Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Earliest possible date of adoption: December 1, 1995

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

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Chapter 91. Cancer

Prostate Cancer Advisory Committee

• 25 TAC §91.21

The Texas Department of Health (department) proposes new §91.21, concerning the creation of the prostate cancer advisory committee which will provide advice on the strategies for educating the public on the health benefits of the early detection, prevention and treatment of prostate cancer. The creation of the committee is required by Health and Safety Code, §91.003. The new section is required by Texas Civil Statutes, Article 6252-33 relating to state agency advisory committees.

Dr. Philip Huang, M.D., Bureau Chief, Bureau of Chronic Disease Prevention and Control, has determined that for the first five-year period the proposed section is in effect there will be no new fiscal implications for state or local governments as a result of enforcing or administering the section.

Dr. Huang also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be better information and advice provided to the department and the Texas Board of Health (board) on the issues relating to the strategies for educating the public on the health benefits of the early detection, prevention and treatment of prostate cancer. There will be no effect on small businesses. There are no economic costs to persons who are required to comply with the section as proposed. There will be no effect on local employment.

Comments on the proposal may be submitted to Dr. Philip Huang, M.D., Bureau Chief, Bureau of Chronic Disease Prevention and Control, 1100 West 49th Street, Austin, Texas 78756 (512) 458-7234. Comments on the new section will be accepted for 30 days following publication in the *Texas Register.*

The new section is proposed under Texas Health and Safety Code §91.003 which requires the creation of the prostate cancer advisory committee; Article 6252-33, §5, which sets standards for the evaluation of advisory committees by the agencies for which they function; under Health and Safety Code, §12. 001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health; and Health and Safety Code §11.016, which allows the board to establish advisory committees.

This section affects Health and Safety Code, Chapter 91.

§91.21. The Prostate Cancer Advisory Committee

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

(1) The name of the advisory committee shall be the Prostate Cancer Advisory Committee (committee).

(2) The committee is required to be established by the Texas Board of Health (board) by Health and Safety Code §91.003.

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

(c) Purpose. The purpose of the committee is to provide advice to the board on strategies for educating the public on the health benefits of the early detection, prevention, and treatment of prostate cancer.

(d) Tasks.

(1) The committee shall advise the board concerning rules relating to educating the public on the health benefits of the early detection, prevention, and treatment of prostate cancer.

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

(e) Review and duration. By September 1, 2000, the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed of eleven members appointed by the board. The composition of the committee shall include:

(1) four consumer representatives; and

(2) and seven other representatives.

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

(1) Members shall be appointed for staggered terms so that the terms of a substantial equivalent number of members will expire on December 31st of each even-numbered year.

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

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

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

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

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

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

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

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

(i) Meetings. The committee shall meet only as necessary to conduct committee business.

(1) A meeting may be called by agreement of department staff and either the presiding officer or at least three members of the committee.

(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability for a meeting date and place.

(3) Each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551.

(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.

(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with quorum present.

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(4) The attendance records of the members shall be reported to the board. The report shall include attendance at committee and subcommittee meetings.

(k) Staff. Staff support for the committee shall be provided by the department.

(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any action taken by the committee must be approved by a majority vote of the members present once quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A draft of the minutes approved by the presiding officer shall be provided to the board and each member of the committee within 30 days of each meeting.

(B) After approval by the committee, the minutes shall be signed by the presiding officer.

(m) Subcommittees. The committee may establish subcommittees as necessary to assist the advisory committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittee.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the committee at each committee meeting or in interim written reports as needed. The reports shall include and executive summary or minutes of each subcommittee meeting.

(n) Statement by members. The board, the department, and the committee shall not be bound in anyway by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.

(o) Reports to board. The committee shall file an annual written report with the board.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, anticipated activities of the committee for the next year, and any amendments to this section requested by the committee.

(2) The report shall identify the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities.

(3) The report shall cover the meetings and activities in the immediate proceedings 12 months and shall be filed with the board each January. It shall be signed by the presiding officer and appropriate department staff.

(p) Effective date. This section shall become effective on January 1, 1996.

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

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

TRD-9513625

Susan K. Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Earliest possible date of adoption: December 1, 1995

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

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Chapter 97. Communicable Diseases

Sexually Transmitted Diseases Including Acquired Immune Deficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV)

• 25 TAC §97.135

The Texas Department of Health (department) proposes an amendment to §97.135, concerning mandatory serologic testing of women for syphilis during pregnancy and delivery. The amendment will require the physician or a person permitted by law to attend a pregnant woman to provide printed materials about HIV, acquired immune deficiency syndrome (AIDS), and syphilis to the woman; submit a blood sample from the woman for a serologic test for HIV unless the woman objects; and provide or make available information relating to treatment of HIV infection and AIDS to women whose serologic HIV test and confirmatory test show that they are or may be infected with HIV or AIDS. Chapter 805 of the 74th Texas Legislature requires the Board of Health to adopt standards for mandatory serologic testing of women for human immunodeficiency virus (HIV) during pregnancy and delivery.

Doug Wilson, Chief of Staff Services for the Disease Control and Prevention Associateship, Texas Department of Health, has determined that for the first five-year period the section is in effect there will be fiscal implications for state government as a result of enforcing or administering the section as proposed. The anticipated cost will be $777,830 for each year of the five years. This cost includes testing and treatment of those pregnant women found to be infected with HIV as well as distribution of prevention information. It is estimated that at least 50% of the department's prenatal clients will be eligible for Medicaid and to that extent 75% of this cost will be paid for by the federal government. It is also anticipated that due to the preventive nature of treatment with AZT early in gestation, there will be a cost savings realized due to the decreased number of HIV infected infants that will be born. The effect on local government is unknown at this time because it is not known how many women obtain their prenatal care at the expense of local government or the increased number of these women who will obtain HIV testing as a result of the change in the law.

Mr. Wilson also has determined that for each year of the first five years the amendment is in effect, the public benefits anticipated as result of enforcing the section will be the education of pregnant women about HIV, AIDS and syphilis through distribution of printed materials; the early detection of HIV in pregnant women and early intervention to prevent transmission of HIV to newborns; post-test counseling; and increased awareness in the prevention of HIV and syphilis transmission. The cost to small businesses and individuals is not known at this time because it is not known how many women obtain their prenatal care at the expense of small businesses and individuals or the increased number of these women who will obtain HIV testing as a result of the change in the law. There will be no impact on local employment.

Comments on the proposal may be submitted to Linda S. Moore, MS, RN, Director, Special Projects and Clinical Resources Program, Texas Department of Health, Bureau of HIV and STD Prevention, 1100 West 49th Street, Austin, Texas, 78756, (512) 490-2505. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

The amendment is proposed under the Texas Health and Safety Code, Annotated §81.004(b) which provides the Texas Board of Health (board) with the authority to adopt rules necessary of the effective implementation regulations regarding Chapter 81, Communicable Diseases; Health and Safety Code §81.090 which provides for serologic testing of pregnant women for syphilis and HIV; and Health and Safety Code §12.001 which provides the board with authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The amendment affects Health and Safety Code, Chapter 81.

§97.135. Serological Testing for Syphilis and HIV during Pregnancy and Delivery.

(a) **At the time of first examination and visit, every** [Every] physician or other person permitted by law to attend a pregnant woman during gestation or at the delivery of the infant resulting from such pregnancy shall for **every** [each] woman so attended:[.]

(1) distribute to the woman printed materials about HIV, AIDS and syphilis which shall be provided by the Texas Department of Health and note on the woman's medical record that the distribution was made;

(2) verbally notify the woman that an HIV test will be performed if the patient does not object and note on the medical records that verbal notification was given;

(3) advise the woman that the result of the test taken under this section is not anonymous, and explain the difference between an anonymous and confidential test; and

(4) take or cause to be taken a sample of the blood of the woman [at the time of first examination and visit] and

submit such sample to a laboratory certified by the Clinical Laboratory Improvement Amendments of 1988 (CLIA-88; 42 United States Code §263a,et>)[.] for: [If the first examination and visit of the pregnant woman is within 24 hours of delivery of the infant, then this sample of blood will satisfy the requirements of subsection (b) of this section.]

(A) a standard serological test for syphilis; and

(B) a standard serological test for HIV infection in accordance with §97.131 of this title (relating to Definitions).

(b) (No change.)

(c) If the woman objects to the test for HIV infection under subsection (a)(4)(B) of this section, the physician or other person may not conduct the test. The physician or other person shall refer the woman who objects to the test to an anonymous testing site or instruct the woman about anonymous testing methods.

(d)[(c)] **A specimen of blood may be taken from the umbilical cord after it has been cut only if the person attending** the delivery of an infant or fetus [who] is not authorized by law or regulation to draw a specimen of blood [may obtain the specimen of blood for testing from the umbilical cord attached to the placenta after separation from the infant; otherwise, this person shall] **from the mother. If a specimen of umbilical cord blood cannot be obtained by this person, he/she will** arrange for a collection of [the specimen] **a blood sample from the mother or the infant** within 24 hours of delivery by a person authorized to do so.

(e)[(d)] Every physician or other person required to report births or fetal deaths shall state on each birth or fetal death certificate whether a blood test for syphilis was performed during the pregnancy [and on the maternal blood or the umbilical cord blood of the newborn infant].

(f) If the serologic screening and confirmatory test for HIV conducted under subsection (a)(4)(B) of this section shows that the woman is or may be infected with HIV, the physician or other person who submitted the sample for the test shall:

(1) provide or make available to the woman information relating to treatment of HIV infection and acquired immune deficiency syndrome, or refer the woman to an entity that provides treatment for individuals infected with HIV or acquired immune deficiency syndrome; and

(2) provide or make available to the woman post-test counseling which includes:

(A) the meaning of the test result;

(B) the possible need for additional testing;

(C) measures to prevent the transmission of HIV;

(D) the availability of appropriate health services;

(E) the benefits of partner notification and the availability of partner notification programs;

(F) increased understanding of HIV infection;

(G) explanation of potential need for confirmatory testing;

(H) explanation of behavior changes to decrease the potential of HIV transmission;

(I) encouragement to seek appropriate medical care; and

(J) encouragement to notify persons with whom there has been contact capable of transmitting HIV.

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

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

TRD-9513626 Susan K. Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Earliest possible date of adoption: December 1, 1995

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

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Chapter 229. Food and Drug

Licensing of Wholesale Device Distributors

• 25 TAC §229.444

The Texas Department of Health (department) proposes new §229.444, concerning the Device Distributors and Manufacturers Advisory Committee. The proposed new section covers applicable law, purpose, tasks, abolishment, terms of office, officers, meetings, attendance, staff, procedures, subcommittees, statements by members, reports to the board, reimbursement of members' expenses, and the section's effective date.

The new section will allow the department to establish an advisory committee for medical device distributors and manufacturers as required by Health and Safety Code, §431.275, for the purpose of advising the board in the development of standards and procedures relating to the licensing of distributors and manufacturers of medical devices.

Cynthia T. Culmo, R.Ph., Director, Drugs and Medical Devices Division, Bureau of Food and Drug Safety, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Culmo also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section are the department's access to the committee's advice concerning the Drugs and Medical Devices Program's operation and delivery of services. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There will be no anticipated effect on local employment.

Comments on the proposal may be submitted to Thomas E. Brinck, Drugs and Medical Devices Division, Bureau of Food and Drug Safety, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 719-0200. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register.*

The new section is proposed under Texas Civil Statutes, Article 6252-33, which set standards for the evaluation of advisory committees by the agencies for which they function; and under Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the Commissioner of Health.

The new section affects the Health and Safety Code, Chapter 431.

§229.444. Device Distributors and Manufacturers Advisory Committee.

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

(1) The name of the committee shall be the Device Distributors and Manufacturers Advisory Committee (committee).

(2) The committee is required to be established by the Texas Board of Health (board) by Health and Safety Code, §431.275.

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

(c) Purpose. The purpose of the committee is to provide advice to the board in the area of licensure of device distributors and manufacturers.

(d) Tasks.

(1) The committee shall advise the board concerning rules relating to licensing of device distributors and manufacturers.

(2) The committee shall advise the board in the development of standards and procedures relating to the licensing of device distributors and manufacturers; make recommendations to the board relating to the content of the rules adopted to implement the licensing of device distributors and manufacturers; and perform any other functions requested by the board to implement and administer the rules regarding the licensing of device distributors and manufacturers.

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

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

(f) Composition. The committee shall be composed of five members appointed by the board. The composition of the committee shall include:

(1) two consumer representatives; and

(2) three nonconsumer representatives.

(g) Terms of office. The term of office of each member shall be three years.

(1) Members shall be appointed for staggered terms so that the terms of a substantial equivalent number of members will expire on August 31st of each odd numbered year.

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

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

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

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

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

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

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

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

(i) Meetings. The committee shall meet only as necessary to conduct committee business.

(1) A meeting may be called by agreement of department staff and either the presiding officer or at least three members of the committee.

(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability for a meeting date and place.

(3) Each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551.

(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.

(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with quorum present.

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(4) The attendance records of the members shall be reported to the board. The report shall include attendance at committee and subcommittee meetings.

(k) Staff. Staff support for the committee shall be provided by the department.

(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any action taken by the committee must be approved by a majority vote of the members present once quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A draft of the minutes approved by the presiding officer shall be provided to the board and each member of the committee within 30 days of each meeting.

(B) After approval by the committee, the minutes shall be signed by the presiding officer.

(m) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommit-

tee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the advisory committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(n) Statement by members. The board, the department, and the committee shall not be bound in anyway by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.

(o) Reports to board. The committee shall file an annual written report with the board.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, anticipated activities of the committee for the next year, and any amendments to this section requested by the committee.

(2) The report shall identify the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities.

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the board each August. It shall be signed by the presiding officer and appropriate department staff.

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

Issued in Austin, Texas, on October 24, 1995.

TRD-9513697 Susan K. Steeg
General Counsel
Texas Department of Health

Earliest possible date of adoption: December 1, 1995

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

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Part II. Texas Department of Mental Health and Mental Retardation

Chapter 401. System Administration

Subchapter A. Advisory Committees

• 25 TAC §401.12, §401.21

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

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes the repeal of §401.12 and §401.21, concerning advisory committees.

The proposed repeals would eliminate reference to all advisory committees that are not recognized by the Appropriations Act, Article II, Rider 27. Elimination of reference to certain advisory committees does not necessarily mean that the committees no longer exist, but rather that the committees are not funded under legislation authorizing advisory committees.

Don Green, chief financial officer, has determined that for the first five-year period the repeals are in effect there will be no additional fiscal cost to state or local government as a result of enforcing or administering the repeals. There will be no significant local economic impact.

Karen Hale, assistant commissioner, has determined that the public benefit is the adoption of department rules that reflect legislative intent. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Linda Logan, Director, Policy Development, Texas Department Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

The repeals are proposed under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

The repeals affect the Texas Health and Safety Code, Chapters 533, 552, and 593.

§401.12. Case Management Advisory Committee.

§401.21. Human Rights Committees.

This agency hereby certifies that the sections as proposed have been reviewed by legal counsel and found to be within the agency's authority to adopt.

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

TRD-9513661 Ann Utley
Chair
Texas Department of Mental Health and Mental Retardation

Earliest possible date of adoption: December 1, 1995

For further information, please call: (512) 206-4516

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Part XI. Texas Cancer Council

Chapter 701. Policies and Procedures

• 25 TAC §701.9

The Texas Cancer Council proposes new §701.9, concerning policies and procedures. The new section is being proposed to add a definition regarding employee training.

Emily Untermeyer, Executive Director of the Texas Cancer Council, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government, as a result of enforcing or administering the rule.

Ms. Untermeyer also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to make the Council meet the requirements of the State Employees Training Act of 1969, codified at Texas Government Code Annotated, §§656.041 et seq (Vernon 1994).

Comments on the proposal may be submitted to Emily Untermeyer, Executive Director, Texas Cancer, at the interagency address 211 East Seventh Street, Suite 710, Austin, Texas 78701, or the mailing address P.O. Box 12097, Austin, Texas 78711.

The new section is proposed under the Health and Safety Code, Chapters 102. 002 and 102.009, which provides the Texas Cancer Council with the authority to develop and implement the Texas Cancer Plan, and Texas Civil Statutes, Article 6252-13a, §4, which provide the Texas Cancer Council with the authority to adopt rules governing council practice and procedures.

No other government code, statute, or article is affected by this proposed rule.

§701.9. Employee Training.

(a) Purpose. The Texas Cancer Council recognizes that staff development for employees is important and should be encouraged. This rule provides guidelines to assist employees who want to increase their job skills that are appropriate for their TCC duties.

(b) Eligibility. An employee must be in a full-time permanent position with the agency and be performing his/her job in a satisfactory manner. Training topics must be related to:

(1) the employee's current position; and/or

(2) the employee's future career goals with the agency.

(c) Agency Obligations. Dependent on availability, agency funds may be used to pay the cost of the training and allow employees to use work time to attend. The Executive Director will implement internal procedures for approving training requests.

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

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

TRD-9513589 Emily F. Untermeyer
Executive Director
Texas Cancer Council

Earliest possible date of adoption: December 1, 1995

For further information, please call: (512) 463-3190

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 3. Life, Accident and Health Insurance and Annuities

Subchapter FF. Credit Life and Accident and Health Insurance

The Texas Department of Insurance proposes amendments to §3.5302, and new §3.5502, concerning joint credit accident and health insurance. The proposed amendment to §3.5302 deletes the provision which currently prohibits the writing of joint credit accident and health insurance. The proposed new §3.5502 defines and describes joint credit accident and health insurance, including limitations on the amount of each periodic indemnity payment and on the total amount of indemnity payable on a single transaction.

Rhonda Myron, Deputy Commissioner, Life/Health Group, Texas Department of Insurance, has determined that for each year of the first five years in which the proposed amendment and new section are in effect, the fiscal implications to state or local government as a result of enforcing or administering the proposed amendment and new section would be minimal, and would be absorbed in the usual costs associated with routine policy review. Ms. Myron has also determined that there will be no effect on local employment or the local economy as a result of the proposal.

Ms. Myron has determined that for each year of the first five years in which the proposed amendment and new section are in effect, the public benefit anticipated as a result of implementing and enforcing the proposed amendment and new section will be the additional availability of credit disability coverage which can be written on two individuals who are jointly responsible for the repayment of a debt. Under the proposed coverage, if either or both of the joint debtors are disabled, the periodic indemnity payment due will be paid during the period of disability.

The estimated economic cost to insurers that write the lines of insurance affected by the proposed amendment and new section will vary depending on various factors including size of company, type of company, number of different policies written by the insurer that are affected, and the volume of premium dollars the insurer writes for the lines of insurance affected. It is estimated that for the first year that the proposed amendment and new section are in effect, the anticipated costs to insurers for compliance with the proposed amendment and new section for monitoring of compliance, filing requirements, and compliance with other provisions in the proposed amendment and new section will range from no costs up to $5,000. The most measurable cost of compliance will occur in the first year, when insurers will reprogram their systems to ensure compliance with the proposed amendment and new section. The costs in future years will primarily be those associated with the monitoring of compliance. Estimated costs for the remaining four years will range from no costs up to $1,000. The assumptions on which these costs are based may change substantially as the department receives data during the comment period.

Comments on the proposal must be submitted within 30 days after publication of the proposed sections in the Texas Register to Alicia M. Fechtel, Chief Clerk, Texas Department of Insurance, P.O. Box 149104, Mail Code 113-1C, Austin, Texas 78714-9104. An additional copy of the comment must be submitted to Rhonda Myron, Deputy Commissioner, Life/Health Group, Texas Department of Insurance, P.O. Box 149104, MC 106-1A, Austin, Texas 78714-9104. A request for a public hearing on the proposal should be submitted separately to the Office of the Chief Clerk.

General Provisions

• 28 TAC §3.5302

The amendment is proposed under the authority of the Texas Insurance Code, Articles 3.53, §12 and 1.03A. Article 3.53, §12 authorizes the Commissioner of Insurance to issue such rules and regulations as deemed appropriate for the supervision of The Model Act for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance. Article 1.03A authorizes the Commissioner of Insurance to promulgate and adopt rules and regulations for the conduct and execution of the duties and functions of the department.

The following articles are affected by this proposal: Insurance Code, Article 3.53; Insurance Code, Article §3.53.

§3.5302. Joint Credit Life Insurance.

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

[(c) The writing of joint credit accident and health insurance is prohibited.]

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

Issued in Austin, Texas, on October 24, 1995.

TRD-9513713 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: December 1, 1995

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

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Standards of Benefits for Credit Accident and Health Insurance

• 28 TAC §3.5502

The new section is proposed under the authority of the Texas Insurance Code, Articles 3.53, §12 and 1.03A. Article 3.53, §12 authorizes the Commissioner of Insurance to issue such rules and regulations as deemed appropriate for the supervision of The Model Act for the Regulation of Credit Life Insurance and Credit Accident and Health Insurance. Article 1.03A authorizes the Commissioner of Insurance to promulgate and adopt rules and regulations for the conduct and execution of the duties and functions of the department.

The following articles are affected by this proposal: Insurance Code, Article 3.53; Insurance Code, Article 3.53.

§3.5502. Joint Credit Accident and Health Insurance.

(a) Joint debtors, for purposes of credit accident and health insurance written under Article 3.53, Texas Insurance Code, means only spouses or business partners, and such persons must be jointly and severally liable for repayment of the single indebtedness and be joint signers of the instrument of indebtedness. Endorsers and guarantors are not eligible for credit insurance coverage. Joint accident and health coverage shall not be written covering more than two debtors.

(b) Coverage may be provided by either of the methods set forth in paragraphs (1) and (2) of this subsection:

(1) each debtor is insured for 100% of the disability payment;

(2) each debtor is insured for a portion of the disability payment. The total of the portions shall equal 100% of the disability payment. The joint disability insurance benefit cannot exceed the amount of insurance that would have been provided if coverage had been issued on a single debtor.

(c) Joint disability coverage shall be evidenced by an individual policy or, in the case of group insurance, by a certificate of insurance. The form shall specify the amount of disability benefit to be provided on each debtor. The coverage shall not be provided by two single individual disability policies or by two single group disability certificates of insurance. Jointly indebted persons shall not both be covered separately at single accident and health rates.

(d) Joint disability forms shall provide that if coverage on one of the joint debtors is terminated, the coverage on the other debtor shall be continued under a single individual disability policy or a single group disability certificate. Coverage may be terminated for any of the reasons stated in paragraphs (1)-(4) of this subsection:

(1) the coverage is contested;

(2) the coverage was issued in error to a joint insured who exceeded the eligibility age limits and who correctly stated his age. Under these circumstances, the insurer has the right to terminate the portion of coverage provided on such insured as long as the adjustment is handled as set forth in §3.5106(b) of this title (relating to Prohibited Provisions and Practices) addressing excess coverage;

(3) coverage was issued in error to a joint insured who did not meet the eligibility employment requirements, if required, and who correctly stated his employment status in writing. Under these circumstances, the insurer has the right to terminate the portion of coverage provided on such insured as long as the adjustment is made as set forth in subsection (b) of §3.5106 of this title (relating to Prohibited Provisions and Practices) addressing excess coverage;

(4) suicide.

(e) If termination occurs for any of the reasons set forth in subsection (d)(1)-(4) of this section, the amount of premium refund required will be equal to the difference between the premium charge for the joint disability coverage and the premium that would have been charged if only single disability coverage (on a single insured) had been provided at the time the coverage was originally issued.

(f) If a separate identifiable premium is charged for the joint disability coverage, and if joint coverage is desired by the debtors, each debtor must elect and sign for the joint coverage.

(g) The maximum premiums to be charged for joint disability coverage when each debtor is insured for 100% of the disability payment must be equal to the percentage set forth in the latest adopted presumptive premium rates for joint credit disability coverage. The maximum premiums to be charged for joint disability coverage when each debtor is insured for a portion of the disability payment, with the total of the portions equal to 100% of the disability payment, must be equal to the premium that would have been charged if 100% of the disability insurance amount was provided on a single life, as set forth in the latest adopted presumptive premium rates for single life credit disability coverage.

(h) The annual experience data reports required under §3.5701 of this title (relating to Statistical Data and Annual Experience Calls) shall be submitted as follows:

(1) if joint disability coverage is provided on each debtor for 100% of the disability payment, the experience data will be reported as joint disability coverage;

(2) if joint disability coverage is provided on each debtor for a portion of the disability payment, with the total of the portions equal to 100%, the experience data will be reported as single life disability. The data for this type of joint disability coverage shall be combined with the single life disability coverage experience data reports.

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

Issued in Austin, Texas, on October 24, 1995.

TRD-9513712 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: December 1, 1995

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

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Chapter 7. Corporate and Financial Regulation

Subchapter A. Examination and Corporate Custodian and Tax

• 28 TAC §7.7

The Texas Department of Insurance proposes an amendment to §7.7, concerning subordinated indebtedness, surplus debentures, surplus notes, premium income notes, bonds, or debentures, and other contingent evidences of indebtedness. The amendment is necessary to implement amendments to the Insurance Code, Article 1.39, enacted by passage of House Bill 1243, Section 1, 74th Legislature, 1995. The Insurance Code, Article 1.39, provides for the regulation of these instruments. The definition of "insurer" in §7.7(a) is deleted to avoid any conflict with the definition of insurer in the Insurance Code, Article 1.39. The definition of "property" in §7.7(a) is deleted and §7.7(b)(5) is amended to conform to the amendment to the Insurance Code, Article 1.39(b), by House Bill 1243, §1, which substituted "cash equivalents, or other assets that have a readily determinable value and are satisfactory to the commissioner" for "property". Section 7.7(b)(3) is amended by adding directions for the filing of applications and notices required under the Insurance Code, Article 1.39, and deleting language providing that any agreement made under the Insurance Code, Article 1.39, may also be subject to the Insurance Code, Articles 1.29 and 21.49-1. Language similar to that deleted is proposed in new §7.7(b)(2). The amendment to §7.7(b)(4) includes nonprofit health maintenance organizations as entities that may utilize subordinated indebtedness for initial capitalization. Section 7.7(c)(6) is deleted as redundant with the requirement enacted by House Bill 1243, §1, that the commissioner approve any agreement subject to the Insurance Code, Article 1.39, and new subsections (d) and (e) are proposed to implement that requirement. Old subsections (d) and (e) are relettered

Jose Montemayor, associate commissioner for financial, has determined that for the first five-year period the proposed section is in effect there will be moderate fiscal implications for the Texas Department of Insurance. House Bill 1243, §1, 74th Legislature, 1995, requires any insurer to obtain the approval of the commissioner before issuing any evidences of indebtedness which are subordinated to the other liabilities of the insurer. Insurers are required to file the debt instrument and related information with the department. The financial analyst assigned to monitor the financial condition of the company must review the information and make a recommendation to the commissioner. Many of these proposals were required to be filed under the requirements of the Insurance Holding Company System Regulatory Act (the Insurance Code, Article 21.49-1) and others were reviewed informally under the general monitoring of the financial condition of an insurer, therefore, fiscal implications for the department are immaterial. There are no other fiscal implications for state or local government as a result of enforcing and administering this proposed section. There will be no effect on local employment or local economy.

Mr. Montemayor also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be more effective regulation of insurers. On the basis of cost per hour of labor, there is no anticipated difference in cost of compliance between small and large businesses. There is no anticipated economic cost to persons or entities who are required to comply with the section as proposed, other than the minimal cost of completion of the appropriate forms.

Comments on the proposal to be considered by the Commissioner of Insurance, must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to Alicia M. Fechtel, General Counsel and Chief Clerk, Texas Department of Insurance, Mail Code 113-2A, P.O. Box 149104, Austin,

Texas 78714-9104 An additional copy of the comments should be submitted to Jose Montemayor, Associate Commissioner for Financial, Mail Code 305-2A, Texas Department of Insurance, P.O. Box 149104, 333 Guadalupe, Austin, Texas 78714-9104. Request for a public hearing on this proposal should be submitted separately in writing to the Chief Clerk's Office.

The amendment is proposed under the Insurance Code, Article 1.39(f), which authorizes the Commissioner of Insurance to adopt rules as necessary to implement the statute.

The following articles of the Insurance Code are affected by this amendment: Texas Insurance Code, Articles 1.39, 11.16, 17.17, 19.07, and 21.49-1.

§7.7. Subordinated Indebtedness, Surplus Debentures, Surplus Notes, Premium Income Notes, Bonds, or Debentures, and Other Contingent Evidences of Indebtedness.

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

[(1) Insurer–An insurer authorized to do business under the law of this sate and includes life, health, and accident insurance companies, fire and marine companies, general casualty companies, title insurance companies, fraternal benefit societies, mutual life insurance companies, local mutual aid associations, statewide mutual assessment companies, mutual insurance companies other than life, farm mutual insurance companies, county mutual insurance companies, Lloyd's plans, reciprocal and interinsurance exchanges, group hospital service corporations, health maintenance organizations, stipulated premium insurance companies, and nonprofit legal services corporations

(1)[(2)] Minimum surplus or floor–The amount of surplus specified in the written agreement evidencing the subordinated indebtedness which may not be used for payments or repayments of subordinated indebtedness and which amount must exceed the greater of the following:

(A) a minimum surplus stated and fixed in the agreement; or

(B) a minimum surplus of $500,000 for that insurer.

[(3) Property–Any asset of readily determinable value that is an authorized and otherwise qualifying investment for the insurer issuing the subordinated indebtedness.]

(2)[(4)] Subordinated indebtedness–Any contingent indebtedness issued by an insurer for which such insurer assumes a subordinated liability for repayment of principal and payment of interest pursuant to a written agreement providing for payment only out of that portion of an insurer's surplus that exceeds a minimum surplus stated in such agreement. Subordinated indebtedness includes advances made in accordance with the Insurance Code, Articles 11.16, 17.17, and 19.07, and surplus notes, as herein defined.

(3)[(5)] Surplus notes–Surplus notes, also known as "surplus debentures", "contribution certificates", "surplus capital notes", and "premium income notes, bonds, or debentures", however denominated, which are financing vehicles that increase the surplus of an insurer.

(b) General Provisions.

(1) A subordinated indebtedness agreement issued by an insurer on or after September 1, 1995, is subject to the prior approval of the commissioner, as to form and content, regardless of amount.

(2) An insurer may not assume a subordinated liability until the commissioner has approved the agreement under either the Insurance Code, Article 21.49-1 or Article 1.39. Notice of a subordinated indebtedness agreement that is subject to the Insurance Code, Article 21.49-1, §4(d)(1), shall be given at least 90 days prior to entering into the agreement or such shorter period as the commissioner may permit. Notice of a subordinated indebtedness agreement that is subject to the Insurance Code, Article 21.49-1, §4(d)(2) or Article 1.39, respectively, shall be given at least 30 days prior to entering into the agreement or such shorter period as the commissioner may permit. A subordinated indebtedness agreement subject to the Insurance Code, Article 21. 49-1, is subject to all of the requirements and provisions thereof.

(3) All written applications and notices contemplated by this section shall be filed with Financial Monitoring, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149099, 333 Guadalupe, Austin, Texas 78714-9099.

(4)[(1)] The issuance of subordinated indebtedness shall not be utilized to initially capitalize an insurer, other than a mutual life insurer, a county mutual, [or] a reciprocal or interinsurance exchange, **or a nonprofit health maintenance organization.**

(5)[(2)] The consideration received by an insurer in return for the issuance of subordinated indebtedness shall be in the form of cash, cash equivalent securities, [government backed obligations,] or **other assets that have a** [property of] readily determinable value **and are satisfactory to the Commissioner.** In the instance of an issuer required by the department to increase its surplus as regards policyholders, the subordination of a current liability owed by the issuer to the prospective holder of the subordinated indebtedness, may be considered in an amount acceptable to the commissioner.

[(3) Any agreement made pursuant to the Insurance Code, Article 1.39, and this section, shall be subject to other applicable provisions of the Insurance Code, including Articles 1.29 and 21.49-1.]

(c) Written Agreements. When issuing subordinated indebtedness, the insurer must execute a written agreement with the creditor, providing the following:

(1)-(4) (No change.)

(5) in the event of liquidation, payment of interest and repayment of principal under the written agreement are subordinated to policyholder and beneficiary claims[; and].

[(6) an insurer which is the issuer of such an agreement, if not an affiliate as defined in the Insurance Code, Article 21.49-1 of the creditor, shall notify in writing within ten days of issuance, the Financial Analysis Unit, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149099, 333 Guadalupe, Austin, Texas 78714-9099, and provide a copy of the written agreement for informational purposes.]

(d) Written Application.

(1) The written application for approval of the issuance of the subordinated indebtedness agreement shall include information including, but not limited to, the following:

(A) the identity of all parties to the transaction;

(B) the nature and purpose of the transaction including a description of how the subordinated indebtedness relates to the future business plans of the insurer;

(C) a description of the consideration to be received by the insurer in exchange for the issuance of the subordinated indebtedness;

(D) a description of how the value of the consideration was determined;

(E) a statement as to whether any officers or directors of a party are pecuniarily interested in the transaction;

(F) a copy of the proposed written agreement; and

(G) the signed and notarized affidavit of an executive officer of the insurer which states that the insurer is aware of the requirements of the Insurance Code, Article 1.39(e) and subsection (e) of this section regarding notices to the Texas Department of Insurance relating to the payment of interest or the repayment of principal corresponding to subordinated indebtedness and agrees to comply with such requirements.

(2) No application for the issuance of subordinated indebtedness shall be deemed filed with the commissioner until the date that all material necessary to constitute a complete filing has been provided.

(e) Payments of Interest and Repayments of Principal.

(1) An insurer may not repay principal or pay interest on a subordinated liability assumed under either the Insurance Code, Article 21. 49-1, §4, or Article 1.39 on or after September 1, 1995, unless either:

(A) such payment or repayment complies with a specific schedule of payments contained within the terms of the previously approved written agreement; or

(B) written notice is provided to the commissioner at least 15 days before the date scheduled for any payment or repayment if either a schedule of payments is not contained within the terms of the previously approved agreement, or such payment or repayment does not comply with the specific schedule of payments contained within the terms of the previously approved agreement.

(2) Notice required by this subsection, shall be considered promptly. Upon consideration of such notice, the commissioner may take such appropriate action as may be authorized by the Insurance Code and the regulations adopted thereunder.

(f)[(d)] Accounting Requirements

(1) A loan or advance made under the written agreement, and any interest accruing on the loan or advance, is a legal liability and financial statement liability of the insurer only to the extent provided by the terms and conditions of the loan or advance agreement, and the loan or advance may not otherwise be a legal liability or financial statement liability of the insurer. If a written agreement provides specific terms for the payment of principal and interest, and such terms have been satisfied, then any provision providing that no financial statement liability exists shall be considered to be in conflict with the specific terms for the payment of principal and interest; and, for financial statement purposes, the terms for the payment of principal and interest shall result in the reflection of a financial statement liability.

(2) All agreements shall be clearly reported in an insurer's "Notes to Financial Statements" of the Annual Statement and shall disclose all pertinent aspects of payment and prepayment provisions.

(3) An insurer holding a subordinated indebtedness of another insurer may report it as an admitted asset equal to the amount then due and payable under the terms of the subordinated indebtedness agreement

(g)[(e)] Applicability to Foreign Insurers. The provisions of this section shall apply to insurers domiciled in another state unless such other state regulates the issuance of subordinated indebtedness under laws, rules, or bulletins that the commissioner finds are substantially similar in substance and effect to Texas law and rules. To pursue this exception, the insurer shall provide, upon request, to the commissioner evidence of similarity in the form of statutes, regulations, and interpretation of the standards utilized by the state of domicile.

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

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

TRD-9513754 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: December 1, 1995

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

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 305. Consolidated Permits

The Texas Natural Resource Conservation Commission (Commission or TNRCC) proposes amendments to §§305.51, 305.69, and 305.122, concerning consolidated permits These amendments are proposed strictly for the purpose of ensuring that state rules are equivalent to the federal regulations after which they are patterned. The language of the proposed state rules is designed to ensure equivalence to the corresponding federal regulations.

The amendments to Chapter 305 specifically address changes to the federal hazardous waste regulations made effective between July 1, 1991 and June 30, 1993. By establishing equivalency with these federal regulations, the State of Texas will maintain equivalency with the federal hazardous waste program. This, in turn, will enable the state to retain authorization to operate aspects of the federal hazardous waste program in lieu of the U.S. Environmental Protection Agency. The resultant benefit will be a reduced cost to participants in the hazardous waste regulatory program because state hazardous waste program procedures will not need to duplicate those of the federal agency.

The proposed amendment to §305.51(c)(6), relating to Revision of Applications for Hazardous Waste Permits, involves the addition of "containment buildings" to the list of changes which may be made under interim status, even if they amount to reconstruction of the hazardous waste management facility.

The proposed amendment to §305.69(d)(1)(D) intends to reference applicable requirements by adding §§305.571-305.573 (relating to Permits for Boilers and Industrial Furnaces Burning Hazardous Waste) to the list of informational requirements for Class 3 modifications to industrial and hazardous solid waste permits.

The proposed amendment to §305.69(f)(5)(B)(ii) concerns temporary authorizations. The amendment includes "containment buildings" used for treatment or storage of restricted wastes and would add "RCRA section 3004" changing the rule to read as follows: "The commission shall approve or deny the temporary authorization as quickly as practicable. To issue a temporary authorization, the commission must find ..the temporary authorization is necessary to achieve one of the following objectives before action is likely to be taken on a modification request: ... to allow treatment or storage in tanks, containers, or containment buildings, of restricted wastes in accordance with 40 Code of Federal Regulations, Part 268 or RCRA section 3004;. .."

Section 305.69(h)(1)(D), relating to newly regulated wastes and units, is intended to clarify the type of modification requests required, by replacing the word "permit" in the phrase "permit modification request" with the phrase "Class 2 or 3," such that the proposed phrase reads as follows: "Class 2 or 3 modification request."

The proposed amendment to §305 69(i), Appendix I include addition of the word "facility" to the heading of clause B to read "General Facility Standards"; the addition of a modification under subclause B.1. as follows: "To incorporate changes associated with underlying hazardous constituents in ignitable or corrosive wastes"; the addition of subclause B.7. to include modifications related to construction quality assurance plans; the addition of

subclauses H.6. and H.7. concerning surface impoundment permit modifications related to unconstructed units and to changes in response action plans, respectively; the addition of subclause I.6. concerning enclosed waste pile permit modifications related to conversion to a containment building; the addition of subclause J.7. concerning landfill and unenclosed waste pile permit modifications related to modifications of unconstructed units to comply with certain referenced federal permitting standards; the addition of subclause J.8. concerning landfill and unenclosed waste pile permit modifications related to changes in response action plans; and the addition of clause N. related to various permit modifications concerning containment buildings.

The proposed amendment to §305.122(a)(3) is the inclusion of lateral expansions, such that the proposed rule states that compliance with a hazardous waste permit during its term constitutes compliance, for purposes of enforcement, with subtitle C of RCRA except for those requirements not included in the permit which, among other things, are promulgated under Title 40 Code of Federal Regulations, Part 264, regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units, and lateral expansions of such units.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Minick also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be improvements in the management of hazardous waste and hazardous waste management facilities, more cost-effective regulation of hazardous waste and increased consistency in federal and state waste management regulations. These proposed sections will incorporate existing federal regulations which are currently in effect. No additional cost implications as a result of this adoption will be realized by affected facilities subject to these sections, beyond those costs which could have been attributable to the underlying federal regulation. No additional costs are anticipated for small businesses. No economic costs are anticipated to any person required to comply with the sections as proposed.

Written comments may be submitted to the TNRCC central office in Austin for a period of 30 days following the date of this publication. Material received by the TNRCC Office of Policy and Regulatory Development by 4:00 p.m. on that date will be considered by the commission prior to any final action on the proposal. Please mail written comments to Bettie Mabry-Bell, Office of Policy and Regulatory Development, MC-201, Post Office Box 13087, Austin, Texas 78711-3087 and refer to Rule Log Number 95117-335-WS when commenting on the proposed rule. For further information, please contact Ray Henry Austin at (512) 239-6814.

Subchapter C. Application for Permit

• 30 TAC §305.51

The amendment is proposed under the Texas Water Code, §5.103 and §5. 105 (Vernon 1988), which provides the TNRCC the authority to promulgate rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state; and under the Texas Health and Safety Code, §361.017 and §361.024 (Vernon 1992), which further provides the TNRCC authority to promulgate rules necessary to manage industrial solid and municipal hazardous wastes.

§305.51. Revision of Applications for Hazardous Waste Permits.

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

(c) Except as specifically allowed under this subsection, changes listed under subsection (a) of this section may not be made if they amount to reconstruction of the hazardous waste management facility. Reconstruction occurs when the capital investment in the changes to the facility exceeds 50% of the capital cost of a comparable entirely new hazardous waste management facility. If all other requirements are met, the following changes may be made even if they amount to a reconstruction:

(1)-(5) (No change.)

(6) changes to store or process, in tanks, [or] containers, **or containment buildings,** hazardous wastes subject to land disposal restrictions imposed by 40 Code of Federal Regulations, Part 268 or by §3004 of the RCRA, provided that such changes are made solely for the purpose of complying with 40 Code of Federal Regulations, Part 268 or §3004 of the RCRA, as amended; and

(7) (No change.)

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

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

TRD-9513677 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: December 1, 1995

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

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Subchapter D. Amendments, Transfers, Corrections, Revocation, and Suspension of Permits

• 30 TAC §305.69

The amendment is proposed under the Texas Water Code, §§5.103 and 5.105 (Vernon 1988), which provides the TNRCC the authority to promulgate rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state; and under the Texas Health and Safety Code, §361.017 and §361.024 (Vernon 1992), which further provides the TNRCC authority to promulgate rules necessary to manage industrial solid and municipal hazardous wastes.

§305.69. Solid Waste Permit Modification at the Request of the Permittee.

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

(d) Class 3 modifications of solid waste permits.

(1) for Class 3 modifications listed in Appendix I of this subchapter, the permittee must submit a modification request to the executive director that:

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

(D) provides the applicable information in the form and manner specified in §§305.41-305.53 of this title (relating to Application for Permit), §§305.171-305.174 of this title (relating to Hazardous Waste Incinerator Permits), and §§305.181-305.184 of this title (relating to Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses), **and §§305.571-305.573 of this title (relating to Permits for Boilers and Industrial Furnaces Burning Hazardous Waste).**

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

(e) (No change.)

(f) Temporary authorizations.

(1)-(4) (No change.)

(5) the commission shall approve or deny the temporary authorization as quickly as practicable. To issue a temporary authorization, the commission must find:

(A) (No change.)

(B) the temporary authorization is necessary to achieve one of the following objectives before action is likely to be taken on a modification request:

(i) (No change.)

(ii) to allow treatment or storage in tanks, [or] containers, **or containment buildings,** of restricted wastes in accordance with 40 Code of Federal Regulations, Part 268 **or RCRA section 3004;**

(iii)-(v) (No change.)

(6) (No change.)

(g) (No change.)

(h) Newly regulated wastes and units.

(1) the permittee is authorized to continue to manage wastes listed or identified as hazardous under 40 Code of Federal Regulations, Part 261 or to continue to manage hazardous waste in units newly regulated as hazardous waste management units if:

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

(D) [in the case of Classes 2 and 3 modifications,] the permittee also submits a complete **Class 2 or 3** [permit] modification request within 180 days after the effective date of the final rule listing or identifying the waste or subjecting the unit to RCRA Subtitle C management standards; and

(E) (No change.)

(2) (No change.)

(i) Appendix I. The following appendix will be used for the purposes of Subchapter D which relate to solid waste permit modification at the request of the permittee.

Figure 1: 30 TAC §305.69(i).

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

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

TRD-9513676 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: December 1, 1995

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

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Subchapter F. Permit Characteristics and Conditions

• 30 TAC §305.122

The amendment is proposed under the Texas Water Code, §5.103 and §5. 105 (Vernon 1988), which provides the TNRCC the authority to promulgate rules necessary to carry out the powers and duties under the provisions of state; and under the Texas Health and Safety Code, §361.017 and §361.024 (Vernon 1992), which further provides the TNRCC authority to promulgate rules necessary to manage industrial solid and municipal hazardous wastes.

§305.122. Characteristics of Permits.

(a) Compliance with a Resource Conservation and Recovery Act (RCRA) permit during its term constitutes compliance, for purposes of enforcement, with subtitle C of RCRA except for those requirements not included in the permit which:

(1) become effective by statute;

(2) are promulgated under Title 40 Code of Federal Regulations, Part 268 restricting the placement of hazardous wastes in or on the land; or

(3) are promulgated under Title 40 Code of Federal Regulations, Part 264, regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units, **and lateral expansions of surface impoundment, waste pile, and landfill units.** The leak detection system requirements include double liners, CQA programs, monitoring, action leakage rates, and response through the Class 1 permit modifications procedures of Title 40 Code of Federal Regulations, §270.42 (relating to permit modification at the request of the permittee).

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

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

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

TRD-9513678 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: December 1, 1995

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

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Chapter 324. Used Oil

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes new §§324.1-324.22 and §§324.50-324.54, concerning used oil recycling and financial assurance requirements for closure, respectively. The new chapter is primarily proposed to conform with the new United States Environmental Protection Agency (EPA) 40 Code of Federal Regulations (CFR), Part 279, Standards for the Management of Used Oil (57 FedReg 41566, September 10, 1992). On May 3, 1993, the EPA published technical corrections to the rule (58 corrected several errors in the May 3, 1993, notice (58 FedReg 33341). On March 4, 1994, the EPA published a change to 40 CFR, Part 279 clarifying exemptions related to mixing used oil with crude oil and providing some exemptions from the definition of processor for generators and transfer facilities filtering used oil from electrical turbines and transformers (59 FedReg 10550). This new federal rule extends the EPA's regulation to all nonhazardous used oil, used oil made characteristically hazardous by use (rather than by mixing), used oil recycled by means other than burning for energy recovery (in addition to used oil burned for energy recovery), and used oil generated by municipal or industrial generators. It also regulates do-it-yourself (DIY) changer used oil (household used oil) after collection. The portion of 40 CFR, Part 279 addressing the burning of used oil for energy recovery was effective March 8, 1993, and has essentially the same requirements as in the predecessor regulation set forth in 40 CFR, Part 266, Subpart E that it replaces. The remainder of 40 CFR, Part 279 will not be effective in Texas until the TNRCC adopts an implementing rule. Senate Bill 1683, 74th Texas Legislature, 1995, made statutory changes to Texas Health and Safety Code, Chapter 371, Used Oil Collection, Management, and Recycling, to make implementation of 40 CFR, Part 279 possible. Section 324.1 adopts by reference Title 40 CFR, Part 279, Standards for the Management of Used Oil and any federal rules referenced therein.

Section 324.2 provides additional definitions to those established in 40 CFR, §279.1. The "Aboveground tank" definition is modified to refer to the state rule on aboveground and underground storage tanks, 30 TAC Chapter 334, rather than the counterpart federal rule, 40 CFR, Part 280. The definition of the EPA's "Administrator or Regional Administrator" is substituted with "State Director, the Executive Director of the TNRCC or his representative" in the federal rule wherever these EPA terms occur. A definition of "Burning for energy recovery" is included, which was derived from 50 FedReg 630, January 4, 1985 and 50 FedReg 49166, November 29, 1985. "Commission" is defined as the TNRCC. "Commission" is substituted for the term "EPA" as it appears in the federal rule. The definition of "Impervious to used oil" was added for clarification and derived from EPA preamble language, 57 FedReg 41604, September 10, 1992. The definition of "Recycling" is derived from the Texas Health and Safety Code, Chapter 371, §371.003(13). "Re-refining" is derived from the Texas Health and Safety Code, Chapter 371, §371.003(14). The definition of "Secondary containment" is drawn from EPA preamble language, 57 FedReg 41594 and 41595, September 10, 1992. The definition of "Synthetic oils" is derived from EPA preamble language, 57 FedReg 41574, September 10, 1992, and the EPA's Used Oil Management Standards Training manual, page 2-8, April 5, 1994.

For further guidance on the scope of the definition of "Used oil" see 50 FedReg 49174, November 29, 1985: 57 FedReg 51573, September 10, 1992; and the EPA's Used Oil

pages 2-7, 2-9, 2-10 2-11, 2-12, 2-13, and 2-14, April 5, 1994.

The only types of used oil not regulated by this rule are used oil mixtures made hazardous either by adding a listed hazardous waste to used oil or that retain a hazardous characteristic after adding characteristically hazardous waste. These used oil mixtures are hazardous and managed pursuant to the hazardous waste provisions in 30 TAC Chapter 335 (relating to Industrial Solid Waste and Municipal Hazardous Waste). Also, used oil mixed with diesel fuel by generators for use in their own vehicles or marine engines is not regulated by this rule. The used oil is regulated prior to mixing. Burning of used oil in diesel and marine engines is also not regulated by this rule (58 FedReg 26422, May 3, 1993).

Section 324.3(1) clarifies that mixtures of used oil and solid wastes, drained of free-flowing oil, burned for energy are subject to this rule and such mixtures require a determination as to whether they are on- or off-specification used oil fuels; this language is derived from EPA preamble language, 57 FedReg 41585, September 10, 1992. Section 324.3(2) clarifies that an EPA Hazardous Waste Number "F002" shall be used on used oil that is listed hazardous due to halogenated contaminants. This number is used because the EPA has not yet specified a EPA Hazardous Waste Number that can be used to manifest used oil made hazardous by mixing. Section 324.3(3) clarifies the requirements applicable to mixing used oil with other wastes. This language is derived from the EPA's Used Oil Management Standards Training manual, pages 2-19, 20-20, and 2-22; the Used Oil Questions and Answers section of the manual, page 5; and the 40 CFR, §279.1 definition of a processor. Section 324.3(4) clarifies when 40 CFR, Part 112 (relating to Oil Pollution Prevention) is also applicable to used oil storage near navigable waters and shorelines. The information presented is derived from 40 CFR, §112.1 (relating to General Applicability).

Pursuant to 40 CFR, §279.10(b)(1), used oil containing more than 1,000 parts per million (ppm) total halogens is presumed to be hazardous waste because it has been mixed with halogenated hazardous waste listed in 40 CFR, Part 261, Subpart D. This presumption may be rebutted by documentation demonstrating that the used oil does not or could not contain listed hazardous waste or an analysis can be conducted to show that the used oil does not contain "significant concentrations" of halogenated hazardous constituents listed in 40 CFR, Part 261, Appendix VIII. A concentration of less than 100 ppm, however, is not deemed significant. The 100 ppm concentration allowance does not apply if the hazardous constituent or waste is one that could not occur in used oil without intentional mixing. This guidance is derived from EPA preamble language, 50 FedReg 49176, November 29, 1985.

Section 324.4(1) states that a person shall not manage used oil in a manner that endangers public health or endangers or damages the environment. Section 324.4(2)(A)-(F) states further prohibitions on the management of used oil. Section 324.4(3) and (4) provide exemptions from penalties for unknowingly disposing of used oil in a landfill and unavoidably mixing used oil with waste going to a landfill as a result of scrap metal shredding. These requirements were derived from Health and Safety Code, §371.041 (relating to Actions Prohibited).

Section 324.5 requires a retail dealer who sells more than 500 gallons of automotive oil directly to the public to post a sign provided by the TNRCC. This requirement was derived from the Texas Health and Safety Code, §371.022 (relating to Notice by Retail Dealer).

Section 324.6(1) requires that generators that burn off-specification used oil in space heaters as specified in 40 CFR, §279.23 comply with 30 TAC Chapter 116 (relating to Control of Air Pollution by Permits for New Construction or Modification). Section 324.6(2) clarifies that business entities that remove used oil for their customers at customer sites can be generators of that used oil under this rule. This is based on the EPA's Used Oil Management Training manual, Used Oil Questions and Answers section, page 15; and 45 FedReg 72026/72027, October 30, 1980.

Section 324.7 primarily transfers applicable used oil collection center requirements from repealed 30 TAC §330.1145 (relating to Used Oil Collection Centers) and the current Texas Health and Safety Code, §371.024 to this rule. Section 324.7(1)(B)(ii) and (2)(B)(ii) clarify that a collection center is eligible for the waiver of the fee on the first sale of automotive oil in Health and Safety Code, §371.062(a)(2)(C) if the collection center collects household oil at its site during business hours. Section 324.7(1)(E) and (2)(E) clarify that the rebuttable presumption (that used oil is listed hazardous if total halogens exceed 1,000 ppm) does not apply to household used oil until it is mixed with non-household used oil. Section 324.7(6) adds a collection center annual reporting requirement from the Texas Health and Safety Code, §371.024(b)(2).

Section 324.8 incorporates state liability exemptions for collectors of household used oil from the Texas Health and Safety Code, §371.025.

Section 324.9 incorporates state reimbursement allowances for disposal of hazardous wastes inappropriately left at collection centers during non-operation hours or used oil accidentally contaminated with hazardous wastes during normal collection center operations. This is derived from the Texas Health and Safety Code, §371.0245.

Section 324.10 incorporates state procedures for collection centers to request reimbursement for disposal of household hazardous wastes inappropriately left at a center or used oil accidentally contaminated by hazardous wastes. This is derived from the Texas Health and Safety Code, §371.0246.

Section 324.11(1) clarifies that the underground storage tanks are subject to 40 CFR, Part 280 (as required in 40 CFR, Part 279) via 30 TAC Chapter 334 (relating to Underground and Aboveground Storage Tanks). It further clarifies that the storage requirements of 40 CFR, Part 279 also apply. Section 324.11(2) requires used oil transporter registration pursuant to the Texas Health and Safety Code, §371.026 and 40 CFR, Part 279; it also clarifies that transporters must register within 90 days of initiation of used oil activities under this rule. Section 324.11(3) implements financial responsibility requirements per Texas Health and Safety Code, §371.026(a)(4). Section 324. 11(4) implements annual reporting requirements per Texas Health and Safety Code, §371.026(a)(2).

Transporters who store used oil for less than 24 hours are not subject to transfer facility storage requirements. This guidance is found in 59 FedReg 10577, March 4, 1994. Any facility that stores used oil for more than 35 days must register as a processor. There is no used oil storage facility established under 40 CFR, Part 279 or this rule. Section 324.11(3) implements financial responsibility requirements per Texas Health and Safety Code, §371. 026(a)(4). Section 324.11(4) implements annual reporting requirements per Texas Health and Safety Code, §371.026(a)(2).

Section 324.12 applies the same underground storage tank and registration requirements to processors and rerefiners as were applied to transporters in §324.11(1) and (2). Section 324.12(3) clarifies what an analysis plan must contain. These requirements are derived from EPA preamble language, 57 FedReg 41596 and 41597, September 10, 1992. Section 324.12(4) clarifies that the processor/rerefiner biennial report information required by 40 CFR, §279. 57(b) shall be provided to the TNRCC annually on a form to be provided by TNRCC, as required by the Texas Health and Safety Code, §371.026.

Section 324.13 applies the same underground storage tank and registration requirements to burners as were applied to transporters in §324.11(1) and (2) . Section 324.13(3) additionally requires a burner using or installing a space heater to burn off-specification used oil as fuel to comply with the requirements of 30 TAC Chapter 116 (relating to Control of Air Pollution by Permits for New Construction or Modification). Section 324.13(4) implements annual reporting requirements per Texas Health and Safety Code, §371.026(a) (2).

Section 324.14 applies the same transporter registration requirements under §324 11(2) to marketers. A facility cannot be a marketer unless it also fits one of the other facility categories under the rule.

Section 324.15 requires that facility owners/operators maintain sorbents on site for routine spills. This requirement is derived from EPA preamble language, 57 FedReg 41586, September 10, 1992. It also requires corrective measures to protect human health and the environment when a spill reaches the environment beyond any secondary containment. This is derived from EPA preamble language, 57 FedReg 41596, September 10, 1992. It further requires reporting of a used oil spill in water or a spill of used oil outside secondary containment of 25 gallons or more. This criteria was derived from 40 CFR, §280.53(a)(1) and 30 TAC §334.75(1). Reporting is required as soon as possible and

not later than 24 hours after discovery pursuant to requirements of the Texas Water Code, §26.039(b). This section also clarifies which spill materials are regulated under this rule.

Section 324.16 provides the Toxic Substance Control Act requirements from 40 CFR, Part 761 for used oil that contains polychlorinated biphenyls (PCBs).

Section 324.17 is incorporated to comply with EPA mandated requirements in 40 CFR, Part 271, §271.16(a)(3)(ii) regarding criminal penalties for violations.

Section 324.18 is incorporated to comply with the Texas Health and Safety Code, §371.061 requirements regarding civil penalties for violations.

Section 324.19 maintains the existing injunctive relief provisions in accordance with the Texas Health and Safety Code, §371.044

Section 324 20 maintains existing venue provisions in accordance with the Texas Health and Safety Code, §371.045.

Section 324.21 contains closure provisions primarily derived from the state of Utah's 40 CFR, Part 279 implementing rule, entitled "Standards for the Management of Used Oil", R315-15-11.

Section 324.22 contains provisions for suspension or revocation of registrations if necessary. A formal hearing can be requested to contest the suspension or revocation under these provisions

Sections 324.50-324.54 were derived from provisions prescribed in similar TNRCC programs requiring financial assurance.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period these sections as proposed are in effect, there will be fiscal implications as a result of administration and enforcement of the sections There are no significant fiscal implications anticipated for state government. The commission will incur additional costs to implement a program for management of used oil consistent with federal requirements. Changes in other uses of the used oil fund and reductions in grant and administrative support expenses will result in no significant net costs increases to the state There are no significant fiscal implications anticipated for local governments. The fiscal implications for the commission will be related to and contingent on income to the used oil fund for fiscal year 1996 and subsequent fiscal years. Apart from the proposed rules, statutory changes in the fee rate structure supporting the used oil fund will have the anticipated effect of reducing revenue to the fund beginning in fiscal year 1996. The level of reduction is dependent on the response of automotive oil marketers to the opportunity for exemption from fee assessment and cannot be determined at this time. Reductions in revenue below a level sufficient to support the used oil program will result in corresponding reductions in program costs.

Mr. Minick also has determined that for the first five years these sections as proposed are in effect the public benefit anticipated as a result of enforcement of and compliance with the sections will be improvement in the state's used oil regulations, more cost-effective management and regulation of used oil, enhanced consistency of state and federal regulations, and the avoidance of duplicative regulatory requirements. The adoption of regulations consistent with federal requirements will have fiscal implications for persons required to comply with these sections similar to those for the federal rules. There may be additional costs realized by transfer facilities, processors, re-refiners and burners of used oil related to the requirement to install secondary containment features in container and aboveground tank storage areas. Used oil processors and re-refiners may also incur one-time costs in the development of contingency and analysis plans and compliance with closure requirements. These costs will vary widely on a case-by-case basis with individual facilities. No significant costs are anticipated for the vast majority of used oil generators. The most significant costs, for facilities in the processing sector, have been estimated to be up to $65,000 on an annualized basis, although the costs are anticipated to be substantially less. On a national basis, these costs have been translated to represent an increase within the commercial used oil recycling system of between 0.2 and 0.6 cents per gallon of used oil The effects on small businesses (primarily small processors and fuel oil dealers) will be larger on a per unit or per gallon basis because the most significant costs are generally fixed costs and not directly proportional to the amount of used oil handled at smaller facilities

A public hearing on this proposal will be held at the TNRCC Office Complex, Building E, Room 245-S, 12118 North Interstate Highway 35, Austin, Texas on Tuesday, November 14, 1995, at 10:00 a.m. 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 which are not presented at the hearing may be submitted to the TNRCC by 5:00 p.m., 30 days from the date of publication of this proposal in the *Texas Register*. Please mail any written comments to Bettie Mabry Bell, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development (MC-201), P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6087, and please reference TNRCC Rule Log Number 95011-324-WS. For further information, contact Hygie Reynolds, Waste Policy and Regulations Division, at (512) 239-6825.

Subchapter A. Used Oil Recycling

• 30 TAC §§324.1-324.22

The new sections are proposed under the Texas Water Code, §§5.103, 5. 105, and 26.011, which provides the TNRCC the authority to adopt rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. The new sections are also proposed under the Solid Waste Disposal Act, §361.017, which provides the TNRCC the authority to regulate industrial solid wastes and hazardous municipal wastes; §361.024, which allows the TNRCC to adopt rules consistent with the general intent and purposes of the Act; and Chapter 371 relating to Used Oil Collection, Management and Recycling.

The proposed new sections affect the Texas Health and Safety Code, Chapter 371.

§324.1. Adoption by Reference. Except as provided in §§324. 3, 324.4, 324.6, 324.7, and 324.11-324.13, of this title (relating to Applicability, Prohibitions, Generators, Collection Centers, Transporters and Transfer Facilities, Processors and Rerefiners, and Burners of Off-specification Used Oil for Energy Recovery), and subject to the changes indicated in §324.2 of this title (relating to Definitions), the regulations contained in 40 Code of Federal Regulations (CFR), Part 279, Standards for the Management of Used Oil, as amended, are adopted by reference.

§324.2. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, except when the context clearly indicates otherwise. Terms defined in 40 CFR, §279.1 shall have the same meaning when used in this rule, except as specifically defined in this section.

Aboveground tank–A tank used to store or process used oil that is not an underground storage tank as defined in 30 TAC Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks).

Administrator or Regional Administrator–These terms in 40 CFR, Part 279 requirements should be replaced with the "State Administrator, the Executive Director of the Texas Natural Resource Conservation Commission or his representative."

Burning for energy recovery–Recycling by burning waste to recover energy for useful and beneficial purposes. Burning for energy recovery is not legitimate recycling unless the waste has a heating value over 5,000 Btu/lb, as generated. (Burning materials containing or otherwise contaminated with used oil for purposes other than energy recovery are not subject to this rule.)

Commission–The Texas Natural Resource Conservation Commission (TNRCC) or its successor.

Environmental Protection Agency (EPA)–This term in 40 CFR, Part 279 requirements should be replaced with "commission."

Impervious to used oil–Capable of containing all potential spills and releases of used oil to soil, surface water, and ground water from containers and tanks until the

facility owner or operator can take measures to clean up the released used oil.

Recycling–

(A) Preparing used oil for reuse as a petroleum product by rerefining, reclaiming, or other means;

(B) Using used oil as a lubricant or petroleum product instead of using a petroleum product made from new oil; or

(C) Burning used oil for energy recovery.

Re-refining–Applying processes to material composed primarily of used oil to produce high-quality base stocks for lubricants or other petroleum products, including settling, filtering, catalytic conversion, fractional/vacuum distillation, hydrotreating, or polishing.

Secondary containment–Structures (dikes, berms, and/or retaining walls) that are made of a material(s) that is impervious to used oil and capable of containing all potential spills and releases of used oil from the tanks or containers, plus run-on water, until the facility owner or operator can take measures to clean up the released used oil and the run-on water.

Synthetic oils–Oils not derived from crude oil, including those derived from coal, shale, or a polymer-based starting material; and non-polymeric synthetic fluids which are used as hydraulic fluids and heat transfer fluids, such as those based on phosphate esters, diphenyl oxide or alkylated benzenes. Synthetic oils are generally used for the same purpose as crude oil derived oils, are usually mixed and managed in the same manner, and present relatively the same level of hazard after use.

§324.3. Applicability. Applicability and exemptions from applicability will be as in 40 CFR, Part 279, Subpart B, and as clarified herein.

(1) Mixtures of used oil and solid waste (e.g., natural or synthetic sorbent materials, used oil filter elements) from which used oil cannot be separated, when burned for energy recovery, are subject to this chapter and its requirements to designate used oil fuel as on- or off-specification prior to it being burned for energy recovery.

(2) A used oil that has been determined to be listed hazardous must be handled in accordance with hazardous waste rules. EPA Hazardous Waste Number "F002" shall be used on used oil that is listed hazardous due to halogenated contaminants, because the EPA has not provided a Hazardous Waste Number to properly manifest such listed hazardous waste.

(3) Requirements applicable to mixing hazardous waste with used oil are in 40 CFR, §279.10(b) (regarding Mixtures of Used Oil and Hazardous Waste). Mixing of hazardous waste with used oil, by other than generators, in tanks and containers within their applicable accumulation time limit, requires a hazardous waste permit. A waste that is characteristically hazardous for ignitability only can be mixed with used oil, but the resultant mixture cannot exhibit the characteristic of ignitability. The resultant mixture formed from mixing used oil and a characteristically hazardous waste, other than solely ignitable waste, must be tested for all possible characteristics; the resultant mixture can still be a hazardous waste if it retains a hazardous characteristic, even if the characteristic is derived from the used oil. Anyone who mixes used oil with another solid waste to produce from used oil, or to make used oil more amenable for production of fuel oils, lubricants, or other used oil derived products is also a processor.

(4) The requirement in 40 CFR, Part 279 that refers to compliance with Parts 264 or 265, Subpart K, on used oil storage applies to used oil stored in surface impoundments. Storage of used oil in lagoons, pits, or surface impoundments is prohibited, unless the generator is storing only wastewater containing de minimis quantities of used oil, or unless the unit is in full compliance with 40 CFR, Part 264/265, Subpart K.

§324.4. Prohibitions. Prohibitions will be as in 40 CFR, Subpart B, §279.12 and as specified herein.

(1) A person shall not collect, transport, store, burn, market, recycle, process, use, discharge, or dispose of used oil in any manner that endangers the public health or welfare or endangers or damages the environment.

(2) A person commits an offense if, without benefit of a valid permit authorizing the particular action, the person:

(A) intentionally discharges used oil into a sewer, drainage system, septic tank, surface water or groundwater, watercourse, or marine water;

(B) knowingly mixes or commingles used oil with waste (other than sorbents without free-flowing oil) that is to be disposed of in landfills or directly disposes of used oil on land;

(C) knowingly transports, treats, stores, disposes of, recycles, markets, burns, processes, rerefines, or causes any used oil to be transported or otherwise handled within the state:

(i) without first complying with the notification/registration requirements of this rule; and/or

(ii) in violation of standards or rules for the management of used oil; or

(D) intentionally applies used oil to roads or land for dust suppression, weed abatement, or other similar uses that introduce used oil into the environment;

(E) violates an order of the commission to cease and desist any activity prohibited by this section or any rule applicable to a prohibited activity; or

(F) intentionally makes any false statement or representation in an application, label, manifest, record, report, permit or other document filed, maintained or used for purposes of program compliance.

(3) It is an exception to the application of paragraph (2) of this subsection if a person unknowingly disposes into the environment any used oil that has not been properly segregated or separated by the generator from other solid wastes.

(4) It is an exception to the application of paragraph (2)(B) of this subsection if the mixing or commingling of used oil with waste that is to be disposed of in landfills is incident to and the unavoidable result of the mechanical shredding of motor vehicles, appliances or other items of scrap, used, or obsolete metals.

§324.5. Notice by Retail Dealer.

(a) A retail dealer who annually sells directly to the public more than 500 gallons of automotive oil annually in containers for use off-premises shall post in a prominent place a sign provided by the commission:

(1) informing the public that improper disposal of used oil is prohibited by law;

(2) informing the public that used oil filters cannot be disposed of in municipal landfills or waste going to municipal landfills;

(3) prominently displaying the toll-free telephone number of the state used oil information center.

(b) Written requests for signs should be sent to the Texas Natural Resource Conservation Commission, Municipal Solid Waste Division, Automotive Waste Management Section, P.O. Box 13087, Austin, Texas 78711-3087.

§324.6. Generators. Standards for used oil generators shall be as in 40 CFR, Part 279, Subpart C, except as follows or clarified herein.

(1) A generator may burn off-specification used oil in a space heater, as in 40 CFR, §279.23, to legitimately recover its energy content. If a generator uses or installs a space heater which burns off-specification used oil as fuel, as in 40 CFR, §279.23, the space heater shall meet the requirements of Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification).

(2) A person or entity that services or changes used oil at a customer's home or business and removes the used oil is a generator pursuant to 40 CFR, Part 279, Subpart C.

§324.7. Collection Centers. Standards for do-it-yourselfer used oil collection centers and used oil collection centers shall be as in 40 CFR, Part 279, Subpart D and as specified herein. All appropriate businesses and government agencies are encouraged to serve as do-it-yourselfer used oil collection centers or used oil collection centers. All collection centers collecting used oil from households will be publicized by the commission.

(1) Do-it yourselfer used oil collection center:

(A) must post and maintain a durable and legible sign identifying the site as a household used oil collection center;

(B) registration requirements:

(i) must register biennially, by no later than January 25 following the close of the biennial year, with the Texas Natural Resource Conservation Commission, Municipal Solid Waste Division, Automotive Waste Management Section, P.O. Box 13087, Austin, Texas 78711-3087, utilizing a form provided by the commission;

(ii) must collect used oil from households during business hours at each location to be exempt from the fee on first sale of automotive oil;

(C) must notify the commission in writing within 30 days following abandonment or closure of the collection center or the cessation of accepting household used oil from private citizens;

(D) shall annually report the amount of household used oil collected by January 25 of each year;

(E) is not subject to the rebuttable presumption.

(2) Used Oil Collection Center:

(A) must post and maintain a durable and legible sign identifying the site as a household used oil collection center;

(B) registration requirements:

(i) must register biennially, by no later than January 25 following the close of the biennial year, with the Texas Natural Resource Conservation Commission, Municipal Solid Waste Division, Automotive Waste Management Section, P.O. Box 13087, Austin, Texas 78711-3087, utilizing a form provided by the commission;

(ii) must collect used oil from households during business hours at each location to be exempt from the fee on first sale of automotive oil;

(C) must notify the commission in writing within 30 days following abandonment or closure of the collection center or the cessation of accepting household used oil from private citizens;

(D) shall report annually the amount of household and non-household used oil collected. Mixtures of household used oil and non-household used oil shall be considered non-household used oil;

(E) is not subject to the rebuttable presumption on household used oil if it is not mixed with non-household used oil.

§324.8. Limitation of Liability.

(a) A person may not recover from the owner, operator, or lessor of a registered do-it-yourselfer used oil collection center or used oil collection center any damages or costs of response actions at another location resulting from a release or threatened release of used oil collected at the center if:

(1) the owner, operator, or lessor of the collection center does not mix the used oil collected with any hazardous waste or polychlorinated biphenyls (PCBs);

(2) the owner, operator, or lessor of the collection center does not accept used oil that the owner, operator, or lessor knows contains hazardous waste or PCBs; and

(3) the collection center is in compliance with management standards adopted by the commission.

(b) For purposes of this section, the owner, operator, or lessor of a do-it-yourselfer used oil collection center or a used oil collection center may presume that a quantity of less than five gallons of used oil accepted at any one time from any member of the public is not mixed with a hazardous waste or PCBs, provided that the owner, operator, or lessor acts in good faith.

(c) This section applies only to activities directly related to the collection of used oil by a do-it-yourselfer used oil collection center or a used oil collection center. This section does not apply to grossly negligent activities related to the operation of a do-it-yourselfer used oil collection center or a used oil collection center.

(d) This section does not affect or modify the obligations or liability of any person other than the owner, operator, or lessor of the collection center under any other provisions of state or federal law, including common law, for injury or damage resulting from a release of used oil or hazardous substances.

(e) This section does not affect or modify the obligations or liability of any owner, operator, or lessor of a collection center with regard to services other than accepting used oil from the public.

§324.9. Reimbursement of Used Oil Collection Center's Hazardous Waste Disposal Expense.

(a) The commission, on proper application, shall reimburse the owner or operator of an eligible registered do-it-yourselfer used oil collection center or a used oil collection center for costs associated with the collection center's disposal of:

(1) household do-it-yourselfer used oil collected by the collection center that, unknown to the center at the time of collection, contains hazardous wastes or is unfit for recycling;

(2) household do-it-yourselfer used oil collected by the collection center that has been commingled with oils described in paragraph (1) of this subsection and is unsuitable for recycling; or

(3) contaminated used oil left at the collection center as used oil after posted business hours and without the knowledge of the collection center.

(b) A registered do-it-yourselfer used oil collection center or used oil collection center is eligible for reimbursement if it demonstrates to the satisfaction of the commission that:

(1) the center has established procedures to minimize the risk that the center will mix the used oil the center generates or collects from the public with hazardous wastes, especially halogenated wastes;

(2) the center accepts not more than:

(A) five gallons of household used oil from any person at any one time if the center is a registered do-it-yourselfer used oil collection center; or

(B) fifty-five gallons of non-household used oil from any person at one time if the center is a registered used oil collection center.

(3) the center can document to the satisfaction of the commission the volume of used oil the center collects from the public during any period under review by:

(A) providing a process by which all individuals leaving household do-it-yourselfer used oil at the center are required to provide their names, addresses, and the approximate amounts of used oil brought to the collection center; or

(B) another method approved by the commission.

(c) For the purpose of subsection (b)(2) of this section, the owner or operator of a registered do-it-yourselfer used oil collection center or used oil collection center may presume that a quantity of used oil collected from a member of the public that does not exceed the applicable collection limit established by that subsection is not mixed with a hazardous substance if the owner or operator acts in good faith in the belief the oil is generated from the individual's personal activity.

(d) In any state fiscal year, a registered do-it-yourselfer used oil collection center or used oil collection center may not be reimbursed for more than $7,500 in total eligible disposal costs, subject to §324.10(d) of this title (relating to Procedures for Reimbursement of Collection Centers).

(e) Reimbursements made under this section shall be paid out of the used oil recycling fund and may not exceed an aggregate amount of $500,000 each fiscal year.

§324.10. Procedures for Reimbursement of Collection Centers.

(a) An owner or operator of a registered do-it-yourselfer used oil collection center or used oil collection center may apply for reimbursement from the commission.

(b) An application for reimbursement shall be submitted on a form approved or provided by the commission.

(c) An application must contain:

(1) the name, address, and telephone number of the applicant;

(2) the name, mailing address, location address, and commission registration number of the registered do-it-yourselfer used oil collection center or used oil collection center from which the contaminated oil was removed;

(3) the name, address, telephone number, and commission registration number of the hazardous waste transporter used to dispose of the contaminated used oil;

(4) a copy of any shipping documents that accompanied the transportation of the shipment of used oil;

(5) a copy of each invoice for which reimbursement is requested and evidence that the amount shown on the invoice has been paid in full in the form of:

(A) cancelled checks;

(B) business receipts from the person who performed the work; or

(C) other documentation approved by the commission;

(6) a waste-characterization or similar documentation required before acceptance of a hazardous waste by the disposal facility that accepted the contaminated used oil for treatment or disposal; and

(7) any other information that the executive director may reasonably require.

(d) All claims for reimbursement filed under this section and §324.9 of this title (relating to Reimbursement of Used Oil Collection Center's Hazardous Waste Disposal Expense) are subject to funds available for disbursement in the used oil recycling fund and to §324.9(e) of this title. Section 324.9 of this title and this section do not create an entitlement to money in the used oil recycling fund or any other fund.

§324.11. Transporters and Transfer Facilities. Standards for used oil transporters and transfer facilities shall be as in 40 CFR, Part 279, Subpart E and as specified in this section.

(1) Underground storage tanks (USTs). Underground storage tanks that contain used oil are subject to the UST standards in 30 TAC Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks) in addition to those in 40 CFR, Part 279.

(2) Registration. Transporters must register with the EPA and the commission biennially by January 25 of the year following the end of the biennial year. Transporters must register their used oil activities within 90 days of initiation under this rule even if they have previously registered with the commission under other rules. Transporters must register, through the commission, using EPA Form 8700-12 and a form provided by the commission. Registration forms should be mailed to the Texas Natural Resource Conservation Commission, Municipal Solid Waste Division, Automotive Waste Management Section, P.O. Box 13087, Austin, Texas 78711-3087.

(3) Financial responsibility. Transporters seeking registration under this subchapter shall submit evidence of financial responsibility in conformance with the requirements contained in this subsection. (Registrants who are state or federal government entities whose debts and liabilities are the debts and liabilities of a State or the United States are exempt from the requirements contained in this subsection.)

(A) Transporters shall provide evidence of financial responsibility as follows.

(i) A combined single-limit automobile liability insurance policy and a pollution liability policy with a limit of $1 million, exclusive of legal defense costs.

(ii) Transporters are responsible for any liability costs that exceed the dollar limit set in this subsection.

(B) Insurance requirements.

(i) Evidence of automobile liability coverage is demonstrated by submitting original certificate(s) of insurance to the following address: Texas Natural Resource Conservation Commission, Financial Assurance Section, P. O. Box 13087, Austin, Texas 78711-3087. These certificates shall be submitted prior to the registrant receiving approval as a registered transporter.

(ii) The registered transporter must be the named insured on the certificate of insurance and the TNRCC must be listed as the certificate holder, Attention: Financial Assurance Section.

(iii) The cancellation statement on the certificate shall read as follows: "Should any of the policies referenced in this certificate be cancelled before the expiration date thereof, the issuing company will mail a 60-day written cancellation notice to the certificate holder named to the left."

(iv) Upon the TNRCC's receipt of a cancellation notice, the transporter shall seek to obtain alternate insur-

ance coverage and submit evidence of such coverage to the commission before the effective date of the cancellation. Failure to do so may result in a registration request not being approved or termination of the registration.

(v) Evidence of pollution liability coverage is demonstrated by submitting an insurance Form MCS 90 along with the original certificate for the automobile coverage. The scheduled of Insured Vehicles must accompany the certificate of insurance.

(vi) Insurance coverage must be issued for at least one year by a carrier that is licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in Texas. The issuing institution must be acceptable to the executive director.

(vii) An original or certified copy of the insurance policy shall be provided within 30 days from the date requested by the TNRCC.

(C) Incapacity of registered transporters or the issuing institutions.

(i) Registered transporters shall notify the executive director by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code, naming the registered transporter as debtor, within ten business days after the commencement of the proceeding.

(ii) Registered transporters who fulfill the financial assurance requirements by obtaining insurance will be deemed to be without the required financial assurance coverage in the event of bankruptcy, insolvency, or a suspension or revocation of the license of the insurance carrier. Registered transporters shall establish other acceptable financial assurance coverage within 30 days after such an event.

(4) Annual Report. Report annually, by January 25 of the year following the report year, the sources of used oil handled during the preceding year, the quantity of used oil received, the date of receipt, and the destination or end use of the used oil.

§324.12. Processors and Rerefiners. Standards for used oil processors and rerefiners shall be as in 40 CFR, Part 279, Subpart F and as specified in this section.

(1) Underground storage tanks. Section 324. 11(1) of this title (relating to Transporters and Transfer Facilities) applies.

(2) Registration. Processors and rerefiners must register with the EPA and the commission biennially by January 25 of the year following the end of the biennial year. Processors and rerefiners must register their used oil activities within 90 days of initiation under this rule even if they have previously registered with the commission under other rules. Processors and rerefiners must register, through the commission, using EPA Form 8700-12 and a form provided by the commission. Registration forms should be mailed to the Texas Natural Resource Conservation Commission, Municipal Solid Waste Division, Automotive Waste Management Section, P.O. Box 13087, Austin, Texas 78711-3087.

(3) Analysis plan. Each facility must prepare an analysis plan which a facility will follow when performing sampling and analysis, keeping records, and when complying with analytical requirements for documenting that used oil is not listed hazardous and/or the used oil fuel specification has been met. This plan must specify the frequency of sampling and analysis, procedures and analysis (to assure listed hazardous wastes are not mixed with the used oil received), and procedures for handling a shipment of adulterated used oil.

(4) Annual report. The processor/rerefiner biennial report information required by 40 CFR, §279.57(b) shall be provided to the commission annually by January 25 of the following year. The information shall be entered on a commission-prescribed form and forwarded to the commission. Mail the report form to the Texas Natural Resource Conservation Commission, Municipal Solid Waste Division, Automotive Waste Management Section, P.O. Box 13087, Austin, Texas 78711-3087.

§324.13. Burners of Off-specification Used Oil for Energy Recovery. Standards for burners of off-specification used oil for energy recovery shall be as in 40 CFR, Part 279, Subpart G and as specified in this section.

(1) Underground storage tanks. Section 324.11(1) of this title (relating to Transporters and Transfer Facilities) applies.

(2) Registration. Burners of off-specification used oil for energy recovery must register with the EPA and commission biennially by January 25 of the year following the end of the biennial year. They must initially notify the EPA and the commission of their used oil activities within 90 days of initiation under this rule. Previously assigned EPA and commission registration numbers should be entered on the form. Burners must register, through the commission, using EPA Form 8700-12 and a form provided by the commission. Registration forms should be mailed to the Texas Natural Resource Conservation Commission, Municipal Solid Waste Division, Automotive Waste Management Section, P.O. Box 13087, Austin, Texas 78711-3087.

(3) Space heater. If a burner uses or installs a space heater which burns off-specification used oil as fuel to legitimately recover its energy content, as in 40 CFR, §279.61(a)(2)(iii), the owner/operator of the space heater shall obtain authorization pursuant to the requirements of Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification).

(4) Annual Report. Report annually, by January 25 of the year following the report year, the sources of used oil handled during the preceding year, the quantity of used oil received, and the date of receipt.

§324.14. Marketers of Used Oil Fuel. Standards for marketers of used oil which will be burned for energy recovery shall be as in 40 CFR, Part 279, Subpart H, and this subchapter. Marketers of used oil which will be burned for energy recovery must register with the EPA and the commission biennially by January 25 of the year following the end of the biennial year. They must register their used oil activities under this rule with the EPA and the commission within 90 days of initiation. Previously assigned EPA and commission registration numbers should be entered on the form. Marketers must register, through the commission, using EPA Form 8700-12 and a form provided by the commission. Registration forms should be mailed to the Texas Natural Resource Conservation Commission, Municipal Solid Waste Division, Automotive Waste Management Section, P.O. Box 13087, Austin, Texas 78711-3087.

§324.15. Spills. The facility owners or operators must make sure that adequate quantities of sorbent materials are available on-site at all times and are used to contain spill or leaks occurring during normal activities. Whenever there is a catastrophic release or discharge of used oil and used oil reaches the environment, corrective measures must be taken to adequately protect human health and the environment from potential damages. A spill of used oil to water/shoreline or a spill of used oil of 25 gallons or more that goes outside of any secondary containment should be reported to your local TNRCC Region Office during business hours and to the Texas Emergency Response Center at (512) 463-7727 after business hours. Spills shall be reported as soon as possible and not later than 24 hours after discovery. (See 40 CFR, §279.43(c) for discharges during transport.) Free-flowing used oil recovered from spills will be processed under this rule; materials contaminated with used oil that will be burned

for energy recovery will be processed under this rule; materials contaminated with used oil, but not free-flowing oil, that will be sent to treatment or disposal are not defined as used oil.

§324.16. Polychlorinated Biphenyls (PCBs). Pursuant to 40 CFR, Part 279 (Table 1), the applicable standards for the burning of used oil containing PCB's shall be as set out in 40 CFR, §761.20(e).

§324.17. Criminal Penalties.

(a) Except as provided by subsection (b) of this section, an offense under §324.4 of this title (relating to Prohibitions) is punishable by:

(1) a fine of not less than $100 or more than $10,000 for each act of violation or each day of a continuing violation;

(2) imprisonment for at least six months; or

(3) both the fine and the imprisonment.

(b) If it is shown on the trial of an offense under §324.4 of this title (relating to Prohibitions) that the defendant has previously been convicted of an offense under §324.4 of this title, the offense is punishable by:

(1) a fine of not less than $200 or more than $20,000 for each act of violation or each day of a continuing violation;

(2) imprisonment for at least one year; or

(3) both the fine and the imprisonment.

§324.18. Civil Penalty.

(a) Except as provided by subsection (c) of this section, a person who violates this chapter or a rule or order adopted under this chapter is liable for a civil penalty of not less than $100 or more than $500 for each act of violation and for each day of violation.

(b) A civil penalty recovered in a suit brought by a local government under this section shall be divided equally between the state and the local government that brought the suit. The state shall deposit its recovery to the credit of the used oil recycling fund.

(c) The penalty imposed by this section does not apply to failure to file a report under §324.7 of this title (relating to Collection Centers and Aggregation Points).

(d) The commission, a local government in whose jurisdiction the violation occurs, or the state may bring suit to recover a penalty under this section.

§324.19. Injunctive Relief.

(a) If it appears that a violation or threat of violation of the sections under this rule or any order adopted under this rule has occurred or is about to occur and is causing or may cause immediate injury or constitutes a significant threat to the health, welfare, or personal property of a citizen or a local government, the commission, the local government, or the state may bring suit in district court for injunctive relief to restrain the violation or the threat of violation.

(b) In a suit for injunctive relief, the court may grant an injunctive or mandatory relief warranted by the facts, including a temporary restraining order, a temporary injunction, or a permanent injunction. Injunctive relief shall be granted without the requirement for a bond or other undertaking by any governmental entity seeking the injunction.

§324.20. Venue. A suit for injunctive relief, for recovery of a civil penalty, or both, may be brought in:

(1) the county in which the defendant resides;

(2) the county in which the violation or threat of violation occurs; or

(3) Travis County.

§324.21. Closure.

(a) The owner or operator of a used oil transfer, processing, rerefining, or off-specification used oil burning facility shall reclaim the site of the operation to a post operational land use in a manner that:

(1) minimizes the need for further maintenance; and

(2) controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of used oil, used oil constituents, leachate, contaminated run-off, or used oil decomposition products to the ground or surface waters or to the atmosphere; and

(3) complies with the closure requirements of this section.

(b) Plan. The owner or operator of a used oil transfer, processing, rerefining or off-specification used oil burning facility shall have a written closure plan. The plan shall be submitted to the executive director with initial registration and whenever a change to the operation occurs or replaces the plan of record.

(c) Content. The plan shall identify steps necessary to perform partial and/or final closure of the facility at the maximum extent of use during its active life. The closure plan shall include, at least:

(1) a description of how each used oil management unit at the facility will be closed;

(2) a description of how final closure of the facility will be conducted. The description shall identify the maximum extent of the operations which will be closed during the active life of the facility;

(3) an estimate of the maximum inventory of used oil ever on-site over the active life of the facility and a detailed description of the methods to be used during partial closures and final closure, including, but not limited to, methods for removing, transporting, or disposing of all used oil, and identification of the type(s) of the off-site used oil facilities units to be used, if applicable;

(4) a detailed description of the steps needed to remove or decontaminate all used oil residues and contaminated containment system components, equipment, structures, and soils during partial and final closure, including procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy closure;

(5) a detailed description of other activities necessary during the closure period to ensure that all partial closures and final closure satisfy the closure standards;

(6) a closure cost estimate in current dollars showing the cost of hiring a third party to conduct the closure activities as specified in the plan. Additionally, the plan shall identify the financial assurance instrument used by the owner or operator to cover the cost of closure.

(d) Time. Within 90 days after the commission's receipt of notification of closure, the owner or operator shall remove of all used oil in accordance with the approved closure plan and implement closure.

(e) Certification. Within 60 days of completion of closure, the owner or operator shall submit to the executive director, by registered mail, a certification that the used oil facility has been closed in accordance with the specifications in the closure plan. The certification shall be signed by the owner or operator and by an independent registered professional engineer.

§324.22. Suspension or Revocation of Registration.

(a) The commission may suspend or revoke a registration for:

(1) failure to maintain complete and accurate records;

(2) alteration of any record maintained or received by the registrant;

(3) delivery of used oil to an entity not registered with the commission;

(4) failure to comply with this rule or an order issued by the commission;

(5) failure to submit annual reports as required;

(6) failure to maintain financial assurance as required; or

(7) failure to reasonably perform the used oil activities for which the registration was issued.

(b) A registration shall be suspended for a period of one year; however, depending upon the seriousness of the offense(s), the time of suspension may be increased or decreased. A registration is revoked automatically upon a second suspension. If the registration is suspended or revoked a facility shall not possess or accept used oil regulated under this rule.

(c) The holder of a used oil registration that has been revoked by the commission may reapply for registration pursuant to this rule as if applying for the first time, after a period of at least one year from the date of revocation. If a registration is revoked by the commission a second time, the revocation shall be permanent.

(d) Appeal of a suspension or revocation of registration procedures are as follows:

(1) An opportunity for a formal hearing on the suspension or revocation of registration may be requested in writing by the applicant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of proposed suspension or revocation of registration has been sent from the executive director to the last known address of the applicant.

(2) An opportunity for a formal hearing may be requested in writing by the applicant by certified mail, return receipt requested, provided the request is postmarked within 20 days after a notice of denial of registration suspension or revocation has been sent from the executive director to the last known address listed on the application. If the registration is denied, a person shall not possess used oil regulated under this rule.

(3) The formal hearing under this paragraph shall be in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2002 (Vernon 1992), the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapters 361 and 371 (Vernon 1992), and the rules of the commission.

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

Issued in Austin, Texas, on October 20, 1995.

TRD-9513500 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: December 1, 1995

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

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Subchapter B. Financial Assurance for Closure Section

• 30 TAC §§324.50-324.54

The new sections are proposed under the Texas Water Code, §§5.103, 5. 105, and 26.011, which provides the Texas Natural Resource Conservation Commission (TNRCC) the authority to adopt rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. The new sections are also proposed under the Solid Waste Disposal Act, §361.017, which provides the TNRCC the authority to regulate industrial solid wastes and hazardous municipal wastes; §361.024, which allows the TNRCC to adopt rules consistent with the general intent and purposes of the Act; and Chapter 371 relating to Used Oil Collection, Management and Recycling.

The proposed new rules affect the Texas Health and Safety Code, Chapter 371.

§324.50. Financial Assurance for Closure.

(a) Applicability. The requirements of this subchapter apply to owners and operators of any facility with closure requirements, except for owners and operators which are State or Federal government entities whose debts and liabilities are thedebts and liabilities of a State or the United States.

(b) An owner or operator of a facility required to provide evidence of financial responsibility must establish financial assurance for the closure of each registered facility based on the closure cost estimate derived. The owner or operator must choose from one or more of the options as specified in §324. 51 of this title (relating to Financial Assurance Options).

(c) The instruments submitted for compliance with this subchapter must be worded exactly as they appear in §324.52 of this title (relating to Wording of the Instruments).

(d) To receive approval as a registered facility, original signed financial assurance instruments must be submitted with a completed registration. The executive director will determine the acceptability of the instrument(s).

(e) Whenever the closure cost estimate increases to an amount greater than the amount being provided in the financial assurance instrument, as a result of changes in closure activities or inflation, the owner or operator, within 30 days after the increase must either cause the amount of the instrument to be increased or obtain additional financial assurance to cover the increase. The owner or operator shall submit evidence of such increase to the executive director.

(f) Whenever the current closure cost estimate decreases to an amount less than the amount being provided in the financial assurance instrument, the amount of the instrument may be reduced to the amount of the current closure cost estimate following written approval by the executive director.

(g) Use of multiple financial options. An owner or operator may satisfy the requirements of this subchapter by establishing more than one financial option per facility. These options are limited to trust funds, surety bonds, letters of credit, and insurance. The options shall be as specified in §324.51 of this title (relating to Financial Assurance Options), except that it is the combination of options, rather than the single option, which shall provide financial assurance for an amount at least equal to the current closure cost estimate. The executive director may use any or all of the options to provide for closure of the facility.

(h) Use of a financial option for multiple facilities. An owner or operator may use a financial assurance option specified in this subchapter to meet the requirements of this subchapter for more than one facility. Evidence of financial assurance submitted to the executive director shall include a list showing, for each facility, the TNRCC registration number, name, address, and the amount of funds for closure assured by the option. The amount of funds available through the option must be no less than the sum of funds that would be available if a separate option had been established and maintained for each facility.

(i) The executive director will provide written consent to termination of the financial assurance instrument when:

(1) an owner or operator substitutes and receives approval from the executive director for alternate financial assurance as specified in this subchapter; or

(2) the executive director releases the owner or operator from the requirements of this subchapter in accordance with §324.50 of this title (relating to Financial Assurance for Closure).

(j) Following a determination that the owner or operator has failed to perform closure when required to do so, the executive director may complete the site closure.

(k) Continuous financial assurance coverage shall be provided until all the requirements of closure have been completed and the site is determined to be officially closed in writing by the executive director.

§324.51. Financial Assurance Options.

(a) Trust fund.

(1) An owner or operator may satisfy the requirements of financial assurance by establishing a closure trust fund which conforms to the following requirements in addition to the requirements specified in §324.50 of this title (relating to Financial Assurance for Closure).

(2) The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(3) The wording of the trust agreement must be identical to the wording specified in §324.52(a)(1) of this title (relating to Wording of the Instruments), and the trust agreement must be accompanied by a formal certification of acknowledgement (for example, see §324.52(a)(2) of this title). Schedule A of the trust agreement must be updated within 30 days after an approved change in the amount of the current closure cost estimate covered by the agreement.

(4) The initial payment into the trust fund must be at least equal to the current closure cost estimate, except when a combination of options are used in accordance with §324.51 of this title (relating to Financial Assurance Options). A receipt from the trustee for this initial payment must be submitted by the owner or operator to the executive director with the original copy of the trust agreement.

(5) If an owner or operator substitutes other financial assurance as specified in this subchapter for all or part of the trust fund, he may submit a written request to the executive director for approval of the release of the amount in excess of the current closure cost estimate covered by the trust fund.

(6) Within 60 days after receiving a request from the owner or operator for release of funds as specified in paragraph (5) of this subsection or as specified in §324.50 of this title (relating to Financial Assurance for Closure), the executive director may instruct the trustee to release to the owner or operator such funds as the executive director specifies in writing.

(7) After beginning closure, an owner or operator or any other person authorized by the executive director to perform closure may request reimbursement for closure expenditures by submitting itemized bills to the executive director. After receiving bills for closure activities, the executive director will determine whether the closure expenditures are in accordance with the closure requirements, and if so, will instruct the trustee to make reimbursement in such amounts as the executive director specifies in writing. If the executive director has reason to believe that the cost of closure will be significantly greater than the value of the trust fund, the executive director may withhold reimbursement of such amounts as deemed prudent until it is determined, in accordance with §324.50 of this title (relating to Financial Assurance for Closure) that the owner or operator is no longer required to maintain financial assurance for closure.

(b) Surety bond guaranteeing performance of closure.

(1) An owner or operator may satisfy the requirements of financial assurance by establishing a surety bond which conforms to the following requirements in addition to the requirements specified in §324.50 of this title (relating to Financial Assurance for Closure).

(2) The bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the United States Department of Treasury.

(3) The wording of the surety bond must be identical to the wording specified in §324.52(b) of this title (relating to Wording of the Instruments).

(4) The bond must guarantee that the owner or operator will:

(A) perform closure in accordance with the closure requirements of the registration or permit for the facility whenever required to do so; or

(B) within 120 days after receipt by both the owner or operator and the executive director of a notice of cancellation of the bond from the surety, the owner or operator must provide alternate financial assurance as specified in this subchapter, and obtain the executive director's written approval of the assurance provided.

(5) The penal sum of the bond must be in an amount at least equal to the current closure cost estimate, except when a combination of options are used in accordance with §324.50 of this title (relating to Financial Assurance for Closure).

(6) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a determination by the executive director that the owner or operator has failed to perform closure in accordance with registration or permit requirements when required to do so, under terms of the bond the surety will perform closure as guaranteed by the bond or will deposit the amount of the penal sum of the bond into an account as directed by the executive director for the closure of the facility.

(7) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the executive director. Cancellation of the bond may not occur, however, during the 120 days beginning on the date of the receipt of the notice of cancellation by both the owner or operator and the executive director, as evidenced by the return receipts. If the owner or operator fails to provide alternate financial assurance within 90 days of the receipt of notice of cancellation from the surety to the executive director and to the owner or operator, and obtain written approval of the alternate assurance from the executive director, the surety will be required to perform under the terms of the bond.

(8) The surety will not be liable for deficiencies in the performance of closure by the owner or operator after the executive director releases the owner or operator from the requirements of this subchapter in accordance with §324.50 of this title (relating to Financial Assurance for Closure).

(c) Closure letter of credit.

(1) An owner or operator may satisfy the requirements of financial assurance by obtaining a letter of credit which conforms to the following requirements in addition to the requirements specified in §324.50 of this title (relating to Financial Assurance for Closure).

(2) The issuing institution must be an entity which has the authority to issue letters of credit and whose operations are regulated and examined by a federal or state agency.

(3) The wording of the letter of credit must be identical to the wording specified in §324. 52(c) of this title (relating to Wording of the Instruments).

(4) The letter of credit must be accompanied by a letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: the TNRCC registration or permit number, name, and address of the facility, and the amount of funds assured for closure of the facility by the letter of credit.

(5) The letter of credit must be irrevocable and issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless, at least 120 days before the current expiration date, the issuing institution notifies both the owner or operator and the executive director by certified mail of a

decision not to extend the expiration date. Under the terms of the letter of credit, the 120 days will begin on the date when both the owner or operator and the executive director have received the notice, as evidenced by the return receipts.

(6) The letter of credit must be issued in an amount at least equal to the current closure cost estimate, except when a combination of options are used in accordance with §324.50 of this title (relating to Financial Assurance for Closure).

(7) Following a determination that the owner or operator has failed to perform closure in accordance with §324.50 of this title or with the registration or permit requirements when required to do so, the executive director may draw on the letter of credit and deposit such funds into an account for the closure of the facility.

(8) If the owner or operator does not establish alternate financial assurance as specified in this subchapter and obtain written approval of such alternate assurance from the executive director within 90 days after receipt by both the owner or operator and the executive director of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the current expiration date, the executive director will draw on the letter of credit. The executive director may delay the drawing if the issuing institution grants an extension of the term of the credit. During the last 30 days of any such extension, the executive director will draw on the letter of credit if the owner or operator has failed to provide alternate financial assurance as specified in this subchapter and obtain written approval of such assurance from the executive director.

(d) Closure insurance.

(1) An owner or operator may satisfy the requirements of financial assurance by obtaining closure insurance which conforms to the following requirements in addition to the requirements specified in §324.50 of this title (relating to Financial Assurance for Closure).

(2) The insurer must be licensed in Texas and authorized to engage in the business of insurance.

(3) The wording of the certificate of insurance must be identical to the wording specified in §324.52(d) of this title (relating to Wording of the Instruments).

(4) The closure insurance policy must be issued for a face amount at least equal to the current closure estimate, except when a combination of options are used in accordance with §324.50 of this title (relating to Financial Assurance for Closure). The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(5) The closure insurance policy must guarantee that funds will be available whenever closure occurs. The policy shall also guarantee that once closure begins, the issuer will be responsible for paying out funds, up to an amount equal to the face amount of the policy, upon the direction of the executive director, to such party or parties as the executive director specifies.

(6) After beginning closure, an owner or operator or any other person authorized to perform closure may request reimbursement for closure expenditures by submitting itemized bills to the executive director. After receiving bills for closure activities, the executive director will determine whether the closure expenditures are in accordance with the closure requirements, and if so, he will instruct the insurer to make reimbursement in such amounts as the executive director specifies in writing. If the executive director has reason to believe that the cost of closure will be significantly greater than the face amount of the policy, he may withhold reimbursement of such amounts as he deems prudent until he determines, in accordance with §324.50 of this title (relating to Financial Assurance for Closure), that the owner or operator is no longer required to maintain financial assurance for closure of the facility.

(7) The owner or operator must maintain the policy in full force and effect until the executive director consents to termination of the policy by the owner or operator as specified in §324.50 of this title (relating to Financial Assurance for Closure). Failure to pay the premium, without substitution of alternate financial assurance as specified in this subchapter, will constitute a significant violation of these regulations, warranting such remedy as the executive director deems necessary. Such violation will be deemed to begin upon receipt by the executive director of a notice of future cancellation, termination, or failure to renew due to nonpayment of the premium, rather than upon the date of expiration of the policy.

(8) The policy must provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy shall, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy by sending notice by certified mail to the owner or operator and the executive director. Cancellation, termination, or failure to renew may not occur, however, during 120 days beginning with date of receipt of the notice by both the executive director and the owner or operator, as evidenced by the return of receipts. Cancellation, termination, or failure to renew may not occur and the policy will remain in full force and effect in the event that on or before the date of expiration:

(A) the executive director deems the facility abandoned; or

(B) the registration or permit expires, is terminated, or revoked or a new or renewal registration or permit is denied; or

(C) closure is ordered by the executive director of the TNRCC or by a United States district court or other court of competent jurisdiction; or

(D) the owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code; or

(E) the premium due is paid.

(e) Financial test and corporate guarantee for closure.

(1) An owner or operator may satisfy the requirements of financial assurance by obtaining a financial test or a financial test and corporate guarantee which conforms to the following requirements in addition to the requirements specified in §324.50 of this title (relating to Financial Assurance for Closure).

(2) To pass this test the owner or operator must meet the criteria of either subparagraphs (A) or (B) of this paragraph:

(A) the owner or operator must have:

(i) two of the following three ratios: A ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0. 1; and a ratio of current assets to current liabilities greater than 1.5; and

(ii) net working capital and tangible net worth each at least six times the sum of the current closure cost estimate and any other financial assurance obligations under other EPA or state environmental regulations assured by a financial test; and

(iii) tangible net worth of at least $10 million; and

(iv) assets located in the United States amounting to at least 90 percent of the owner's or operator's total assets or at least six times the sum of the current

closure cost estimate and any other financial assurance obligations under other EPA or state environmental regulations assured by a financial test.

(B) the owner or operator must have:

(i) a current rating for his most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and

(ii) tangible net worth at least six times the sum of the current closure cost estimate and any other financial assurance obligations under other EPA or state environmental regulations assured by a financial test; and

(iii) tangible net worth of at least $10 million; and

(iv) assets located in the United States amounting to at least 90 percent of the owner's or operator's total assets or at least six times the sum of the current closure cost estimates and any other financial assurance obligations under other EPA or state environmental regulations assured by a financial test.

(3) To demonstrate that the requirements of the test are being met, the owner or operator shall submit the following items to the executive director:

(A) a letter signed by the owner's or operator's chief financial officer worded identical to the wording specified in §324.52(e) of this title (relating to Wording of the Instruments); and

(B) a copy of the owner's or operator's independently audited year-end financial statements for the latest fiscal year including the "unqualified opinion" of the auditor; and

(C) a special report from the owner's or operator's independent certified public accountant to the owner or operator stating that:

(i) he has compared the data which the letter from the chief financial officer specifies as having been derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements; and

(ii) in connection with that procedure, no matters came to his attention which caused him to believe that the specified data should be adjusted.

(4) After the initial submission of items specified in paragraph (3) of this subsection, the owner or operator must send updated information to the executive director within 90 days after the close of each succeeding fiscal year. This information shall consist of all three items specified in paragraph (3) of this subsection.

(5) If the owner or operator no longer meets the requirements of paragraph (2) of this subsection, he shall send notice to the executive director of intent to establish alternate financial assurance as specified in this subchapter. The notice must be sent by certified mail within 90 days after the end of the fiscal year for which the year-end financial data show that the owner or operator no longer meets the requirements. The owner or operator shall provide the alternate financial assurance within 120 days after the end of such fiscal year.

(6) The executive director may, based on a reasonable belief that the owner or operator may no longer meet the requirements of paragraph (2) of this subsection, require reports of financial condition at any time from the owner or operator in addition to those specified in paragraph (3) of this subsection. If the executive director finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of paragraph (2) of this subsection, the owner or operator must provide alternate financial assurance as specified in this subchapter within 30 days after notification of such a finding.

(7) The executive director may disallow use of this test on the basis of qualifications in the opinion expressed by the independent certified public accountant in his report on examination of the owner's or operator's financial statements. An adverse opinion or disclaimer of opinion will be cause for disallowance. The executive director will evaluate other qualifications on an individual basis. The owner or operator shall provide alternate financial assurance as specified in this subchapter within 30 days after notification of the disallowance.

(8) An owner or operator may meet the requirements of this subchapter by obtaining a written guarantee, hereafter referred to as "corporate guarantee." The guarantor must be the parent corporation of the owner or operator. The guarantor must meet the requirements for owners or operators in paragraphs (1) -(7) of this subsection and shall comply with the terms of the corporate guarantee. The wording of the corporate guarantee must be identical to the wording specified in §324.52(f) of this title (relating to Wording of the Instruments). The corporate guarantee shall accompany the items sent to the executive director as specified in paragraph (3) of this subsection. The terms of the corporate guarantee shall provide that:

(A) if the owner or operator fails to perform closure of the facility covered by the corporate guarantee in accordance with the closure requirements whenever required to do so, the guarantor will do so or establish a trust fund as specified in §324. 51(a)(1) of this title (relating to Financial Assurance Options) in the name of the owner or operator;

(B) the corporate guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and the executive director, as evidenced by the return receipts. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the executive director, as evidenced by the return receipts;

(C) if the owner or operator fails to provide alternate financial assurance as specified in this subchapter and obtain the written approval of such alternate assurance from the executive director within 90 days after receipt by both the owner or operator and the executive director of a notice of cancellation of the corporate guarantee from the guarantor, the guarantor will provide such alternative financial assurance in the name of the owner or operator.

§324.52. Wording of the Instruments.

(a) A trust agreement for a trust fund, as specified in §324.51(a)(1) of this title (relating to Financial Assurance Options), must be worded as follows, except that instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted:
Figure 1: 30 TAC §324.52(a)

(b) A surety bond guaranteeing performance of closure, as specified in 30 Texas Administrative Code §324.51(b) of this title (relating to Financial Assurance Options), must be worded as follows, except that the instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted:
Figure 2: 30 TAC §324.52(b)

(c) A letter of credit, as specified in §324.51(c) of this title (relating to Financial Assurance Options), must be worded as follows, except that instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted:
Figure 3: 30 TAC §324.52(c)

(d) A certificate of insurance, as specified in §324.51(d) of this title (relating to Financial Assurance Options), must be worded as follows, except that instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted:

Figure 4: 30 TAC §324.52(d)

(e) A letter from the chief financial officer, as specified in §324.51(e) must be worded as follows, except that instructions in parenthesis are to be replaced with the relevant information and the parenthesis deleted:

Figure 5: 30 TAC §324.52(e)

(f) A corporate guarantee as specified in §324.51(e) must be worded as follows except that instructions in parenthesis are to be replaced with the relevant information and the parenthesis material deleted:

Figure 6: 30 TAC §324.52(f)

§324.53. Incapacity of Owners or Operators, Guarantors, or Financial Institutions.

(a) An owner or operator must notify the executive director by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), United States Code, naming the owner or operator as debtor, within 10 business days after the commencement of the proceeding. A guarantor of a corporate guarantee as specified in §324.51(e) of this title (relating to Financial Assurance Options) shall make such a notification if he is named as debtor, as required under the terms of the guarantee.

(b) An owner or operator who fulfills the requirements of §324.50 or §324.51 of this title (relating to Financial Assurance for Closure; and Financial Assurance Options) by obtaining a letter of credit, surety bond, or insurance policy will be deemed to be without the required financial assurance coverage in the event of bankruptcy, insolvency, or a suspension or revocation of the license or charter of the issuing institution. The owner or operator must establish other acceptable financial assurance within 30 days after such an event.

§324.54. Other Financial Assurance Requirements. In some instances the executive director may determine that the owner or operator of a facility is required to maintain financial responsibility for post-closure care and/or corrective action. To satisfy the additional financial responsibility, the owner or operator must choose from one or more of the options as specified in §324.51 of this title (relating to Financial Assurance Options), except that the options and instruments are to be revised as appropriate to cover post-closure and/or corrective action.

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

Issued in Austin, Texas, on October 20, 1995.

TRD-9513501 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: December 1, 1995

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

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Chapter 330. Municipal Solid Waste

The Texas Natural Resource Conservation Commission (TNRCC) proposes the repeals of §§330.1141-330.1152, and §§330.1170-330.1174, Subchapter Z (Waste Minimization and Recyclable Materials) concerning do-it-yourself (DIY) changer, used motor vehicle oil recycling and used oil collection center reimbursement.

The United States Environmental Protection Agency (EPA) has published a new 40 Code of Federal Regulations (CFR), Part 279, Standards for the Management of Used Oil (57 FedReg 41566, September 10, 1992). On May 3, 1993, the EPA published technical corrections to the rule (58 FedReg 26420). On June 17, 1993, the EPA corrected several errors in the May 3, 1993, notice (58 FedReg 33341). On March 4, 1994, the EPA published a change to 40 CFR, Part 279 clarifying exemptions related to mixing used oil with crude oil and providing some exemptions from the definition of processor (59 FedReg 10550). This new rule extends the EPA's regulation to all nonhazardous used oil, used oil made characteristically hazardous by use (rather than by mixing), used oil recycled by means other than burning for energy recovery (in addition to used oil burned for energy recovery), and used oil generated by municipal or industrial generators. It also regulates DIY changer used oil (household used oil) after collection. The portion of 40 CFR, Part 279 addressing the burning of used oil for energy recovery was effective March 8, 1993 and has essentially the same requirements as the old 40 CFR, Part 266, Subpart E that it replaces. The remainder of 40 CFR, Part 279 will not be effective in Texas until the TNRCC adopts an implementing rule. Senate Bill 1683, 74th Texas Legislature, 1995, made statutory changes to the Texas Health and Safety Code, Chapter 371, Used Oil Collection, Management, and Recycling, to permit implementation of 40 CFR, Part 279.

These amendments are proposed to delete DIY changer and used motor vehicle oil recycling requirements from Chapter 330, Subchapter Z (Waste Minimization and Recyclable Materials) for replacement by a new 40 CFR, Part 279 implementing rule in Chapter 324, Subchapter A, Used Oil Recycling.

Sections 330.1141-330.1152 on DIY changer, used motor vehicle oil recycling are proposed to be deleted for replacement by 40 TAC Chapter 324, Subchapter A, Used Oil Recycling.

Sections 330.1170-330.1174 on reimbursement of DIY changer, used motor vehicle oil collection centers for disposal of used oil contaminated with hazardous wastes/hazardous substances are proposed to be deleted for replacement by 30 TAC Chapter 324, Subchapter A, Used Oil Recycling.

Stephen Minick, Division of Budget and Planning, has determined that for the first five-year period the proposed rules will be in effect, there will be no fiscal implications for state or local government. There may be additional cost for transfer facilities, processors, rerefiners, and burners of used oil to install secondary containment (dikes, berms, or retaining walls and an impervious floor; or equivalent) in container and aboveground tank storage areas, as required in 40 CFR, Part 279. There may also be a one-time cost for processors and rerefiners to develop contingency (40 CFR, §279.52(b)) and analysis (40 CFR, §279.55) plans and comply with closure requirements in §279.54(h). (Per 40 CFR, §279.1, "processing" is defined as chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of fuel oils, lubricants, or other used oil-derived product. Processing includes, but is not limited to: blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation and rerefining.) The estimated cost for these facilities to implement the new used oil program is from $5,000 to $65,000. There should be no effects on the employment workforce.

Mr. Minick also has determined that for the first five years the rules as proposod are in effect, the public benefit anticipated as a result of administration of compliance with the rule will be more effective management of the state's efforts to control used oil and used oil recycling and improper management of used oil. There are no known costs anticipated for persons required to comply with the rules as proposed.

A public hearing on this proposal will be held at the TNRCC Office Complex, Building E, Room 254-S, 12118 North IH-35, Austin, Texas on November 14, 1995 at 10:00 a.m. 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 not presented at the hearing may be submitted to the TNRCC by 5:00 p.m., 30 days from the date of publication of this proposal in the *Texas Register*. Please mail any written comments to Bettie Mabry Bell, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development (MC-205), Post Office Box 13087, Austin, Texas 78711-3087, and please reference TNRCC Rule Log Number 95011-324-WS. For further information, contact Hygie Reynolds, Waste Policy and Regulations Division, at (512) 239-6825.

Subchapter Z. Waste Minimization and Recyclable Materials.

- **30 TAC §§330.1141-330.1152**

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

The repeals are proposed under Texas Water Code, §§5.103, 5.105, and 26. 011, which provides the TNRCC the authority to adopt rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. These repeals are also proposed under the Health and Safety Code, Chapter 371, Used Oil Collection, Management and Recycling.

The proposed repeals affect Health and Safety Code, Chapter 371.

§330.1141. Purpose.

§330.1142. Applicability.

§330.1143. Definitions.

§330.1144. Public Notice by Retail Dealer.

§330.1145. Used Oil Collection Centers.

§330.1146. Limitation of Liability.

§330.1147. Registration and Other Requirements for Persons Involved in the Transportation, Marketing, or Recycling of Used Oil.

§330.1148. Prohibited Actions; and Semi Penalties.

§330.1149. Criminal Penalties.

§330.1150. Civil Penalties.

§330.1151. Injunctive Relief.

§330.1152. Venue.

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

Issued in Austin, Texas, on October 20, 1995.

TRD-9513503 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: December 1, 1995

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

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Subchapter Z. Waste Minization and Recycable Materials

- **30 TAC §§330.1170-330.1174**

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

The repeals are proposed under Texas Water Code, §§5.103, 5.105, and 26. 011, which provides the Texas Natural Resource Conservation Commission the authority to adopt rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. These repeals are also proposed under the Health and Safety Code, Chapter 371, Used Oil Collection, Management and Recycling.

The proposed repeals affect Health and Safety Code, Chapter 371.

§330.1170. Purpose of Used Oil Reimbursement Program.

§330.1171. Applicability of Used Oil Reimbursement Program Rules.

§330.1172. Definitions Pertaining to Used Oil Reimbursement Program.

§330.1173. General Conditions and Limitations Regarding Used Oil Reimbursement.

§330.1174. Procedures for Reimbursement.

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

Issued in Austin, Texas, on October 20, 1995.

TRD-9513582 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: December 1, 1995

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

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Chapter 337. Enforcement Rules

Subchapter A. Enforcement Generally

- **30 TAC §337.11**

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes new §337.11, concerning payment of penalties by installment.

The proposed section will ensure that a small business is allowed to pay administrative penalties imposed in an agreed order by installment. The rule will specify that the payment period not exceed 12 months and establishes an effective date for the payment period. In addition, the proposed rule will establish criteria for classifying businesses. The proposed new section would allow any business to pay administrative penalties imposed by installments upon approval of the commission

The staff specifically solicits comments on two aspects of the proposed rule, both relating to the definition of small business. Senate Bill 424 contemplated defining small businesses by "net annual receipts." The current proposal incorporates the historic commission definition of small business based upon "net annual income," and the staff requests comments on this change, as well as a potential definition of "net annual receipts." Additionally, the staff requests comments regarding the period over which "net annual income" should be computed. Comments are solicited regarding the definition of small business, particularly with regard to the criteria for classifying businesses and the use of a net annual income test versus a net annual receipts test. Additionally, comments are requested regarding whether the term "annual" should be construed as a fiscal, calendar, or rolling year.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section

Mr. Minick also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a more efficient use of TNRCC resources and elimination of some financial problems incurred by small businesses as a result of enforcement actions. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

A public hearing on the proposal will be held November 27, 1995, at 10:00 a. m. in Room 254S of TNRCC Building E, located at 12124 North IH-35, Park 35 Technology Center, 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 not presented at the hearing may be submitted to the TNRCC central office in Austin through November 30, 1995. Material received by the TNRCC Office of Policy and Regulatory Development by 4:00 p.m. on that date will be considered by the commission prior to any final action on the proposal. Please mail comments to Lisa Martin, Office of Policy and Regulatory Development, MC202, P.O. Box 13087, Austin, Texas 78711-3087, and reference Rules Tracking Log #95146-337-AI Please fax comments to (512) 239-5687. Copies of the proposed rule are available from the Air Policy and Regulations Division, located at 12015 North IH-35, Park 35 Technology Center, Building F, Austin, and at all TNRCC regional offices. For further information, contact John Gillen at (512) 239-1415.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

The new section is proposed under the Texas Water Code, Chapter 5, Subchapter D, §5.103 and §5.1175, and the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed new section implements the Texas Water Code, Chapter 5, Subchapter D, §5.103 and §5.1175, and the Texas Health and Safety Code, §382.017.

§337.11. Installment Payment of Administrative Penalty.

(a) Any person(s), firm, or business may, upon approval of the commission, be allowed to make installment payments of an administrative penalty imposed in an agreed order.

(b) A qualifying small business shall be allowed to make installment payments of an administrative penalty imposed in an agreed order, subject to the following.

(1) For purposes of this provision, a small business shall be defined as any person(s), firm, or business which employs, by direct payroll and/or through contract, fewer than 100 full-time employees and with a net annual income of less than $3 million.

(2) A business that is a wholly-owned subsidiary of a corporation shall not qualify as a small business under this section if the parent organization does not qualify as a small business under this section.

(3) The amount and payment schedule of the monthly installments must be specified by an agreed order.

(4) Payment schedules issued may not exceed a 12-month period.

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

Issued in Austin, Texas, on October 18, 1995.

TRD-9513733 Kevin McCalla
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Proposed date of adoption: December 20, 1995

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

Chapter 13. Land Resources

Special Board of Review Hearings

• 31 TAC 13.31-13.38

The Texas General Land Office (GLO) proposes amendments to §§13.31-13. 38, concerning special board of review hearings. The proposed amendments to these rules concern procedures for conducting public hearings before a special board of review. Pursuant to Texas Natural Resources Code, §§31.161 et seq, the GLO, through its Asset Management Division (the division), will submit a development plan affecting state-owned land to any local government having jurisdiction over the land for evaluation and approval. If local ordinances, rules, zoning, or other regulations prevent effective and beneficial use of state real property assets, the division may request re-zoning or other available relief. If such relief is denied, or if an existing development plan requires revision, the GLO may submit the matter to a special board of review consisting of members of state and local government. A development plan promulgated by the special board of review and any plan accepted by a local government is final and binding, unless subsequently modified or revised by the special board of review.

The GLO proposes amendments to §13.31 to provide new or clarified definitions of terms used in Texas Natural Resources Code, §§31.161 et seq, and §§13.30-13.40 of this chapter.

Section 13.32 is amended to clarify that an individual (such as a board member or the chairperson) may delegate his or her duties under the statute or the rules to a duly authorized representative of such individual; however, neither the board nor the division, as a whole, may delegate its respective duties.

The proposed amendment to §13.33 adds subsection (d), which sets forth the procedure and time period in which a political subdivision may review a substantial amendment to an existing development plan affecting state land within its jurisdiction. This subsection delays the jurisdiction of the special board of review and allows a political subdivision with jurisdiction over the property to review and comment on a proposed substantial amendment to a development plan affecting the property.

Section 13.34 is amended to require that the division submit initial development plans and proposed substantial amendments to political subdivisions for review and comment in accordance with Texas Natural Resources Code, §31.162. The language previously found in §13.34 is now found in §13.35, and all subsequent sections have been renumbered accordingly.

Section 13.36 and §13.38 are amended to provided consistency between these sections and §13.33, and for renumbering purposes. As a result of renumbering, the language previously found in §13.38 is being proposed as new §13.39 along with new §13.40, which sets forth the method of calculating time periods in §§13.30-13.39.

In addition to the foregoing, §§13.30-13.38 are amended so that the analogous terms "local government" and "political subdivision" are no longer used interchangeably in the rules. To clarify and simplify the language of the rules, the proposed amendments define and use only the term "political subdivision."

Christopher K. Price, Deputy Commissioner of the Asset Management Division, has determined for the first five-year period the rules are in effect there will be no fiscal implications to state or local governments as a result of enforcing or administering the rules.

Mr. Price also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be clarification of the rules and consistency in §§13.30-13.40 of this chapter. Further, the proposed amendments will provide for coordinated state and local government efforts to beneficially use state- owned property as the Legislature has directed. There will be no effect on small businesses. There are no anticipated economic costs to the public associated with the rules as proposed.

Comments on the proposed amendments may be submitted to Lenora DuBose, General Land Office, Legal Services Division, 1700 North Congress Avenue, Room 630, Austin, Texas 78701-1495 (Fax: (512) 463-6311). Comments must be received before 5:00 p.m. on December 1, 1995.

Texas Natural Resources Code, §31.166(b), authorizes the GLO to promulgate rules for conducting hearings before the special board of review.

The proposed amendment affects Texas Natural Resources Code, Chapter 31, §§31.161-31.167.

§13.31. Terms. The following words, terms and phrases, when used in §§13.30-13.40 [this subchapter], shall have the following meanings, unless the context clearly indicates otherwise.

Development plan-A plan, promulgated by a political subdivision (as defined in this section) [local government] or by the division (as defined in this section) in accordance with Texas Natural Resources Code, §31.161, to conserve and enhance the value of land belonging to the state, taking into consideration the preservation of the health, safety, and general welfare of the communities in which the property is situated. A development plan may include or address, without limitation, subdivision, site planning, zoning, and other land use regulations.

Political subdivision-A county, municipality, public school district, or special-purpose district or authority with jurisdiction over the property (as defined in this section).

Rezoning-Changing the existing zoning or land use regulation(s) applicable to the property.

Substantial amendment-Amendment of an existing development plan and/or rezoning which results in one or more of the following:

(A) more intense land use not permitted by the existing development plan and/or existing zoning;

(B) change of a site development regulation or requirement set forth in the existing development plan and/or existing zoning; or

(C) change of any condition of approval of the initial zoning and/or development plan.

§13.32. Applicability of Rules.

(a) The provisions of any rule referring to the board shall be construed to apply to the members of the board (including the chairperson) if the matter is within the jurisdiction of the board. Unless otherwise provided by law, a board member or the chairperson may delegate any duty imposed under Texas Natural Resources Code, §31.161 or §§13.30-13.38 of this chapter to the duly authorized representative of the member or chairperson [any duty imposed on the board, the chairperson, or the division may be delegated to a duly authorized representative]. In such case, the provisions of any statute or rule referring to the board[,] member(s) or[,] the chairperson[, or the division] shall be construed to also apply to the duly authorized representative(s).

(b) Except as set forth in §13.33(d) of this chapter (relating to Requests for Board Hearings) the [The] provisions of any rule referring to a development plan shall be construed to apply to any revision or modification of a development plan.

§13.33. Requests for Board Hearings.

(a) A person may request a board hearing to:

(1) appeal the denial by a political subdivision[local government] of a request for rezoning, variance, or other relief; and/or

(2) (No change.)

(b) (No change.)

(c) Within ten days following receipt of such request, the board chairperson shall send copies of such request to all other board members. Except as provided in subsection (d) of this section, if [If], after receiving such request, three or more board members request a hearing by notice in writing to the board chairperson, a hearing shall be scheduled within 60 days following the date the board members' hearing requests were received by the board chairperson.

(d) If such request involves a substantial amendment, the board may not schedule a hearing until the following has occurred:

(1) The division shall submit the request for a substantial amendment to the political subdivision.

(2) The political subdivision shall evaluate the proposed substantial amendment and either accept or reject it, in writing, within four months after submission of the request by the division. If the political subdivision fails to accept or reject the substantial amendment within the four month period, the board shall immediately upon the expiration of such period have jurisdiction to consider the request and may, pursuant to the terms of §§13. 30-13.40 of this chapter, schedule a hearing.

(3) The political subdivision may reject the proposed substantial amendment only on grounds that it does not comply with one or more local ordinances.

(4) If the proposed substantial amendment is rejected, the political subdivision shall specifically identify, in writing, any ordinance with which the substantial amendment conflicts and propose specific modifications that will bring the proposed substantial amendment into compliance with the local ordinance(s).

(5) After a proposed substantial amendment is rejected, the division may modify the proposed substantial amendment to conform to the ordinances specifically identified or apply to the board for rezoning, variance or other relief.

§13.34. Political Subdivision Authority [Notice]. The division shall submit an initial development plan or a proposed substantial amendment to the political subdivision. The political subdivision shall review and comment on the initial development plan or proposed substantial amendment in accordance with Texas Natural Resources Code, §31. 162, and §§13.30-13.40 of this chapter (relating to Special Board of Review Hearings).

[(a) The board shall provide notice of the date, hour, place, and subject of each hearing.

[(b) In accordance with the Texas Open Meetings Act, Government Code, Chapter 551, notice shall be filed with the secretary of state and posted at a place readily accessible to the general public at all times for at least seven days before the scheduled time of the hearing, except in an emergency or when there is an urgent public necessity, in which case the notice of a hearing is sufficient if posted for at least two hours before the hearing is convened and clearly identifies the emergency or urgent public necessity. Special notice of emergency hearings must be provided to the news media, in accordance with the Texas Open Meetings Act, Government Code, Chapter 551, §551.047.

[(c) The board shall provide written notice to a political subdivision at least 14 days prior to a board hearing.]

§13.35. Notice [Hearings].

(a) The board shall provide notice of the date, hour, place, and subject of each hearing. [The board shall conduct one or more public hearings to consider or revise a development plan or order. If the property is located in more than one city or town, the hearing(s) on any single tract of land may be combined. At least one hearing shall be conducted in the county where the property is located. Any board hearing shall be open to the public in accordance with the Texas Open Meetings Act, Government Code, Chapter 551, §§551.001 et seq, and the board shall conduct all hearings in accordance with §§1.66-1.78 of this title (relating to Procedures for Hearings). For purposes of §§1.66-1.78 of this title (relating to Procedures for Hearings), the term "hearing officer" means the board chairper-

son or the duly authorized representative of the board chairperson.]

(b) **In accordance with the Texas Open Meetings Act, Government Code, Chapter 551, notice shall be filed with the secretary of state and posted at a place readily accessible to the general public at all times for at least seven days before the scheduled time of the hearing, except in an emergency or when there is an urgent public necessity, in which case the notice of a hearing is sufficient if posted for at least two hours before the hearing is convened and clearly identifies the emergency or urgent public necessity. Special notice of emergency hearings must be provided to the news media, in accordance with the Texas Open Meetings Act, Government Code, Chapter 551, §551.047.** [Hearings of the board shall not be considered a contested case proceeding under the Administrative Procedure Act, Government Code, Chapter 2001, §§2001.001 et seq, and shall not be subject to appeal thereunder.]

(c) **The board shall provide written notice to a political subdivision at least 14 days prior to a board hearing.**

*§13.36. **Hearings** [Quorum].* [A simple majority of the board members constitutes a quorum with power to act in all cases.]

(a) **The board shall conduct one or more public hearings for any purpose set forth in §13.33(a) of this title (relating to Requests for Board Hearings). If the property is located in more than one city or town, the hearing(s) on any single tract of land may be combined. At least one hearing shall be conducted in the county where the property is located. Any board hearing shall be open to the public in accordance with the Texas Open Meetings Act, Government Code, Chapter 551, §§551.001 et seq, and the board shall conduct all hearings in accordance with §§1.66-1.78 of this title (relating to Procedures for Hearings). For purposes of §§1.66-1.78 of this title (relating to Procedures for Hearings), the term "hearing officer" means the board chairperson or the duly authorized representative of the board chairperson.**

(b) **Hearings of the board shall not be considered a contested case proceeding under the Administrative Procedure Act, Government Code, Chapter 2001, §§2001.001 et seq, and shall not be subject to appeal thereunder.**

*§13.37. **Quorum** [Orders].* **A simple majority of the board members constitutes a quorum with power to act in all cases..** [The board shall issue an order adopting or revising a development plan if, after the hearing(s), the board determines that local ordinances, rules or regulations, and/or an existing development plan are detrimental to the best interests of the state. The board shall issue its order in writing within 15 days following the final hearing. Final orders, minutes of the hearing, and material submitted to the board for consideration shall be open to the public in accordance with the Open Records Act, Government Code, Chapter 552, §§552. 001 et seq.]

*§13.38. **Orders** [Binding Effect of Orders and Development Plans.]* **The board shall issue an order adopting or revising a development plan and/or, if applicable, rezoning the property or granting variances or other necessary relief from ordinances of a political subdivision, if, after the hearing(s), the board determines that local ordinances, rules, zoning or land use regulations, and/or an existing development plan are detrimental to the best interests of the state. The board shall issue its order in writing within 15 days following the final hearing. Final orders, minutes of the hearing, and material submitted to the board for consideration shall be open to the public in accordance with the Open Records Act, Government Code, Chapter 552, §§552.001 et seq.**

[(a) A development plan adopted by board order, or otherwise accepted by a local government having jurisdiction over the property, shall be:

[(1) final and binding on the state, its lessees, successors in interest and assigns, and affected local governments or political subdivisions, unless subsequently revised by the board; and

[(2) filed in the deed records of the county in which the property is located.

[(b) A development plan adopted by board order, or otherwise accepted by a local government having jurisdiction over the property, shall not be revised or modified without specific approval by the board.]

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

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

TRD-9513717 Garry Mauro
Commissioner
General Land Office

Earliest possible date of adoption: December 1, 1995

For further information, please call: (512) 305-9129

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• 31 TAC §13.39, §13.40

The Texas General Land Office (GLO) proposes new §13.39 and §13.40, concerning procedures for conducting special board of review hearings. Pursuant to Texas Natural Resources Code, §31.161 et seq, the GLO, through its Asset Management Division (the division), will submit to any local government having jurisdiction over the land a development plan affecting state-owned land for evaluation and approval. If local ordinances, rules, zoning, or other regulations prevent effective and beneficial use of state real property assets, the division may request rezoning or other available relief. If such relief is denied, or if an existing development plan requires revision, the GLO may submit the matter to a special board of review consisting of members of state and local government. A development plan promulgated by the special board of review and any plan accepted by a local government is final and binding, unless subsequently modified or revised by the special board of review.

As a result of concurrently proposed amendments to this chapter and renumbering of the sections, new §13.39 contains the provisions previously found in §13.38 of this chapter. The language of this section has been changed so that the analogous terms "local government" and "political subdivision" are no longer used interchangeably. To clarify and simplify the language of the rules, only the term "political subdivision", defined in §13. 31 of this title, is used.

New §13.40 is proposed to simplify the calculation of time periods in §§13.30-13.40 of this chapter.

Christopher K. Price, Deputy Commissioner of the Asset Management Division, has determined that for the first five-year period the rules are in effect there will be no fiscal implications to state or local governments as a result of enforcing or administering the rules.

Mr. Price also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be clarification of the rules and consistency in §§13.30-13.40 of this chapter. There will be no effect on small businesses. There is no anticipated economic costs to the public associated with the proposed new rules.

Comments on the proposed rules may be submitted to Lenora DuBose, General Land Office, Legal Services Division, 1700 North Congress Avenue, Room 630, Austin, Texas 78701-1495 (Fax: (512) 463-6311). Comments must be received by 5: 00 p.m. on December 1, 1995.

Texas Natural Resources Code, §31.166(b), authorizes the GLO to promulgate rules for conducting hearings before the special board of review.

The proposed new rules affect Texas Natural Resources Code, Chapter 31, §§31.161-31.167.

§13.39. Binding Effect of Orders and Development Plans.

(a) A development plan adopted by board order, or otherwise accepted by a political subdivision, shall be:

(1) final and binding on the state, its lessees, successors in interest and assigns, and affected political subdivisions, unless subsequently revised by the board; and

(2) filed in the deed records of the county in which the property is located.

(b) No person shall revise or modify a development plan adopted by board order, or otherwise accepted by a political subdivision, without specific approval by the board.

§13.40. Time Periods. Unless otherwise expressed by the provisions of §§13.30-13.39 of this title (relating to Special Board of Review Hearings), all time periods shall be calculated from the date on which a development plan or hearing request is filed with the political subdivision.

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

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

TRD-9513720 Garry Mauro
Commissioner
General Land Office

Earliest possible date of adoption: December 1, 1995

For further information, please call: (512) 305-9129

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter L. Motor Fuels Tax

• 34 TAC §3.181

The Comptroller of Public Accounts proposes new §3.181, concerning tax-free purchase of diesel fuel not legally usable on public highways and roads. The 74th Legislature, 1995, amended the Tax Code, Chapter 153, to allow a permitted supplier to make tax-free sales of diesel fuel that cannot legally be used in a motor vehicle on public highways with the use of a signed statement. Requirements for the use of this new signed statement are prescribed in this section.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule is in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the new section may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed 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 Tax Code, §153.205(j).

§3.181. Tax-free Purchase of Diesel Fuel Not Legally Usable on Public Highways and Roads.

(a) Diesel fuel that may not legally be used to operate a motor vehicle on the public highway in Texas (hereafter referred to as off-road diesel fuel) under state or federal law may be purchased tax free if the purchaser provides the permitted supplier with a signed statement, herein adopted by reference. Copies of the statement are available for inspection at the office of the *Texas Register* or may be obtained from the Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711. Copies may also be requested by calling our toll-free number 1-800-252-1383. In Austin, call 463-4600. (From a Telecommunication Device for the Deaf (TDD) only, call 1-800-248-4099 toll free. In Austin, the local TDD number is 463-4621.)

(b) Beginning on October 1, 1995, permitted suppliers may sell off-road diesel fuel tax free to buyers who:

(1) operate one or more diesel fuel powered vehicles on Texas highways and roads; and

(2) furnish the signed statement if:

(A) the sale covering a single delivery is not more than 3,000 gallons; or

(B) sales during a calendar month do not exceed 10,000 gallons. The sale or delivery that causes the 10,000 gallon limit to be exceeded during a calendar month would not be a taxable sale. Any subsequent sale or delivery made during the same calendar month is taxable.

Figure: 34 TAC 3.181(b)(2)(B)

(c) The signed statement must specify that:

(1) all off-road diesel fuel will be consumed by the buyer for purposes other than operating a motor vehicle on the public highway;

(2) none of the off-road diesel fuel purchased will be resold; and

(3) none of the off-road diesel fuel will be delivered into the fuel supply tanks of motor vehicles licensed for highway use.

(d) Separate corporate divisions may also use a signed statement if they:

(1) do not resell the fuel;

(2) consume the fuel themselves; and

(3) maintain separate storage apart from other corporate divisions.

(e) The signed statement remains in effect until:

(1) it is revoked in writing by either buyer or seller; or

(2) the comptroller notifies the supplier in writing that the buyer may no longer make tax-free purchases.

(f) The signed statement must be signed by the buyer or the buyer's authorized representative.

(g) Jobbers may purchase off-road diesel fuel only for their own use with the use of the signed statement.

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

Issued in Austin, Texas, on October 25, 1995

TRD-9513726 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption: December 1, 1995

For further information, please call: (512) 463-4062

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• 34 TAC §3.185

The Comptroller of Public Accounts proposes an amendment to §3.185, concerning diesel tax prepaid user permit. The 74th Legislature, 1995, amended the Tax Code, Chapter 153 to allow a nonrefundable credit of all or a portion of the prepaid cost of the permit when the actual taxable use of the permit holder during the permit year is less than the prepaid cost of the permit. The amendment prescribes procedures and records required to claim the credit.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule is in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new

information regarding tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed 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 amendment implements the Tax Code, §1532 10(c).

§3.185. Diesel Tax Prepaid User Permit.

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

(d) The following schedule determines permit cost:
Figure: 34 TAC 3.185(d)

(e) Following are the requirements for a nonrefundable credit.

(1) If the cost of the annual permit is greater than the amount of tax due on the diesel fuel actually consumed during the permit year, a nonrefundable credit equal to the difference may be claimed, provided the required renewal date of the permit is October 1, 1995, or later.

(2) The credit may only be applied against the cost of renewal or purchase of a new diesel tax prepaid user permit for the following year, and the credit is valid for one year beginning with the required renewal date of the permit.

(3) The odometer must be maintained in working order. If not, a credit claim cannot be approved.

(f) The following records are required for a nonrefundable credit.

(1) A distribution log must be submitted with a renewal application. The distribution log must reflect the following information:

(A) the date of each delivery of diesel fuel into the fuel supply tanks of the motor vehicle;

(B) the number of gallons delivered;

(C) the odometer reading of the motor vehicle at the time of delivery; and

(D) the state license number or motor vehicle identification number.

(2) Purchase invoices for diesel fuel delivered into the fuel supply tanks from other than one's own storage must contain:

(A) the name of the seller;

(B) the name of the purchaser;

(C) the date of delivery;

(D) the number of gallons delivered;

(E) the odometer reading;

(F) the state license number or motor vehicle identification number; and

(G) the signature of the recipient.

(3) Records pertaining to odometer repair or replacement.

(g) A claim for nonrefundable credit must be filed on a form furnished by the comptroller. The form for the distribution log required by subsection (f)(1) of this section is an integral part of the claim for credit.

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

Issued in Austin, Texas, on October 25, 1995

TRD-9513727 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption: December 1, 1995

For further information, please call: (512) 463-4062

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Subchapter O. State Sales and Use Tax

• 34 TAC §3.287

The Comptroller of Public Accounts proposes an amendment to §3.287, concerning exemption certificates. The Tax Code, §151.155, was amended effective October 1, 1995, to state the value of taxable items if a purchaser who gave a valid exemption certificate makes a divergent use. The amendment states the value of tangible personal property and the value of a taxable service if there is a divergent use by a purchaser.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule is in effect there will be no significant revenue impact on the state or local government as a result of enforcing or administering the rule.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed 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 amendment implements Senate Bill 640, 74th Legislature, 1995, amending the Tax Code, §151.155, effective October 1, 1995.

§3.287. Exemption Certificates.

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

(d) Acceptance of exemption certificate.

(1)-(4) (No change.)

(5) The exemption certificate will be valid if the seller received it in good faith from a purchaser and if the certificate states valid qualifications for an exemption. A retailer must be familiar with the exemptions that are available for the items the retailer sells. **For information on blanket exemption certificates received for agricultural exemptions, see §3.296 of this title (relating to Agriculture, Animal Life, Feed, Seed, Plants, and Fertilizer).**

(6) (No change.)

(e) Improper use of items purchased under an exemption certificate.

(1) When an item purchased under a valid exemption certificate is used in a taxable manner, whether the use is in Texas or outside the state, the purchaser is liable for payment of sales tax based on the [fair market rental] value of the **tangible personal property or taxable service** [item] for the period of time used. [The fair market rental value is the amount the purchaser would pay on the open market to rent the item for use. If the item has no fair market rental value, sales tax is due on the original purchase price.] If the exemption certificate was invalid at the time of its issuance, the purchaser owes tax on the original purchase price.

(2) The value of tangible personal property is the fair market rental value of the tangible personal property. The fair market rental value is the amount that a purchaser would pay on the open market to rent or lease the tangible personal property for use. If tangible personal property has no fair mar-

ket rental value, sales tax is due based upon the original purchase price.

(3) The value of a taxable service is the fair market value of the taxable service. The fair market value is the amount that a purchaser would pay on the open market to obtain that taxable service. If a taxable service has no fair market value, sales tax is due based upon the original purchase price.

(4)[(2)] At any time the person using tangible personal property or a taxable service [the item] purchased under a valid exemption certificate may stop paying tax on the [fair market rental] value of tangible personal property or the value of a taxable service and instead pay sales tax on the original purchase price. When the person elects to pay sales tax on the purchase price, credit will not be allowed for taxes previously paid based on [the fair market rental] value.

(5)[(3)] Sales tax is not due when an item purchased under a valid exemption certificate is donated to an organization exempt from tax under the Tax Code, §151.309 or §151.310(a)(1) or (2), provided the purchaser does not use the donated tangible personal property or the donated taxable service.

(6)[(4)] Contractors using equipment purchased under a valid exemption certificate on both taxable and exempt projects must account for tax based upon the provisions in §3.291 of this title (relating to Contractors).

(f)-(g) (No change.)

(h) Form of an exemption certificate. An exemption certificate must be in substantially the form of a Texas Sales and Use Tax Exemption Certification that the comptroller adopts by reference. Copies are available for inspection at the office of the *Texas Register* or may be obtained from the Comptroller of Public Accounts, Tax Policy Division, 111 West Sixth Street, Austin, Texas 78701-2913. Copies may also be requested by calling our toll-free number 1-800-252-5555. In Austin, call 463-4600. (From a Telecommunication Device for the Deaf (TDD) only, call 1-800-248-4099 toll free. In Austin, the local TDD number is 463-4621) [set out as follows].
Figure: 34 TAC 3.287(h)

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

Issued in Austin, Texas, on October 24, 1995

TRD-9513652 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption: December 1, 1995

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

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• 34 TAC §3.296

The Comptroller of Public Accounts proposes an amendment to §3.296, concerning agriculture, animal life, feed, seed, plants, and fertilizer. The amendment implements legislative changes resulting from Senate Bill 640, 74th Legislature, 1995, and a policy change, in subsection (b)(2), restating the qualifications for "original producer" to mean a person who produces at least 50% of the products which are ultimately processed, packed, or marketed. Subsection (b)(3) and (4) are added to describe actions that will result in disqualification as an original producer, the period to be reviewed to determine if the 50% requirement is met and the basis for tax assessment if the requirement is not met The policy changes are retroactive.

Legislative amendments to this section include adding subsection (a)(6) to exempt containers, bins, or cages used exclusively to transport fruit, vegetables, or poultry for processing, packing, or marketing. Subsection (b) is amended to include an exemption for pollution control equipment required for the processing, packing, or marketing of agriculture products by the original producer. Subsection (b)(1) defining "original producer" replaces subsection (b)(4) which previously listed three tests to be met in order to be an original producer. Subsection (b)(2)(B) is amended to allow an original producer to process, pack, or market for consideration agricultural products belonging to another, not to exceed 5.0% of total products processed, packed, or marketed. Subsection (b)(5) is added to define other entities that may qualify as an original producer. Subsection (f) is clarified to include poultry farms in the definition of farm or ranch. With the exception of containers and bins to transport fruit or vegetables and the clarification of subsection (f), the changes due to legislative amendments are prospective

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Reissig also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be in providing new information regarding tax responsibilities There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed 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 amendment implements the Tax Code, §151 316 and §151.342.

§3.296. Agriculture, Animal Life, Feed, Seed, Plants, and Fertilizer.

(a) Sales tax is not due on the receipts from sales of, and the storage, use or consumption of, the following:

(1)-(5) (No change.)

(6) Containers, bins, or cages used exclusively to transport:

(A) fruit or vegetables from the field or place of harvest to a location where the items are processed, packaged, or marketed; or

(B) poultry from a poultry farm to a location where the poultry is processed, packaged, or marketed.

(b) Sales tax is not due on machinery and equipment exclusively used in , and pollution equipment required as a result of, the processing, packing, or marketing of agricultural products by an [the] original producer at a location operated by the original producer exclusively for processing, packing, or marketing the original producer's own products.

(1) "Original producer" means a person who:

(A) brings an agricultural product into being and is the owner of the agricultural product from the time it is brought into being until it is processed, packed, or marketed; or

(B) is the grower of an agricultural product, exercises predominant operational control over the raising of the agricultural product, and bears a risk of loss of investment in the agricultural product.

(2) In order to qualify as an original producer:

(A) 50% or more of the agricultural products processed, packed, or marketed at or from the location must be actually produced by the original producer and not purchased or acquired from others; and

(B) agricultural products belonging to others, in an amount greater than 5.0% of the total agricultural prod-

ucts processed, packed, or marketed by the producer, may not be processed, packed, or marketed for consideration at or from the location.

(3) If a person purchases agricultural products from a grower, processes those products, and subsequently sells the processed products back to the same grower for the purpose of circumventing paragraph (2)(B) of this subsection, the person will not qualify as an original producer.

(4) For purposes of determining if 50% or more of the agricultural products were actually grown by the original producer, the period to be reviewed will be the most recently completed calendar year.

(A) A producer will be liable for sales tax based on the fair market rental value of machinery and equipment purchased tax free if the producer grows less than 50% of the agricultural products it processed, packed, or marketed. The period of assessment shall be the entire one-year period following the calendar year in which the producer did not meet the 50% criteria, and the assessment will be on the fair market rental value of machinery and equipment used during the period of assessment. The fair market rental value is the amount that a purchaser would pay on the open market to rent the item for use. If the item has no fair market rental value, sales tax is due based upon the purchase price.

(B) At any time the producer may stop paying tax on the fair market rental value of the machinery and equipment and instead pay sales tax on the original purchase price. When the person elects to pay sales tax on the original purchase price, credit will not be allowed for taxes previously paid on the fair market rental value.

(5) Two or more corporations that operate agricultural activities on the same tract or adjacent tracts of land and that are entirely owned by an individual or a combination of the individual, the individual's spouse, and the individual's children may qualify as an original producer for the purposes of paragraph (1) of this subsection.

(6)[(1)] Machinery and equipment exclusively used in the processing, packing, or marketing of agricultural products by an agricultural cooperative organized under the Agriculture Code, Chapter 52, are not exempt unless the comptroller determines that:

(A) the cooperative itself is the original producer of all the agricultural products being processed, packed, or marketed; and

(B) the processing, packing, or marketing is being accomplished at a location operated by the cooperative.

[(2) The three tests (all of which must be answered in the affirmative) for determining if a person is the original producer are:

[(A) is the person the grower of the crops;

[(B) does the person exercise predominant operational control over the raising of the crops; and

[(C) does the person bear a risk of loss of investment in the crop?]

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

(f) A farm or ranch is defined as one or more tracts of land used, either wholly or in part, in the production of crops, livestock, and/or other agricultural products held for sale in the regular course of business. This includes feed lots, dairy farms, poultry farms, commercial orchards, commercial nurseries, and similar commercial agricultural operations. Farm or ranch does not include home gardens or timber operations.

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

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

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

TRD-9513685 Martin Cherry
Chief, General Law
Comptroller of Public Accounts

Earliest possible date of adoption: December 1, 1995

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

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• 34 TAC §3.314

The Comptroller of Public Accounts proposes an amendment to §3.314, concerning wrapping, packing, packaging supplies, containers, labels, tags, and export packers. The section is being amended because of the passage of House Bill 1611, 74th Legislature, 1995, which exempts materials and supplies used by persons providing stevedoring services. The passage of Senate Bill 640, 74th Legislature, 1995, also affects this section by deleting the exclusion for internal and external wrapping and packaging materials from the exemptions provided under the Tax Code, §151.319(e).

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Reissig also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be in providing new information regarding tax responsibilities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed 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 amendment implements the Tax Code, §151.329 and §151.319(e).

§3.314. Wrapping, Packing, Packaging Supplies, Containers, Labels, Tags, [and] Export Packers, and Stevedoring Materials and Supplies.

(a) (No change.)

(b) Manufacturers.

(1) (No change.)

(2) Sales tax is not due on internal or external wrapping, packing and packaging supplies sold to a person for the person's own use, stored for use, or used in wrapping, packing, or packaging newspapers as defined in §3. 299(a) of this title (relating to Newspapers, Magazines, Publishers, Exempt Writings), including those distributed free of charge to the general public.

(3)[(2)] Packaging supplies do not include returnable containers. See subsection (g) of this section.

(c)-(i) (No change.)

(j) Stevedoring services. Materials and supplies are exempt when purchased by a person providing stevedoring services for a ship or vessel operating exclusively in foreign or interstate coastal commerce if the materials and supplies are loaded aboard the ship or vessel and are not removed before the departure of the ship or vessel.

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

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

TRD-9513686 Martin Cherry
Chief, General Law
Comptroller of Public Accounts

Earliest possible date of adoption: December 1, 1995

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

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• 34 TAC §3.354

The Comptroller of Public Accounts proposes an amendment to §3.354, concerning debt collection services. The amendment reflects changes made by Senate Bill 640, 74th Legislature, 1995, to impose tax on the processing fee charged by a person collecting a dishonored check. The tax may be collected from the payor or payee of the check. Senate Bill 793, 74th Legislature, 1995, excludes fees paid to recover court-ordered child support or medical child support from taxable debt collection services.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Reissig also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be in providing new information regarding tax responsibilities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed 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 amendment implements the Tax Code, §151.0036(c).

§3.354. Debt Collection Services.

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

(1)-(5) (No change.)

(6) Drawer--The payor who owns the account on which a check is drawn.

(b) Responsibilities of debt collectors.

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

(3) The drawer [recipient] of a dishonored check is responsible for paying the cost incurred to process a dishonored check including the sales tax due on the debt collection service.

(4) Debt collectors must obtain a tax permit and collect tax on the entire sales price of their service, or accept a properly completed exemption certificate in lieu of collecting tax. See §3.287 of this title (relating to Exemption Certificates) and §3.322 of this title (relating to Exempt Organizations [Entities]).

(5) (No change.)

(c) (No change.)

(d) Nontaxable services.

(1) Activities undertaken by a debt collector to determine whether a creditor has a claim are not taxable if the debt collector determines not to attempt to collect or adjust the claim.

(2) Collection of court-ordered child support or medical child support.

(e)-(g) (No change.)

(h) Local taxes.

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

(3) References. For more information on the collection and allocation of local sales and use taxes, see §3.374 of this title (relating to Collection and Allocation of the City Sales Tax), §3.375 of this title (relating to City Use Tax), §3.424 of this title (relating to Collection and Allocation of Transit Sales Tax), and §3.425 of this title (relating to Transit Use Tax).

(i)-(j) (No change.)

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

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

TRD-9513684 Martin Cherry
Chief, General Law
Comptroller of Public Accounts

Earliest possible date of adoption: December 1, 1995

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

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Subchapter V. Franchise Tax

• 34 TAC §3.555

The Comptroller of Public Accounts proposes an amendment to §3.555, concerning earned surplus: computation. One amendment changes the definition of the Internal Revenue Code in accordance with Senate Bill 644, 74th Legislature, 1995.

Amendments have been made to the provisions for business losses, explaining that a business loss is computed after apportionment and allocation, in accordance with Senate Bill 644, 74th Legislature, 1995.

In accordance with agency policy, a provision has been added to clarify that a business loss may only be used by the entity that incurred the business loss; a provision has been added to address situations involving corporations who use a 52/53 week accounting period; and a provision that restricted certain deductions for enterprise and solar energy computations has been deleted.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule is in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed 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 amendment implements the Tax Code, §§171.001 et seq.

§3.555. Earned Surplus: Computation.

(a) (No change.)

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

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

(4) Internal Revenue Code–For reports originally due on or after January 1,1996, the Internal Revenue Code (IRC) of 1986 in effect for the tax year beginning on or after January 1, 1994, and before January 1, 1995. For reports originally due on or after January 1, 1992 and before January 1, 1996, the Internal Revenue Code of 1986 in effect for the tax year beginning on or after January 1, 1990, and before January 1, 1991. The franchise tax law requires that the 1990 IRC be used for reports originally due prior to January 1, 1996. Because of this requirement, there may be differences between federal taxable income reported for federal income tax purposes and reportable federal taxable income for franchise tax purposes for franchise tax reports originally due prior to 1996. To the extent that such differences exist, the 1990 IRC must be used to report the differences for reports originally due on or after January 1, 1996. For example, if a corporation was denied any portion of an IRC §179 deduction on an asset in computing taxable earned surplus on a franchise tax report due prior to January 1, 1996 (because the §179 deduction exceeded the $10,000 limit allowed under the 1990 IRC), the corporation will be allowed to compute depreciation on the asset based on the 1990 IRC (i.e., the corporation may depreciate the asset based on the $10,000 §179 deduction allowed under the 1990 IRC) for reports originally due on or after January 1, 1996 [The Internal Revenue Code of 1986 in effect for the tax year beginning on or after January 1, 1990, and before January 1, 1991].

(5) (No change.)

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

(g) Business losses.

(1) A business loss which is carried forward to a report year must be deducted from apportioned **plus allocated** taxable earned surplus after any allowable deductions for enterprise zone projects or solar energy devices.

(2) A business loss which is carried forward to a successive year must be applied to the extent of apportioned **plus allocated** taxable earned surplus in that succeeding year.

(3) A corporation may not convey, assign, or transfer a business loss to another entity including, but not limited to, by merger.

(h) Deductions for solar energy devices and investments in enterprise zones.

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

[(3) No other deduction is allowed in computing reportable federal taxable income with regard to amounts deducted from earned surplus under the Tax Code, §171.107 or §171.1015. For example, any depreciation or amortization of a solar energy device in computing reportable federal taxable income is not allowed if the deduction under Tax Code, §171.107, is claimed.]

(i)-((k) (No change.)

(l) 52-53 week accounting year end. A corporation which uses a 52-53 week accounting year end and has an accounting year ending the first four days of January of the year during which the annual report is originally due may use the preceding December 31 as the date through which taxable earned surplus is computed.

(m) Allocated taxable earned surplus. See the Tax Code, §171.1061 regarding the allocation of certain taxable earned surplus to this state.

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

Issued in Austin, Texas, on October 25, 1995

TRD-9513729 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Earliest possible date of adoption: December 1, 1995

For further information, please call: (512) 463-3725

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 85. Admission and Placement

Commitment and Reception

• 37 TAC §85.7

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

The Texas Youth Commission (TYC) proposes the repeal of §85.7, concerning mentally retarded youth. The repeal eliminates procedures for returning mentally retarded youth to the courts when committed to TYC. The 74th legislature established new law allowing for mentally retarded youth to be committed to TYC for delinquent acts, thus procedures herein are no longer in effect.

John Franks, Director of Finance, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Franks also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be elimination of rules not longer in effect. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The repeal is proposed under the Human Resources Code, §61.077, which provides the Texas Youth Commission with the authority to accept a child who is mentally retarded.

The proposed repeal implements the Human Resource Code, §61.034.

§85.7. Mentally Retarded Youth.

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

Issued in Austin, Texas, on October 24, 1995.

TRD-9513664 Steve Robinson
Texas Youth Commission

Earliest possible date of adoption: December 1, 1995

For further information, please call: (512) 483-5244

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Chapter 87. Treatment

Basic Care Services

• 37 TAC §87.73

The Texas Youth Commission (TYC) proposes an amendment to §87.73, concerning clothing for TYC youth. The amendment provides that uniform type clothing is required for delinquent youth residing in TYC facilities. It eliminates the list of minimum clothing provided by the youth's parent and by TYC since it will no longer be needed.

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

Mr. Franks also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be more efficient use of State resources and increase safety in facility operation. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed rule implements the Human Resource Code, §61.034.

§87.73. Clothing.

(a) Policy.

[(1)] The Texas Youth Commission (TYC) provides for adequate and appropriate clothing for [to its] youth **in TYC operated residential programs. For youth in contract programs, see GOP.41.43, §83.43 of this title (relating to Clothing and Personal Property of Youth in Contract Programs).** [Clothes issued by TYC are a youth's personal property unless issued for special use.]

[(2) With specific written justification,] Individual TYC staff operated programs may require all youth in the program to wear uniform clothing **in order to ensure a safe and efficient operation and program.**

(b) Rules.

(1) **The stored supply of clothing exceeds that required for the facility's maximum juvenile population.**

(2)[(1)] Clothes shall be appropriate to the season.

(3) **Youth will wear clothing issued and required by the agency.**

(4)[(2)] **Individual programs** [Youth may be] allow[ed] youth to purchase **some personal** [their own] clothing.

(5)[(6)] As needed, TYC issues clothing for temporary use in special events such as **community employment,** sports, camping and protective clothing for work **activity.** [in food services or on facility grounds.]

(6)[(3)] The youth's Clothing/Personal Property Inventory record is established for each youth as he or she enters TYC and follows him or her through the system. It [and] provides accountability for receipt, [issue,] discard and/or transfer of clothing items.

(7)[(4)] Laundry services are sufficient to provide clean **clothingat least three times per week except clean underwear and socks which are provided daily.** [clothing on a daily basis and to disinfect if necessary.]

(8) **Clothing is disinfected when necessary and before storage of personal items.**

[(5) Nonwashable items are dry cleaned at TYC expense.

[(7) Except when uniform clothing has been justified, clothing purchased by the agency will reflect present fashion trends as much as possible. TYC provides or ensures that each youth is issued clothing to meet the minimum standard established herein. Minimum clothing requirements are:

[(A) Boys

[(i) pants, jeans or casual 3 each

[(ii) shirts, knit or sport shirt 3 each

[(iii) shoes, school 1 pair

[(iv) shoes, tennis 1 pair

[(v) briefs 5 pair

[(vi) socks 5 pair

[(vii) T-shirts 5 each

[(viii) jacket, denim/nylon 1 each

[(ix) robe 1 each

[(x) pajamas (optional) 1 each

[(B) Girls

[(i) slacks/jeans 3 each

[(ii) blouses 3 each

[(iii) dress outfit (dress or skirt/blouse) 1 each

[(iv) shoes, school 1 pair

[(v) shoes, tennis 1 pair

[(vi) panties 5 pair

[(vii) bras 3 each

[(viii) panty hose 2 pair

[(ix) socks, knee high or footlet 4 pair

[(x) pajamas or gown 1 each

[(xi) robe 1 each

[(xii) jacket, heavy sweater 1 each

[(xiii) half-slip 1 each]

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

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

TRD-9513583 Steve Robinson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: December 1, 1995

For further information, please call: (512) 483-5244

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Chapter 91. Discipline and Control

Due Process Hearings Procedures [Transportation of Youth]

• 37 TAC §91.31

The Texas Youth Commission (TYC) proposes an amendment to §91.31, concerning level I hearing procedures. The amendment eliminates requirements that the hearings examiner conducting the level I hearing to find facts regarding alleged major rule violations be an examiner who has not previously participated in a hearing for the youth. The requirement is that the hearings examiner shall be impartial.

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

Mr. Franks also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a more efficient use of resources and staff assigned as hearings examiners. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed rule implements the Human Resource Code, §61.034.

§91.31. Transportation of Youth.

(a) (No change.)

(b) Rules.

(1) The hearing shall be conducted by a hearings examiner appointed by the Texas Youth Commission (TYC) director of legal services. The hearings examiner shall be **impartial.** [one who has not previously participated in a hearing for the youth.]

(2)-(48) (No change.)

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

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

TRD-9513586 Steve Robinson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: December 1, 1995

For further information, please call: (512) 483-5244

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Chapter 93. General Provisions

Youth Property

• 37 TAC §93.21

The Texas Youth Commission (TYC) proposes an amendment to §93.21, concerning a youth's personal property. The amendment elements allowing youth to have a liberal amount of their personal property in their living space while in residence at a TYC operated facility. The change will facilitate a more efficient use of resources and element a source of much contention thus allowing a more controlled setting.

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

Mr. Franks also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a more efficient operation and use of State facilities.

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

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.034 which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed rule implements the Human Resource Code, §61.034.

§93.21. Youth Personal Property.

(a) Policy. **Youth in Texas Youth Commission (TYC) custody residing in any residential program may be prohibited from possessing personal property except medically necessary items. Property not allowed by program rules may be surrendered to the youth's family or stored and returned to him/her upon program change. Individual programs** [The Texas Youth Commission (TYC)] **may** allow youth to have **limited** personal possessions **when specific program requirements have been reached and in accordance with** [within the limits set in] GOP.61.01 §89.1 of this title (relating to Basic Youth Rights). [following initial placement.] Staff maintains a perpetual inventory of each youth's clothing and personal property from admission to release. **Any personal property youth is allowed to possess** moves with the youth to each assigned placement. Contraband is disposed of according to GOP.71.03 §93.23 of this title (relating to Disposition of Unauthorized Items Seized).

(b) Rules.

(1) Property.

(A) Personal letters and photographs not considered contraband shall be allowed. Such possessions are not inventoried.

(B) Individual programs may allow youth to possess limited personal property consistent with the program's privilege system and/or interaction in the community.

(2) TYC Assessment Center.

(A) Personal property is not allowed at TYC assessment centers.

(B) All personal property except for medically necessary items is inventoried, receipted and returned to the person transporting the youth to the facility to be returned to the youth's home.

(3)[(1)] Inventory.

[(A) All youth property is searched upon admission to statewide reception center (SRC) and to the initial placement.

[(B) While at the SRC, a youth may have personal possessions limited to no more than three sets of clothing and other basic necessities. During subsequent placement, a youth may have additional personal items.]

(A)[(C)] An inventory of a youth's clothing and property is established and maintained by staff. The inventory lists all property and [personal] clothing items, including TYC issued clothing and clothing discarded. Youth is responsible for ensuring that all personal property is recorded on the personal property inventory form by maintaining his/her copy and by submitting changes in inventory to staff. The inventory shall describe the type/nature of the property in enough detail to indicate the value of the property.

(B)[(D)] Each facility is responsible for instructing the youth on property inventory and for promptly updating the inventory with any [each] new acquisition.

(C)[(E)] The inventory is filed in the youth's masterfile. Youth receives a copy.

(D)[(F)] All personal and issued clothing is thoroughly cleaned and disinfected, if necessary, before allowing the youth to keep or wear clothing.

(4)[(2)] Loss or Damage.

(A) TYC is neither liable for nor will replace lost, stolen or damaged personal items of youth unless loss or damage can be shown to have resulted from staff negligence.

(B) Youth may request reimbursement for personal possessions lost or damaged due to staff negligence. Only student benefit funds may be expended.

(C) No reimbursement will be made for lost or damaged property which is not included on the youth's [personal] property inventory. Absent a sufficient description indicating otherwise, the property will be assigned an ordinary value.

(D) No reimbursement will be made unless there is sufficient evidence to indicate that the loss was the result of staff negligence.

(E) Unless approval is obtained from the director of institutions or the director of community services, no reimbursement from the student benefit fund shall exceed $100 per loss.

(5)[(3)] Authorized Program Change. Transportation arrangement for the personal property of a youth who is authorized to change program locations is the responsibility of the sending location. Property will usually travel with the youth.

(6)[(4)] Unauthorized Absence. Any personal clothing or other property that remains with any TYC facility, program, or contract placement when the youth is no longer present due to unauthorized absence is held or disposed of by the administrator in compliance with the following rules.

(A) Immediate Action-The property is immediately secured, inventoried and stored.

(B) Return Property. -The administrator notifies the youth and his or her parents, head of household, or managing conservator of the inventory of property and that the property will be disposed of in 90 days unless collect return is authorized. If authorization is given, all property is securely wrapped and shipped collect by the least expensive means available.

(C) Disposition-If after 30 days no demand has been made for the property, it is thoroughly cleaned, disinfected if necessary, inventoried and stored. One copy of the inventory is placed in the youth's masterfile and one in an active file. If after 90 days in storage the property has not been demanded, then the property is:

(i) assigned to other youth; or

(ii) made available to any department which can use the property for the general benefit of all youth; or

(iii) sold as surplus or salvage or destroyed as appropriate to the condition and value of the individual items.

(D) Numbering/Labeling-Any item assigned to a department will be numbered or labeled, as appropriate.

(E) Youth Return Following Disposition-Should a youth subsequently return from an escape, reasonable efforts

are made to return any property remaining at the facility. However, a youth shall not be entitled to compensation for any loss or damage caused by disposition or shipping of property in accordance with this procedure. An absconding youth is considered to have abandoned his property.

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

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

TRD-9513585 Steve Robinson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: December 1, 1995

For further information, please call: (512) 483-5244

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Records, Reports and Forms

• 37 TAC §93.57

The Texas Youth Commission (TYC) proposes an amendment to §93.57, concerning access to youth records. The amendment provides that files are open to government agencies if the disclosure is required or authorized by law and to whom a child is referred for treatment or services if a written confidentiality agreement has been signed. This amendment complies with changes made by the 74th Legislature.

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

Mr. Franks also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be compliance with laws providing sharing of youth files is limited cases. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed rule implements the Human Resource Code, §61.034.

§93.57. Accessto Youth Records.

(a) (No change.)

(b) Rules.

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

(4) General Access.

(A) Each program administrator is responsible for ensuring that files or records on individual youth are open to inspection only by those given access under Texas Family Code, Title 3 and Federal Rule 42 CFR Part 2 as interpreted by TYC.

(i)-(iii) (No change.)

(iv) **Files are open to a governmental agency if the disclosure is required or authorized by law;**

(v) **Files are open to a person or entity to whom the child is referred for treatment or services if the agency or institution disclosing the information has entered into a written confidentiality agreement with the person or entity regarding the disclosed information.**

(vi) **Files are open to the Texas Department of Criminal Justice (TDCJ) and to the Texas Juvenile Probation Commission (TJPC) for the purpose of maintaining statistical records of recidivism and for diagnosis and for classification. All requests from TDCJ are forwarded to TYC's records custodian.**

(vii)[(iv)] Files are open, with leave of the juvenile court, to any other person, agency, or institution having a legitimate interest in the work of the agency or institution. TYC will provide the name of the committing court judge to those not granted access by statute. Authorization must be in the form of a signed letter **by the judge of the committing court** specifying the information to be released; phone calls do not constitute authorization.

[(v) Files are open to the Texas Department of Corrections (TDC) to the extent provided in the Family Code, §51.14(b). All requests from TDC are forwarded to TYC's records custodian.]

(B) Requests for records under subparagraph (A)(ii), (iii), or (vi) [(v)] of this subsection shall be required to be in writing with the request sufficiently identifying the requester as a party permitted access thereunder.

(5)-(6) (No change.)

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

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

TRD-9513584 Steve Robinson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: December 1, 1995

For further information, please call: (512) 483-5244

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 76. Criminal History Check of Employees in Facilities for Care of the Aged and Persons with Disabilities

The Texas Department of Human Services (DHS) proposes the repeal of §§76.101-76.108, and new §§76.101-76.106, concerning purpose and definitions, pre-employment criminal history check, application for and retention of criminal history check, result of criminal history check, criminal history confidentiality, and correction of mistakes of fact or identity in criminal history record, in its Criminal History Check of Employees in Facilities for Care of the Aged and Persons with Disabilities chapter. The purpose of the repeals and new sections is to comply with changes made by the 74th Texas Legislature amending the criminal history check statute in Chapter 250 of the Health and Safety Code.

Burton F. Raiford, commissioner, has determined that for the first five-year period the repeals and new sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals and new sections.

Mr. Raiford also has determined that for each year of the first five years the repeals and new sections are in effect the public benefit anticipated as a result of enforcing the repeals and new sections will be a demonstration of the department's compliance with the criminal history check statute in the Health and Safety Code. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed repeals and new sections.

Questions about the content of this proposal may be directed to Wendy Francik at (512) 438-3167 in DHS's Long Term Care Policy Section. Written comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Media and Policy Services-029, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

Policy and Procedures

• 40 TAC §§76.101-76.108

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

The repeals and new sections are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs, and under the Health and Safety Code, Title 4, Chapter 250, which requires the department to perform criminal history checks on persons employed by certain types of facilities.

The repeals implement the Human Resources Code, §§22.001-22.024, and the Health and Safety Code, §250.001-250.009.

§76.101. Definitions.

§76.102. Pre-employment History Check.

§76.103. Application for Criminal History Check.

§76.104. Presumption of Employability.

§76.105. Administrative Review.

§76.106. Standards for Review.

§76.107. Personal Appearance.

§76.108. Correction of Mistakes of Fact or Identity in Criminal History Record.

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

Issued in Austin, Texas, on October 24, 1995.

TRD-9513706 Nancy Murphy
Section Manager, Media and Policy Services
Texas Department of Human Services

Proposed date of adoption: January 1, 1996

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

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• 40 TAC §§76.101-76.106

The new sections are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs, and under the Health and Safety Code, Title 4, Chapter 250, which requires the department to perform criminal history checks on persons employed by certain types of facilities.

The new sections implement the Human Resources Code, §§22.001-22.024, and the Health and Safety Code, §§250.001-250.009.

§76.101. Introduction.

(a) Purpose. The purpose of this chapter is to implement the provisions of the Health and Safety Code, Chapter 250, concerning criminal history checks of certain employees and applicants for employment in certain facilities serving the elderly or persons with disabilities.

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

(1) Board-The Board of the Texas Department of Human Services.

(2) Department-The Texas Department of Human Services (DHS).

(3) Direct contact with a consumer-Any contact with a resident or client in a facility covered by this chapter.

(4) Emergency requiring immediate employment-The urgent need to temporarily hire an individual pending the results of a criminal history check. An emergency may occur as a result of a survey deficiency on staffing and/or the potential of the facility to fall below their desired staffing, thus putting the client's health and safety at risk.

(5) Facilities-The following facilities and applicants, included in the requirement of criminal history checks:

(A) Nursing homes, custodial care homes, or other institutions licensed under the Health and Safety Code, Chapter 242.

(B) Personal care facilities licensed under the Health and Safety Code, Chapter 247.

(C) Adult day care facilities or adult day health care facilities licensed under Human Resources Code, Chapter 103.

(D) Facilities for persons with mental retardation licensed or certified by DHS.

(E) Intermediate care facilities for persons with mental retardation certified for participation in the Medicaid program under the Social Security Act, Title XIX.

(F) Adult foster care providers contracting with DHS.

(6) Private agency-An organization engaged in the business of obtaining criminal history checks on behalf of a facility.

§76.102. Pre-employment Criminal History Check.

(a) A facility may not employ a person in a position with duties involving direct contact with a consumer in the facility if the:

(1) facility determines as a result of a criminal history check that a person has been convicted of an offense that is listed in Health and Safety Code, §250.006, barring employment or that a conviction is a contraindication to employment with the consumers a facility serves; and

(2) applicant is a nurse aide, until the facility further verifies that the applicant is listed in the nurse aide registry and verifies that the applicant is not designated in the registry as having a finding entered into the registry concerning abuse, neglect or mistreatment of a consumer of a facility, or misappropriation of a consumer's property. A person licensed under another law of this state is exempt from the criminal history check requirements of this chapter.

(b) If a facility believes that a conviction under Health and Safety Code, §250.006, bars a person from employment in the facility or believes that a criminal conviction may be a contraindication to a person's employment, a facility shall notify the applicant or employee.

(c) A facility will immediately discharge any employee whose duties involve direct contact with a consumer in the facility if his criminal history check reveals conviction of a crime that bars employment or a criminal conviction that the facility determines is a contraindication to employment as provided in this chapter or who is designated in the nurse aide registry as having committed an act of abuse, neglect or mistreatment of a consumer of a facility or misappropriation of a consumer's property.

(d) Applicants to provide adult foster care are subject to criminal history checks before enrollment in the adult foster care program.

§76.103. Application for and Retention of Criminal History Check.

(a) The facility must request a criminal history check for any applicant or employee. If the applicant is provided temporary employment under the emergency employment provision, the request must be submitted within 72 hours of the time of employment on forms provided by the Texas Department of Human Services (DHS).

(b) A facility may employ a private agency to obtain criminal history record information regarding employment applicants or employees covered by this chapter. The private agency is authorized to obtain this information by direct submission to the Texas Department of Public Safety or DHS.

When there is a submission to DHS, the private agency must use the identification number of the facility to facilitate the DHS's automated data processing system.

(c) DHS or the private agency will forward the criminal history report, if any, to the facility.

(d) The facility will advise the applicant or employee of the criminal history report contents if the report results in adverse employment action.

(e) The facility must retain criminal history check documentation on employees for a period of three years and 90 days.

§76.104. Result of Criminal History Check. If no response is received by the facility requesting a criminal history check within 40 days of the request date, the facility may assume the check to have revealed no conviction on the Texas Department of Public Safety system.

§76.105. Criminal History Confidentiality.

(a) Criminal history records are for the exclusive use of the regulatory agency, the requesting facility, the private agency on behalf of the requesting facility, and the applicant or employee who is the subject of the records.

(b) Criminal history records and reports received by the Texas Department of Human Services or the private agency for the purpose of forwarding to the requesting facility are confidential and may not be released or disclosed to any person except on court order or with the written consent of the applicant or employee.

§76.106. Correction of Mistakes of Fact or Identity in Criminal History Record. The applicant for employment or enrollment is responsible for correcting errors of fact or identity in the criminal history record reported by the Texas Department of Public Safety (DPS). The applicant should contact DPS directly and provide whatever positive identification information may be required for a verification of the record.

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

Issued in Austin, Texas, on October 24, 1995.

TRD-9513707

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

Proposed date of adoption: January 1, 1996

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

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Name: Alan Pilat
Grade: 6
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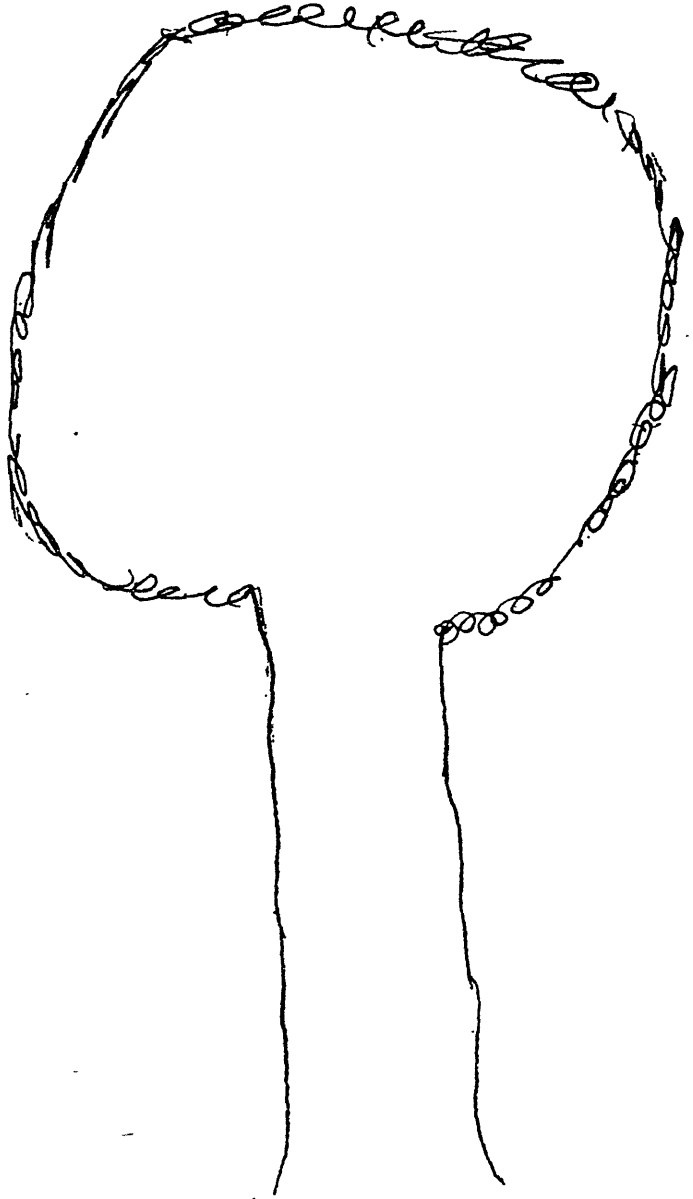

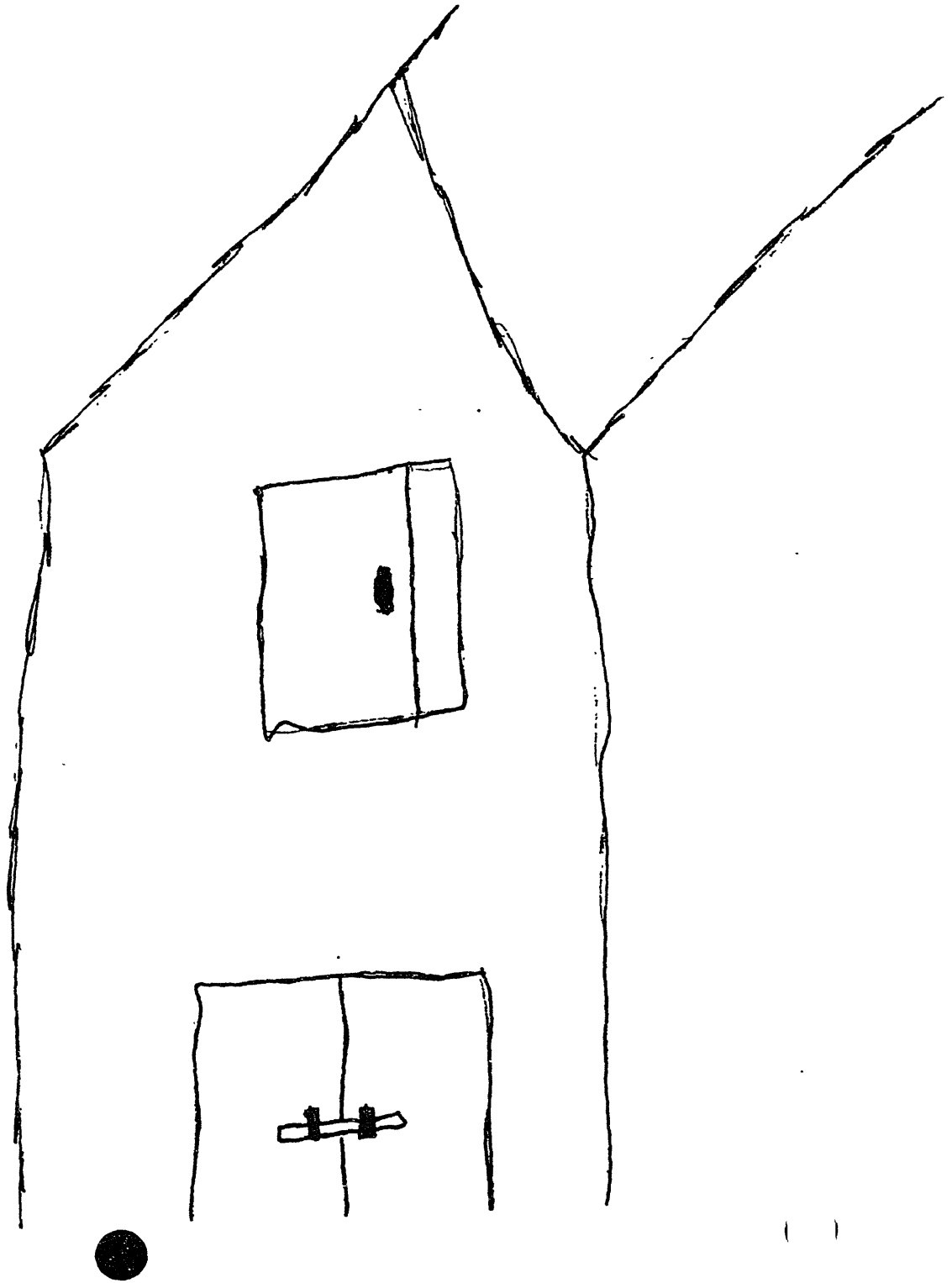

WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon filling or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register***.

TITLE 16. ECONOMIC REGULATION

Part VI. Texas Motor Vehicle Commission

Chapter 109. Lessors and Lease Facilitators

• 16 TAC §109.6

The Texas Motor Vehicle Commission has withdrawn from consideration for permanent adoption a proposed new §109.6, which appeared in the August 4, 1995, issue of the *Texas Register* (20 TexReg 5842). The effective date of this withdrawal is October 25,. 1995.

Issued in Austin, Texas, on October 24, 1995.

TRD-9513747 Brett Bray
Director, Motor Vehicle Division
Texas Motor Vehicle Commission

Effective date: October 25, 1995

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

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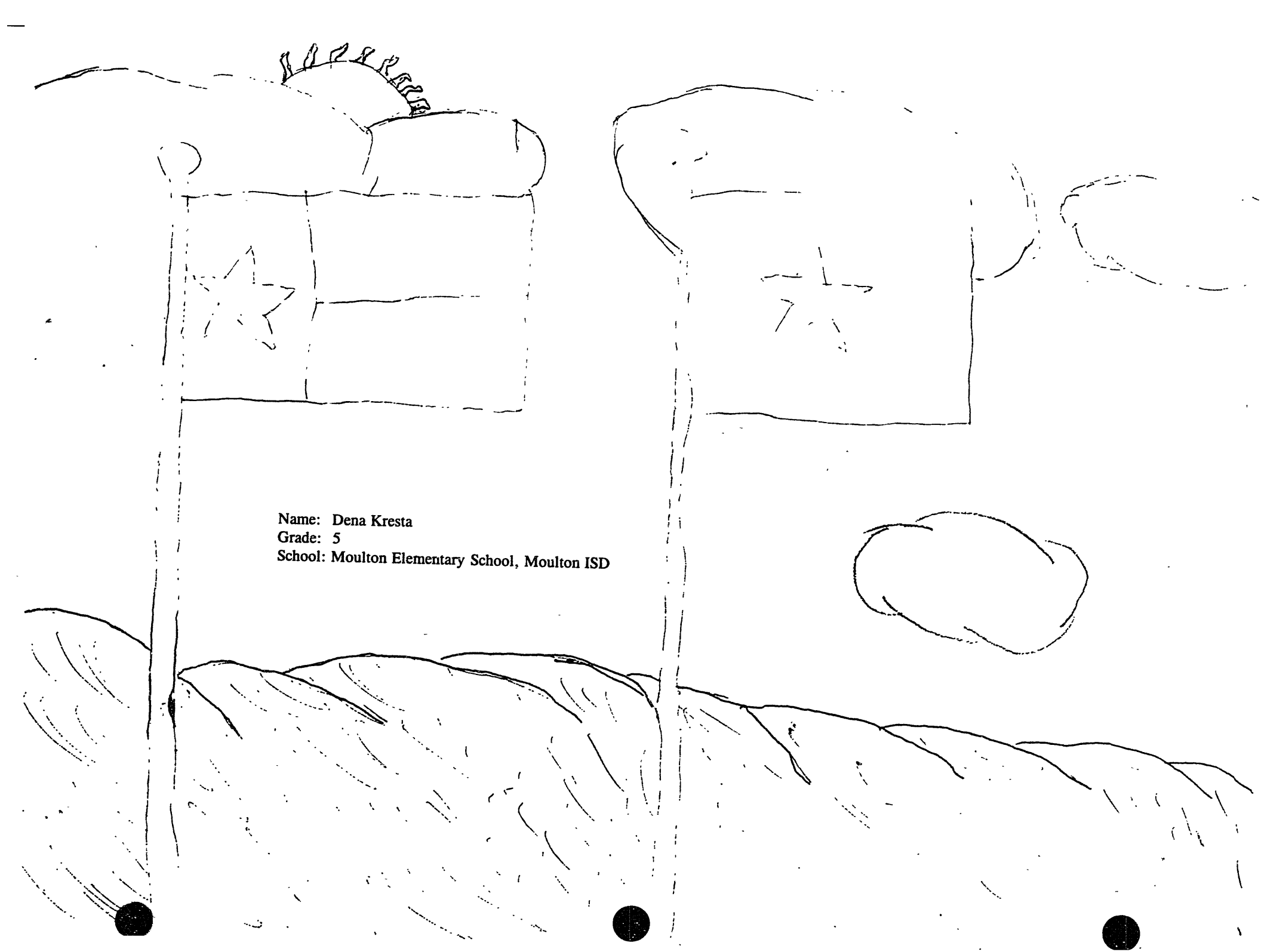

Name: Dena Kresta
Grade: 5
School: Moulton Elementary School, Moulton ISD

ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 days after the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 4. AGRICULTURE
Part I. Texas Department of Agriculture
Chapter 25. Agricultural Development Board

The Texas Department of Agriculture (the department) adopts the repeal of §§25.1-25.9, 25.12, 25.31, 25.32, 25.51-25.58, 25.71-25.82, 25.101, 25.102, 25.111, 25.131-25.141, 25.151, 25.152, 25.161, and 25.171-25.173, concerning the Texas Agricultural Development Board (the Board), without changes to the proposed text as published in the August 29, 1995, issue of the *Texas Register* (20 TexReg 6727).

The repeals are adopted to comply with the repeal of Chapter 57 of the Texas Agriculture Code by the 74th Legislature, Senate Bill 372, resulting in the abolishment of the Board.

The repeals will function by deleting references that are now irrelevant and nonfunctional due to the abolishment of the Board.

No comments were received regarding adoption of the repeals.

Subchapter A. General Provisions

• 4 TAC §§25.1-25.9, 25.12

The repeals are adopted under the Texas Agriculture Code, §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the administration of its powers and duties under the 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 authority.

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

TRD-9513611 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Effective date: November 13, 1995

Proposal publication date: August 29, 1995

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

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Subchapter B. Corporation Filings

• 4 TAC §25.31, §25.32

The repeals are adopted under the Texas Agriculture Code, §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the administration of its powers and duties under the 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 authority.

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

TRD-9513612 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Effective date: November 13, 1995

Proposal publication date: August 29, 1995

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

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Subchapter C. Applications in General: Filing Requirements

• 4 TAC §§25.51-25.58

The repeals are adopted under the Texas Agriculture Code, §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the administration of its powers and duties under the 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 authority.

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

TRD-9513613 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Effective date: November 13, 1995

Proposal publication date: August 29, 1995

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

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Subchapter D. Facility Bonds: Contents of Application

• 4 TAC §§25.71-25.82

The repeals are adopted under the Texas Agriculture Code, §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the administration of its powers and duties under the 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 authority.

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

TRD-9513614 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Effective date: November 13, 1995

Proposal publication date: August 29, 1995

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

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Subchapter E. Facility Bonds: Conditional Approval of Application

• 4 TAC §25.101, §25.102

The repeals are adopted under the Texas Agriculture Code, §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the administration of its powers and duties under the 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 authority.

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

TRD-9513615 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Effective date: November 13, 1995

Proposal publication date: August 29, 1995

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

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Subchapter F. Facility Bonds: Final Approval of Application

• 4 TAC §25.111

The repeal is adopted under the Texas Agriculture Code, §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the administration of its powers and duties under the 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 authority.

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

TRD-9513616 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Effective date: November 13, 1995

Proposal publication date: August 29, 1995

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

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Subchapter G. Loans to Lending Institutions Program Bonds: Contents of Application

• 4 TAC §§25.131-25.141

The repeals are adopted under the Texas Agriculture Code, §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the administration of its powers and duties under the 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 authority.

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

TRD-9513617 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Effective date: November 13, 1995

Proposal publication date: August 29, 1995

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

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Subchapter H. Loans to Lending Institutions Program Bonds: Conditional Approval of Application

• 4 TAC §25.151, §25.152

The repeals are adopted under the Texas Agriculture Code, §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the administration of its powers and duties under the 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 authority.

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

TRD-9513618 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Effective date: November 13, 1995

Proposal publication date: August 29, 1995

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

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Subchapter I. Loans to Lending Institutions Program Bonds: Final Approval of Application

• 4 TAC §25.161

The repeal is adopted under the Texas Agriculture Code, §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the administration of its powers and duties under the 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 authority.

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

TRD-9513619 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Effective date: November 13, 1995

Proposal publication date: August 29, 1995

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

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Subchapter J. Loans to Lending Institutions Program Bonds: Certification

• 4 TAC §§25.171-25.173

The repeals are adopted under the Texas Agriculture Code, §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the administration of its powers and duties under the 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 authority.

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

TRD-9513620 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Effective date: November 13, 1995

Proposal publication date: August 29, 1995

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

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TITLE 16. ECONOMIC REGULATION

Part VI. Texas Motor Vehicle Commission

Chapter 101. Practice and Procedure

Adjudicative Proceedings and Hearings

• 16 TAC §101.64

The Texas Motor Vehicle Board adopts an amendment to §101.64, concerning the procedure under which decisions regarding general warranty complaints brought under the Texas Motor Vehicle Commission Code, §3.08(i), become final, without changes to the proposed text as published in the June 20, 1995, issue of the *Texas Register* (20 TexReg 4461).

The amendment to §101.64 excepts cases brought under Texas Motor Vehicle Commission Code, §3.08(i) pertaining to consumer complaints, covered by general warranty agreements, from the provisions of §101.64. The amendment is necessary to allow the addition of new §107.12, which authorizes the executive director to issue final orders under the Code, §3.08(i), and which is simultaneously being adopted.

The effect of enforcing the section will be to except general warranty claims brought under the Code, §3.08(i), from its provisions, thereby allowing expeditious resolution of the claims by bringing them under the procedure used for lemon law claims brought under the Code, §6.07.

One written comment questioning the efficacy of the proposed amendment was received from Ford Motor Company. A public hearing for the purpose of receiving comments was held September 7, 1995. Testimony questioning §101.64 was received from Ford Motor Company. The Board determined that using the same procedures for cases brought under §3.08(i) and §6.07 would expedite the resolution of general warranty complaints and that this outweighed any negative effect of any

perceived expansion of the lemon law to include general warranty complaints.

The amendment is adopted under the Texas Motor Vehicle Commission Code, §3.06, which provides the Board with authority to adopt rules necessary and convenient to effectuate the provisions of the act and to govern practice and procedure before the 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 24, 1995.

TRD-9513743 Brett Bray
Director, Motor Vehicle Division
Texas Motor Vehicle Commission

Effective date: November 15, 1995

Proposal publication date: June 20, 1995

For further information, please call: (512) 505-5100

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Chapter 107. Warranty Performance Obligations

The Texas Motor Vehicle Board adopts amendments to §107.1, concerning Objective and §107.6, concerning Hearings; and new §107.12, concerning Contested Cases under General Warranty Provisions, Decisions and Final Orders, without changes to the proposed text as published in the June 20, 1995, issue of the *Texas Register* (20 TexReg 4461).

The amendment to §107.1 is necessary to allow the use of the applicable procedure promulgated under the Texas Motor Vehicle Commission Code, §6.07, known as the lemon law, for general warranty complaints and to allow the addition of proposed new §107.12, which will authorize the executive director to issue final orders under the Code, §3.08(i). The amendment to §107.6(2) changes the notice requirements for lemon law hearings from 20 days to ten days notice, to conform with the provisions of the Administrative Procedure Act and to allow greater flexibility in scheduling lemon law hearings. The amendment also deletes mandatory notice to the dealer, unless the dealer is identified as a party to the proceeding, to relieve the agency of an unnecessary administrative burden.

New §107.12 authorizes the executive director to issue final orders under the Texas Motor Vehicle Commission Code, §3.08(i), pertaining to consumer complaints covered by general warranty agreements, which authority is currently reserved for the Motor Vehicle Board. This enables the Motor Vehicle Division to expedite resolution of general warranty complaints, by allowing use of the procedures promulgated under the Code, §6.07.

The effect of the amendment to §107.1 and new §107.12 will be to expedite the resolution of general warranty complaints brought under the Texas Motor Vehicle Commission Code, §3.08(i), by bringing them into conformance with procedures used for lemon law claims under the Code, §6.07.

The effect of enforcing §107.6(2) will be the uniformity of Texas Motor Vehicle Board rules with Administrative Procedure Act provisions pertaining to notice of hearing; and also allow greater flexibility in scheduling consumer complaint hearings, thereby expediting resolution of these complaints.

Written comments on the proposed amendments and the proposed section were received from Ford Motor Company, General Motors Corporation and the Recreation Vehicle Industry Association. A public hearing for the purpose of receiving comments was held September 7, 1995. Comments in favor of the proposals were received from the Motor Vehicle Division staff. Comments opposing the proposals or parts thereof were received from Ford Motor Company, General Motors Corporation and Buick Motor Division. Concerns were expressed about changing the notice requirements for hearings from 20 to ten days, deleting the requirement to provide the dealer with the notice, except when a party, and expanding the lemon law to include general warranty complaints.

The board considered comments questioning whether the procedures as to how decisions become final should be the same for both §3.08 and §6.07 cases. Because using the same procedures would expedite the resolution of general warranty complaints, the board determined this fact outweighed any negative effect of any perceived expansion of the lemon law to include general warranty complaints. With respect to changing the notice requirements for hearings from 20- to ten-day notice, the board questioned the comments from the manufacturers that this change would seriously impact their ability to resolve complaints before the hearings or create scheduling difficulties, when, in fact, they have usually known about the complaint for three to four months (i. e., when the consumer first files a complaint). The board agreed with the staff's assessment that bringing the notice period into conformity with the Administrative Procedure Act and allowing greater flexibility in scheduling hearings, outweighed the concerns expressed by the manufacturers. Regarding deleting the mandatory notice of the hearing to the dealer, unless the dealer is a party, the board questioned the comments by the manufacturers as to the necessity of providing the hearing notice to the dealer in light of the fact that the agency provides the dealer with a copy of the complaint when filed and asks for a response thereto as part of the mediation process. The board decided that relieving the agency of the administrative burden of providing another notification to the dealer outweighed the concerns expressed by the manufacturers.

• 16 TAC §107.1, §107.6

The amendments are adopted under the Texas Motor Vehicle Commission Code, §3.06, which provides the board with authority to adopt rules necessary and convenient to effectuate the provisions of the act and to govern practice and procedure before the 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 24, 1995.

TRD-9513744 Brett Bray
Director, Motor Vehicle Division
Texas Motor Vehicle Commission

Effective date: November 15, 1995

Proposal publication date: June 20, 1995

For further information, please call: (512) 505-5100

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• 16 TAC §107.12

The new section is adopted under the Texas Motor Vehicle Commission Code, §3.06, which provides the board with authority to adopt rules necessary and convenient to effectuate the provisions of the act and to govern practice and procedure before the 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 24, 1995.

TRD-9513745 Brett Bray
Director, Motor Vehicle Division
Texas Motor Vehicle Commission

Effective date: November 15, 1995

Proposal publication date: June 20, 1995

For further information, please call: (512) 505-5100

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Chapter 109. Lessors and Lease Facilitators

• 16 TAC §§109.1-109.5, 109.7-109.11

The Texas Motor Vehicle Board adopts new §§109.1-109.5 and §§109. 7-109.11, concerning regulation of motor vehicle lessors and lease facilitators by establishing requirements for licensing and business practices and cause for cancellation of license. Sections 109.3-109.5, 109.7, and 109.9 are adopted with changes to the proposed text as published in the August 4, 1995, issue of the *Texas Register* (20 TexReg 5842). Sections 109.1, 109. 2, 109.8, 109.10, and 109.11 are adopted without changes and will not be republished. Proposed §109.6 is being withdrawn in response to public comment summarized in the public comments section of this preamble.

Changes made for clarification or to correct typographical errors are as follows. For clarification in §109.3, the board has determined it is necessary to add a description and the functions of a bona fide employee of a lease facilitator.

The board has expanded permissible documentation for application for a license by adding the phrase "or acceptable substitute as designated by the Motor Vehicle Division" to §109.4. The board has changed §109.5(a) by deleting the word "cancel" and substituting "revoke, deny or suspend" to more clearly illustrate due process will be afforded to any licensee facing termination of license. Section 109.5(a)(2) has been augmented by, "Such records shall be kept in accordance with §109.9(a) of this title (relating to Records of Leasing)."

Section 109.7(1)(E) has been added, "A lease facilitator's established and permanent place of business, as prescribed in this rule, must be physically located within the state of Texas" to clearly indicate that consumers in Texas must be able to deal face-to-face with lease facilitators doing business in Texas.

Section 109.7(3) has been amended to require a lessor or lease facilitator to maintain any premises lease for the same period of time as its license, rather than one year, as follows. "If the premises from which a lessor or lease facilitator conducts business are not owned by the licensee, such licensee shall maintain a lease continuous for the same period of time as the lessor's or lease facilitator's license." Additionally, the word "dealer" has been deleted from the phrase "owned by the licensee dealer".

Section 109.9(c)(2) has been amended by the addition of the word "new" to clarify that lessors and lease facilitators may not sell new motor vehicles in accordance with the Texas Motor Vehicle Commission Code, §5.04. In addition, the word "lease facilitator" has been pluralized throughout Chapter 109.

The new rules are necessary to implement the regulation of motor vehicle lessors and lease facilitators by the Motor Vehicle Board pursuant to Senate Bill 921, passed during the 74th Legislative Session, effective June 8, 1995, by imposing requirements for licensing and business practices and cause for cancellation of licenses.

The effect of enforcing the sections will be compliance with statutory changes enacted by the 74th Legislature requiring regulation of the motor vehicle leasing industry and providing a forum for complaints against lessors and lease facilitators engaging in illegal activities.

Written comments on the proposed section were received from Capital Consultants, National Vehicle Leasing Association, Texas Automobile Dealers Association, Texas Credit Union League and Affiliates and individual lessors. A public hearing for the purpose of receiving comments was held September 7, 1995. Testimony in favor of the proposal was received from Motor Vehicle Division staff and Capital Consultants. Testimony opposing the proposal or parts thereof were received from the National Vehicle Leasing Association (NLVA); Enterprise Fleet Services and one individual. Concerns were expressed about the prohibition against off-site leasing in §109.06 as being too restrictive and beyond the intent of the enabling legislation.

Comments were received raising questions about the applicability of the motor vehicle leasing rules to "indirect lessors". The board determined that no difference between original lessors and subsequent lessors exists, as far as the public interest in regulating the relationship between Texas consumers and their motor vehicle lessors is concerned; and, therefore, no amendment or clarification in that regard was necessary because the existing proposed language covered all lessors.

With respect to questions about whether the statute and rules apply to entities that are exempt from licensing under the statute and whether acquisition fees are allowed, the board concluded that all entities, whether required to hold a license or not, are expected to comply with board rules and statutory regulations.

The board also considered the specific concern over §109.6 which, as proposed, would preclude off-site leasing activity. It was determined that additional study was necessary with relation to that particular rule (§109.6) and it was decided to withdraw it from consideration for passage at this time.

The new sections are adopted under the Texas Motor Vehicle Commission Code, §3.06, which provides the board with the authority to adopt rules necessary and convenient to effectuate the provisions of the act and to govern practice and procedure before the agency.

§109.3. License.

(a) No person may engage in business as a lessor or a lease facilitator unless that person has a currently valid license assigned by the Department.

(b) Lease facilitators must be licensed separately for each business location. Any representative of a lease facilitator must be a bona fide employee of the lease facilitator. A bona fide employee is a representative of the lease facilitator's business:

(1) who is on the payroll and receives compensation in which Social Security, FUTA, and all other appropriate taxes are withheld from the representative's paycheck and said taxes are paid to the proper taxing authority; and

(2) the details of the work of when, where, and how the final results are achieved are directed and controlled by the lease facilitator.

§109.4. Application for a License. Application for a lessor's or lease facilitator's license, or a renewal thereof, shall be on a form prescribed by the director, properly completed by the applicant, and shall be submitted with supporting documentation showing all information requested. The supporting documentation shall include:

(1) a letter of appointment from each lessor or lease facilitator or acceptable substitute as designated by the Motor Vehicle Division;

(2) a verification that each owner and officer of the applicant has not been convicted of any felony;

(3) the fee for the license as prescribed by law for each type of license required;

(4) photographs clearly depicting the overall appearance of the interior and exterior of the applicant's office;

(5) verification of all assumed name(s), if applicable, in the form of assumed name certificate(s) on file with the Secretary of State or county clerk;

(6) a copy of the Certificate of Incorporation on file with the Secretary of State, if a corporation;

(7) a sample copy of the agreement between the lessor or lease facilitator and a lessee;

(8) a list of all lessors, including names and addresses, with which any lease facilitator executes leases. This list must be updated in writing upon renewal of a license, and within ten days of the addition of any lessor to this list.

§109.5. Sanctions.

(a) Revocation/Denial. The Motor Vehicle Board may revoke, deny or suspend a lessor or lease facilitator's license if that lessor or lease facilitator:

(1) fails to maintain an established and permanent place of business conforming to the Department's regulations under § 109.7 of this title (relating to Lessors and Lease Facilitator Licensing, Established and Permanent Place of Business);

(2) refuses to permit or fails to comply with a request by a representative of the department to examine, during normal working hours, the current and previous year's leasing records and ownership papers for vehicles owned, leased, or under that lessor or lease facilitator's control, and evidence of ownership or lease agreement for the property upon which the business is located. Such records shall be kept in accordance with §109.9(a) of this title (relating to Records of Leasing);

(3) fails to notify the department of a change of address within ten days after such change;

(4) fails to notify the department of a change of lessor/lease facilitator's name or ownership within ten days after such a change;

(5) fails to observe the fee restrictions as described in the Motor Vehicle Commission Code, §5.03A and §5.03B;

(6) fails to maintain leasing and/or advertisement records as described in these rules;

(7) fails to remain regularly and actively engaged in the business of leasing or facilitating the leasing of vehicles as the person's license is issued;

(8) violates any law relating to the sale, distribution or insuring of motor vehicles;

(9) uses or allows use of a leasing or lease facilitating license for the purpose of avoiding any provisions of the Motor Vehicle Commission Code;

(10) makes a material misrepresentation in any application or other information filed with the department;

(11) fails to update in writing the list of lessors, including names and addresses, with which any lease facilitator executes leases within ten days of any changes to this list and upon renewal of the license;

(12) violates any state of federal law relating to the leasing of new motor vehicles.

(b) Referral fees prohibited. A lessor or lease facilitator may not, directly or indirectly, accept a fee from a dealer for referring customers who purchase or consider purchasing vehicles.

§109.7. Established and Permanent Place of Business. A lessor or lease facilitator must meet the following requirements at each location where vehicles are leased or offered for lease.

(1) Office requirements.

(A) A lessor or lease facilitator must be open to the public during normal working hours. The lessor or lease facilitator's business hours for each day of the week must be posted at the main entrance of the office, and the owner or a bona fide employee of the lessor or lease facilitator must be at the location during the posted business hours for the purpose of leasing vehicles. In the event the owner or a bona fide employee is not available to conduct business during the posted business hours, a separate sign must be posted indicating the date and time such owner or a bona fide employee will resume leasing operations. The structure must be of sufficient size to accommodate and must be equipped with a desk and chairs from which the lessor or lease facilitator transacts his business and be equipped with a working telephone instrument listed in the name under which the lessor or lease facilitator does business.

(B) If a licensee's office is located in a residential structure, the office must be completely separated from the residential quarters and be in compliance with all applicable local zoning ordinances and deed restrictions. Such an office shall not be used as a part of the living quarters and must be readily accessible to the public without having to pass into or through any part of the living quarters.

(C) Portable-type office structures may qualify, provided they meet the minimum requirements as set forth herein.

(D) In those instances when two or more lessors or lease facilitators occupy the same business locations and conduct their respective leasing operations under different names, one office structure for all lessors or lease facilitators operating from such location will be acceptable; provided, however, each lessor or lease facilitator must have:

(i) a separate desk from which that lessor or lease facilitator transacts business;

(ii) a separate working telephone instrument and listing in the lessor or lease facilitator's name;

(iii) a separate right of occupancy meeting the requirements of this section.

(E) A lease facilitator's established and permanent place of business, as prescribed in this rule, must be physically located within the State of Texas.

(2) Sign requirements.

(A) A lessor or lease facilitator shall display a conspicuous sign showing the name under which the lessor or lease facilitator conducts business. Outdoor signs must contain letters no smaller than six inches in height.

(B) Such sign must be readable from the address listed on the application for the lessor or lease facilitator license.

(3) Lease requirements. If the premises from which a lessor or lease facilitator conducts business are not owned by the licensee, such licensee shall maintain a lease continuous for the same period of time as the lessor's or lease facilitator's license, and such lease agreement shall be on a properly executed form containing, but not limited to the following information:

(A) the names of the lessor and lessee;

(B) the legal description of the property or street address; and

(C) the period of time for which the lease is valid.

(4) Independence. A lessor or lease facilitator shall be independent of financial institutions and dealerships in location and in business activities unless that lessor or lease facilitator is an employee of such an institution or dealership.

§109.9. Records of Leasing.

(a) Purchase and leasing records. Lessors and lease facilitators must maintain a separate and complete lease file for each transaction in their business office readily available and subject to inspection during regular business hours upon request by a Department representative containing the following information on each lease transaction for a period of at least three years after the expiration of the lease.

(b) Content of records. As used in this subsection, a complete lease file shall include the following things:

(1) names, addresses and telephone numbers of the lessor of the vehicle in the transaction;

(2) names, addresses and telephone numbers of the lessee of the vehicle in the transaction;

(3) names, addresses, telephone numbers and license numbers of the lease facilitator of the vehicle in the transaction;

(4) name, home address, and telephone number of employee of lease facilitator who handled the transaction;

(5) complete description of the vehicle involved in the transaction, including its Vehicle Identification Number (VIN).

(6) name, address, telephone number and General Distinguishing Number of the Dealer selling the vehicle, as well as the franchise license number of the dealer if the vehicle in the transaction is a new motor vehicle.

(7) amount of fee received by or paid to the lease facilitator;

(8) copies of the buyers order and sales contract for the vehicle;

(9) copy of the lease contract;

(10) copies of all other contracts, agreements or disclosures between the lease facilitator and the consumer lessee;

(11) copies of the front and back of Manufacturer's Statement/Certificate of Origin or the title of the vehicle involved in the transaction.

(c) Records of advertising. A lessor or lease facilitator must maintain copies of all advertisements, brochures, scripts or electronically reproduced copies, in whatever medium appropriate, of promotional materials for a period of at least 18 months, subject to inspection upon request by a department representative at the business of the licensee during regular business hours.

(1) All advertisements by lessors or lease facilitators must be in accordance with the Motor Vehicle Board Advertising Rules.

(2) Lessors and lease facilitators may not state or infer, either directly or indirectly, in any manner such as advertisements, stationery or business cards that their business involves the sale of new motor vehicles.

(d) Title assignments. All certificates of title, manufacturer's certificates of origin, or other evidence of ownership for vehicles which have been acquired by a lessor for lease must be properly assigned from the selling dealer into the lessor's name.

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 24, 1995.

TRD-9513746 Brett Bray
Director, Motor Vehicle Division
Texas Motor Vehicle Commission

Effective date: November 15, 1995

Proposal publication date: August 4, 1995

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

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Chapter 111. General Distinguishing Numbers

• 16 TAC §§111.1-111.16

The Texas Motor Vehicle Board adopts new §§111.1-111.16, concerning the obligations of motor vehicle dealers and manufacturers regarding registration and business operations under the Transportation Code, §§503.001 et seq (formerly Texas Civil Statutes, Article 6686) and the Texas Motor Vehicle Commission Code (Texas Civil Statutes, Article 4413(36)). Sections 111.3, 111. 4, 111.7, 111.11, 111.12, and 111.15 are adopted with changes to the proposed text as published in the August 4, 1995, issue of the *Texas Register* (20 TexReg 5844). Sections 111.1, 111.2, 111.5, 111.6, 111.8-111.10, 111.13, 111.14, and 111.16 are adopted without changes and will not be republished.

The board considered revisions that were submitted by the staff. It agreed that most of the changes concerned grammatical corrections or deletion of superfluous and/or confusing language. Changes made for clarification or to correct typographical errors follow.

In §111.3(3), the word "Sates" has been corrected to "States"; §111.3(7) , "a least 25" has been corrected to "at least 25" and the last word "and" has been deleted: §111.3(8), "§111.4" has been corrected to "§111.5"; in §111.3(c)(1), "§111.6" has been corrected to "§111.7". The last sentence has been deleted from §111.3(d) because both franchised and independent dealers are now licensed by the Texas Motor Vehicle Commission (now the Texas Motor Vehicle Board) and the distinction no longer applies to independent dealers. In §111.3(f), the word "the" has been added to the phrase "under the Texas Business Corporation Act".

Section 111.4 has been corrected by changing the word "design" to "designed". Section 111.7 has been amended to clarify that only non-franchised dealers must carry a $25,000 bond.

The board has changed §111.11(a) by deleting the term "cancellation" and substituting "revocation/denial", as well as deleting the word "cancel" and substituting "revoke, deny or suspend" to more clearly illustrate due process will be afforded to any licensee facing termination of license. Section 111. 11(a)(4) has been amended to clarify that an offer to sell has the same effect as selling, unless otherwise authorized by statute.

Section 111.13 has been corrected by the addition of the word "be" to the phrase "must be properly executed". In §111.20, the last word "or" has been deleted. The word "Board" has been substituted for "Commission" in §111.12.

Section 111.15(b)(6) has been corrected by the addition of the word "is" to the phrase "if vehicle is offered". The last word "and" has been deleted in §111.15(b)(7). "Titles or photocopies of titles" have been added to §111. 15(b)(8) as records a dealer is required to maintain.

Section 111.15(c) has been amended to delete the words "assigned ownership documents in favor of the purchaser when the vehicle is sold or furnish". Section 111.15(d) has been amended to delete the words "full cash payment, or the" and "or the documents will be filed by the lienholder". These amendments were made to bring the rules into consistency with state law regarding prohibitions against brokering and procedures called for under laws relating to titling and sales of new motor vehicles.

The new rules are required pursuant to action taken by the 74th Legislative Session, Senate Bill 1446, effective June 9, 1995, which transfer regulatory and rulemaking authority regarding such obligations from the Texas Transportation Commission to the Texas Motor Vehicle Board.

The effect of enforcing the section will be to combine the similar functions of the Motor Vehicle Division with those of the Vehicle Title and Registration Division of the Texas Department of Transportation, thereby streamlining the licensing and enforcement processes for all motor vehicle dealers.

Written comments on the proposed sections were received from the Texas Automobile Dealers Association and Gulf Insurance Group. A public hearing for the purpose of receiving comments was held September 7, 1995. Testimony in favor of the proposal was received from Heidi Jackson, Assistant Director-Licensing, Motor Vehicle Division. No testimony was received opposing the proposed sections.

Concerns were registered about applicability of state rules and regulations regarding the Tax Code and the Comptroller's Office insofar as dealer activity is concerned. The board agreed to the addition of item number 23 under proposed §111.11 which causes a dealer to be in jeopardy of sanctions for violation of any state or federal law or regulation relating to the sale of a motor vehicle. The board found the expression of sanctions listed in proposed §111.11 to be appropriate and will allow the agency sufficient latitude to deal with a variety of case scenarios.

The new sections are adopted under the Texas Motor Vehicle Commission Code, §3.06, which provides the Board with the authority to adopt rules necessary and convenient to effectuate the provisions of the act and to govern practice and procedure before the agency.

§111.3. General Distinguishing Number.

(a) No person may engage in business as a dealer unless that person has a currently valid general distinguishing number assigned by the department for each location from which the person engages in business. If a dealer consigns more than five vehicles in a calendar year for sale from a location other than the location for which the dealer holds a general distinguishing number, the dealer must also hold a general distinguishing number for the consignment location.

(b) The provisions of subsection (a) of this section do not apply to:

(1) a person who sells or offers for sale less than five vehicles of the same type as herein described in a calendar year and such vehicles are owned by him and registered and titled in his name;

(2) a person who sells or offers to sell a vehicle acquired for personal or business use if the person does not sell or offer to sell to a retail buyer and the transaction is not held for the purpose of avoiding the provisions of the Transportation Code, §§503.001 et seq (formerly Texas Civil Statutes, Article 6686), and the sections under this chapter;

(3) an agency of the United States, this state, or local government;

(4) a financial institution or other secured party selling a vehicle in which it holds a security interest, in the manner provided by law for the forced sale of that vehicle;

(5) a receiver, trustee, administrator, executor, guardian, or other person appointed by or acting pursuant to the order of a court;

(6) an insurance company selling a vehicle acquired from the owner as the result of paying an insurance claim;

(7) a person selling an antique passenger car or truck that is at least 25 years old or a collector selling a special interest motor vehicle as defined in the Transportation Code, §683.077 (formerly the Texas Litter Abatement Act, Texas Civil Statutes, Article 4477-9a), if the special interest vehicle is at least 12 years old;

(8) a licensed auctioneer who, as a bid caller, sells or offers to sell property to the highest bidder at a bona fide auction if neither legal nor equitable title passes to the auctioneer and if the auction is not held for the purpose of avoiding another provision of the Transportation Code, §§503. 001, et seq (formerly Texas Civil Statutes, Article 6686), and sections under this chapter; and provided that if an auction is conducted of vehicles owned, legally or equitably, by a person who holds a general distinguishing number, the auction may be conducted only at a location for which a general distinguishing number has been issued to that person or at a location approved by the department as provided in §111.5 of this title (relating to More Than One Location); and

(9) a person who is a domiciliary of another state and who holds a valid dealer license and bond, if applicable, issued by an agency of that state, when the person buys a vehicle from, sells a vehicle to, or exchanges vehicles with a person who:

(A) holds a current valid general distinguishing number issued by the department, if the transaction is not intended to avoid the terms of the Transportation Code, §§503.001, et seq (formerly Texas Civil Statutes, Article 6686); or

(B) is a domiciliary of another state if the person holds a valid dealer license and bond, if applicable, issued by that state, and if the transaction is not intended to avoid the terms of the Transportation Code, §§503.001, et seq (formerly Texas Civil Statutes, Article 6686).

(c) Application for a general distinguishing number shall be on a form prescribed by the director properly completed by the applicant showing all information requested thereon and shall be submitted to the director accompanied by the following:

(1) a $25,000 surety bond as provided in §111.7 of this title (relating to Bond Requirements), or acceptable security as cited in §111.7 of this title (relating to Assignment of Security and Letter of Credit), in the name of the applicant;

(2) a one-year lease as cited in §111.10 of this title (relating to Established and Permanent Place of Business), or deed for the dealer's location in the name of the applicant;

(3) the fee for the general distinguishing number as prescribed by law for each type of license requested;

(4) the fee as prescribed by law for each dealer metal plate requested and the license plate reflectorization fee as prescribed by law;

(5) photographs clearly showing:

(A) the interior of the dealer's office;

(B) the exterior of the dealer's office;

(C) the dealer's sign;

(D) the vehicle display area; and

(6) verification of all assumed name(s), if applicable, in the form of assumed name certificate(s) on file with the Secretary of State or county clerk.

(d) A person who applies for a general distinguishing number and will operate as a dealer under a name other than the name of that person shall use the name under which that person is authorized to do business, as filed with the secretary of state or county clerk, and the assumed name of such legal entity shall be recorded on the application using the letters "DBA. "

(e) If the general distinguishing number is issued to a corporation, the dealer's name, as it appears on file with the Secretary of State, shall be recorded on the application. The corporation must provide verification that all corporate franchise taxes required under the Texas Business Corporation Act, Article 2.45, have been paid.

(f) A licensed wholesale dealer who elects to buy, sell to, or exchange vehicles with persons other than licensed dealers, must satisfy the display space requirements of §111.10 of this title (relating to Established and Permanent Place of Business) and exchange the wholesale dealer license for a general distinguishing number which is appropriate for the type of vehicles the dealer wishes to buy, sell, or exchange.

(g) An application for a general distinguishing number may be denied if an applicant for such license has committed any act that could result in license cancellation or revocation under the Transportation Code, §§503.001, et seq (formerly Texas Civil Statutes, Article 6686(a)(1) (1-A)(viii).

(h) All general distinguishing numbers expiring on March 31, 1996, when renewed, will expire on the last day of randomly assigned calendar months of the next calendar year. Thereafter, each license will be issued for a period of one year from the date of issuance of the license. The entire yearly license fee will be due at that time.

(1) The license fee for each general distinguishing number issued during 1996 for a period of less than one year shall be prorated and only that portion of the license fee allocable to the number of months for which the license is issued shall be payable by the licensee. The amount of such license fees will be rounded off to the nearest dollar.

(2) The surety bond or other surety required for dealers by the Department pursuant to the Transportation Code, §§503.033 (formerly Texas Civil Statutes, Article 6686(a)(1-A)(vii)) must be effective, at a minimum, for the period for which the general distinguishing number will be valid.

(3) All dealer metal plates issued to a licensed dealer shall expire on the same date as the expiration of the dealer's general distinguishing number.

§111.4. House Trailer; Travel Trailer. The term house trailer/travel trailer for the purpose of the sections under this chapter shall mean a vehicle without automotive power designed for human habitation and for carrying persons and property upon its own structure and for being drawn by a motor vehicle if that vehicle is less than eight body feet in width and less than 40 body feet in length, excluding the hitch, or the vehicle shall be 400 square feet or less when measured at the largest horizontal projections.

§111.7. Security Requirements.

(a) A motor vehicle dealer or motorcycle dealer who does not hold a franchised dealer's license issued by the Texas Motor Vehicle Board of the Texas Department of Transportation shall have a $25,000 bond conditioned on the dealer's payment of all valid bank drafts drawn by the dealer for the purchase of motor vehicles and the dealer's transfer of good title to each motor vehicle the dealer offers for sale. The bond must be valid for the same period of time as the dealer's license and is subject to the following:

(1) The bond shall be on a form which is prescribed by the director and approved by the attorney general and issued by a company duly authorized to do business in the State of Texas.

(2) The name of all owners shall be shown on the bond along with the name in which the dealer's license is issued.

(3) A bond executed by an agent who represents a bonding company or surety must be supported by an original power of attorney from the bonding company or surety.

(b) In lieu of a surety bond, the department will accept an assignment of security or an irrevocable letter of credit on forms approved by the attorney general. An assignment of security or an irrevocable letter of credit must be executed by a bank, savings and loan institution, credit union, or other financial institution insured by an agency of the United States government and authorized to do business in the State of Texas.

(c) Recovery against the bond or acceptable security may be made by any person who obtains a court judgment assessing damages and attorneys fees for an act or omission on which the bond is conditioned.

(d) The provisions of subsections (a) and (b) of this section do not apply to:

(1) a franchised motor vehicle dealer who is licensed by the Texas Motor Vehicle Board of the Texas Department of Transportation;

(2) a franchised motorcycle dealer who is licensed by the Texas Motor Vehicle Board of the Texas Department of Transportation;

(3) a house trailer or travel trailer dealer; or

(4) a trailer/semitrailer dealer.

§111.11. Sanctions.

(a) Revocation/Denial. The director may deny, revoke or suspend a dealer's license (general distinguishing number) if that dealer:

(1) fails to maintain a good and sufficient bond in the amount of $25,000 or to be currently licensed as a franchised dealer by the Texas Motor Vehicle Board of the Texas Department of Transportation;

(2) fails to maintain an established and permanent place of business conforming to the department's regulations pertaining to office, sign, and display space requirements;

(3) refuses to permit or fails to comply with a request by a representative of the department to examine, during normal working hours, the current and previous year's sales records and ownership papers for vehicles owned by that dealer or under that dealer's control, and evidence of ownership or lease agreement on the property upon which the dealer's business is located;

(4) holds a wholesale dealer license and, without notifying the department and meeting the vehicle display space requirements of §111.10 of this title (relating to Established and Permanent Place of Business), is found to be selling or offering to sell a vehicle to someone other than a licensed dealer, unless authorized by statute;

(5) holds a travel trailer dealer license or a trailer/semitrailer dealer license and is found to be selling a motor vehicle or a motorcycle;

(6) fails to notify the department of a change of address within ten days after such change;

(7) fails to notify the department of a dealer's name change or ownership within ten days after such change;

(8) issues more than one buyer's temporary cardboard tag for the purpose of extending the purchaser's operating privileges for more than 20 days;

(9) fails to remove out-of-state license plates from a vehicle which is displayed for sale;

(10) misuses a metal dealer license plate or a temporary cardboard tag;

(11) fails to display dealer license plates or cardboard tags in a manner conforming to the department's regulations pertaining to the display of such plates and cardboard tags on unregistered vehicles;

(12) fails to satisfy the notification requirements of §111.15 of this title (relating to Record of Sales and Inventory);

(13) holds open titles or fails to take assignment of all certificates of title, manufacturer's certificates, or other basic evidence of ownership for vehicles acquired by the dealer or fails to assign the certificate of title, manufacturer's certificate, or other basic evidence of ownership for vehicles sold. (All certificates of title, manufacturer's certificates, or other basic evidence of ownership for vehicles owned by a dealer must be properly executed showing transfer of ownership into the name of the dealer.);

(14) fails to remain regularly and actively engaged in the business of buying, selling, or exchanging vehicles of the type for which the general distinguishing number is issued;

(15) violates any of the provisions of the Transportation Code, §§503.001, et seq (formerly Texas Civil Statutes, Article 6686), Texas Civil Statutes, Article 4413(36) (Texas Motor Vehicle Commission Code), or any rule or regulation of the department, including advertising rules set out in Chapter 105 of this title (relating to Advertising);

(16) has not assigned at least five vehicles in the prior 12 months, provided the dealer has been licensed more than 12 months;

(17) files a false or forged title or tax document, including sales tax affidavit or affidavit making application for a certified copy of a title;

(18) uses or allows use of that dealer's license or location for the purpose of avoiding the provisions of the dealer law or other laws;

(19) makes a material misrepresentation in any application or other information filed with the department;

(20) fails to remit payment for civil penalties assessed by the department;

(21) sells new motor vehicles without a franchise license issued by the Texas Motor Vehicle Board of the Texas Department of Transportation;

(22) utilizes a temporary cardboard tag that fails to meet department specifications as cited in §111.8 of this title (relating to Temporary Cardboard Tags); or

(23) violates any state or federal law or regulation relating to the sale of a motor vehicle.

(b) Civil penalties. The director may assess a civil penalty of not less than $50 nor more than $1,000 against a person who violates any provision of subsection (a) of this section, and in determining the amount of any such penalty may consider the relevant circumstances.

(c) Pre-sanction citation. In lieu of imposing sanctions under subsections (a) or (b) of this section, the director may issue a pre-sanction citation to a person notifying that person of the nature of the violation, and specifying the date by which corrective action is to be completed and full compliance is to be met; provided, however, that the director may not utilize this procedure in more than three subsequent violations of the same or similar nature by that person in the same calendar year.

§111.12. Notice and Appeal.

(a) Notice of Hearing and Complaint. A hearing shall be conducted in all contested cases, as defined in the Texas Administrative Code, which arise in connection with the violation of any law, order or rule of the Board. Upon determination that a person had violated or is likely to violate any law, board rule, order or decision, the director shall mail a notice of hearing and complaint by certified mail to

the last known address of that person. All hearings shall be conducted in accordance with the procedure as described in the Texas Motor Vehicle Commission Code, §3.08.

(b) Date, time, and place of hearing. Notice of a hearing shall describe in summary form the purpose of the hearing and its date, time, and place.

(c) Administrative hearing. The department may initiate a formal administrative hearing pursuant to the Motor Vehicle Commission Code, Texas Civil Statutes, Article 4413(36), §3.03(b) and conducted in accordance with the procedural rules found in §§101.5-101. 14 and §§101.41-101.65 of this title (relating to Practice and Procedure), which relate to contested cases before the Texas Motor Vehicle Board, to determine the amount of the civil penalty to be assessed, if any, from not less than $50 up to $1,000 for each alleged violation of the provisions of §111.11 of this title (relating to Sanctions), and to determine whether the dealer's license should be canceled. For purposes of assessing civil penalties under this subsection, each act in violation of those provisions is a separate violation, and each day of a continuing violation is a separate violation.

(d) Notice of contested case hearing. Notice of a contested case hearing,shall be deemed to have been received by any person if notice of the hearing was mailed to the last known address of any person known to have legal rights, duties, or privileges that could be determined at the hearing, not less than ten days before the hearing requested. Notice may be given to any officer, agent, employee, legal representative, or attorney of any person. Notice of any hearing may be waived by any person.

§111.15. Record of Sales and Inventory.

(a) Purchase and sales records. A dealer must keep a complete record of all vehicle purchases and sales for a minimum period of 13 months, and such record must be available for inspection by a representative of the department at the dealer's location.

(b) Content of records. As used in this subsection, a complete record of vehicle purchases and sales shall include the:

(1) date of purchase;

(2) date of sale;

(3) vehicle identification number;

(4) name and address of person selling to the dealer;

(5) name and address of person purchasing from the dealer;

(6) name and address of selling dealer if vehicle is offered for sale by consignment; and

(7) except in a purchase or sale by a wholesale dealer, number and filing date of the Tax Collector's Receipt for Title Application/Registration/Motor Vehicle Tax, Form 31; and

(8) copies of any and all documents, forms, and agreements applicable to a particular sale, including, but not limited to title applications, work-up sheets, Manufacturer's Certificates of Origin, titles or photocopies of titles, factory invoices, sales contracts, retail installment agreements, buyer's orders, bills of sale, waivers, or other agreements between the seller and purchaser.

(c) Title assignments. All certificates of title, manufacturer's certificates, or other evidence of ownership for vehicles offered for sale or which have been acquired by a dealer must be properly assigned into the dealer's name. A dealer must provide the purchaser with the receipt for application for certificate of the title issued by the county tax assessor-collector within 20 working days of the date of sale of any vehicle to be titled or registered in the state of Texas.

(d) Notification to the department. Notification of vehicle sales, as required by the Transportation Code, §§503.005, et seq (formerly Texas Civil Statutes, Article 6686, §d), shall be an application for certificate of title in the name of the retail purchaser filed with the appropriate county tax assessor-collector. When a sales transaction involves a vehicle to be transferred out of state, the dealer may, in lieu of filing the application for certificate of title for the purchaser, deliver the properly assigned evidence of ownership to the purchaser. In such instance, a photocopy of such evidence, including all assignments, shall be documented on a form prescribed by the director, and maintained on file at the dealer's business location.

(e) Consignment sales. A dealer offering a vehicle for sale by consignment shall have a written consignment agreement for the vehicle or a power of attorney covering the vehicle and shall maintain a record of each such vehicle by vehicle identification number and owner of each such vehicle handled on consignment for a minimum of 13 months.

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 24, 1995.

TRD-9513748 Brett Bray
Director, Motor Vehicle Division
Texas Motor Vehicle Commission

Effective date: November 15, 1995

Proposal publication date: August 4, 1995

For further information, please call: (512) 505-8630

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 3. Memorandums of Understanding With Other State Agencies

• 25 TAC §3.31

The Texas Department of Health (department) adopts new §3.31, concerning a memorandum of understanding (MOU), with changes to the proposed text as published in the August 8, 1995, issue of the *Texas Register* (20 TexReg 5989).

The new section adopts by reference an MOU between the department, Texas Department of Criminal Justice, Texas Rehabilitation Commission, Texas Commission for the Blind, Texas Commission for Deaf and Hard of Hearing, and Texas Department of Human Services, and addresses the responsibilities of each agency to institute a continuity of care and service for offenders in the criminal justice system who are physically disabled, terminally ill or significantly ill. The MOU is required by Texas Health and Safety Code §614. 015.

One staff comment was received regarding the proposed section. The department responded accordingly.

COMMENT: Department staff commented that Chapter 835 of the 74th Legislature changed the name of the Texas Commission for Deaf and Hearing Impaired to the Texas Commission for the Deaf and Hard of Hearing, effective September 1, 1995. The section should be changed to reflect the new name.

RESPONSE: The department agrees and the title and text of the section were changed.

The commenter was the Texas Department of Health, Office of General Counsel.

The new section is adopted under the Texas Health and Safety Code, Chapter 614, "Texas Council on Offenders with Mental Impairments," §614.015, "Continuity of Care for Physically Disabled, Terminally Ill, or Significantly Ill Offenders," which requires the department to adopt an MOU by rule; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

§3.31. Memorandum of Understanding Between the Texas Department of Criminal Justice, Texas Commission for the Blind, Texas Commission for the Deaf and Hard of Hearing, Texas Rehabilitation Commission, Texas Department of Human Services, and the Texas Department of Health.

(3) The Texas Department of Health (department) adopts by reference a memorandum of understanding (MOU) between the Texas Department of Criminal Justice, Texas Commission for the Blind, Texas Commission for the Deaf and Hard of Hearing, Texas Rehabilitation Commission, and Texas Department of Human Services. The MOU contains the agreement required by Texas Health and Safety Code, Chapter 614, §614.015 to establish the respective responsibilities of these agencies to institute a continuity of care and service program for offenders in the criminal justice system who are physically disabled, terminally ill, or significantly ill.

(b) The MOU is adopted by rule in 37 Texas Administrative Code §159.5(a).

(c) The effective date of the MOU, with respect to the department, is the same as the effective date 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 23, 1995.

TRD-9513637 Susan K. Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Effective date. November 13, 1995

Proposal publication date· August 8, 1995

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

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Chapter 98. HIV and STD Control

The Texas Department of Health (department) adopts the repeal of §98 104 and §98.105, and new §98.104, concerning medication coverage and drug specific eligibility criteria, without changes to the proposed text as published in the July 4, 1995, issue of the *Texas Register* (20 TexReg 4903) and therefore the sections will not be republished. The new section specifies that medication coverage and drug specific eligibility criteria shall be determined by the commissioner of health considering the recommendations of the Texas HIV Medication Advisory Committee. The repeal and new section are necessary to implement the provisions of the "Communicable Disease Prevention and Control Act." The Texas HIV Medication Program is established by Texas Health and Safety Code (HSC), Chapter 85, Subchapter C, §85.063 to assist hospital districts, local health departments, public or nonprofit hospitals and clinics, nonprofit community organizations, and HIV-infected individuals in the purchase of medications approved by the Texas Board of Health (board) that have been shown to be effective in reducing hospitalizations due to HIV-related conditions. Although not required by statute, the board has selected these medications by rule. The proliferation of available medications used in treating HIV-infected individuals, and advances in the medical knowledge concerning their use has resulted in frequent amendments of 25 TAC §98.104 and §98.105. The rulemaking process is time consuming and could result in a delay between Food and Drug Administration and advisory committee approval, and the addition of drugs to the program in the future. The department is adopting the repeal of existing §98.104 and §98.105 and new §98.104 to make the formulary a matter for internal department decision, rather than a rulemaking procedure. The Texas Board of Health (board) will do this by deleting the rules, but not the policies; establishing medication coverage and drug specific eligibility criteria; and by delegating authority to approve medications to the commissioner of health. The board's authority to approve medications is given in Health and Safety Code, Chapter 85, §85.061. The authority to delegate authority to the commissioner is found in Health and Safety Code, Chapter 11, §11 013(b).

No comments were received regarding adoption of the repeals and new section.

Subchapter C. Texas HIV Medication Program

• 25 TAC §98.104, §98.105

The repeals are adopted under the Health and Safety Code, §85.016, which provides the board with the authority to adopt rules concerning the Texas HIV Medication Program; under Health and Safety Code, §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

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 23, 1995.

TRD-9513644 Susan K. Steeg
General Counsel, Office of General Counsel
Texas Department of Health

Effective date: November 13, 1995

Proposal publication date: July 4, 1995

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

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• 25 TAC §98.104

The new section is adopted under the Health and Safety Code, §85.016, which provides the board with the authority to adopt rules concerning the Texas HIV Medication Program; under Health and Safety Code, §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

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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Part II. Texas Department of Mental Health and Mental Retardation

Chapter 401. System Administration

Subchapter C. TDMHMR Rulemaking

• 25 TAC §§401.301-401.308

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeal of §§401.301-401.308, concerning TDMHMR rulemaking, without changes to the proposed text as published in the September 15, 1995, issue of the *Texas Register* (20 TexReg 7259). New §§401.301-401.308, concerning the same matters are adopted contemporaneously in this issue of the *Texas Register*.

The repeals enable the department to update it's policies concerning rulemaking processes consistent with the Administrative Procedure Act, Texas Government Code, Chapter 2001.

No comment were received regarding adoption of the repeals.

The repeals are adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority, and under provisions of Texas Civil Statutes, Article 4413(502), §15, which provide the Texas Health and Human Services Commission with authority for 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 authority.

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

TRD-9513595 Ann Utley
Chair
Texas Department of Mental Health and Mental Retardation

Effective date: November 13, 1995

Proposal publication date: September 15, 1995

For further information, please call: (512) 206-4516

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The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§401.301-401.303, and §§401.305, 401.306, and 401.308, concerning TDMHMR rulemaking, without changes to the proposed text as published in the September 15, 1995, issue of the *Texas Register* (20 TexReg 7259). Section 401.304 and §401.307 are adopted with changes. Existing §§401.301-401.308, concerning the same matters are repealed contemporaneously in this issue of the *Texas Register*

The new sections update the department's policies concerning rulemaking processes consistent with the Administrative Procedure Act, Texas Government Code, Chapter 2001.

Section 401.304 is changed on adoption to clarify that the commissioner notifies the petitioner in writing not only when a petition is denied but also when a petition results in the initiation of the rulemaking process. Section 401.308 is changed on adoption to more accurately depict the distribution of the new rules.

A public hearing was held in Austin on September 26, 1995. No testimony was offered at that time. Written comments were received from Advocacy, Inc.; MHMR Services for the Concho Valley, San Angelo; Harris Mental Health Management Services, Arlington; Tarrant County Mental Health and Mental Retardation Services, Fort Worth; and the Private Providers Association of Texas, Austin.

A commenter noted that no methodology is prescribed in the rule for use by the department in determining whether or not a proposed rule will have a significant fiscal implication on state or local government or small businesses, and suggested that the rule should prescribe a standard methodology. The commenter further stated that the absence of a prescribed methodology permits a single designated individual to state an opinion without any real fact finding studies being conducted or factual opinions required from those who must carry out the rule requirements. The department responds that no further standardization of the process is necessary, and that the current system of estimating economic impacts, publishing a statement in the preamble of proposed rule (as required by law), requesting comments specific to fiscal implications when the proposal is distributed, reviewing comments, and revising the economic impact statement as necessary provides the best available information.

A commenter noted that the rule does not provide a mechanism for the commissioner to respond to a petition for a rule change. The department responds that the rule requires the commissioner to either deny the petition in writing or initiate rulemaking procedures. Language has been added to clarify that the petitioner will also be notified when rulemaking procedures are initiated.

One commenter requested that the rule provide more details specifically as it applies to the re-proposal of a rule which has been withdrawn without final action being taken, and the department's policy concerning the response to substantive negative comment. The commenter also stated that the organization could not support the rules as proposed. The department responds that a detailed description of the required rulemaking process is outlined in the Administrative Procedure Act (APA), Texas Government Code, Chapter 2001, and in the rules of the *Texas Register* (1 TAC 91) and does not need to be duplicated in the rules of this department. Regarding the issue of substantive negative comment, the department's internal process for responding to comments involves review by staff in legal, fiscal, and program areas. Comment is summarized not only in the adoption, as required by *Texas Register* rules, but also in a standardized format prescribed by the Texas MHMR Board for its use in considering the recommended rule action. One of the required elements of the board memo is a discussion of negative reactions from the public and other stakeholders. All rules are issued under the authority of the board and the commissioner. The department considers a detailed discussion of this process in the rule to be unnecessarily prescriptive and burdensome, and declines to implement the requested revision.

A commenter questioned the distribution of the new rules, both in scope and timeliness. The department responds that the new rules on TDMHMR rulemaking will be distributed to all entities required to comply with one or more departmental rules as well as to advocacy and special interest organizations who routinely receive rules related to their areas of interest. The department distributes rules so that they are received prior to their effective dates; emergency rules that are adopted immediately are distributed as soon as possible following adoption.

A commenter questioned whether the distribution section should be expanded to reference community mental health and mental retardation centers or contractors. The department responds that the distribution section has been revised in response to the commenter's concern.

A commenter questioned whether the rule should be titled "TXMHMR Rulemaking" instead of "TDMHMR Rulemaking." The department responds that for purposes of compliance with the Administrative Procedures Act and other laws, the department is identified as "TDMHMR."

The new sections are adopted under the Texas Health and Safety Code, §532. 015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority, and under provisions of Texas Civil Statutes, Article 4413(502), §15, which provide the Texas Health and Human Services Commission with authority for department rules.

§401.304. Petitions for Rules or Changes to Rules.

(a) Any person may petition for a rule or rule change by submitting a request to the commissioner that complies with the following requirements:

(1) The petition shall be typed or legibly printed and shall be signed in ink by the petitioner or the petitioner's authorized agent.

(2) The petition shall:

(A) state its purpose;

(B) contain a concise statement of facts in support of its purpose; and

(C) include the text of the proposed rule or revision and the proposed effective date.

(b) Not later than the 60th day after the date of submission of a petition under this section, the commissioner shall take the following action, with written notification to the petitioner:

(1) deny the petition in writing, stating the reason for the denial; or

(2) initiate a rulemaking proceeding under this subchapter and Texas Government Code, Chapter 2001.

§401.307. Distribution. This rule shall be distributed to all members of the board; assistant commissioner; directors in Central Office; superintendents/directors of all department facilities; chief executive officers of mental health and mental retardation authorities, community mental health and mental retardation centers, psychiatric hospitals, and crisis stabilization units; Medicaid providers subject to regulation by the Texas Department of Mental Health and Mental Retardation; advocacy and other organizations; the *Texas Register*; and others as appropriate and as designated in the distribution notice.

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 23, 1995.

TRD-9513594

Ann Utley
Chair
Texas Department of
Mental Health and
Mental Retardation

Effective date: November 13, 1995

Proposal publication date: September 15, 1995

For further information, please call: (512) 206-4516

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

Chapter 19. Oil Spill Prevention and Response

Subchapter B. Spill Prevention and Preparedness

• 31 TAC §19.17, §19.19

The Texas General Land Office (GLO) adopts the repeal of §19.17 and §19.19, concerning vessel response plans and proof of financial responsibility and denial of entry into port, without changes to the proposed text as published in the May 9, 1995, issue of the *Texas Register* (20 TexReg 3442). The sections are repealed because they have been moved into new Subchapter E of this chapter (relating to Vessels). The provisions relating to proof of financial responsibility are now at §19.62 and provisions relating to denial of entry into port are now at §19.63.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Natural Resources Code, §40.007 and §40.117(a)(1), which authorizes the commissioner of the GLO to adopt regulations necessary and convenient to the administration of the Oil Spill Prevention and Response Act and, more specifically, to adopt regulations regarding standards and requirements for discharge prevention and response capabilities of vessels.

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 25, 1995.

TRD-9513718 Garry Mauro
Commissioner
General Land Office

Effective date: November 14, 1995

Proposal publication date: May 9, 1995

For further information, please call: (512) 305-9129

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Subchapter E. Vessels

• 31 TAC §§19.60-19.63

The General Land Office (GLO) adopts new §§19.60-19.63, Subchapter E, concerning vessels and the prevention of and response to oil spills emanating from vessels that enter Texas coastal waters. Section 19.60 and §19.61 are adopted with changes to the proposed text as published in the May 9, 1995, issue of the *Texas Register* (20 TexReg 3443). Section 19.62 and §19. 63 are adopted without changes and are not republished.

The new subchapter incorporates information previously found in §19.17 and §19.19, which are concurrently being repealed, and can now be found at §19.62 and §19.63 of this subchapter. The new subchapter was proposed, and is adopted, to provide a subchapter containing all requirements for vessels subject to regulation under the Oil Spill Prevention and Response Act of 1991 (OSPRA), Texas Natural Resources Code, Chapter 40.

The adopted sections apply to vessels subject to the Oil Pollution Act (OPA) and to Regulation 26 of Annex I of MARPOL. Vessels subject only to OSPRA, and not to OPA or Regulation 26, are not affected by these rules. The GLO is continuing to evaluate options for regulating the discharge prevention and response capability of vessels that are capable of carrying 10,000 gallons or more of oil as fuel or as cargo. Unfortunately, there was some confusion regarding the interpretations of the proposed rules applicability to vessels subject to OPA. Vessels that are required to comply with OPA are only required to comply with §19.61(a). Even if the same vessel must comply with both OPA and Regulation 26, the GLO does not require compliance with both §19.61(a) and (c), but only compliance with (a). Section 19.61(c) regarding IMO vessels applies, for purposes of these rules, only to vessels that are subject to Regulation 26, Annex I of MARPOL and that are not subject to OPA.

Section 19.60(a)(1) and (2) are reordered to clarify the distinction between MARPOL and Annex I of MARPOL.

Sections 19.60(a)(5), 19.61(a)(2) and (c)(1) have been changed to clarify the relationship between requirements for OPA vessels and vessels subject to Regulation 26 by adding language to the definitions of OPA vessel and IMO vessel and the requirements for response plans from these vessels.

Section 19.60(a)(4) has been changed to substitute the term "authorized organization" for the term "approved class society", to conform to practice in the international vessel community.

Section 19.61(c)(2)(B)(i) has been changed by adding the requirement that vessels provide their IMO number.

Section 19.61(c)(2)(B)(iv) has been changed by deleting the requirement that IMO vessels submit the names of discharge response contractors to the GLO and to require only that such information be kept on board the affected vessel.

Section 19.61(c)(2)(A) has been changed to provide for approval by a vessel's flag state to conform to practice in the international vessel community.

Section 19.61(c)(2)(B)(iii)(I) has been changed to substitute the term "authorized person" for the term "person-in-charge" to avoid confusion with federal regulations.

Section 19.63(d)(5) has been changed because the GLO is not requiring that information about response organizations be forwarded to the GLO, but only that such information be kept on board the IMO vessel.

Section 19.63.(e) has been changed to delete the requirement that vessels requiring emergency entry into a Texas port must identify response organizations.

General Comments

One commenter complimented the GLO for connecting OSPRA implementation to IMO Regulation 26 requirements, thereby avoiding duplication and unnecessary paperwork. The GLO is committed to ensuring that the requirements of state law regarding oil spill prevention and response complement, rather than duplicate, federal and international law. Therefore, some of the proposed requirements in this subchapter have been changed to minimize duplication.

Two commenters stated that the proposed regulations are duplicative of federal regulations and are therefore inappropriate and fiscally irresponsible. OSPRA requires the GLO to respond to and prepare for oil spills that enter or threaten to enter Texas coastal waters. The GLO, in its fourth year of implementing OSPRA, has proceeded cautiously in imposing requirements on vessels due to the international character of their ownership. However, the Texas Legislature did not intend to rely solely on federal requirements to protect Texas coastal waters. The GLO has strongly supported the "one plan" concept for oil spill prevention and response and believes that these rules, which impose minimal additional requirements on vessel owners and operators, are justified by its legislative mandate to ensure that the state's response to oil spills is swift and orderly. No change was made based on these comments.

One commenter recommended that the GLO simply require vessel owners and operators to have an approved plan on board and to allow GLO inspection on request. The GLO requires information that is readily accessible in the event of an oil spill; simply having a plan on board the vessel does not allow the GLO to begin immediate response planning when a spill occurs. The spill responder's lack of access to a spill response plan would create significant problems where the vessel is in distress. These rules do not impose significant additional requirements on vessels already regulated by either OPA or MARPOL, but only requires certain basic information be submitted to the GLO to ensure protection of Texas coastal waters and shorelines. No change has been made based on this comment.

One commenter suggested that coastal states, like Texas, provide ship masters with the information needed to make prompt and correct notifications. The GLO welcomes this suggestion and is in the process of providing simplified notification information to ship masters. Based upon this comment, no change was made to the rule.

One commenter stated that the proposed regulations are too stringent and will drive commercial shrimping vessels out of business. The same commenter noted that there was no documentation to suggest that vessels carrying 10,000 gallons or more of fuel oil are a potential pollution threat. The requirement that vessels carrying 10,000 gallons or more of oil submit response plans is required by

OSPRA. These rules, however, do not effect such vessels. As stated in §19.61(b), such vessels are not yet subject to vessel response plan requirements. Furthermore, an analysis of three years of oil spill reports shows that shrimping vessels are responsible for a disproportionate share of oil spills in coastal waters, mostly due to the discharge of oily bilge, flooding and sinking incidents.

Two commenters suggested that the GLO simplify its regulations by developing a closer coordination with the United States Coast Guard (USCG) and by accessing USCG data via computer instead of requiring vessel owners and operators to submit information to the GLO. Another commenter recommended that GLO use computers to operate more efficiently and to decrease overhead by retrieving needed information from USCG databases. The GLO has developed a close working relationship with the USCG. The problem with simply sharing databases, which is an excellent idea, is that the USCG is operating a computer system that is not compatible with the one operated by the GLO or by the Texas Department of Public Safety. Furthermore, the GLO does not want to become overly reliant on computer-stored information. During an emergency, when electricity may not be available, information in hard copy may make the difference between an oil spill that can be managed and one that becomes uncontrollable. No change was made to this rule as a result of the comments.

Two commenters objected to having to submit both the OPA plan and part of the MARPOL plan to the GLO. Any vessel already subject to OPA does not have to submit part of its MARPOL plan to the GLO. Unfortunately, this was not clear in the proposed rule. Section 19.60 and §19.61 are changed to clarify that the GLO is requiring information only once from each vessel entering Texas waters. Therefore, a vessel subject to OPA does not have to submit any MARPOL information to the GLO.

One commenter stated that the GLO should coordinate information sharing with the USCG and not require vessel owners and operators to submit proof of compliance with OPA to the GLO. This requirement was not new in the proposed rules. The GLO has been requiring proof of compliance with OPA for over a year, under concurrently repealed §19.17 of this chapter, and does not believe the requirement is burdensome. No change was made as a result of this comment.

One commenter requested the GLO to clarify that vessels subject to both OPA and IMO need submit only the OPA plan to the GLO. This clarification is being made by changing the definitions in §19.60 and the response plan requirements in §19.61.

One commenter stated that non-oil tankers should have no additional contingency plan requirements other than those required by Regulation 26. Vessels regulated by Regulation 26 are only required to submit a form to the GLO which gives information already required by Regulation 26. The GLO is only requesting the information in English, which may not be the language of the regulation since the master and officers of a vessel often are not English-speaking. This is hardly an additional contingency plan requirement. It allows the GLO to have its own database of vessel information to assist in initiating spill response. No change was made based upon this comment.

Two commenters stated that the proposed regulations increase administrative and economic burdens on the public and the private sector without any clear enhancement of safety, pollution prevention or response readiness. The GLO disagrees with these comments. The availability of basic information about a vessel, like the name of the name of the owner, the name of the person in charge of oil spill response and elementary vessel information, as required by §19.61(c)(2)(b), enhances the ability of the State of Texas to initiate rapid spill response. Based on these comments and others, the GLO is changing §19.61(c)(2)(B)(iv) to delete the requirement that IMO vessel owners and operators submit the names of discharge response contractors to the GLO. Instead, the IMO vessel owners and operators will be required only to have such information on board.

One commenter asked whether the vessel owners and operators will have to advise the GLO, in addition to advising the USCG, of vessel movements in Texas and suggested that one notification be sufficient. The GLO is not requiring vessels to report on their movements in Texas. The GLO will coordinate with the USCG when it deems such information necessary. No change was made based upon this comment.

Section 19.60

One commenter recommended substituting the phrase "authorized organization" for the words "approved class society." The GLO has changed §19.60(a)(4) in accordance with this useful suggestion.

One commenter recommended reversing paragraphs (1) and (2) of §19.60(a) to clarify that they are separate paragraphs. The GLO has changed §19.60(a) to make this clarification and others.

One commenter recommended amending §19.60(a)(2) to allow any officer of the corporation which owns or operates the vessel to sign the submission of information to the GLO. The GLO, in accord with the federal regulations and with OSPRA regulations related to facilities, is retaining this requirement. The GLO is requiring the signature of at least a corporate vice-president because the responsibility for complying with oil spill prevention and response should be acknowledged at a relatively high level of the corporate organization.

Section 19.61

One commenter stated that the proposal in §19.61(a), that vessels subject to OPA submit enumerated portions of their response plan to the GLO, is duplicative because the USCG is already reviewing and approving the OPA plans and because vessel owners and operators must comply with OPA response plan requirements to operate in U.S. waters. Further, this commenter stated there is no need for the State to re-review such plans and second-guess the USCG approval. This requirement was not new in the proposed rule. The GLO has been requiring proof of compliance with OPA for over a year, under concurrently repealed §19.17 of this chapter, and does not believe the requirement is burdensome. The GLO does not re-review OPA plans; the purpose of the requirement is to ensure that the GLO has basic vessel information and that the vessel is approved by the USCG under OPA. OSPRA specifically requires the GLO to accept federally approved plans in lieu of separate OSPRA plans and nothing in the proposed rule adds requirements nor allows the GLO to second-guess the USCG. No change was made in response to this comment.

One commenter stated that the §19.61(a) requirement for submission of copies of USCG letters of approval, deficiencies and conditional approval to the GLO is duplicative and burdensome and of no quantifiable benefit to the state. The commenter suggested that the GLO simply consult with the USCG to ensure that a vessel entering Texas waters has a valid, approved response plan or that the GLO seek access to the USCG database. This requirement was not new in the proposed rule. The GLO is unable to access the USCG database for reasons described previously in this preamble. The GLO requires the USCG letters of approval, instead of a complete copy of the plan, to be sure that every vessel entering Texas waters has an approved response plan. The receipt of notices of deficiencies and conditional approvals gives the GLO notice of potential problems or weaknesses in response capability which allow better planning and more appropriate response in the event of an oil spill. No change was made to the rule based upon this comment.

One commenter suggested that, instead of the requirements in §19.61(a)(2), the GLO allow owners and operators to supply a letter providing the name, address and phone number of the owner/operator, the qualified individual and also a copy of the USCG approval letter and a testimonial that required resources have been provided by contract or other approved means. Section 19. 61(a)(2) was not changed in the rule; these requirements have been in effect for over one year under concurrently repealed §19.17 of this chapter; the GLO experience during this time has been that ready access to the information required by §19.61(a)(2) has enhanced the State's ability to mobilize appropriate spill response resources.

One commenter suggested that the GLO has underestimated the record-keeping requirements of these proposed rules and should instead require only changes related to the qualified individual, the ships named in the plan and changes in geographic specific appendices. The notification of changes in the OPA response plan is required by federal regulations and the GLO is merely requesting a copy of information submitted to the federal government. Making an extra copy and mailing it to the GLO does not significantly increase record-keeping requirements. No changes were made in response to this comment.

One commenter requested an amendment to §19.61(c)(2) to allow an owner or operator to

submit a copy of the Shipboard Oil Pollution Emergency Plan instead of the information requested in the proposed rule. The GLO is not requiring submission of the entire IMO plan for several reasons. First, the GLO does not perceive a need for the entire plan, when only certain information will fulfill the State's responsibility to respond quickly and appropriately. Second, the GLO does not want to incur the cost of translating foreign language plans and therefore is requiring the submission of specified information in English. Finally, the GLO intends to rely on the relationships between vessel owners and operators and their U.S.-based agents to secure additional information in the event of an oil spill. No change was made as a result of this comment.

One commenter stated that §19.61(c)(2)(A) be amended to provide for approval by the vessel's flag state. Section 19.61(c)(2)(a) does allow for approval by a vessel's flag state or by a class society. However, the language is being changed to conform to a change in §19.60.(a)(4) by substituting the phrase "authorized organization" for "approved class society."

One commenter stated that reporting requirements in §19.61(c)(2)(B) exceeded federal requirements, that the proposed rule will create a substantial administrative burden on the GLO, and that the GLO should regulate vessels for which there are not other regulations instead of those adequately covered by federal law. The same commenter also objected to the requirement that the information be submitted on a specified form. Section 19.61(c)(2)(B) (iv) is changed to require only that discharge response organization information be maintained on board the IMO vessel, instead of being submitted to the GLO. The GLO is requiring the information needed to respond adequately and appropriately to an oil spill. Finally, the GLO requires a specific form to minimize its administrative burden; submission of information on a specific form makes the information more accessible, reduces the person hours required to store and retrieve the information, and ensures consistency.

One commenter noted §19.61(c)(2)(B) is duplicative because many OPA vessels are also IMO vessels and such vessels should only be required to submit the OPA plan. Section 19.60 and §19.61 are changed to clarify that a vessel subject to OPA is not required to submit any information except that required by §19.61(a). This was the intent of the proposed rule, and the GLO apologizes for a lack of clarity that led to this and many similar comments and questions.

One commenter noted that the §19.61(c)(2)(B)(i) requirements contain unnecessary requests and that the GLO should utilize the USCG Port State Information Exchange. The GLO does not consider the USCG Port State Information Exchange data sufficient to meet the requirements of OSPRA. No change was made in response to this comment.

One commenter noted that §19.61(c)(2)(B)(i) does not request the IMO number, but that the specified form does request the number. Similarly the commenter noted that the form asks for "tanks designed to carry oil," while the text asks for tanks "which carry oil" and that such a request is above the requirements of Regulation 26. The proposed form and §19.61(c)(B) have been changed for consistency.

One commenter noted that the reference to Regulation 26 in §19.61(c)(2)(B) (iii)(I) and (II) are incorrect and appear to have been based on an early draft of Regulation 26 guidelines. The reference used by the GLO is the document adopted by the Marine Environment Protection Committee of the International Maritime Organization at its 31st Session on April 10, 1992, which became effective on April 4, 1993. The GLO is unaware of any other IMO reference documents and the commenter did not cite any. There is no change based on this comment.

Three commenters noted that Regulation 26 does not require the designation of a person in charge or of a preparedness manager, and thus proposed §19. 61(c)(2)(B)(iii)(I) requires a vessel owner or operator to redraft his Regulation 26 plan. While it is true that Regulation 26 does not require the designation of a person in charge or of a preparedness manager, the Regulation does require a procedure for a person in charge of the ship to report an oil pollution incident, to describe the action to be taken immediately by persons on board and the procedures and point of contact on the ship for coordinating shipboard activities with local authorities. Thus, Regulation 26 requires that some person be responsible for these actions. The GLO, in requiring vessel owners and operators to submit the name of the person, is not imposing a requirement that necessitates a re-write of an IMO plan. The placement of a person's name on a GLO-provided form does not appear unduly burdensome, especially when measured against the enhanced ability of the State to communicate effectively with the appropriate person responsible for the vessel's spill response and preparedness. Vessels may comply with this requirement by simply naming the vessel master as the person required to fulfill these roles. No change was made in response to this comment.

Two commenter stated that Regulation 26 does not require someone on board with independent authority to deploy resources and that such authority implicitly belongs to the master of the vessel. One of these commenters also suggested that the on-scene coordinator simply use public funds from the Oil Spill Liability Trust Fund or from the Coastal Protection Fund for cleanup and removal if the vessel fails to respond. The GLO will accept the designation of the master of the vessel as the person responsible for spill response and for preparedness training. The Coastal Protection Fund acts as a safety net to ensure that state spill response will be adequate when owners and operators fail to undertake their legal responsibility to respond to an oil spill. The GLO does utilize the Coastal Protection Fund to respond when a vessel fails to do so; however, the fact that this ability exists should not be an excuse for regulated vessels to ignore legal requirements or to dismiss the importance of an effective, usable oil spill prevention and response plan. OSPRA and OPA both require the responsible person (i.e. the vessel owner or operator) to respond to an oil spill and to prepare for its response in a viable contingency plan, such as the one required by the IMO rules. No change was made in response to this comment.

One commenter recommended that the term "person in charge" not be used because it is already used in federal regulations and that the GLO proposed rules will create confusion between GLO's use of the term and the federal government's use of the term. The GLO has changed §19.61(c)(2)(B)(iii)(I) to amend the term for the person responsible for and in control of the vessel's spill response to "authorized person," to avoid confusion with federal terminology.

One commenter recommended that the GLO accept the USCG letters of approval instead of requiring owners and operators to submit the federal vessel response plan and the Regulation 26 plan. Section 19.61(a) requires vessels subject to OPA to submit only the information required in that section. Such vessels are not required to submit any Regulation 26 information to the GLO. Section 19.60 and §19.61 have been changed to clarify the relationship between requirements for OPA and IMO vessels.

One commenter recommended that the State of Texas require identification of an authorized person/response manager to recognize, consistent with Regulation 26 guidelines, that the master should focus on the safety of the vessel and crew and the spill response should be managed by a shore based authorized person/response manager. The GLO agrees with the suggestion of this commenter, but declines to require that any specific type of person be designated as the authorized person. Instead, the GLO will rely on the best judgement of the vessel owner or operator to determine who should be responsible for vessel spill response. No change was made as a result of this comment.

One commenter noted that the requirement in §19.61(c)(2)(B)(iv) that a vessel owner or operator submit the name of two discharge cleanup organizations without having to establish a relationship with the discharge cleanup organizations is a meaningless exercise. The GLO has changed §19. 61(c)(2)(B)(iv) to require only that such information be available on board. This requirement is intended to enhance speedy response by having some information on board about response capability available to the vessel.

One commenter stated that the requirement in §19.61(c)(2)(b) that purely IMO vessels identify oil spill responders is inappropriate because Regulation 26 does not contain any such requirement. Section §19.61(c)(2)(B)(iv) has been changed to require only that such information be available on board. This requirement is intended to enhance speedy response by having some information on board about response capability available to the vessel.

One commenter recommended requiring vessel agents to provide a list of oil spill response organizations to vessels. The GLO agrees that the vessel agents could play a

useful role in spill response by providing information to vessels in port. However, OSPRA's jurisdiction does not extend to vessel agents, and therefore the GLO cannot impose any requirements on vessel agents. No change was made in response to this comment.

Two commenters stated that requiring updating of vessel information within 24 hours, as required by §19.61(c)(2)(D), would create an administrative burden for vessel owners and operators and for the GLO and that vessels not entering Texas waters should not have to report within 24 hours. Section 19. 61(c)(2)(D) is changed to require vessels entering Texas waters to report changes as soon as possible and to allow vessels not entering Texas waters to report changes within 30 days.

One commenter stated that since the federal vessel response plans and the Regulation 26 plans are formatted for use by the vessel owner/operator, the vessel owner/operator can supply the State with the latest version of the plan if a spill incident occurs. The initial stages of a spill incident, like any emergency response, can be confusing until an incident command system is established. The difficulties inherent in emergency response to oil spills, which often involves both the federal and the state government, would be exacerbated if a current vessel plan was not available to government spill responders. The GLO is adopting these requirements because adequate response planning includes immediate access to relevant information. One expects vessel owners and operators to be busily engaged in spill response when a spill occurs instead of spending time copying a plan for the GLO. No change was made in response to this comment.

Section 19.63

One commenter recommended changing "may be" to "shall be" in §19.63(b). This proposed language was chosen specifically to notify regulated vessels that the GLO does not intend to routinely board vessels or require notification from vessels entering Texas waters. Section 19.63(b) provides notice that the GLO may exercise the option to make such request. The GLO will continue to rely on the USCG as the agency primarily responsible for vessel entry into port. The GLO and the USCG will coordinate any vessel boarding or requests for routine information. No change was made based on this comment.

One commenter suggested that §19.63(b)(2) be amended to make only certain types of equipment subject to the reporting standard. The language in §19. 63(b)(2) is taken directly from OSPRA. The GLO has not and does not presently intend to specify which types of equipment problems may be subject to an information request from the GLO. The purpose of this section is to provide notice to vessel owners and operators that the GLO may request information about operational or mechanical failures. No change was made based on this comment.

One commenter recommended using the language of 33 Code of Federal Regulations, §155.1050, for identifying the types of equipment which a vessel owner or operator must have available to respond to a spill. The same commenter also recommended adding language from the same section related to firefighting responsibility. The GLO does not presently intend to require the presence or use of any particular spill response equipment on board vessels entering Texas coastal waters. No change was made based on this comment. Comments on the proposed new rules were received from: Allied Towing Corporation; Amoco Petroleum Products; Brownsville-Port Isabel Shrimp Producers Association; International Association of Drilling Contractors; International Chamber of Shipping; INTERTANKO; Jo Tankers B.V.; La Quinta Marine Services, Inc.; Marispond, Inc.; Maritime Bureau, Inc.; Maritrans; Seagroup; Sealand Service, Inc.; SeaRiver Maritime, Inc.; Transportation Institute; United States Coast Guard, Marine Safety Office, Corpus Christi; and West Gulf Maritime Association

The new sections are adopted pursuant to Texas Natural Resources Code, §40.007 and §40.117, which authorize the commissioner of the GLO to promulgate rules necessary and convenient to the administration of OSPRA and rules regarding standards and requirements for discharge prevention and response capabilities of vessels.

§19.60. Definitions and Correspondence for Vessels.

(a) The following words, terms and phrases, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other terms are defined in §19.2 of this title (relating to Definitions).

(1) MARPOL 73/78–The International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978, as amended.

(2) Annex I of MARPOL–Regulations for the Prevention of Pollution by Oil.

(3) Oil Tanker–A vessel constructed or adapted primarily to carry oil in bulk in its cargo spaces and includes combination carriers and any "chemical tanker" as defined in Annex II of MARPOL 73/78 when it is carrying a cargo or part cargo of oil in bulk.

(4) Regulation 26 of Annex I of MARPOL–The regulation adopted in July of 1991 by the Marine Environment Protection Committee of the International Maritime Organization (IMO), requiring every oil tanker of 150 gross tons and above and every other vessel of 400 gross tons and above to carry on board a shipboard oil pollution emergency plan approved by its flag state, or authorized organization.

(5) Vessel.

(A) OPA vessel–Every description of watercraft or other means of artificial contrivance used, or capable of being used, as a means of transportation on water, other than a public vessel as defined by OPA, required to submit to the United States Coast Guard a tank vessel response plan pursuant to §311(j)(5) of the Federal Water Pollution Control Act, as amended by OPA, 33 United States Code, §1321(j)(5) and §2716. Vessels subject to OPA, 33 United States Code, §2701 et seq, and the Federal Water Pollution Control Act (Clean Water Act), 33 United States Code, §1251 et seq, as amended by OPA, and operating in coastal waters of the State of Texas that are subject to OPA must have response plans pursuant to 33 United States Code, §1321(j)(5) and §2716, whenever required by federal law. Submission of the OPA plan, pursuant to §19.61(a) constitutes compliance with OSPRA.

(B) IMO vessel–An oil tanker of 150 gross tons and above and any other vessel of 400 gross tons and above required to have a shipboard oil pollution emergency plan pursuant to Regulation 26 of Annex I of MARPOL 73/78. A vessel which has submitted an OPA plan is not required to also submit an IMO plan.

(C) OSPRA vessel–Every description of watercraft or other contrivance used or capable of being used as a means of transportation on water, whether self-propelled or otherwise, including barges, and with a capacity to carry 10,000 gallons or more of oil as fuel or cargo that operates in coastal waters and not required to have a response plan under either OPA or IMO. Requirements for response plans for OSPRA vessels are under development.

(b) All information and correspondence, including requests for forms, relating to this subchapter and vessel compliance with OSPRA shall be submitted to: Texas General Land Office, Oil Spill Prevention and Response Division, 1700 North Congress Avenue, Austin, Texas 78701-1495.

§19.61. Response Plans.

(a) OPA vessels.

(1) Vessels subject to OPA, 33 United States Code, §§2701 et seq and the Federal Water Pollution Control Act (Clean Water Act), 33 United States Code, §1251 et seq as amended by OPA. Vessels operating in coastal waters of the State of Texas that are subject to OPA must have response plans pursuant to 33 United States Code, §1321(j)(5) and §2716, as required by federal law.

(2) OPA Vessels must submit vessel response plans to the GLO. All owners and operators of OPA vessels that intend to enter the coastal waters of the State of Texas must submit the following English language version sections of their plan or, if

they choose, the entire plan to the GLO. The sections must be accompanied by a letter from the person who signed the vessel response plan that was submitted to the United States Coast Guard and the letter must verify that the submissions to the GLO are identical to those submitted to the United States Coast Guard. Compliance with this section constitutes compliance with OSPRA; an OPA vessel is not required to submit any other response plan. The following sections must be submitted:

(A) general information and introduction;

(B) notification procedures;

(C) list of contacts;

(D) geographic-specific appendix for each captain of the port (COTP) zone in Texas in which the vessel intends to operate;

(E) vessel-specific appendix for each vessel which intends to enter coastal waters of the State of Texas covered by the plan; and

(F) shore-based response activities.

(3) Submission of United States Coast Guard letter of acknowledgment or deficiency. Vessel owners and operators are required to forward to the GLO copies of all correspondence between the United States Coast Guard and the vessel owner or operator relating to the receipt, acceptance, deficiency, corrections of deficiencies and notification of changes in the vessel response plan submitted pursuant to OPA, §2716.

(b) OSPRA vessels are those vessels capable of carrying oil as fuel or cargo in excess of 10,000 United States gallons. OSPRA vessels will be required to meet the vessel response plan requirements of the Texas Natural Resources Code, §40.114, when rules are adopted thereunder.

(c) IMO Vessels.

(1) Compliance with Regulation 26 of Annex I of MARPOL. IMO vessels that enter Texas coastal waters must have on board a shipboard oil pollution emergency plan pursuant to Regulation 26 of Annex I of MARPOL 73/78. The IMO vessel must be operating in compliance with the approved plan to gain entry into a Texas port, pursuant to §19.63 of this title (relating to Entry Into Port). Vessels subject to OPA and to IMO are only required to submit their OPA plan to the GLO.

(2) Submission of Information to GLO. The plan prepared pursuant to Regulation 26 of Annex I of MARPOL is not required to be submitted to the GLO. Every owner, operator or manager of an IMO vessel that intends to traverse Texas coastal waters shall submit to the GLO, 60 days after this rule becomes final:

(A) a copy of its flag state or authorized organization approval of the IMO Regulation 26 Shipboard oil pollution emergency plan; and

(B) IMO Vessel Form. Every owner, operator or manager of an IMO vessel that intends to traverse Texas coastal waters shall submit to the GLO the information listed in this subsection. This information is required by Regulation 26, §2.5.4. The information must be submitted on IMO Vessel Form:
Figure 1: 31 TAC 19.61(c)(2)(B).

(i) Vessel Information. The registered name, flag state, port of registry of the vessel, international call sign, official number and issuer of the number, IMO number, gross tonnage, overall length, breadth and summer draught. Any previous registered names of the vessel shall also be provided and if the vessel has not previously been registered under another name, such fact shall be affirmatively stated. The owner, operator or manager of an IMO vessel shall also submit a general arrangement plan showing the location and tank capacities for those tanks which carry oil.

(ii) Notification Information. The name, address, telephone number, and facsimile number of the owner, operator and manager of the vessel. The telephone number provided shall be a 24-hour contact number for the person named as owner, operator and manager.

(iii) Vessel Personnel Information. Every owner, operator or manager of an IMO vessel that intends to traverse Texas coastal waters shall designate a:

(I) Authorized Person: who is responsible for and in control of all oil spill response operations on behalf of the vessel. This person must be available 24 hours a day to ensure prompt response to oil spills in Texas coastal waters. This person need not be on board the vessel but must have independent authority to deploy response equipment and to expend funds necessary for response actions. This information is required pursuant to Regulation 26, §2.2.4. Further responsibilities of the person in charge are delineated at §19.16 of this title (relating to Person in Charge).

(II) Preparedness Manager: who is responsible for ensuring that personnel aboard an IMO vessel are properly trained in mitigation and control of an unauthorized discharge of oil. This information is required pursuant to Regulation 26, §2.5.1.

(iv) Vessel Response Organization. Every owner, operator or manager of an IMO vessel that intends to traverse Texas coastal waters shall maintain on board the name and telephone numbers of two oil spill response organizations identified as capable of providing a timely response to an unauthorized discharge of oil from the vessel, at her intended port of call and at any portion of the route of said vessel to and from the port of call.

(D) Changes in IMO Vessel Form. Any change in any information required pursuant to this section shall be submitted to the GLO as soon as possible when the vessel is entering Texas waters. Vessels not entering Texas waters shall report such changes to the GLO within 30 days of the change.

(E) DCO List. The GLO shall provide, upon request, a list of DCOs certified in Texas.

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

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

TRD-9513719 **Garry Mauro**
Commissioner
General Land Office

Effective date: November 14, 1995

Proposal publication date: May 9, 1995

For further information, please call: (512) 305-9129

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part IV. Texas Commission for the Blind

Chapter 171. Cooperative Activities

• 40 TAC §171.3

The Texas Commission for the Blind adopts an amendment to §171.3, concerning memoranda of understanding between agencies without changes to the proposed text as published in the September 19, 1995, issue of the *Texas Register* (20 TexReg 7471).

The rule functions as the agreement between the Texas Department of Human Services, the Texas Interagency Council on Early Childhood Intervention, the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, the Texas Commission for the Blind, the Texas Department of Protective and Regulatory Services, the Texas Education Agency, the Texas Juvenile Probation Commission, the Texas Rehabilitation Commission, and the Texas Youth Commission in delivering coordinated services to children and youths with multi-agency needs.

No comments were received regarding adoption of the amendment.

The amendment is 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 which authorizes the agency to negotiate interagency agreements with other state agencies to extend and improve the regular services provided by the agencies.

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 23, 1995.

TRD-9513603 Pat D. Westbrook
Executive Director
Texas Commission for the Blind

Effective date: November 13, 1995

Proposal publication date: September 19, 1995

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

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Texas Department of Insurance Exempt Filing

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

(Editor's Note As required by the Insurance Code, Article 5 96 and 5 97, the Texas Register publishes notices of actions taken by the Department of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure Act.

These actions become effective 15 days after the date of publication or on a later specified date

The text of the material being adopted will not be published, but may be examined in the offices of the Department of Insurance, 333 Guadalupe, Austin.)

The Commissioner of Insurance, at a public hearing under Docket Number 2174 held at 9:00 a m., October 19, 1995, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, adopted amendments proposed by staff to the Texas Automobile Rules and Rating Manual (the Manual), Rule 74, to implement the optional Academic Achievement Discount set forth in the Insurance Code, Article 5.03-3, adopted by the 74th Legislature in Senate Bill 553. Staff's petition (Reference Number A-0895-26-I) was published in the September 15, 1995, issue of the *Texas Register* (20 TexReg 7274).

The Insurance Code, Article 5.03-3 provides that an insurer may grant a discount for certain automobile insurance premiums for academic achievement if necessary qualifications are met. Article 5.03-3 provides that the "commissioner by rule shall set the amount of the discounts applicable under this article...". Manual Rule 74 is amended by adding a new section I as shown in the exhibit attached to staff's petition, as amended. The amount of the discount will be determined in "Private Passenger and Commercial Auto Benchmark Rates," Docket Number 454-95-1218.G.

The amendments as adopted by the Commissioner of Insurance are shown in an exhibit on file with the Chief Clerk under Reference Number A-0895-26-I, which is incorporated by reference into Commissioner's Order Number 95-1107.

The Commissioner of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.03-3, 5.10, 5.96, 5.98, and 5.101.

This notification is made pursuant to the Insurance Code, Article 5 96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

Consistent with the Insurance Code, Article 5.96(h), the Department will notify all insurers writing automobile insurance of this adoption by letter summarizing the Commissioner's action.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the Manual is amended as described herein, and the amendments are adopted effective January 1, 1996.

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

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

TRD-9513756 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Effective date: January 1, 1996

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

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The Commissioner of Insurance, at a public hearing under Docket Number 2175 held at 9:00 a.m., October 19, 1995, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, adopted amendments proposed by staff to the Texas Automobile Rules and Rating Manual (the Manual), Rule 135, and to adopt Endorsement 4R Mobilowners Policy-Exclusion of Windstorm, Hurricane, Hail and Flood, and Endorsement TE 20 17, Mobile Homes-Exclusion of Windstorm, Hurricane, Hail and Flood. Staff's petition (Reference Number A-0895-25-I) was published in the September 15, 1995, issue of the *Texas Register* (20 TexReg 7273).

To increase incentive for insurers to continue writing coverage for mobile homes in coastal areas, Mobilowners Endorsement 4R is adopted for the Manual. This endorsement will exclude from the Mobilowners Policy the perils of windstorm, hurricane, hail and flood, thereby making the policyholders eligible for other insurance policies. One of such policies will be that offered through the Texas Catastrophe Property Insurance Association (Catpool), and the other will be a flood insurance policy from the federal government (Federal Emergency Management Agency/National Flood Insurance Program). Endorsement TE 20 17 is also adopted, which will have the same effect as Endorsement 4R, but will be used for mobile homes covered under the Business Auto, Garage, or Truckers Coverage Form.

Manual Rule 135 "Mobile Homes" is amended to refer to the new endorsements. These amendments consist of adding a new paragraph 10 to Section I.C., renumbering existing paragraph 10 as paragraph 11, and adding a new subsection J to Section II of Rule 135.

An editorial correction of the wording of the note following Manual Rule 135, Section II.D. is also adopted. The current wording "...with respects the personal effects..." will be changed to "...for the personal effects...".

The proposed endorsements provide that they are being issued for reduced policy premiums, and the amendments to Rule 135 refer to Rate Section VII regarding premium adjustments, although the wording for Rate Section VII has not yet been developed. The amounts of the credits to be given by rate-regulated companies need to be determined at a rate hearing conducted under the Insurance Code, Article 5.101. Therefore, the effective date for the new endorsements and for the amendments to Rule 135 will be: (1) for companies subject to Article 5.101, the effective date of the relevant rates and credits adopted in "Private Passenger and Commercial Auto Benchmark Rates," Docket Number 454-95-1218.G; and (2) for county mutual in-

surance companies subject to the Insurance Code, Chapter 17, November 15, 1995, subject to the insurer filing with the Department rates and credits for the new endorsements, or a date later than November 15th if so specified by the county mutual insurer.

The amendments as adopted by the Commissioner of Insurance are shown in exhibits on file with the Chief Clerk under Reference Number A-0895-25-I, which are incorporated by reference into Commissioner's Order Number 95-1108.

The Commissioner of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.06, 5.10, 5.96, and 5.98.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

Consistent with the Insurance Code, Article 5.96(h), the Department will notify all insurers writing automobile insurance of this adoption by letter summarizing the Commissioner's action.

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

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

TRD-9513755

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

Effective date: November 15, 1995

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

TABLES AND GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

Figure 1: 30 TAC §305.69(i)

APPENDIX I

Modifications	Class
A. General Permit Provisions	
1. Administrative and informational changes	1
2. Correction of typographical errors	1
3. Equipment replacement or upgrading with functionally equivalent components (e.g., pipes, valves, pumps, conveyors, controls)	1
4. Changes in the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities by the permittee:	
a. To provide for more frequent monitoring, reporting, sampling, or maintenance	1
b. Other changes	2
5. Schedule of compliance	
a. Changes in interim compliance dates, with prior approval of the executive director	1[1]
b. Extension of final compliance date	3
6. Changes in expiration date or permit to allow earlier permit expiration, with prior approval of the executive director	1[1]
7. Changes in ownership or operational control of a facility, provided the procedures of §305.65(g) are followed	1[1]
8. Six months or less extension of the construction period time limit applicable to commercial hazardous waste management units pursuant to §305.149(b)(2) or §305.149(b)(4)	2
9. Greater than six-month extension of the commercial hazardous waste management unit construction period	

time limit pursuant to §305.149(b)(3) or §305.149(b)(4) 3

10. Any extension pursuant to §305.149(b)(3) of a construction period time limit for commercial hazardous waste management units which has been previously authorized under §305.149(b)(2) 3

B. General Facility Standards

1. Changes to waste sampling or analysis methods:
   a. To conform with agency guidance or regulations 1
   b. To incorporate changes associated with underlying hazardous constituents in ignitable or corrosive wastes . . . . . 1[1]
   c [b] Other changes 2
2. Changes to analytical quality assurance/ control plan:
   a. To conform with agency guidance or regulations 1
   b. Other changes 2
3. Changes in procedures for maintaining the operating record 1
4. Changes in frequency or content of inspection schedules 2
5. Changes in the training plan:
   a. That affect the type or decrease the amount of training given to employees 2
   b. Other changes 1
6. Contingency plan:
   a. Changes in emergency procedures (i.e., spill or release response procedures) 2
   b. Replacement with functionally equivalent equipment, upgrade, or relocate emergency equipment listed 1
   c. Removal of equipment from emergency equipment list 2
   d. Changes in name, address, or phone number of coordinators or other persons or agencies identified in the plan 1

7. Construction quality assurance plan:
   a. Changes that the COA officer certifies in the operating record will provide equivalent or better certainty that the unity components meet the design specifications 1
   b. Other Changes 2

Note: When a permit modification (such as introduction of a new unit) requires a change in facility plans or other general facility standards, that change shall be reviewed under the same procedures as the permit modification.(No change)

C. Ground-water Protection
   1. Changes to wells:
      a. Changes in the number, location, depth, or design of upgradient or downgradient wells of permitted groundwater monitoring system 2
      b. Replacement of an existing well that has been damaged or rendered inoperable, without change to location, design, or depth of the well 1
   2. Changes in groundwater sampling or analysis procedures or monitoring schedule, with prior approval of the executive director . . . . . 1[1]
   3. Changes in statistical procedure for determining whether a statistically significant change in groundwater quality between upgradient and downgradient wells has occurred, with prior approval of the executive director . . . . . 1[1]
   4. Changes in point of compliance 2
   5. Changes in indicator parameters, hazardous constituents, or concentration limits (including ACLs):
      a. As specified in the groundwater protection standard 3
      b. As specified in the detection monitoring program 2
   6. Changes to a detection monitoring program as required by §335.164(10) of this title (relating to Detection Monitoring Program), unless otherwise specified in this appendix 2

7. Compliance monitoring program:
   a. Addition of compliance monitoring program pursuant to §335.164(7)(D) of this title (relating to Detection Monitoring Program), and §335.165 of this title (relating to Compliance Monitoring Program) 3
   b. Changes to a compliance monitoring program as required by §335.165(11) of this title (relating to Compliance Monitoring Program), unless otherwise specified in this appendix 2
8. Corrective action program:
   a. Addition of a corrective action program pursuant to §335.165(9)(B) of this title (relating to Compliance Monitoring Program) and §335.166 of this title (relating to Corrective Action Program) 3
   b. Changes to a corrective action program as required by §335.166(8), unless otherwise specified in this appendix 2

D. Closure
1. Changes to the closure plan:
   a. Changes in estimate of maximum extent of operations or maximum inventory of waste on-site at any time during the active life of the facility, with prior approval of the executive director..... 1[1]
   b. Changes in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of the closure period, with prior approval of the executive director..... 1[1]
   c. Changes in the expected year of final closure, where other permit conditions are not changed, with prior approval of the executive director..... 1[1]
   d. Changes in procedures for decontamination of facility equipment or structures, with prior approval of the executive director..... 1[1]
   e. Changes in approved closure plan resulting from unexpected events occurring during partial or final closure, unless otherwise

specified in this appendix..... 2

f. Extension of the closure period to allow a landfill, surface impoundment or land treatment unit to receive non-hazardous wastes after final receipt of hazardous wastes under 40 CFR 264.113(d) and (e)..... 2

2. Creation of a new landfill unit as part of closure..... 3

3. Addition of the following new units to be used temporarily for closure activities:

a. Surface impoundments..... 3

b. Incinerators..... 3

c. Waste piles that do not comply with 40 CFR 264.250(c)..... 3

d. Waste piles that comply with 40 CFR 264.250(c)..... 2

e. Tanks or containers (other than specified below)..... 2

f. Tanks used for neutralization, dewatering, phase separation, or component separation, with prior approval of the executive director.....1[1]

E. Post-Closure

1. Changes in name, address, or phone number of contact in post-closure plan..... 1

2. Extension of post-closure care period..... 2

3. Reduction in the post-closure care period..... 3

4. Changes to the expected year of final closure, where other permit conditions are not changed..... 1

5. Changes in post-closure plan necessitated by events occurring during the active life of the facility, including partial and final closure..... 2

F. Containers

1. Modification or addition of container units:

a. Resulting in greater than 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) below..... 3

b. Resulting in up to 25% increase in the facility's container storage capacity,

except as provided in F(1)(c) and F(4)(a) below..... 2

c. Or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), with prior approval of the executive director. This modification may also involve addition of new waste codes or narrative descriptions of wastes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1[1]

2. a. Modification of a container unit without increasing the capacity of the unit..... 2

b. Addition of a roof to a container unit without alteration of the containment system..... 1

3. Storage of different wastes in containers, except as provided in F(4) below:

a. That require additional or different management practices from those authorized in the permit..... 3

b. That do not require additional or different management practices from those authorized in the permit..... 2

Note: See §305.69(g) of this title (relating to Newly Listed Solid Waste Permit Modification at the Request of the Permittee or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

4. Storage or treatment of different wastes in containers:

a. That require addition of units or change in treatment process or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable

treatment standards, or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8 (a)(2)(ii), with prior approval of the executive director. This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1[1]

b. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1

5. Other changes in container management practices (e.g., aisle space, types of containers, segregation)..... 2

G. Tanks

1. a. Modification or addition of tank units resulting in greater than 25% increase in the facility's tank capacity, except as provided in G(1)(c), G(1)(d), and G(1)(e) below of this appendix..... 3

b. Modification or addition of tank units resulting in up to 25% increase in the facility's tank capacity, except as provided in G(1)(d) and G(1)(e) below of this appendix..... 2

c. Addition of a new tank (no capacity limitation) that will operate for more than 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation..... 2

d. After prior approval of the executive director, addition of a new tank (no capacity limitation) that will operate

for up to 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation..... 1[1]

e. Modification or addition of tank units or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), with prior approval of the executive director. This modification may also involve addition of new waste codes. It is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1[1]

2. Modification of a tank unit or secondary containment system without increasing the capacity of the unit..... 2

3. Replacement of a tank with a tank that meets the same design standards and has a capacity within +/-10% of the replaced tank provided:..... 1
   a. The capacity difference is no more than 1500 gallons;
   b. The facility's permitted tank capacity is not increased; and
   c. The replacement tank meets the same conditions in the permit.

4. Modification of a tank management practice..... 2

5. Management of different wastes in tanks:
   a. That require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in G(5)(c) below..... 3
   b. That do not require additional or different management practices, tank design, different fire protection specifi-

cations, or significantly different tank treatment process from that authorized in the permit, except as provided in G(5)(d) below..... 2

c. That require addition of units or change in treatment processes or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(1)(ii), with prior approval of the executive director. The modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1[1]

d. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1

Note: See §305.69(g) of this title (relating to Newly Listed Solid Waste Permit Modification at the Request of the Permittee or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

H. Surface Impoundments

1. Modification or addition of surface impoundment units that result in increasing the facility's surface impoundment storage or treatment capacity... 3
2. Replacement of a surface impoundment unit..... 3
3. Modification of a surface impoundment unit without increasing the facility's surface impoundment storage or treatment capacity and without modifying the unit's liner, leak detection system, or leachate collection system..... 2
4. Modification of a surface impoundment management practice..... 2

5. Treatment, storage, or disposal of different wastes in surface impoundments:
   a. That require additional or different management practices or different design of the liner or leak detection system than authorized in the permit..... 3
   b. That do not require additional or different management practices or different design of the liner or leak detection system than authorized in the permit..... 2
   c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), and provided that the unit meets the minimum technological requirements stated in 40 CFR 268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1
   d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a unit that meets the minimum technological requirements stated in 40 CFR 268.5(h)(2), and provided further that the surface impoundment has previously received wastes of the same type (for example, incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1

6. Modifications of unconstructed units to comply with 40 CFR §§264.221(c), 264.222, 264.223 and 264.226(d).....1[1]

7. Changes in response action plan:
   a. Increase in action leakage rate.....3
   b. Change in a specific response reducing its frequency or effectiveness.....3

c. Other Changes.....2

Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

I. Enclosed Waste Piles. For all waste piles except those complying with 40 CFR 264.250(c), modifications are treated the same as for a landfill. The following modifications are applicable only to waste piles complying with 40 CFR 264.250(c).
   1. Modification or addition of waste pile units:
      a. Resulting in greater than 25% increase in the facility's waste pile storage or treatment capacity..... 3
      b. Resulting in up to 25% increase in the facility's waste pile storage or treatment capacity..... 2
   2. Modification of waste pile unit without increasing the capacity of the unit..... 2
   3. Replacement of a waste pile unit with another waste pile unit of the same design and capacity and meeting all waste pile conditions in the permit..... 1
   4. Modification of a waste pile management practice.... 2
   5. Storage or treatment of different wastes in waste piles:
      a. That require additional or different management practices or different design of the unit..... 3
      b. That do not require additional or different management practices or different design of the unit..... 2

Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

6. Conversion of an enclosed waste pile to a containment building unit.....2

J. Landfills and Unenclosed Waste Piles

1. Modification or addition of landfill units that result in increasing the facility's disposal capacity..... 3
2. Replacement of a landfill..... 3
3. Addition or modification or a liner, leachate collection system, leachate detection system, run-off control, or final cover system..... 3
4. Modification of a landfill unit without changing a liner, leachate collection system, leachate detection system, run-off control, or final cover system..... 2
5. Modification of a landfill management practice..... 2
6. Landfill different wastes:
   a. That require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system..... 3
   b. That do not require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system..... 2
   c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR 268.8(a)(2)(ii), and provided that the landfill unit meets the minimum technological requirements stated in 40 CFR 268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1
   d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a landfill unit that meets the minimum technological requirements stated in 40 CFR 268.5(h)(2), and provided further that the landfill has previously received wastes of the same type (for example, incinerator ash).

This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1

Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

7. Modifications of unconstructed units to comply with 40 CFR §§264.251(c), 264.252, 264.253, 264.254(c), 264.301(c), 264.302, 264.303(c), and 264.304 . . . . . 1[1]
8. Changes in response action plan:
   a. Increase in action leakage rate 3
   b. Change in a specific response reducing its frequency or effectiveness 3
   c. Other changes 2

K. Land Treatment
1. Lateral expansion of or other modification of a land treatment unit to increase areal extent..... 3
2. Modification of run-on control system..... 2
3. Modify run-off control system..... 3
4. Other modifications of land treatment unit component specifications or standards required in the permit..... 2
5. Management of different wastes in land treatment units:
   a. That require a change in permit operating conditions or unit design specifications..... 3
   b. That do not require a change in permit operating conditions or unit design specifications..... 2

Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

6. Modification of a land treatment management practice to:
   a. Increase rate or change method of waste application..... 3
   b. Decrease rate of waste application..... 1

7.	Modification of a land treatment unit management practice to change measures of pH or moisture content, or to enhance microbial or chemical reactions	2
8.	Modification of a land treatment unit management practice to grow food chain crops, or add to or replace existing permitted crops with different food chain crops, or to modify operating plans for distribution of animal feeds resulting from such crops	3
9.	Modification of operating practice due to detection of releases from the land treatment unit pursuant to 40 CFR 264.278(g)(2)	3
10.	Changes in the unsaturated zone monitoring system, resulting in a change to the location, depth, or number of sampling points, or that replace unsaturated zone monitoring devices or components thereof with devices or components that have specifications different from permit requirements	3
11.	Changes in the unsaturated zone monitoring system that do not result in a change to the location, depth, or number of sampling points, or that replace unsaturated zone monitoring devices or components thereof with devices or components having specifications not different from permit requirements	2
12.	Changes in background values for hazardous constituents in soil and soil-pore liquid	2
13.	Changes in sampling, analysis, or statistical procedure	2
14.	Changes in land treatment demonstration program prior to or during the demonstration	2
15.	Changes in any condition specified in the permit for a land treatment unit to reflect results of the land treatment demonstration, provided performance standards are met, and the executive director's prior approval has been received	1[1]
16.	Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, provided the conditions for the second demonstration are substantially	

the same as the conditions for the first demonstration and have received the prior approval of the executive director..... 1[1]

17. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the waste can be treated completely, where the conditions for the second demonstration are not substantially the same as the conditions for the first demonstration..... 3

18. Changes in vegetative cover requirements for closure..... 2

L. Incinerators, Boilers and Industrial Furnaces

1. Changes to increase by more than 25% any of the following limits authorized in the permit: A thermal feed rate limit; a feedstream feed rate limit; a chlorine feed rate limit, a metal feed rate limit, or an ash feed rate limit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means..... 3

2. Changes to increase by up to 25% any of the following limits authorized in the permit: A thermal feed rate limit; a feedstream feedrate limit; chlorine/chloride feed rate limit, a metal feed rate limit, or an ash feed rate limit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means..... 2

3. Modification of an incinerator, boiler, or industrial furnace unit by changing the internal size of geometry of the primary or secondary combustion units, by adding a primary or secondary combustion unit, by substantially changing the design of any component used to remove HCl/Cl_2, metals or particulate from the combustion gases, or by changing other features of the incinerator, boiler, or industrial furnace that could affect its

capability to meet the regulatory performance standards. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means..... 3

4. Modification of an incinerator, boiler, or industrial furnace unit in a manner that would not likely affect the capability of the unit to meet the regulatory performance standards but which would change the operating conditions or monitoring requirements specified in the permit. The executive director may require a new trial burn to demonstrate compliance with the regulatory performance standards..... 2

5. Operating requirements:
   a. Modification of the limits specified in the permit for minimum or maximum combustion gas temperature, minimum combustion gas residence time, oxygen concentration in the secondary combustion chamber, flue gas carbon monoxide and hydrocarbon concentration, maximum temperature at the inlet to the particulate matter emission control system, or operating parameters for the air pollution control system. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means..... 3
   b. Modification of any stack gas emission limits specified in the permit, or modification of any conditions in the permit concerning emergency shutdown or automatic waste feed cutoff procedures or controls..... 3
   c. Modification of any other operating condition or any inspection or recordkeeping requirement specified in the permit..... 2

6. Burning different wastes:
   a. If the waste contains a POHC that is more difficult to burn than authorized by the permit or if burning of the waste requires compliance with different regulatory performance standards than specified in

the permit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means..... 3

b. If the waste does not contain a POHC that is more difficult to burn than authorized by the permit and if burning of the waste does not require compliance with different regulatory performance standards than specified in the permit..... 2

Note: See §305.69(g) of this title (relating to Newly Regulated Wastes and Units) for modification procedures to be used for the management of newly regulated wastes and units.

7. Shakedown and trial burn:
   a. Modification of the trial burn plan or any of the permit conditions applicable during the shakedown period for determining operational readiness after construction, the trial burn period, or the period immediately following the trial burn..... 2
   b. Authorization of up to an additional 720 hours of waste burning during the shakedown period for determining operational readiness after construction, with the prior approval of the executive director .....1[1]
   c. Changes in the operating requirements set in the permit for conducting a trial burn, provided the change is minor and has received the prior approval of the executive director... 1[1]
   d. Changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor and has received the prior approval of the executive director..... 1[1]
8. Substitution of an alternate type of nonhazardous waste fuel that is not specified in the permit..... 1

M. Corrective Action

1. Approval of a corrective action management unit pursuant to 40 Code of Federal Regulations §264.552..... 3
2. Approval of a temporary unit or time extension for a temporary unit pursuant to 40 Code of Federal Regulations §264.553..... 2

N. Containment Buildings.

1. Modification or addition of containment building units:
   a. Resulting in greater than 25% increase in the facility's containment building storage or treatment capacity.....3
   b. Resulting in up to 25% increase in the facility's containment building storage or treatment capacity.....2
2. Modification of a containment building unit or secondary containment system without increasing the capacity of the unit.....2
3. Replacement of a containment building with a containment building that meets the same design standards provided:
   a. The unit capacity is not increased.....1
   b. The replacement containment building meets the same conditions in the permit.....1
4. Modification of a containment building management practice.....2
5. Storage or treatment of different wastes in containment buildings:
   a. That require additional or different management practices.....3
   b. That do not require additional or different management practices.....2

the permit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means..... 3

b. If the waste does not contain a POHC that is more difficult to burn than authorized by the permit and if burning of the waste does not require compliance with different regulatory performance standards than specified in the permit..... 2

Note: See §305.69(g) of this title (relating to Newly Regulated Wastes and Units) for modification procedures to be used for the management of newly regulated wastes and units.

7. Shakedown and trial burn:
   a. Modification of the trial burn plan or any of the permit conditions applicable during the shakedown period for determining operational readiness after construction, the trial burn period, or the period immediately following the trial burn..... 2
   b. Authorization of up to an additional 720 hours of waste burning during the shakedown period for determining operational readiness after construction, with the prior approval of the executive director .....1[1]
   c. Changes in the operating requirements set in the permit for conducting a trial burn, provided the change is minor and has received the prior approval of the executive director... 1[1]
   d. Changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor and has received the prior approval of the executive director..... 1[1]
8. Substitution of an alternate type of nonhazardous waste fuel that is not specified in the permit..... 1

This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028)..... 1

Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

7. Modifications of unconstructed units to comply with 40 CFR §§264.251(c), 264.252, 264.253, 264.254(c), 264.301(c), 264.302, 264.303(c), and 264.304 . . . . . 1[1]

8. Changes in response action plan:
   a. Increase in action leakage rate 3
   b. Change in a specific response reducing its frequency or effectiveness 3
   c. Other changes 2

K. Land Treatment
1. Lateral expansion of or other modification of a land treatment unit to increase areal extent..... 3
2. Modification of run-on control system..... 2
3. Modify run-off control system..... 3
4. Other modifications of land treatment unit component specifications or standards required in the permit..... 2
5. Management of different wastes in land treatment units:
   a. That require a change in permit operating conditions or unit design specifications..... 3
   b. That do not require a change in permit operating conditions or unit design specifications..... 2

Note: See §305.69(g) of this title (relating to Newly Listed or Identified Wastes) for modification procedures to be used for the management of newly listed or identified wastes.

6. Modification of a land treatment management practice to:
   a. Increase rate or change method of waste application..... 3
   b. Decrease rate of waste application..... 1

Name: Gwen Pilat
Grade: 5
School: Moulton Elementary School, Moulton ISD

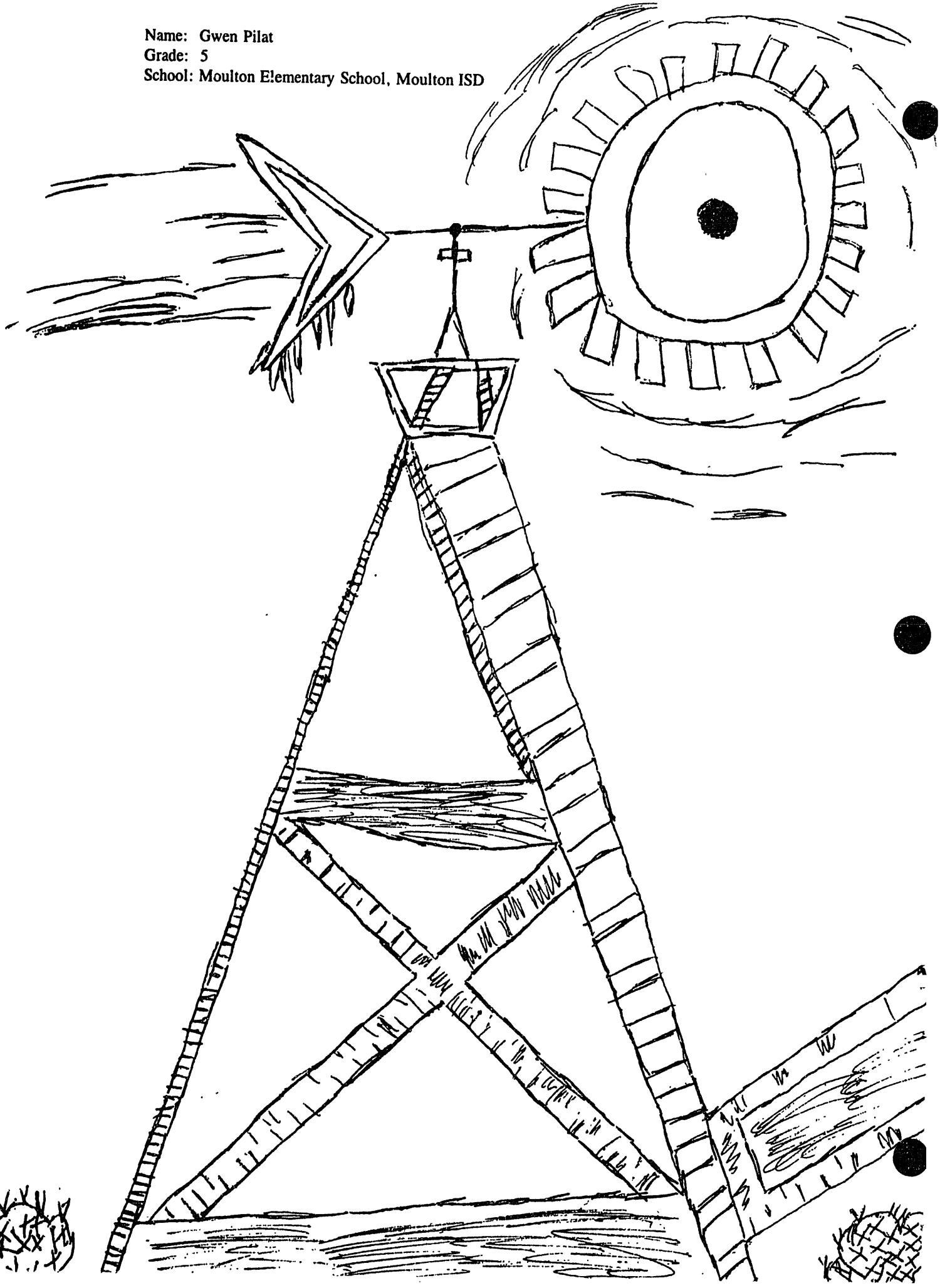

Figure 1: 30 TAC §324.52(a)

TRUST AGREEMENT

TRUST AGREEMENT, the "Agreement," entered into as of [date] by and between (name of the owner or operator), a (name of State) (insert "corporation," "partnership," "association," or "proprietorship"), the "Grantor," and (name of corporate trustee), (insert "incorporated in the State of _____" or "a national bank"), the "Trustee."

Whereas, the Texas Natural Resource Conservation Commission, "TNRCC," an agency of the State of Texas, has established certain regulations applicable to the Grantor, requiring that an owner or operator of a recycling facility shall provide assurance that funds will be available when needed for closure of the facility,

Whereas, the Grantor has elected to establish a trust to provide all or part of such financial assurance for the facility(ies) identified herein,

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee,

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

(a) The term "Grantor" means the owner or operator who enters into this Agreement and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.

(c) Facility or activity means any "recycling facility" or any other facility or activity that is subject to regulation under this 30 TAC Chapter 324 §324.50.

Section 2. Identification of Facilities and Cost Estimates. This Agreement pertains to the facilities and cost estimates identified on attached Schedule A (on Schedule A, for each facility list the TNRCC registration or permit number, name, address, and the current closure cost estimate, or portions thereof, for which financial assurance is demonstrated by this Agreement).

Section 3. Establishment of Fund. The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of TNRCC. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. The Fund is established initially as consisting of the property, which is acceptable to the Trustee, described in Schedule B

attached hereto. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by TNRCC.

Section 4. Payment for Closure. The Trustee shall make payments from the Fund as the Executive Director shall direct, in writing, to provide for the payment of the costs of closure of the facilities covered by this Agreement. The Trustee shall reimburse the Grantor or other persons as specified by the Executive Director from the Fund for closure expenditures in such amounts as the Executive Director shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Executive Director specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Trustee Management. The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiary and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like use, in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the facilities, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held unless they are securities or other obligations of the Federal or a State government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 6. Commingling and Investment. The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered or permitted under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote shares in its discretion.

Section 7. Express Powers of Trustee. Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing

accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 8. Taxes and Expenses. All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all proper charges and disbursements of the Trustee shall be paid from the Fund.

Section 9. Advice of Counsel. The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement of any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 10. Trustee Compensation. The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

Section 11. Successor Trustee. The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in a writing sent to the Grantor, the Executive Director, and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 12. Instructions to the Trustee. All orders, requests, and instructions by the Grantor to the Trustee shall be

in writing, signed by such persons as are designated in the attached Exhibit A or such other designees as the Grantor may designate by amendment to Exhibit A. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Executive Director to the Trustee shall be in writing, signed by his designee, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or TNRCC hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or TNRCC, except as provided for herein.

Section 13. Amendment of Agreement. This Agreement may be amended by an instrument in writing executed by the Grantor, the Trustee, and the appropriate Executive Director, or by the Trustee and the appropriate Executive Director if the Grantor ceases to exist.

Section 14. Irrevocability and Termination. Subject to the right of the parties to amend this Agreement as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee, and the Executive Director, or by the Trustee and the Executive Director if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 15. Immunity and Indemnification. The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Executive Director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 16. Choice of Law. This Agreement shall be administered, construed, and enforced according to the laws of the State of Texas.

Section 17. Interpretation. As used in this Agreement,

words in the singular include the plural and words in the plural include the singular. The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in 30 Texas Administrative Code §324.52(a)(1) as such regulations were constituted on the date first above written.

[Signature of Grantor]
By [Title]
Attest:

[Title]

[Seal}

[Signature of Trustee]
By
Attest:

[Title}

[Seal]

(2) The following is an example of the certification of acknowledgment which must accompany the trust agreement for a trust fund as specified in §324.51(a)(2) of this title (relating to Financial Assurance Options).

State
of_____
County
of_____

On this (date), before me personally came (owner or operator) to me known, who, being by me duly sworn, did depose and say that she/he resides at (address), that she/he is (title) of (corporation), the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such

corporate seal; that it was so affixed by order to the Board of Directors of said corporation, and that she/he signed her/his name thereto by like order.

(signature of Notary Public)

Figure 2: 30 TAC §324.52(b)

PERFORMANCE BOND

Date bond executed: _____.
Effective date: _____.
Principal: (legal name and business address of owner or operator).
Type of organization: (insert "individual," "joint venture," "partnership," or "corporation').
State of incorporation: _____.
Surety(ies): (name(s) and business address(es))

TNRCC registration [or permit] number, name, address, and closure amounts(s) for each facility guaranteed by this bond (indicate closure amounts for each facility):

Total penal sum of bond: $_____.
Surety's bond number: _____.

Know All Persons By These Presents. That We, the Principal and Surety(ies) hereto are firmly bound to the Texas Natural Resource Conservation Commission (hereinafter called TNRCC), in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

Whereas said Principal is required, under the appropriate program, to comply with registration requirements in order to own or operate each facility identified above, and

Whereas said Principal is required to provide financial assurance for closure as a condition of the registration to operate under authorization, and

Now, therefore, the conditions of this obligation are such that if the Principal shall faithfully perform closure, whenever required to do so, of each facility for which this bond guarantees closure, in accordance with the closure requirements of the registration or permit for operating under authorization as may be amended, pursuant to all applicable laws, statutes, rules and regulations, as such laws, statutes, rules, and regulations may be amended,

Or, if the Principal shall provide alternate financial assurance and obtain the Executive Director's written approval of such assurance, within 30 days after the date of notice of cancellation is received by both the Principal and the Executive Director(s) from the Surety(ies), then this obligation shall be null and void, otherwise it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by an Executive Director that the Principal has been found in violation of the closure requirements for a facility which this bond guarantees performances of closure, the Surety(ies) shall either perform closure in accordance with the closure requirements for operating under authorization or place the amount for closure into an account as directed by the Executive Director.

Upon notification by an Executive Director that the Principal has failed to provide alternate financial assurance and obtain written approval of such assurance from the Executive Director during the 90 days following receipt by both the Principal and the Executive Director of a notice of cancellation of the bond, the Surety(ies) shall place funds in the amount guaranteed for the facility(ies) into an account as directed by the Executive Director.

The surety(ies) hereby waive(s) notification of amendments to closure requirements, registration or permits, applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said penal sum.

The Surety(ies) may cancel the bond by sending notice by certified mail to the owner and operator and to the Executive

Director provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the Executive Director, as evidenced by the return receipts.

The principal may terminate this bond by sending written notice to the Surety(ies), provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the Executive Director.

(The following paragraph is an optional rider that may be included but is not required.)

Principal and Surety(ies) hereby agree to adjust the penal sum of the bond yearly so that it guarantees a new closure amount, provided that the penal sum does not increase by more than 20 percent in any one year, and no decrease in the penal sum takes place without the written permission of the Executive Director.

In Witness Whereof, The Principal and Surety(ies) have executed this Performance Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording on this surety bond is identical to the wording specified in 30 Texas Administrative Code §324.52(b) as such regulation was constituted on the date this bond was executed.

Principal.
(Signature(s))
(Name(s))
(Title(s))
(Corporate seal)
(Corporate Surety(ies))
(Name and address)
State of incorporation:

Liability limit: $ _____.
(Signature(s))
(name(s) and title(s))
Corporate seal:
(For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.)
Bond premium: $ _____.

Figure 3: 30 TAC §324.52(c)

IRREVOCABLE STANDBY LETTER OF CREDIT

Executive Director
Texas Natural Resource Conservation Commission

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. _____ in your favor, at the request and for the account of [owner's or operator's name and address] up to the aggregate amount of [in words] U.S. dollars $_____, available upon presentation of

(1) Your sight draft, bearing reference to this letter of credit No. _____, and

(2) Your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of the Texas Natural Resource Conservation Commission."

This letter of credit is effective as of (date) and shall expire on (date at least 1 year later), but such expiration date shall be automatically extended for a period of (at least 1 year) on (date) and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both you and (owner's or operator's name) by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both you and (owner's or operator's name), as shown on the signed return receipts.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us.

We certify that the wording of this letter of credit is identical to the wording specified in 30 Texas Administrative Code §324.52(c) as such regulations were constituted on the date shown immediately below.

(Signature(s) and title(s) of official(s) of issuing institution)
(Date)

This credit is subject to (insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits,

published by the International Chamber of Commerce," or "the Uniform Commercial Code").

Figure 4: 30 TAC §324.52(d)

CERTIFICATE OF INSURANCE FOR CLOSURE

Name and Address of Insurer (herein called the "insurer"):

_____

Name and Address of Insured (herein called the "insured"):

_____

Facilities covered: (list for each facility: The TNRCC registration or permit number, name, address, and the amount of insurance for closure (these amounts for all facilities covered must total the face amount shown below).)
Face Amount:

_____
Policy Number:

_____
Effective Date:

_____

The insurer hereby certifies that it has issued to the Insured the policy of insurance identified above to provide financial assurance for closure for the facilities identified above. The Insurer further warrants that such policy conforms in all respects with the requirements of 30 TAC Chapter 324 §324.51(d), as applicable and as such regulations were constituted on the date shown immediately below. It is agreed that any provision of the policy inconsistent with such regulations is hereby amended to eliminate such inconsistency.

Whenever requested by the Executive Director of the Texas Natural Resource Conservation Commission ("TNRCC"), the Insurer agrees to furnish to the Executive Director a duplicate original of the policy listed above, including all endorsements thereon.

I hereby certify that the wording of this certificate is identical to the wording specified in 30 Texas Administrative Code §324.52(d) as such regulations were constituted on the date shown immediately below.

(Authorized signature of Insurer)
(Name of person signing)
(Title of person signing)

(Signature of witness or notary:)

_____
(Date)

Figure 5: 30 TAC §324.52(e)

LETTER FROM CHIEF FINANCIAL OFFICER

(Address to Executive Director)

I am the Chief Financial Officer of (name and address of firm.) This letter is in support of this firm's use of the financial test to demonstrate financial assurance for closure care as specified in 30 Texas Administrative Code §324.50.

(Fill out the following paragraphs regarding facilities and associated cost estimates. If your firm has no facilities that belong in a particular paragraph, write "None" in the space indicated. For each facility, include its TNRCC registration or permit number, name, address, and closure cost estimate.)

This firm is the owner or operator of the following facilities for which financial assurance for closure care is being demonstrated through the financial test specified in §324.51(e). The closure care amount covered by the test is shown for each facility: _____.

This firm guarantees, through the corporate guarantee specified in §324.51(e), the closure care of the following facilities owned or operated by subsidiaries of this firm. The current cost estimates for the closure care so guaranteed are shown for each facility: _____.

This firm (insert "is required" or "is not required") to file a Form 10K with the Securities and Exchange Commission (SEC) for the latest fiscal year. The fiscal year of this firm ends on (month, day). The figures for the following items marked with an asterisk are derived from this firm's independently audited, year-end financial statements for the latest completed fiscal year, ended (date).

(Fill in Alternative I if the criteria of §324.51(e)(2)(A) are used. Fill in Alternative II if the criteria of §324.51(e)(2)(B) are used.)

ALTERNATIVE 1

1. (a) Current closure cost.....$_____

(b) Sum of the current closure cost estimates and liability coverage requirements of any other

financial assurance obligations under other EPA or state environmental regulations assured by a financial test.....

(c) Total of lines a and b.....

*2. Total liabilities (if any portion of the closure cost or liability coverage is included in total liabilities, you may deduct the amount of that portion from this line and add that amount to lines 3 and 4).....

*3. Tangible net worth.....

*4. Net Worth.....

*5. Current assets.....

*6. Current liabilities.....

*7. Net working capital (line 5 minus line 6).....

*8. The sum of net income plus depreciation, depletion and amortization.....

*9. Total assets in U. S. (required only if less than 90% of firm's assets are located in U.S.).....

10. Assured environmental costs to demonstrate financial responsibilities in the following amounts under CFR and TNRCC regulations:

Municipal Solid Waste Landfill (MSWLF) under 30 TAC Part 330 and 40 CFR Part 258 $.....

Hazardous waste treatment, storage, and disposal facilities under 30 TAC Part 335 and 40 CFR Parts 264 and 265 $.....

Petroleum underground storage tanks under 30 TAC Part 334 and 40 CFR Part 280 $.....

Underground Injection Control System facilities under 30 TAC Part 331 and 40 CFR Part 144 $.....

PCB commercial storage facilities under 40 CFR Part 761 $.....

Total assured environmental costs $.....

Circle either "yes" or "no" to the following questions.

11. Is line 3 at least $10 million? yes/no

12. Is line 3 at least 6 times line 1(c)? yes/no

13. Is line 7 at least 6 times line 1(c)? yes/no

*14. Are at least 90% of firm's assets located in the

U.S.? yes/no

If not, complete line 15

15. Is line 9 at least 6 times line 1(c)? yes/no
16. Is line 2 divided by line 4 less than 2.0? yes/no
17. Is line 8 divided by line 2 greater than 0.1? yes/no
18. Is line 5 divided by line 6 greater than 1.5? yes/no

ALTERNATIVE II

1. (a) Current closure cost.....$_____
(b) Sum of the current closure cost estimates and liability coverage requirements of any other financial assurance obligations under other EPA or state environmental regulations assured by a financial test.....
(c) Total of lines a and b.....
2. Current bond rating of most recent issuance of this firm and name of rating service.....
3. Date of issuance of bond.....
4. Date of maturity of bond.....
*5. Tangible net worth (if any portion of the closure cost estimate(s) or liability coverage requirements is included in "total liabilities" on your firm's financial statements, you may add the amount of that portion to this line).....
*6. Total assets in U.S. (required only if less than 90% of firm's assets are located in U.S.).....
7. Assured environmental costs to demonstrate financial responsibilities in the following amounts under CFR and TNRCC regulations:

MSWLF under 30 TAC Part 330 and 40 CFR Part 258 $.....

Hazardous waste treatment, storage, and disposal facilities under 30 TAC Part 335 and 40 CFR Parts 264 and 265 $.....

Petroleum underground storage tanks under 30 TAC Part 334 and 40 CFR Part 280 $.....

Underground Injection Control System facilities under 30 TAC

Part 331 and 40 CFR Part 144 $.....

PCB commercial storage facilities under 40 CFR Part 761 $.....

Total assured environmental costs $.....

Circle either "yes" or "no" to the following questions.

8. Is line 5 at least $10 million? yes/no
9. Is line 5 at least 6 times line 1(c)? yes/no
*10. Are at least 90% of the firm's assets located in the U.S.? yes/no

If not, complete line 11

11. Is line 6 at least 6 times line 1(c)? yes/no

I hereby certify that the wording of this letter is identical to the wording specified in 30 Texas Administrative Code §324.52(e) as such regulations were constituted on the date shown immediately below.

(Signature)
(Name)
(Title)
(Date)

Figure 6: 30 TAC §324.52(f)

CORPORATE GUARANTEE FOR CLOSURE

Guarantee made this _____ day of _____, 19____, by (name of guaranteeing entity), a business corporation organized under the laws of the State of _____, herein referred to as guarantor to the Texas Natural Resource Conservation Commission (TNRCC), obligee, on behalf of (owner or operator) of (business address).

Recitals

1. Guarantor meets or exceeds the financial test criteria and agrees to comply with the reporting requirements for guarantors as specified in 30 Texas Administrative Code §324.51(e).

2. (Owner or operator) owns or operates the following recycling facility(ies) covered by this guarantee: (List for each facility: TNRCC registration or permit number, name, and address.)

3. "Closure requirements" as used below refers to the closure cost estimate maintained as required for the closure of facilities as identified above.

4. For value received from (owner or operator), guarantor guarantees to TNRCC that in the event that (owner or operator) fails to perform closure of the above facility(ies) in accordance with the closure requirements when required to do so, the guarantor will do so as specified in 30 Texas Administrative Code §324.51(e) in the name of (owner or operator) in the amount of the adjusted closure cost estimates prepared.

5. Guarantor agrees that, if at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor will send within 30 days, by certified mail, notice to the Executive Director and to (owner or operator) that he intends to provide alternate financial assurance. Within 30 days after sending such notice, the guarantor will establish such financial assurance if (owner or operator) has not done so.

6. The guarantor agrees to notify the Executive Director, by certified mail, of a voluntary or involuntary case under Title 11, U.S. Code, naming guarantor as debtor, within 10 days after its commencement.

7. Guarantor agrees that within 30 days after being notified by the Executive Director of a determination that guarantor no longer meets the financial test criteria or that he is disallowed

from continuing as a guarantor of closure, he will establish alternate financial assurance, in the name of (owner or operator) if (owner or operator) has not done so.

8. Guarantor agrees to remain bound under this guarantee notwithstanding any or all of the following: amendment or modification of the closure cost estimates, the extension or reduction of the time of performance of closure or any other modification or alteration of an obligation of (owner or operator) pursuant to 30 Texas Administrative Code Chapter 324 §324.50.

9. Guarantor agrees to remain bound under this guarantee for so long as (owner or operator) must comply with the applicable financial assurance requirements of 30 Texas Administrative Code Subchapter §324.50 for the above-listed facilities, except that guarantor may cancel this guarantee by sending notice by certified mail, to the Executive Director and to (owner or operator), such cancellation to become effective no earlier than 120 days after actual receipt of such notice by both TNRCC and [owner or operator] as evidenced by the return receipts.

10. Guarantor agrees that if (owner or operator) fails to provide alternate financial assurance and obtain written approval of such assurance from the Executive Director within 90 days after a notice of cancellation by the guarantor is received by both the Executive Director and (owner or operator), guarantor will provide alternate financial assurance as specified in 30 Texas Administrative Code §324.51(e) in the name of the (owner or operator).

11. Guarantor expressly waives notice of acceptance of this guarantee by the Texas Natural Resource Conservation Commission or by (owner or operator). Guarantor also expressly waives notice of amendments or modifications of the closure cost estimates.

I hereby certify that the wording of this guarantee is identical to the wording specified in 30 Texas Administrative Code §324.52(f).

Effective date:_____.

(Name of guarantor)
(Authorized signature for guarantor)
(Type name of person signing)
(Title of person signing)
Signature of witness or notary:_____

Figure 1: 31 TAC 19.61(c)(2)(B)

VESSEL INFORMATION

Vessel's Registered Name:

Gross Tonnage:

International Call Sign:

Vessel's Official Number:

Vessel's IMO Number:

Vessel's Flag State:

Vessel's Port of Registry:

Previous Names (if none, state none):

Length Overall: M ft

Breadth Overall: M ft

Summer Draught (draft): M ft

In addition to the above, a general arrangement plan, preferably on 8-1/2" x 11" or 11" x 14" paper, must be submitted along with tank capacities for those tanks designed to carry oil.

Figure 1: 31 TAC 19.61(c)(2)(B)

NOTIFICATION INFORMATION

Owner's Name:

Address:

Telephone (24-hour contact):
Facsimile:

Operator's Name (if different from above):

Address:

Telephone (24-hour contact):
Facsimile:

Manager's Name (if different from either above):

Address:

Telephone (24-hours contact):
Facsimile:

Page 2

Figure 1: 31 TAC 19.61(c)(2)(B)

VESSEL PERSONNEL INFORMATION

AUTHORIZED PERSON [IN CHARGE]: The person who is responsible for and in control of all oil spill response operations on behalf of the vessel. This person must be available 24 hours a day to ensure prompt response to oil spills in Texas coastal waters. This person need not be on board the vessel but must have independent authority to deploy response equipment and to expend funds necessary to response actions. This information is also required by Regulation 26, §2.2.4.

Name:

Position:

24-hour contact:

PREPAREDNESS MANAGER: Person who is responsible for ensuring that personnel aboard an IMO vessel are properly trained in mitigation and control of an unauthorized discharge of oil. This information is required in Regulation 26, §2.5.1.

Name:

Position:

Figure: 34 TAC 3.181(b)(2)(B)

Example:

	Deliveries to:	
Date	Buyer A	Buyer B
July 1	2,500 gal.	2,500 gal.
July 5	2,500 gal.	2,500 gal.
July 10	2,500 gal.	2,500 gal.
July 15	2,500 gal.	2,501 gal.
July 20	*3,000 gal.*	*500 gal.*

The sale on July 20 to Buyer B is taxable because the 10,000 gallon limit was exceeded on July 15. The sale to Buyer A on July 20 is not taxable because it is the sale that caused the 10,000 gallon limit to be exceeded and the delivery does not exceed 3,000 gallons.

Figure: 34 TAC 3.185(d)

VEHICLE CLASS	REGISTERED GROSS WEIGHT	PERMIT COST
A	Less than 2,500 lbs.	$ 46.50
B	2,501 to 3,500 lbs.	82.50
C	3,501 to 4,500 lbs.	103.50
D	4,501 to 7,000 lbs.	124.50
E	7,001 to 10,000 lbs.	145.50

Figure: 34 TAC 3.287(h)

[TEXAS SALES AND USE TAX EXEMPTION CERTIFICATE

[Name of purchaser, firm, or agency

[_____

[Address (Street & number, P.O. Box or Route number) Phone (Area Code and number)

[_____

[City, State, ZIP code

[_____

[I, the purchaser named above, claim an exemption from payment of sales and use taxes for the purchase of taxable items described below or on the attached order or invoice form:

[Seller:

[_____

[Street address: _____City, State, ZIP code: _____

[Description of items to be purchased or on the attached order or invoice:

[_____

[_____

[_____

[Purchaser claims this exemption for the following reason:

[_____

[_____

[_____

[I understand that I will be liable for payment of sales or use taxes which may become due for failure to comply with the provisions of the Tax Code: Limited Sales, Excise, and Use Tax Act; Municipal Sales and Use Tax Act; Sales and Use Taxes for Special Purpose Taxing Authorities; County Sales and Use Tax Act; County Health Services Sales and Use Tax; The Texas Health and Safety Code; Special Provisions Relating to Hospital Districts, Emergency Services Districts, and Emergency Services Districts in counties with a population of 125,000 or less.

[I understand that it is a criminal offense to give an exemption certificate to the seller for taxable items that I know, at the time of purchase, will be used in a manner other than that expressed in this certificate and, depending on the amount of tax evaded, the offense may range from a Class C misdemeanor to a felony of the second degree.

[_____

Purchaser Title Date

[SIGN
HERE

[_____

[Note: This certificate cannot be issued for the purchase, lease, or rental of a motor vehicle. THIS CERTIFICATE DOES NOT REQUIRE A NUMBER TO BE VALID. Sales and Use Tax "Exemption Numbers" or "Tax Exempt" Numbers do not exist.

[This certificate should be furnished to the supplier. Do NOT send the completed certificate to the [Comptroller of Public Accounts.]

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

Friday, November 17, 1995, 10:00 a.m. (Rescheduled from November 21, 1995.)

7800 Shoal Creek Boulevard

Austin

Utility Division

AGENDA:

The hearing on the merits is rescheduled to the above date and time in SOAH Docket Number 473-95-1194: complaint of Michael M. Phillips Farms, Inc. against Houston Lighting and Power Company (PUC Docket Number 14293).

Contact: J. Kay Trostle, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0233.

Filed: October 25, 1995, 4:02 p.m.

TRD-9513781

♦ ♦ ♦

Texas Department of Agriculture

Thursday, November 16, 1995, 1:30 p.m.

Texas Department of Agriculture, 1700 North Congress Avenue, Room 924A

Austin

Office of Hearings

AGENDA:

Administrative hearing to review alleged violation of Texas Agriculture Code Annotated, §§101.001-101.021 and/or §§102.001-102.172 (Vernon 1995) by Produce Marketing Company as petitioned by Cargil Produce Company.

Contact: Joyce C. Arnold, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: October 26, 1995, 10:03 a.m.

TRD-9513802

♦ ♦ ♦

Texas Council on Alzheimer's Disease and Related Disorders

Friday, December 1, 1995, 1:00 p.m.

Room G-107, Texas Department of Health, 1100 West 49th Street

Austin

AGENDA:

The council will discuss and possibly act on: approval of minutes from the last meeting; Alzheimer's Family Care Program; Alzheimer research updates; Special Care Unit Disclosure Task Force update; Alzheimer's Regional Conference; program development; and legislative issues.

Contact: Veronda Durden, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7534. 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 24, 1995, 4:46 p.m.

TRD-9513723

♦ ♦ ♦

Texas Certified Self-Insurer Guaranty Association

Wednesday, November 8, 1995, 9:30 a.m.

4000 South IH-35, Tippy Foster Meeting Room 910

Austin

Board

AGENDA:

I. Call to order.

II. Approval of minutes for the public meeting of September 7, 1995.

III. Discussion, consideration, and possible action on the following initial applications.

A. Parker-Hannifin Corporation

B. Montgomery Ward and Company, Incorporated

C. Union Tank Car Company

D. Archer-Daniels-Midland Company

IV. Discussion, consideration, and possible action on the following renewal applications.

A. Hyatt Corporation

B. HealthSouth Corporation

C. W. R. Grace and Company

D. Lockheed Martin Corporation

E. Dean Foods Company

F. Union Pacific Motor Freight Company

G. Overnite Transportation Company

H. AAA Cooper Transportation

I. VF Corporation

J. International Paper Company

V. Discussion, consideration, and possible actions on publication of proposed amendments to by-laws.

VI. Other business.

VII. Discussion of future public meetings.

VIII. Adjournment.

Contact: Judy Roach, 1600 San Jacinto Center, 98 San Jacinto Boulevard, Austin, Texas 78701, (512) 322-2514.

Filed: October 24, 1995, 10:51 a.m.

TRD-9513674

♦ ♦ ♦

Texas Department of Commerce

Friday, November 3, 1995, 10:00 a.m.

State Capitol Building, Extension, Room E2.036, 1400 North Congress Avenue

Austin

Texas Defense Economic Adjustment Advisory Council, Environmental Committee

AGENDA:

I. Welcoming remarks

II. Texas Natural Resource Conservation Commission staff presentation

Follow-up on action items

Recap focus group meetings

III. Air Force Base Conversion Agency presentation

IV. Kelley Air Force Base presentation

V. Red River Army depot presentation

VI. Committee business

Review committee make-up

Summarize actions items

Establish next meeting/tentative agenda

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services are requested to contact Audra Lipe at (512) 936-0105 at least two days before this meeting so that appropriate arrangements can be made. Please contact Audra Lipe at (512) 936-0105 if you need assistance in having English translated to Spanish.

Contact: Audra Lipe, 1700 North Congress Avenue, Austin, Texas 78701, (512) 936-0105.

Filed: October 25, 1995, 3:48 p.m.

TRD-9513779

♦ ♦ ♦

State Board of Dental Examiners

Thursday, November 2, 1995, 1:00 p.m.

SBDE Offices, 333 Guadalupe, Tower Three, Suite 800

Austin

Credentials Review Committee

AGENDA:

I. Call to order

II. Roll call

III. Approval of minutes

IV. Review dental applications for licensure by credentials and make recommendations to the board for approval or denial of said applications

V. Review dental hygiene applications for licensure by credentials and make recommendations to the board for approval or denial of said applications

VI. Announcements

VII. Adjourn

Contact: Douglas A. Beran, 333 Guadalupe, Tower Three, Suite 800, Austin, Texas 78701, (512) 463-6400.

Filed: October 24, 1995, 3:47 p.m.

TRD-9513710

Friday, November 3, 1995, 7:30 a.m.

333 Guadalupe, William Hobby Building, HR 100, Main Lobby Area

Austin

Examination Committee

AGENDA:

I. Call to order

II. Roll call

III. Discuss and consider criteria to develop new jurisprudence examination

IV. Discuss and consider criteria to develop new nitrous oxide monitoring examination

V. Discuss and consider criteria to develop new dental assistant's radiology examination

VI. Discussion and consider jurisprudence and nitrous oxide examination schedule

VII. Discuss and consider WREB examination schedule

VIII. Announcements

IX. Adjourn

Contact: Douglas A. Beran, 333 Guadalupe, Tower Three, Suite 800, Austin, Texas 78701, (512) 463-6400.

Filed: October 24, 1995, 4:56 p.m.

TRD-9513724

Friday, November 3, 1995, 8:00 a.m.

333 Guadalupe, William Hobby Building, HR 100, Main Lobby

Austin

Board Meeting

AGENDA:

I. Call to order

II. Roll call

III. Approval of past minutes

IV. Appearances before the board, Bob Robinson, Dr. Topek, Dr. Ousley, Dr. Naylor, Dr. Bowman, Dr. LaCombe

V. Enforcement, approval of settlement conference orders, Enforcement Committee report

VI. Administration, Administration Committee report, Legislative Committee report

VII. Licensing and examination, discuss and consider approval/denial of sedation-anesthesia permits; Examination Committee report; CE Committee report; Credentials Committee report; DHAC Committee report; discuss and consider designating Dr. Paul Stubbs to serve on the WREB Dental Examining Team; DLCC report

VIII. Discuss and consider amendments to Rules 109.5, 119.5 and 109.107

IX. President's report

X. Executive director's report

XI. Public testimony

XII. Executive session to discuss pending litigation pursuant to §551.071, Texas Government Code, Beck vs. TSBDE

XIII. Announcements

XIV. Adjourn

Contact: Douglas A. Beran, 333 Guadalupe, Tower Three, Suite 800, Austin, Texas 78701, (512) 463-6400.

Filed: October 24, 1995, 3:47 p.m.

TRD-9513711

Saturday, November 4, 1995, 10:00 a.m.

SBDE Offices, 333 Guadalupe, Tower Three, Suite 800

Austin

Anesthesia Consultants Review Committee

AGENDA:

I. Call to order

II. Roll call

III. Discuss and review current anesthesia rules §§109.171-109.177

IV. Discuss and review current permitting procedures for anesthesia administration

V. Announcements

VI. Adjourn

Contact: Douglas A. Beran, 333 Guadalupe, Tower Three, Suite 800, Austin, Texas 78701, (512) 463-6400.

Filed: October 24, 1995, 3:47 p.m.

TRD-9513709

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Texas Planning Council for Developmental Disabilities

Thursday, November 2, 1995, 10:30 a.m.

Embassy Suites Hotel North, 5901 North IH-35, Bluebonnet Room

Austin

Executive Committee Meeting

AGENDA:

Thursday, November 2, 1995

10:30 a.m.-Call to order

1. Approval of minutes

2. Public comments

3. Review of stipends request for proposals (RFP)

4. Consideration of stipends applications

5. Discussion of Grants Committee responsibilities

6. Consideration of conference co-sponsorships

7. Discussion of TPCDD multi-cultural initiative

8. Fiscal year 1995 budget update

9. Chair's report

10. Executive director's report

Noon-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 25, 1995, 10:33 a.m.

TRD-9513758

Thursday-Friday, November 2-3, 1995, 1:30 p.m. and 8:30 a.m., respectively.

Embassy Suites North, 5901 North IH-35, Ballroom

Austin

Council Meeting

AGENDA:

Thursday, November 2, 1995

1:30 p.m.-Call to order

1. Introductions

2. Public comments

3. Approval of minutes

4. Executive Committee report

A. Update on fiscal year 1996 budget status

B. Discussion of Grants Committee responsibilities

C. Review of stipends request for proposals (RFP)

D. Status report on interim study on offenders

E. Information and update items

5. Consideration of impact of expanding the definition of developmental disabilities

6. Planning Committee report

A. Consideration of new funding activities

B. Information and update items

5:00 p.m.-Recess

Friday, November 3, 1995

8:30 a.m.-Reconvene

1. Introductions

2. Public comments

3. Continuation of unfinished business from November 2, 1995

4. Overview of Texas Council on Offenders with Mental Impairments

5. Advocacy and Public Information Committee report

A. Federal policy and legislation update

B. Information and update items

6. Chair's report

7. Executive director's report

8. Protection and Advocacy System report

9. University Affiliated Program report

10. Announcements

1:30 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 25, 1995, 10:34 a.m.

TRD-9513759

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Texas Diabetes Council

Friday, October 27, 1995, 10:00 a.m.

Room G-107, Texas Department of Health, 1100 West 49th Street

Austin

AGENDA:

The council will discuss and possibly act on: approval of minutes from the July 14, 1995 meeting; director's report; grant awards (community-based program expansion in African American communities; and pregnancy and diabetes program); and recommendation to endorse American Diabetes Association, Texas Affiliate, as the sole agency responsible for operation: Defeat Diabetes in Jefferson and Tarrant counties.

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 19, 1995, 3:38 p.m.

TRD-9513484

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Texas Education Agency

Thursday-Friday, November 2-3, 1995, 9:00 a.m.

Instructional Materials Service, Riverside Campus, Building 8236, Texas A&M University

College Station

Agricultural Science and Technology Essential Knowledge and Skills Adjunct Team

AGENDA:

The following meeting is not subject to the Open Meetings Act; however, the agency desires to publicize the event as a courtesy to the public and to allow for all interested parties to have opportunity to be informed of the meeting.

The Agricultural Science and Technology Adjunct Team will meet to review previous team work; review and clarify essential knowledge and skills and Agriscience 101 and 102; and review common framework documents.

Contact: Kirk Edney, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9687 or Nell Overstreet, Instructional Materials Service, Texas A&M University, (409) 845-6601.

Filed: October 25, 1995, 8:34 a.m.

TRD-9513725

Friday, November 3, 1995, 10:00 a.m.

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee on the Permanent School Fund

AGENDA:

A public hearing will be held regarding the issues related to the formation of the non-profit corporation to manage the assets of the Permanent School Fund.

Anyone wishing to testify should register in advance by contacting the Texas Permanent School Fund at (512) 463-9169 by 5:00 p.m. on Thursday, November 2, 1995. Testimony will be limited to three minutes in an order established by the committee chair. It is recommended that 25 copies of written testimony, including the name and address of the speakers, be provided at the time for the hearing. Those individuals wishing to give testimony who are unable to preregister may register on the day of the hearing. If time permits, these individuals will be allowed to give testimony following those who have preregistered.

Individuals who are unable to attend the hearing may send written comments to: State Board of Education Committee on the Permanent School Fund, in care of Texas Permanent School Fund, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494.

Individuals may contact Carlos Resendez or Dean Murray at (512) 463-9169 for additional information.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: October 26, 1995, 8:18 a.m.

TRD-9513790

Friday, November 3, 1995, 11:00 a.m.

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee on the Permanent School Fund

AGENDA:

The committee will meet at 11:00 a.m. or upon the adjournment of the public hearing which begins at 10:00 a.m. The committee will discuss and review the Standards of Performance and the Articles of Incorporation and the Bylaws of the Texas Permanent School Fund Management Company, Inc.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: October 26, 1995, 8:18 a.m.

TRD-9513792

Friday-Sunday, November 3-5, 1995, 5:00 p.m. and 8:00 a.m., respectively.

Hyatt Regency, 208 Barton Springs Road, Ballroom B (Friday) and Big Bend Room (Saturday-Sunday)

Austin

Marketing Education Essential Knowledge and Skills Clarification Team

AGENDA:

The following meeting is not subject to the Open Meetings Act; however, the agency desires to publicize the event as a courtesy to the public and to allow all interested parties to have opportunity to be informed of the meeting.

The Marketing Education Essential Knowledge and Skills Clarification Team will meet Friday, November 3, for a project update and review of work completed in September. During the Saturday, November 4 meeting, the group will work on developing marketing functions. On Sunday, November 5, the group will submit its work to the project coordinator and review the entire project.

Contact: Emmett Eary, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9443.

Filed: October 25, 1995, 2:59 p.m.

TRD-9513776

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Office of the Governor

Thursday, November 9, 1995, 10:00 a.m.

State Bar of Texas, 1414 Colorado

Austin

Ad Hoc Committee to Revise the Code of Criminal Procedures

AGENDA:

1. Welcome

2. Work on revisions to Chapters 1-26 and Chapter 42

3. Discuss procedures of revision process

4. Closing remarks

Contact: Kathy Herasimchuk, 1107 San Jacinto, Austin, Texas 78701, (512) 463-2198.

Filed: October 24, 1995, 2:15 p.m.

TRD-9513696

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Office of the Governor, Criminal Justice Division

Thursday, November 9, 1995, 10:00 a.m.

Criminal Justice Division Conference Room, 221 East 11th Street

Austin

Governor's Juvenile Justice Task Force

AGENDA:

I. Call to order

II. Approval of minutes

III. Calendar of meetings

IV. "Kids, Guns, and Gangs": Cathy Herasimchuk

V. Reports from committee chairs

VI. Travel reimbursement: Camille Cain

VII. Senate Interim Committee meetings schedule

VIII. Other business

IX. Adjourn

X. Upon adjournment-Subcommittees to meet in Capitol Extension

A. Fine-Tuning Codes-E2.018

B. Implementation-E2.220

C. Legislation/Appropriations-E2.022

D. Resources-E1.018

E. Strategy-E1.022

Contact: Pete Wassdorf, P.O. Box 12428, Austin, Texas 78711, (512) 463-1788.

Filed: October 24, 1995, 10:14 a.m.

TRD-9513672

Thursday, November 9, 1995, 10:00 a.m.

Criminal Justice Division Conference Room, 221 East 11th Street

Austin

Governor's Juvenile Justice Task Force

AGENDA:

I. Call to order

II. Approval of minutes

III. Calendar of meetings

IV. "Kids, Guns, and Gangs": Cathy Herasimchuk

V. Reports from committee chairs

VI. Travel reimbursement: Camille Cain

VII. Senate Interim Committee meetings schedule

VIII. Other business

IX. Adjourn

X. Upon adjournment-Subcommittees to meet in Capitol Extension

A. Fine-Tuning Codes-E2.018

B. Implementation-E2.020

C. Legislation/Appropriations-E2.022

D. Resources-E1.018

E. Strategy-E1.022

Contact: Pete Wassdorf, P.O. Box 12428, Austin, Texas 78711, (512) 463-1916.

Filed: October 24, 1995, 2:11 p.m.

TRD-9513695

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Statewide Health Coordinating Council

Wednesday, November 1, 1995, 11:00 a.m.

Rio Grande Council of Governments, Fourth Floor Conference Room, 100 North Stanton Street

El Paso

AGENDA:

The council will be holding a public forum in order to solicit public comments and concerns about managed care and how it affects the health of, and health care for Texans.

Contact: Trish O'Day, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: October 24, 1995, 4:46 p.m.

TRD-9513721

Wednesday, November 1, 1995, 2:30 p.m.

Rio Grande Council of Governments, Fourth Floor Conference Room, 100 North Stanton Street

El Paso

Revised Agenda

AGENDA:

The council will discuss and possibly act on block grants for health services legislation.

Contact: Trish O'Day, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: October 24, 1995, 4:46 p.m.

TRD-9513722

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Texas Department of Human Services

Friday, November 3, 1995, 10:00 a.m.

701 West 51st Street, First Floor, Public Hearing Room

Austin

Aged and Disabled Advisory Committee

AGENDA:

1. Opening comments. 2. Deputy commissioner's comments. 3. Approval of minutes. Action items: 4. Increase of functional eligibility score for home-delivered meals and emergency response services. 5. Technical amendment to the Tel-Assistance Service Program. 6. Primary home care program: health assessments. 7. DAHS program: rule change. 8. Guidelines for end-of-life decisions in long term care facilities. 9. Amendments to Medicaid Nursing Facility Moratorium rules. 10. Changes to the ventilator add-on rate eligibility criteria for nursing facility residents and community-based alternative clients. Information/technical items: 11. Technical amendments relating to architectural provisions to the ICF-serving persons with mental retardation, personal care, and adult day care licensure requirements. 12. Exclusion of deeming from an alien's sponsor. 13. Revision to the Bienvivir Waiver program reimbursement methodology. Reports: Proceeding of the subcommittee on services to persons with disabilities and Nursing Facility Subcommittee. 14. Open discussion by members. 15. Next meeting/adjournment.

Contact: Anthony Venza, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-4943.

Filed: October 25, 1995, 2:59 p.m.

TRD-9513778

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Board of Law Examiners

Thursday, November 9, 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: Kay Ann Sprague; Nicholas C. Morgan; Diogu K. Diogu; Mark S. Snodgrass; Chadd K. Parker; Robert G. Cochran. (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 25, 1995, 4:02 p.m.

TRD-9513780

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Texas Department of Licensing and Regulation

Thursday, November 2, 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 administrative penalties against the respondent, John Brad Byrd doing business as Parker Company, for allegedly engaging in air conditioning and refrigeration contracting without a license, a violation of the Texas Civil Statutes Annotated, Article 8861 (the Act), §3B and Article 9100; the Texas Government Code, Chapter 2001 (APA); and 16 Texas Administrative Code, Chapter 75.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

Filed: October 24, 1995, 2:45 p.m.

TRD-9513702

Thursday, November 2, 1995, 10:30 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 administrative penalties against the respondent, R. P. Miller doing business as R. P. Miller Service Company, for allegedly engaging in air conditioning and refrigeration contracting without a license, a violation of 16 Texas Administrative Code (TAC), §75.1(b) and for advertising that it engaged in air conditioning contracting and refrigeration without a license, a violation of 16 TAC §75. 90(f), the Texas Civil Statutes Annotated, Articles 8861 and 9100; the Texas Government Code, Chapter 2001, (APA); and 16 TAC, Chapter 75.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

Filed: October 24, 1995, 2:44 p.m.

TRD-9513701

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Texas Lottery Commission

Friday, November 3, 1995, 9:00 a.m.

6937 North IH-35, American Founders Building, First Floor Auditorium

Austin

AGENDA:

According to the agenda summary, the Texas Lottery Commission will call the meeting to order; approval of minutes of the September 12, 1995 meeting; consideration and possible action regarding policy on the commission receiving public comment at commission meetings and on the receipt of public comment by individual commissioners; consideration and possible action, including proposal of a new rule, 16 TAC §401.309 relating to assignability of prizes; consideration and possible action on the renewal of the lottery operator contract; consideration and possible action on the appointment, employment or duties of the Internal Auditor; consideration and possible action on Americans with Disabilities Act complaints by the commission; commission will meet in executive session with its attorneys to receive legal advice regarding pending litigation pursuant to §551.071(1) of the Texas Government Code, including but not limited to Wolverine Council Auxiliary v. Texas Lottery Commission, Scott Wenner v. Texas Lottery Commission, Frances Vaughn v. Texas Lottery Commission and Nora Linares, In the Interest of April Jo Flores, A Child, Headrick et al v. Texas Lottery Commission, In re LRN, First Approach Financial, Inc. and Western United Life Assurance Company v. Texas Lottery Commission, Linda Stewart v. Texas Lottery Commission, et al, Founders Trust v. Texas Lottery Commission, Natalie Gutierrez v. The Kroger Company, and Gifford Thomas Riney v. Hilda Arlene Riney (Stanley) et al; to deliberate the evaluation of the executive director pursuant to §551.074 of the Texas Government Code; to receive legal advice from its attorneys pursuant to §551. 071(2) of the Texas Government Code regarding the assignability of lottery prize winnings; and, to deliberate the appointment, employment, or duties of the Internal Auditor pursuant to §551.074 of the Texas Government Code; return to open session for further deliberation and possible action on any matter discussed in executive session; consideration of the status and possible entry of an order in any contested case if a proposal for decision has been received from the assigned administrative law judge and the time period has lapsed for the filing of exceptions and replies; report by the executive director and possible discussion on the financial status of the agency and the operation of the agency, including but not limited to discussion of the new HUB rules.

Beginning at 1:00 p.m., report by the Bingo Advisory Committee and possible action on its activities; report by the executive director and possible deliberation and/or action regarding the Texas Lottery Commission's regulation and administration of charitable bingo; and adjournment.

For ADA assistance, call Michelle Guerrero at (512) 323-3791 at least two days prior to meeting.

Contact: Michelle Guerrero, 6937 North IH-35, Austin, Texas 78752, (512) 323-3791.

Filed: October 24, 1995, 11:13 a.m.

TRD-9513675

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Texas Natural Resource Conservation Commission

Wednesday, November 1, 1995, 9:30 a.m.

12118 North Interstate 35, Building E, Room 201S

Austin

Revised Agenda

AGENDA:

Addendum to agenda, motion for rehearing filed on Highsaw Water Corporation.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: October 24, 1995, 4:21 p.m.

TRD-9513716

Thursday, November 2, 1995, 9:30 a.m.

TNRCC Park 35 Office Complex, 12015 Park 35 Circle, North IH-35, Building E, Room 201-S

Austin

Water Well Drillers Advisory Council

AGENDA:

The Texas Water Well Drillers Advisory Council will meet to discuss and take action on the following: consider the approval of minutes of the September 14, 1995 meeting; consider whether to set the following complaints for a formal hearing or take appropriate legal action; Larry Bisidas, Paul Higgins, Ruben Molina, Steve Allen, Danny Anderson, Scarley Bible, Carl Critendon, Jr., Abdul Deen, Clay Dingler, Mike Hayden, Dickey Long, Joe Madrid, Arnoldo Mireles, and Tony Murchison, consider certification of applications for registration and driller-trainee registration; and consider staff reports.

Contact: Bonnie Rubey, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640.

Filed: October 25, 1995, 8:19 a.m.

TRD-9513794

Thursday, November 2, 1995, 2:00 p.m.

TNRCC Park 35 Office Complex, Building B, Room 201 A, 13100 North IH-35

Austin

Texas Groundwater Protection Committee

AGENDA:

The Texas Groundwater Protection Committee will meet to discuss: subcommittee reports from Agricultural Chemicals; Data Management and Nonpoint Source; presentations from Jon Fisher, Texas Chemical Council, John Tintera, Railroad Commission of Texas, status update from CSGWPP development status, outreach efforts (Abandoned Well Plugging Educational Initiative, 1996 water quality inventory report, report on state offical ground water protection, council fall technical meeting and SFTREG Water Quality Workgroup report, discussion of Draft Texas Ground Water Programs Directory); outreach efforts; discuss draft of Texas Ground-Water Programs Directory and Texas State Management Plan for Prevention of Pesticide Contamination of Ground Water; announcements; and public comment.

Contact: Mary Ambrose, P.O. Box 13087, Austin, Texas 78701, (512) 329-4800.

Filed: October 26, 1995, 8:19 a.m.

TRD-9513793

Wednesday, November 8, 1995, 10:00 a.m.

Valero Refining Company, 5400 Up River Road

Corpus Christi

Scientific/Technical Advisory Committee of the Corpus Christi Bay National Estuary Program

AGENDA:

I. Call to order/introduction/minutes

II. Program update

III. APDP proposal evaluation

IV. Environmental stressors matrix discussion

V. Environmental planning units

VI. STAC membership reduction

VII. Presentation by Valero representative

VIII. Proposed standardized bay/estuary names and descriptions

IX. Five-month plan for STAC agenda

X. Additional items/adjournment

Contact: Richard Volk, Campus Box 290, 6300 Ocean Drive, Corpus Christi, Texas 78412, (512) 985-6767.

Filed: October 25, 1995, 8:45 a.m.

TRD-9513731

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Texas Parks and Wildlife Department

Wednesday, November 1, 1995, 9:00 a.m.

Parks and Wildlife HQ, 4200 Smith School Road

Austin

Parks and Wildlife Commission, Regulations Committee

AGENDA:

Approval of committee minutes of the previous meetings; briefing-status of committee charges; action-regulatory reform; action-regulations for the trapping, transporting, and transplanting of game animals and game birds; stocking policy; action-scientific breeder permit regulations; action-scientific collection, educational display, zoological collection, and rehabilitation permit regulations; action-consistency with federal regulations in the exclusive economic zone; action-Management of Wildlife and Exotic Animals from Aircraft Proclamation; action-disposition of contraband; action-general permits for the disturbance or removal of marl, sand, and gravel; briefing-exotic aquatic species; other business.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4642.

Filed: October 24, 1995, 1:50 p.m.

TRD-9513691

Wednesday, November 1, 1995, 9:00 a.m.

Parks and Wildlife HQ, 4200 Smith School Road

Austin

Parks and Wildlife Commission

AGENDA:

Notice of closed meeting

Approval of the minutes from the previous meeting; executive director review.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4642.

Filed: October 24, 1995, 1:44 p.m.

TRD-9513690

Wednesday, November 1, 1995, 9:00 a.m.

Parks and Wildlife HQ, 4200 Smith School Road

Austin

Parks and Wildlife Commission, Public Lands Committee

AGENDA:

Approval of committee minutes of the previous meetings; briefing-status of committee charges; action-nomination for oil and gas; briefing-historic sites; action-Lakeline Mall Habitat Conservation Plan; other business.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4642.

Filed: October 24, 1995, 1:43 p.m.

TRD-9513689

Wednesday, November 1, 1995, 9:00 a.m.

Parks and Wildlife HQ, 4200 Smith School Road

Austin

Parks and Wildlife Commission, Finance Committee

AGENDA:

Approval of committee minutes of the previous meetings; briefing-status of committee charges; action-Annual Audit Plan; action-fee increases; other business.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4642.

Filed: October 24, 1995, 1:43 p.m.

TRD-9513688

Wednesday, November 1, 1995, 7:30 p.m.

Ruth's Chris Steakhouse, 3010 Guadalupe

Austin

Parks and Wildlife Commission

AGENDA:

Members of the Texas Parks and Wildlife Commission plan to have dinner at 7: 30 p.m., November 1, 1995. Although this function is primarily a social event and no formal action is planned, the commission may discuss items on the public hearing scheduled for 9:00 a.m., Thursday, November 2, 1995.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4642.

Filed: October 24, 1995, 1:50 p.m.

TRD-9513692

Thursday, November 2, 1995, 9:00 a.m.

Parks and Wildlife HQ, 4200 Smith School Road

Austin

Parks and Wildlife Commission

AGENDA:

Notice of closed meeting.

Approval of the minutes from the previous meeting; action-land donation-Liberty County; action-land acquisition-Presidio County; action-land acquisition-Hidalgo County; action-land acquisition-Palo Pinto and Parker counties.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4642.

Filed: October 24, 1995, 1:50 p.m.

TRD-9513694

Thursday, November 2, 1995, 9:00 a.m.

Parks and Wildlife HQ, 4200 Smith School Road

Austin

Parks and Wildlife Commission

AGENDA:

Approval of the commission minutes from the annual public hearing, August 30, 1995, and the commission meeting, August 31, 1995; presentation of retirement certificates and service awards; presentation-Texas Black Bass Unlimited; presentation-Shikar Safari Officer of the Year Award; presentation-National Fish and Wildlife Foundation; donation-Artificial Reef Program; briefing-Texas Historical Commission; action-artwork approval; action-fee increases; action-regulations for the trapping, transporting, and transplanting of game animals and game birds, stocking policy; action-scientific breeder permit regulations; action-scientific collection, educational display, zoological collection, and rehabilitation permit regulations; action-mobile and stationary beach vending permits; action-Management of Wildlife and Exotic Animals by the Use of Aircraft Proclamation; action-consistency with federal regulations in the exclusive economic zone; briefing-Artificial Reef Program; action-nomination for oil and gas; action-general permits for the disturbance or removal of marl, sand, and gravel; action-Lakeline Mall Habitat Conservation Plan; action-land donation-Liberty County; action-land acquisition-Presidio County; action-land acquisition-Hidalgo County; action-land acquisition-Palo Pinto and Parker counties.

Contact: Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4642.

Filed: October 24, 1995, 1:50 p.m.

TRD-9513693

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State Pension Review Board

Friday, November 3, 1995, 3:00 p.m. (Telephone Conference Call.)

300 West 15th Street, Room 406, William Clements Building, Fourth Floor, Pension Review Board Conference Room

Austin

Planning, Research, and Policy Development Committee

AGENDA:

1. Overview of database project

2. Establishment of working committees

3. Proposed breakdown of research categories

4. Establishment of Technical Advisory Committee

5. Information to be included in database

Additional telephones will be available for conference call.

Contact: Lynda Baker, P.O. Box 13498, Austin, Texas 78711, (512) 463-1736.

Filed: October 26, 1995, 9:50 a.m.

TRD-9513798

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Texas State Board of Plumbing Examiners

Monday, November 6, 1995, 9:30 a.m.

929 East 41st Street

Austin

Board

AGENDA:

1. Roll call; 2. Recognize visitors; 3. Public comment; 4. Consider approval of the minutes of the September 11, 1995 and the September 27, 1995 special called board meeting; 5. Hear committee reports: a. Continuing Education, b. Examination, c. Field, d. Legislative, e. Medical Gas, f. Personnel, g. Rules Review, h. Water Supply Protection Specialist; 6. Assistant Attorney General, a. Enforcement Committee, b. Possible approval for publication of proposals to board rules; 7. Hear Field/Citation report; 8. Hear Examination report; consideration and possible approval or denial of hardship cases: a. Fernando Arevalo, b. Candelario Cervantes, c. Juan M. Garcia, d. Raul Garcia, e. Juan V. Gonzales, f. Pablo Rodriguez, g. Joe A. Bustos, h. Jesse C. Medina, i. Norberto Rodriguez, j. Jose Luis Torres, k. Randal Lee Reeder, l. Harold L. Nolan, m. Irvin E. Grosscup, Jr.; 10. Hear financial report; 11. Hear administrator's report; 12. Hear staff travel requests; 13. Announcement of next regularly scheduled board meeting-Monday, January 8, 1996, 9:30 a.m.; 14. Adjournment.

Contact: Mary Lou Lane, 929 East 41st Street, Austin, Texas 78751, (512) 458-2145, Ext. 222.

Filed: October 25, 1995, 9:14 a.m.

TRD-9513736

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Boards for Lease of State-Owned Lands

Friday, November 3, 1995, 9:30 a.m.

General Land Office, Stephen F. Austin Building, 1700 North Congress Avenue, Room 831

Austin

Board for Lease of Texas Parks and Wildlife Department

AGENDA:

Approval of previous board meeting minutes; consideration of nominations, terms, conditions and procedures for a special oil and gas lease sale; easement application renewals, Engeling Wildlife Management Area, Anderson County.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: October 25, 1995, 4:27 p.m.

TRD-9513782

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Teacher Retirement System of Texas

Tuesday, November 7, 1995, Noon.

1000 Red River, Room 420

Austin

Medical Board

AGENDA:

Discussion of 1) the files of members who are currently applying for disability retirement and 2) the files of disability retirees who are due a re-examination report.

Contact: Mary Godzik, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6411. For ADA assistance, contact Mary Godzik (512) 397-6411 or T.D. D. (512) 397-6444 or 1-800-841-4497 at least two days prior to the meeting.

Filed: October 25, 1995, 1:46 p.m.

TRD-9513766

Tuesday, November 7, 1995, Noon.

1000 Red River, Room 420

Austin

Medical Board

AGENDA:

Discussion of: 1) the files of members who are currently applying for disability retirement and 2) the files of disability retirees who are due a re-examination report.

Contact: Mary Godzik, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6411. For ADA assistance, contact Mary Godzik (512) 397-6411 or T.D. D. (512) 397-6444 or 1-800-841-4497 at least two days prior to the meeting.

Filed: October 25, 1995, 4:57 p.m.

TRD-9513788

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Texas Tech University Health Sciences Center and Texas Tech University

Friday, November 3, 1995, 8:00 a.m.

3601 Fourth Street, Room 2B 152, Health Sciences Center

Lubbock

Executive Session

AGENDA:

Approve August 11, 1995 minutes.

Consider: Texas Civil Statutes, Government Code, §551.074-Personnel Matters: a. employee disciplinary matter, and b. employee evaluations; and Texas Civil Stautes, Government Code, §551.071-Pending and contemplated litigation update. Reports.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806) 742-2161.

Filed: October 25, 1995, 2:28 p.m.

TRD-9513769

Friday, November 3, 1995, 10:30 a.m. (or following Executive Session)

3601 Fourth Street, Room 2B 152, Health Sciences Center

Lubbock

Academic, Student and Clinical Affairs

AGENDA:

Approve August 11, 1995 committee meeting minutes. Consider:

Texas Tech University Health Sciences Center: Establishment special professorships known as "Grover E. Murray Professorships"; involvement of TTUHSC in State's Medicaid Managed Care Pilot Project Initiative and authorization for president to contract with relevant entities for implementation and conduct of initiative; agreement with Life Management Center regarding El Paso Psychiatric Hospital; contract with Northwest Texas Healthcare Systems (Amarillo, Texas) to provide pharmacy services; contract with The Don and Sybil Harrington Cancer Center (Amarillo, Texas) to provide research services; contract with University Medical Center (Lubbock, Texas) for physician staffing of various UMC clinics; authorization for the Texas Department of Health (TDH), other related subcontracts with other clinical institutions and relevant community health care providers to assume and operate TDH net-

works of rural county public health clinics for extended provision of maternal and child health services, and related clinical and academic programs; renew contract with Medical Center Hospital (Odessa, Texas) to provide funding for School of Allied Health in Odessa, Texas; renewal contract with Providence Memorial Hospital (El Paso, Texas) to provide funding for resident and faculty services; amendment with Texas Department of Criminal Justice (Huntsville, Texas) to provide psychiatric care to prison inmates at facilities in West Texas; merger of School of Medicine's Department of Family Medicine and Department of Preventive and Occupational Medicine into one, creating the Department of Family and Community Medicine; finding of fact regarding appointment of an employee to another position of honor, trust or profit; exception to HSC OP 70.08 and Board of Regents Policy 04.22; ratification: conferral of degrees for December 16, 1995, commencement and commissioning of peace officers. Reports.

Texas Tech University: Establish Board of Regents policy for TTU concerning conflict of interest; revision of Board of Regents Policy 04.10, Intellectual Property Policy; finding of fact regarding appointment of an employee to another position of honor, trust or profit; ratification: leaves of absence, conferral of degrees for December 16, 1995, commencement, commissioning of peace officers and establish the Architecture Research Center. Reports.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806) 742-2161.

Filed: October 25, 1995, 2:29 p.m.

TRD-9513770

Friday, November 3, 1995, 10:30 a.m. (or following Executive Session)

3601 Fourth Street, AT&T Conference Room, Second Floor, Health Sciences Center

Lubbock

Finance and Administration

AGENDA:

Approval August 11, 1995, committee meeting minutes. Consider:

Texas Tech University Health Sciences Center: Approval of the sale of the remainder of the Texas Tech University Health Sciences Center's interest in the Paul and Eva Braddock Estate farm and ranch land; and budget adjustments for period July 1, 1995 to September 30, 1995. Reports.

Texas Tech University: Approval of Dudley Lyle Berry Trust Quasi Endowment for Student Endowment of TT Student Association, Dudley Lyle Berry Trust Quasi Presidential Scholarship Endowment, and Dudley Lyle Berry Trust Quasi Endowment for Substance Abuse Program; approval of TT Scholastic Achievement Scholarship Quasi Endowment; acceptance of three gifts-in-kind with value in excess of $25,000; ratification: delegation of officers and/or employees to approve official travel reimbursements from appropriated funds; delegation of officers and/or employees to authorize and approve expenditures from appropriated funds; specification of officers and/or employees to sign checks; specification of officers and/or employees to sign cashier's checks only; and budget adjustments for period July 1, 1995 through August 31, 1995. Reports.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806) 742-2161.

Filed: October 25, 1995, 2:29 p.m.

TRD-9513771

Friday, November 3, 1995, 10:30 a.m. (or following Executive Session)

202 Board of Regents Committee Room, Administration Building, Campus

Lubbock

Facilities

AGENDA:

Approve August 11, 1995, committee meeting minutes. Consider:

Texas Tech University Health Sciences Center: Approval of project analysis and schematic design, and authorization for president to proceed with design development, and authorization to reestablish project budget for an Ambulatory Health Center for Texas Tech University Health Sciences Center at Odessa; authorization for president to proceed with planning, establish project budget, appoint project engineer, approve schematic design, and proceed with contract documents and receipt of bids for completion of infrastructure in Mechanical Room D, Phase II of Health Sciences Center Building, Lubbock; authorization for president to proceed with planning, establish project budget and appoint project architect, approval of schematic design and authorization for president to proceed with contract documents and receipt of bids, and award a construction contract for completion of renovation of the Dermatology Clinic on Fourth Floor, Pod A, of Health Sciences Center, Lubbock. Reports.

Texas Tech University: Authorization for president to proceed with planning, establish a planning budget, and appoint a project architect to complete needs analysis for completion of stacks and renovation of Library; approval of schematic design, authorization for president to proceed with contract documents and receipt of bids, and authorization for president to award construction contract for replacement of windows in Sneed Hall; authorization for president to proceed with planning, establish project budget, and appoint project architect, approve schematic design, and authorization to proceed with contract documents and receipt of bids, and to award construction contract for replacement of roof on Mass Communications Building; authorization for president to proceed with planning, establish project budget, and appoint project architect, approve schematic design, and authorization to proceed with contract documents and receipt of bids, and to award construction contract for replacement of roof on Men's Gymnasium and Natatorium Building; and ratification: acceptance dates for refrigerant upgrade at Central Heating and Cooling Plant I and II. Reports.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806) 742-2161.

Filed: October 25, 1995, 2:30 p.m.

TRD-9513772

Friday, November 3, 1995, 1:00 p.m.

3601 Fourth Street, Room 2B 152, Health Services Center

Lubbock

Board of Regents

AGENDA:

Action and/or reports on:

Minutes; Academic, Student and Clinical Affairs; Finance and Administration; Facilities; and president's report.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806) 742-2161.

Filed: October 25, 1995, 2:27 p.m.

TRD-9513768

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University of Texas at Arlington

Wednesday, December 6, 1995, 12:45 p.m.

501 South Nedderman, Room 323, Life Science Building

Arlington

Institutional Animal Care and Use Committee

AGENDA:

1. Approval of June 7, 1995 minutes.

2. Discussion of future improvements for animal facilities.

Contact: Verne C. Cox, Box 15528, Arlington, Texas 76019, (817) 273-3164.

Filed: October 25, 1995, 2:59 p.m.

TRD-9513777

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Regional Meetings

Meetings Filed October 24, 1995

The Edwards Aquifer Authority Board-Special met at 100 Guenther, San Antonio River Authority, San Antonio, October 28, 1995, at 10:00 a.m. Information may be obtained from Mike Beldon, P.O. Box 15830, San Antonio, Texas 78212, (210) 270-0800. TRD-9513698.

The Gulf Bend Center Board of Trustees will meet at 1502 East Airline, Victoria, October 31, 1995, at Noon. Information may be obtained from Agnes Moeller, 1502 East Airline, Victoria, Texas 77901, (512) 575-0611. TRD-9513705.

The Hickory Underground Water Conservation District Number 1 Board and Advisors will meet at 2005 South Bridge Street, Brady, November 2, 1995, at 10:00 a.m. Information may be obtained from Lorna Moore, P.O. Box 1214, Brady, Texas 76825, (915) 597-2785. TRD-9513700.

The Lamb County Appraisal District Appraisal Review Board will meet at 331 LFD Drive, Littlefield, November 7, 1995, at 8:00 a.m. Information may be obtained from Vaughn E. McKee, P.O. Box 950, Littlefield, Texas 79339-0950, (806) 385-6474. TRD-9513671.

The Pecan Valley MHMR Region (Emergency Revised Agenda) Board of Trustees met at 104 Pirate Drive, Granbury, October 25, 1995, at 8:30 a.m. (Reason for emergency: Notified October 23, 1995, by TXMHMR of necessity for board action.) Information may be obtained from Dr. Theresa Mulloy, P.O. Box 973, Stephenville, Texas 76401, (817) 965-7806. TRD-9513687.

The Tyler County Appraisal District Board of Directors will meet at 806 West Bluff, Woodville, November 8, 1995, at 4:00 p.m. Information may be obtained from Eddie Chalmers, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9513708.

The West Central Texas Council of Governments (Revised Agenda.) Regional Citizens Advisory Committee will meet at 809 North Judge Ely Boulevard, Abilene, November 2, 1995, at 10:00 a.m. Information may be obtained from Brad Helbert, 1025 East North Tenth Street, Abilene, Texas 79601, (915) 672-8544. TRD-9513703.

The West Central Texas Council of Governments (Revised Agenda.) Regional Citizens Advisory Committee will meet at 809 North Judge Ely Boulevard, Abilene, November 2, 1995, at 10:00 a.m. Information may be obtained from Brad Helbert, 1025 East North Tenth Street, Abilene, Texas 79601, (915) 672-8544. TRD-9513704.

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Meetings Filed October 25, 1995

The Central Texas Area Consortium (Regular Meeting) will meet at 2 North Fifth Street, Temple, November 2, 1995, at 7:00 p.m. Information may be obtained from Michael B. Herring, P.O. Box 3303, Temple, Texas 76505-3303, (817) 791-9102. TRD-9513752.

The Dallas Central Appraisal District Board of Directors' Audit Committee will meet at 2949 North Stemmons Freeway, Dallas, November 1, 1995, at 7:00 a.m. Information may be obtained from Rick Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9513764.

The Dallas Central Appraisal District Board of Directors (Regular Meeting) will meet at 2949 North Stemmons Freeway, Second Floor Community Room, Dallas, November 1, 1995, at 7:30 a.m. Information may be obtained from Rick Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9513767.

The Hale County Appraisal District Appraisal Review Board will meet at 3314 Olton Road, Plainview, October 31, 1995, at Noon. Information may be obtained from Linda Jaynes, P.O. Box 329, Plainview, Texas 79073, (806) 293-4226. TRD-9513757.

The Henderson County Appraisal District Board of Directors will meet at 1751 Enterprise Street, Athens, October 31, 1995, at 5:00 p.m. Information may be obtained from Lori Fetterman, 1751 Enterprise Street, Athens, Texas 75751, (903) 675-9296. TRD-9513728.

The Lower Rio Grande Valley Development Council Hidalgo County Metropolitan Planning Organization will meet at the TxDOT District Office, 600 West Expressway US 83, Pharr, November 2, 1995, at 7:00 p.m. Information may be obtained from Edward L. Molitor, 4900 North 23rd Street, McAllen, Texas 78504, (210) 682-3481. TRD-9513730.

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Meetings Filed October 26, 1995

The Brazos Valley MHMR Authority Personnel/Budget Committee met at 804 Texas Avenue, Bryan, October 26, 1995, at Noon. Information may be obtained from Leon Bawcom, P.O. Box 4588, Bryan, Texas 77807, (409) 822-6467. TRD-9513789.

The Kendall Appraisal District Appraisal Review Board will meet at 121 South Main Street, Boerne, November 14, 1995, at 9:00 a.m. Information may be obtained from Mick Mikulenka or Tammy Johnson, P.O. Box 788, Boerne, Texas 78006, (210) 249-8012, Fax: (210) 249-3975. TRD-9513797.

The Northeast Texas Rural Rail Transportation District Board met at 2821 Washington Street, Greenville, October 30, 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-9513801.

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IN ADDITION

The ***Texas Register*** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Office of the Attorney General

Notices of Amendment to Consulting Services Contract

In accordance with the provisions of the Consulting Services Act, Texas Government Code, §2254.021 (the Act), the Office of the Attorney General hereby gives notice that it intends to enter into an amendment to a consulting services contract for advice concerning the implementation of a grant of federal funds awarded by the Governor's Office of Criminal Justice. The grant is for the provision of training to school districts, community-based service organizations, and other social service agencies, including the Texas Youth Council, related to mediation and intervention skills in connection with services to high-risk youth. The Attorney General previously has used consultants in connection with activities for the provision of the necessary training, site visits, and other grant-related activities.

The contract so amended originally was executed by the Attorney General and Rebecca Bales. The consulting services rendered pursuant to the contract commenced on April 1, 1995, and shall end on December 31, 1995. The value of the contract after the amendment will be $11,150, and this notice is filed pursuant to the provisions of the Act requiring such notice be given whenever the value of amended consulting services will exceed $10,000.

The Attorney General intends to award the proposed amendment to the existing consultant.

Issued in Austin, Texas, on October 24, 1995.

TRD-9513750 Suzanne Marshall
Assistant Attorney General
Office of the Attorney General of Texas

Filed: October 24, 1995

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In accordance with the provisions of the Consulting Services Act, Texas Government Code, §2254.021 (the Act), the Office of the Attorney General hereby gives notice that it intends to enter into an amendment to a consulting services contract for advice concerning the implementation of a grant of federal funds awarded by the Governor's Office of Criminal Justice. The grant is for the provision of training to school districts, community-based service organizations, and other social service agencies, including the Texas Youth Council, related to mediation and intervention skills in connection with services to high-risk youth. The Attorney General previously has used consultants in connection with activities for the provision of the necessary training, site visits, and other grant-related activities.

The contract so amended originally was executed by the Attorney General and Rebecca Bales. The consulting services rendered pursuant to the contract commenced on April 1, 1995, and shall end on December 31, 1995. The value of the contract after the amendment will be $20,208.74, and this notice is filed pursuant to the provisions of the Act requiring such notice be given whenever the value of amended consulting services contract will exceed $10,000.

The Attorney General intends to award the proposed amendment to the existing consultant.

Issued in Austin, Texas, on October 24, 1995.

TRD-9513749 Suzanne Marshall
Assistant Attorney General
Office of the Attorney General of Texas

Filed: October 24, 1995

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In accordance with the provisions of the Consulting Services Act, Texas Government Code, §2254.021 (the Act), the Office of the Attorney General hereby gives notice that it intends to enter into an amendment to a consulting services contract for advice concerning the implementation of a grant of federal funds awarded by the Governor's Office of Criminal Justice. The grant is for the provision of training to school districts, community-based service organizations, and other social service agencies, including the Texas Youth Council, related to mediation and intervention skills in connection with services to high-risk youth. The Attorney General previously has used consultants in connection with activities for the provision of the necessary training, site visits, and other grant-related activities.

The contract so amended originally was executed by the Attorney General and Walter Price. The consulting services rendered pursuant to the contract commenced on April 1, 1995, and shall end on December 31, 1995. The value of the contract after the amendment will be $13,480, and this notice is filed pursuant to the provisions of the Act requiring such notice be given whenever the value of amended consulting services contract will exceed $10,000.

The Attorney General intends to award the proposed amendment to the existing consultant.

Issued in Austin, Texas, on October 24, 1995.

TRD-9513751 Suzanne Marshall
Assistant Attorney General
Office of the Attorney General of Texas

Filed: October 24, 1995

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Notice of Public Hearing

The Office of the Attorney General will conduct a public hearing at the Bell County Exposition Center, 301 West Loop 121, Belton, Texas, beginning at 9:00 a.m. on Thursday, November 2, 1995.

The purpose of the meeting is to receive public input on the content of guidelines to be prepared by the Office of the Attorney General to assist governmental entities in identifying and evaluating governmental actions that may result in a taking of private real property under §2007.003(a)(1)-(3) of Senate Bill 14 enacted by the 74th Legislature of the State of Texas.

Additional information may be obtained from Sarah Duke or Diana Reyes, Administrative Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711, (512) 463-1415 or (512) 463-2025.

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

TRD-9513593 Suzanne Marshall
Assistant Attorney General
Office of the Attorney General

Filed: October 23, 1995

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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).

Types of Rate Ceilings	Effective Period (Dates are Inclusive)	Consumer (1)/Agricultural/ Commercial (2) thru $250,000	Commercial(2) over $250,000
Indicated (Weekly) Rate - Art. 1.04(a)(1)	10/30/95-11/05/95	18.00%	18.00%

(1)Credit for personal, family or household use. (2)Credit for business, commercial, investment or other similar purpose.

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

TRD-9513737 Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner

Filed: October 25, 1995

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Texas Education Agency

Notice of Public Hearing Concerning the Texas Permanent School Fund

The State Board of Education Committee on the Permanent School Fund will conduct a public hearing to solicit comments related to the formation of a non-profit corporation for the management of the assets of the Texas Permanent School Fund.

The hearing will be on Friday, November 3, 1995, 10:00 a.m.-11:00 a.m., Texas Education Agency, 1701 North Congress Avenue, Room 1-104, Austin, Texas 78701-1494.

The board is seeking comments from interested parties in order to receive a wide range of public input. Concrete suggestions regarding the formulation of the non-profit corporation will be more helpful than broad, philosophical position statements. The enabling legislation, approved by the last session of the legislature, authorizes the State Board of Education to contract with a non-profit corporation for the management of the assets of the Texas Permanent School Fund.

To allow the board to hear from as many groups as possible, each professional association or education advocacy organization is encouraged to coordinate proposals within its membership and make one presentation on behalf of the group. Appropriate action will be taken to avoid unduly repetitive testimony to assure that different members of the public with differing points of view have reasonable access to the board.

Anyone wishing to testify should register in advance by contacting the Texas Permanent School Fund at (512) 463-9169, by 5:00 p.m. on Thursday, November 2, 1995. Testimony will be limited to three minutes in an order established by the committee chair. It is recommended that 25 copies of written testimony, including the name and address of the speaker, be provided at the time of the hearing.

Those individuals wishing to give testimony who are unable to preregister may register on the day of the hearing. If time permits, these individuals will be allowed to give testimony following those who have preregistered.

Individuals who are unable to attend the hearing may send written comments to: State Board of Education Committee on the Permanent School Fund, c/o Texas Permanent School Fund, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494.

Individuals may contact Carlos Resendez or Dean Murray at (512) 463-9169 for additional information.

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

TRD-9513760 Criss Cloudt
Associate Commissioner for Policy Planning and Research
Texas Education Agency

Filed: October 25, 1995

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Request for Applications Concerning Academics 2000: First Things First, the Texas Goals 2000 Initiative

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-96-008 is authorized by Public Law 103-227.

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications from school districts or cooperatives of school districts working in collaboration with regional education service centers and/or other educational, business, and community institutions to develop plans for school improvement and to implement academic, instructional, and professional training and development strategies to improve early childhood and elementary student achievement in prekindergarten through Grade 4.

Description. The primary objective of the Academics 2000 initiative is to ensure that all fourth grade students are fully proficient in reading and core academic skills. The focus of this initiative is on improving early childhood and elementary education, prekindergarten through Grade 4, through district and campus planning and implementation strategies and educator preservice training and professional development. The State Board of Education stipulates that activities funded with Academics 2000 grants must be limited to activities promoting instructional and academic improvement in the areas of early childhood and elementary reading, writing, English language arts, mathematics, social studies, and science.

Dates of Project. Academics 2000: First Things First, the Texas Goals 2000 Initiative, will be implemented through the 1995-1997 school year. Applicants should plan for a starting date of no earlier than May 1, 1996, and an ending date of no later than May 31, 1997.

Project Amount. Funding will be provided for up to approximately 160 projects. Each project will receive a minimum of $50,000 and a maximum of $150,000 through the 1995-1997 school year. Continuation funding will be based on satisfactory progress of the objectives and activities and on general budget approval by the United States Congress, the State Board of Education, and the commissioner of education. This project is funded 100% from federal funds ($22,200,350).

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Priority will be given to applications submitted for cooperatives of school districts and to applications that are submitted in collaboration with institutions of higher education, regional education service centers, and nonprofit organizations. The TEA reserves the right to select from the highest ranking applications those that address all requirements in the RFA.

The TEA is not obligated to approve an application, provide funds, or endorse any applications submitted in response to this RFA. This RFA does not commit TEA to pay any cost before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-96-008 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, or by calling (512) 463-9304. Please refer to the RFA number in your request.

Further Information. For clarifying information about the RFA, contact Peggy Mays, Division of Curriculum Development and Textbooks, Texas Education Agency, (512) 463-9315.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. (Central Standard Time), Tuesday, January 16, 1996, to be considered.

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

TRD-9513742 Criss Cloudt
Associate Commissioner for Policy Planning and Research
Texas Education Agency

Filed: October 25, 1995

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Request for Proposals Concerning Clarification of Essential Knowledge and Skills in Health and Physical Education

Filing Authority. Request for Proposals (RFP) #701-96-004 is authorized under the Texas Education Code, §7.102(b)(2), and 19 TAC §75.5.

Eligible Proposers. The Texas Education Agency (TEA) is requesting proposals from institutions of higher education, professional associations, private companies, individuals, regional education service centers, nonprofit organizations, and other entities to manage the process of clarifying the essential knowledge and skills in health and physical education.

Description. The objective of this project is to clarify the essential knowledge and skills and develop performance standards for grade levels and courses in health and physical education, kindergarten through Grade 12. The main emphasis is to define what students should know and be able to do and the levels of expected student performance. Ultimately, the clarified essential knowledge and skills in health and physical education will form the basis for providing students with a foundation of knowledge and skills that will allow them to make positive decisions regarding their own health and fitness.

The selected contractor will manage the clarification and rewriting process of the essential knowledge and skills by planning and conducting meetings, synthesizing the work of the clarification team, and collaborating with agency staff on and conducting the field reviews of the drafts. The contractor will also participate in the Connections Team, which ensures interdisciplinary linkage of concepts, multicultural representation, process skills alignment, kindergarten through Grade 12 articulation, and real-world applications.

Dates of Project. All services and activities related to this proposal will be conducted within specified dates. Proposers should plan for a starting date of no earlier than January 15, 1996, and an ending date of no later than August 31, 1996.

Project Amount. One contractor will be selected to receive a maximum of $150,000 during the contract period.

Selection Criteria. A proposal will be selected based on the ability of the proposer to carry out all requirements contained in the RFP. The TEA will base its selection on, among other things, the demonstrated competence and

qualifications of the proposer. The TEA reserves the right to select from the highest ranking proposals the one that addresses all requirements in the RFP.

The TEA is not obligated to execute a resulting contract, provide funds, or endorse any proposal submitted in response to this RFP. This RFP does not commit TEA to pay any costs incurred before a contract is executed. The issuance of this RFP does not obligate TEA to award a contract or pay any costs incurred in preparing a response.

Requesting the Proposal. A complete copy of RFP #701-96-004 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, or by calling (512) 463-9304. Please refer to the RFP number in your request.

Further Information. For clarifying information about the RFP, contact Tommy Fleming, Division of Curriculum Development and Textbooks, Texas Education Agency, (512) 463-4326.

Deadline for Receipt of Proposals. Proposals must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. (Central Standard Time), Friday, December 15, 1995, to be considered.

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

TRD-9513741 Criss Cloudt
Associate Commissioner for Policy Planning and Research
Texas Education Agency

Filed: October 25, 1995

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Texas Environmental Awareness Network

Notice of Monthly Meeting

The Texas Environmental Awareness Network (TEAN) will meet Tuesday, November 14, 1995, 8:30 a.m. at its usual location, the Texas Parks and Wildlife Department, Wild Basin Preserve Offices, 805 South Capital of Texas Highway, Austin, Texas 78746.

Agenda:

1. Introductions

2. Sign in/Mailing List Update

3. Eye on Earth Program October show recap November 15th show-"Bring Wildlife to Your Classroom" December 13th show-"Energize Your Classroom"

4. TEAN representation at CAST

5. TEAN representation at NSTA-San Antonio, December

6. TEAN agencies interested in participating in TNRCC's "Teaching Environmental Sciences" summer course

7. Other announcements

For information about the meeting, or to place an item on the agenda, contact Sue Bumpous, TEAN Chair, by mail at P.O. Box 13087, MC 194, Austin, Texas 78711; by phone at (512) 239-0049; or by fax at (512) 239-0055.

Issued in Austin, Texas, on October 24, 1995.

TRD-9513663 Sigrid Clift
Texas Environmental Awareness Network

Filed: October 24, 1995

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Texas Department of Health

Notice of Emergency Order

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Little Bit Wireline Service (licensee L-03168) of Beaumont to perform radiation surveys of all equipment, facilities, and land surfaces at the well site (North Winnie Field, Evans Unit A, Well Number 1, Chambers County) to detect, assess, and evaluate all contamination that resulted from a leaking radioactive well logging source. The bureau determined that the well site where the source was ruptured, the well service equipment located on the site, and other sites and equipment related to operations at the site have been severely contaminated with radioactive material. The bureau determined these sites and equipment require immediate decontamination to protect the public health and safety and the environment. The licensee is further ordered to have a company, which is authorized by the bureau, evaluate and decontaminate all sites and equipment.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

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

TRD-9513285 Susan K. Steeg
General Counsel
Texas Department of Health

Filed: October 16, 1995

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Notice of Revocation of Certificates of Registration

The Texas Department of Health, having duly filed complaints pursuant to Texas Regulations for Control of Radiation, Part 13 (25 Texas Administrative Code §289.112), has revoked the following certificates of registration. Timothy W. Lykke, D.P.M., Houston, R07601, October 18, 1995; Golden Triangle Chiropractic Center, Denton, R16514, October 18, 1995; Richard A. Watson, D.V.M., Spring, R16535, October 18, 1995; Thao's Dental Equipment, Houston, R16591, October 18, 1995; General Medical Technology, Inc. , Pasadena, R17250, October 18, 1995; Douglas L. Reece, D.O., Lubbock, R17640, October 18, 1995; Carrier Chiropractic, Grand Prairie, R18070, October 18, 1995; Douglas Edward, Inc., Lubbock, R20223, October 18, 1995.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

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

TRD-9513735 Susan K. Steeg
General Counsel
Texas Department of Health

Filed: October 25, 1995

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Notice of Revocation of Radioactive Material Licenses

The Texas Department of Health, having duly filed complaints pursuant to Texas Regulations for Control of Radiation, Part 13 (25 Texas Administrative Code §289.112), has revoked the following radioactive material licenses: Craven Laboratories, Inc. , Austin, L02773, October 18, 1995; Robco Production Logging, Inc., Snyder, L03549, October 18, 1995.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

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

TRD-9513734 Susan K. Steeg
General Counsel
Texas Department of Health

Filed: October 25, 1995

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Texas Department of Mental Health and Mental Retardation

Notice of Public Hearing

The Texas Department of Mental Health and Mental Retardation (TDMHMR) will conduct a public hearing to receive comments on the department's proposed reimbursements for the following Medicaid programs: Case Management for Persons with Severe and Persistent Mental Illness; Case Management Program Requirements; and Rehabilitation Services for Persons with Mental Illness. The public hearing is held in compliance with Title 25, Texas Administrative Code, Chapter 409, Subchapter A, §409.002(j), which requires a public hearing on proposed reimbursement rates for medical assistance programs. The hearing will be held at 9:00 a.m., Thursday, November 16, 1995, in the TDMHMR Central Office Auditorium (Main Building) at 909 West 45th Street in Austin, Texas. Persons who wish to offer testimony but who are unable to attend the hearing may submit written comments which must be received by noon the day of the hearing. The written comments should be sent to the Data Analysis Section, Medicaid Administration, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668 or faxed to (512) 323-3250. Interested parties may obtain a copy of the reimbursement briefing package by calling the Data Analysis Section at (512) 323-3870. If interpreters for the hearing impaired are required, please contact the Data Analysis Section at the number previously listed at least 72 hours in advance of the hearing.

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

TRD-9513740 Ann K. Utley
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation

Filed: October 25, 1995

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Texas Natural Resource Conservation Commission

Notice of Public Hearing

Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code, §382.017 and 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 revisions to Chapter 337.

Section 337.11, concerning Installment Payment of Administrative Penalty, is proposed for revision to ensure that a small business is allowed to pay administrative penalties imposed in an agreed order by installment. The rule will specify that the payment period not exceed 12 months and establishes an effective date for the payment period. In addition, the proposed rule will establish criteria for classifying businesses. The proposed new section would allow any business to pay administrative penalties by installments upon approval of the commission.

A public hearing on the proposal will be held November 27, 1995, at 10:00 a. m. in Room 254S of TNRCC Building E, located at 12118 North IH-35, Park 35 Technology Center, 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 not presented at the hearing may be submitted to the TNRCC central office in Austin through November 30, 1995. Material received by the TNRCC Office of Policy and Regulatory Development by 4:00 p.m. on that date will be considered by the commission prior to any final action on the proposal. Please mail comments to Lisa Martin, Office of Policy and Regulatory Development, MC 202, P.O. Box 13087, Austin, Texas 78711-3087, and reference Rules Tracking Log #95146-337-AI. Please fax comments to (512) 239-5687. Copies of the revision are available from the Air Policy and Regulations Division, located at 12015 North IH-35, Park 35 Technology Center, Building F, Austin, and at all TNRCC regional offices. For further information, please contact John Gillen at (512) 239-1415.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on October 24, 1995.

TRD-9513732 Kevin McCalla
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Filed: October 25, 1995

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Public Utility Commission of Texas

Notice of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.26

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 23.26 for approval of three new Optional Calling Plans for business customers in the Long Distance Message Telecommunications Service Tariff.

Tariff Title and Number. Application of Southwestern Bell Telephone Company to provide three new Optional Calling Plans (OCP) for business customers in the Long Distance Message Telecommunications Service Tariff. Docket Number 14892.

The Application. Southwestern Bell Telephone Company is requesting approval of three new Optional Calling Plans (OCP). An OCP is a service arrangement that provides pricing alternatives to the traditional interLATA long distance rate schedule.

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 23, 1995.

TRD-9513669 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: October 24, 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 the City of Midland in Midland, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for the City of Midland pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 14898.

The Application. Southwestern Bell Telephone Company is requesting approval of a 97-station addition to the existing PLEXAR-Custom service for the City of Midland. The geographic service market for this specific service is the Midland, 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 23, 1995.

TRD-9513666 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: October 24, 1995

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Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Plainview ISD in Plainview, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for Plainview ISD pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 14899.

The Application. Southwestern Bell Telephone Company is requesting approval of a 75-station addition to the existing PLEXAR-Custom service for the Plainview ISD in Plainview. The geographic service market for this specific service is the Plainview, 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 23, 1995.

TRD-9513667 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: October 24, 1995

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Public Notice

On September 27, 1995, Southwestern Bell Telephone Company filed notice to file a LRIC study pursuant to Substantive Rule §23.91 for the following: (1) Automatic Number Identification; (2) Coin Central Office Equipment per Line; (3) Network Access Channel Basic Level-Type A per NAC; (4) Network Access Channel Basic Level-Type B per NAC; (5) Network Access Channel Basic Level-Type C per NAC; (6) Network Access Channel Connection-Basic Level per Channel Connection; (7) Network Access Channel Connection-Switched Line Interfact per Channel Connection; (8) Operator Call Processing Transfer; (9) Local Operator Assistance; and (10) IntraLATA Operator in Project Numbers 12475 and 12481, Application of Southwestern Bell Telephone Company and GTE Southwest, Inc. for Approval of LRIC Studies Workplans Pursuant to Public Utility Commission Substantive Rule 23.91. GTE expects to file these studies on October 9, 1995.

Persons who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Commission by November 10, 1995. A request to intervene, participate, or for further information should be mailed to the Public Utility Commission of

Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757. Further information may also be obtained by calling the Public Utility Commission Public Information Office at (512) 458-0256. The telecommunications device for the deaf (TDD) is (512) 458-0221.

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

TRD-9513668 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: October 24, 1995

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Texas Racing Commission

Notice of Application Periods

The Texas Racing Commission announces that the Commission will open two application periods during which the Commission will accept applications for Class 3 and Class 4 racetrack licenses statewide. Under Texas Racing Commission rules, an application for a pari-mutuel racetrack license must be filed on a form prescribed by the Commission during an application period set by the Commission.

On July 10, 1995, the Texas Racing Commission's Horse Racing Section established new application periods for receiving Class 3 and Class 4 racetrack applications. The first application period will begin on November 30, 1995, and end on January 28, 1996. The second application period will begin on January 29, 1996, and end on March 15, 1996. During either application period, a person may file an application for a Class 3 or Class 4 racetrack located in any Texas county that has approved pari-mutuel wagering in accordance with Article 16, Texas Racing Act (Vernon's Texas Civil Statutes, Article 179e).

For more information and a copy of the application form, contact Jean Cook, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

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

TRD-9513608 Paula Cochran Carter
General Counsel
Texas Racing Commission

Filed: October 23, 1995

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Sam Houston State University

Consultant Proposal Request

This request for consulting services is filed under the provisions of the Texas Government Code, Chapter 22.54. Sam Houston State University (SHSU) seeks written proposals from qualified consulting firms based in Washington, D. C. to represent and assist the University in developing projects deemed important to the University. Important considerations in the award of the proposed contract will be the years of experience in securing funding assistance for university programs and facilities, a strong bipartisan presence within the firm with considerable experience working with legislative staffs, and a record of substantial success in dealing with the Congress and the Executive Agencies. Excellent skills in university grant and contract awards is necessary. Substantial experience in the development of strategies for corporate participation in university-sponsored development projects especially those relating to environmental and telecommunication issues. Interested parties are invited to express their interest and describe their capabilities by December 15, 1995. The consulting services desired are a continuation of a service previously performed by a private consultant. This contract represents a renewal and will be awarded to the previous consultant unless a better offer is received. The term of the contract is to be from date of award for a 12-month period with options to renew. Further technical information can be obtained from Dr. Billy Covington at (409) 294-3621. Deadline for receipt of proposals is December 15, 1995. Date and time will be stamped on the proposals by the Office of Research and Sponsored Programs. Proposals received later than this date and time will not be considered. All proposals must be specific and must be responsive to the criteria set forth in this request.

I. General Instructions

Submit one copy of your proposal in a sealed envelope to: Office of Research and Sponsored Programs, P.O. Box 2448, Sam Houston State University, Huntsville, Texas 77341-2448 before 4:00 p.m., December 15, 1995. Proposals may be modified or withdrawn prior to the established due date.

II. Discussions with Offerers and Award

The University reserves the right to conduct discussions with any or all offerers, or to make an award of a contract without such discussions based only on evaluation of the written proposals. The University also reserves the right to designate a review committee in evaluating the proposals according to the criteria set forth under Section III entitled "Scope of Work." The Associate Vice President for Research and Sponsored Programs shall make a written determination showing the basis upon which the award was made and such determination shall be kept on file.

III. Scope of Work

1. Representation and assistance in developing projects deemed important to the University.

2. Assistance in obtaining funding for University projects.

3. Consulting and representation as directed by Sam Houston State University.

IV. Evaluation

A. Criteria for Evaluation of Proposals:

Firms will be evaluated on time and quality of experience in representing and assisting universities in developing projects. Equal consideration will be given to past performance, writing skills, and the effectiveness of the firms strategies.

B. Your proposal should include costs for all related expenses.

V. Termination

This Request for Proposal (RFP) in no manner obligates SHSU to the eventual purchase of any services described, implied or which may be proposed until confirmed by a written contract. Progress towards this end is solely at the discretion of SHSU and may be terminated without penalty or obligation at any time prior to the signing of a contract. SHSU reserves the right to cancel this RFP at any time, for any reason and to reject any or all proposals. SHSU requires that the responses to this RFP must state that the proposed terms will remain in effect for at least 45 days after the scheduled response opening.

Issued in Austin, Texas, on October 10, 1995.

TRD-9513414 B. K. Marks
Vice President for Academic Affairs and Student Services
Sam Houston State University

Filed: October 18, 1995

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Texas Department of Transportation
Public Hearing Notice

Pursuant to Transportation Code, §201.602, the Texas Transportation Commission will conduct a public hearing to receive data, comments, views, and/or testimony concerning the commission's highway project selection process and the relative importance of the various criteria on which the commission bases its project selection decisions.

The public hearing will be held on Wednesday, November 29, 1995, at 1:00 p. m., in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas. The hearing will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 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 authority as may be necessary to ensure a complete record. While any person with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority 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. Presentations must remain pertinent to the issue 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 the hearing 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 Kerry Kutch, community relations manager, at 125 East 11th Street, Austin, Texas 78701-2383, (512) 463-8954 at least two work days prior to the hearing so that appropriate arrangements can be made.

Copies of the criteria/information will be available beginning October 30, 1995, at the department's Camp Hubbard Annex, 4000 Jackson Avenue, Building 1, Room 320, Austin, (512) 302-2278. Written comments may be submitted to the Texas Department of Transportation, attention Alvin R. Luedecke, P.E., P.O. Box 5051, Austin, Texas 78763-5051. The deadline for receipt of comments is 5: 00 p.m. on December 11, 1995.

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

TRD-9513648 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Filed: October 24, 1995

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Public Notice

The Texas Department of Transportation publishes this notice for informational purposes only. House Bill 2053, 74th Legislature, 1995, effective September 1, 1995, amended Texas Civil Statutes, Article 6675-3aa, relating to the identification of a motor vehicle that is issued exempt license plates. Before issuance of exempt license plates, exempt agencies must certify to the Texas Department of Transportation, Vehicle Titles and Registration Division, in writing that there is printed on each side of the vehicle, in letters that are at least two inches high and of a color sufficiently different from the body of the vehicle to be clearly legible from a distance of 100 feet, the name (no abbreviations or acronyms) of the agency, department, bureau, board, commission, or officer of the United States, Texas, or political subdivision of Texas that has custody of the vehicle.

A peace officer may seize a motor vehicle displaying exempt license plates if the vehicle is being operated on a public highway and not identified in this manner.

Contact: Jerry L. Dike, Director, Vehicle Titles and Registration, 125 East 11th Street, Austin, Texas 78701, (512) 465-7570.

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

TRD-9513649 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Filed: October 24, 1995

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Rate Schedule

The Texas Department of Transportation is authorized by Texas Civil Statutes, Article 6144e to publish literature for the purpose of advertising the highways of this state and attract traffic thereto, and to include paid advertising in such literature. 43 TAC §23.10 describes the policies governing advertising in department travel literature, lists acceptable and unacceptable subjects for advertising in department travel literature, and describes the procedures by which the department will solicit advertising.

As required by 43 TAC §23.10(e)(4)(A), the department invites any entity or individual interested in advertising in department travel literature to request to be added to the department's mailing list. Requests may be made by writing to the Texas Department of Transportation, Advertising, P.O. Box 141009, Austin, Texas 78714-1009.

The department is now accepting advertising for publication in the February, 1997 issue of the Texas State Travel Guide. The rate card information along with a sample copy of the Texas State Travel Guide will be mailed to every entity or individual on the mailing list on December 1, 1995. On and after January 2, 1996, the department will accept all insertion orders (orders for paid advertising) received prior to the publication deadline on a first-come, first-served basis or until all advertising space is filled. The publication deadline for accepting advertising space is December 1, 1996. Insertion orders postmarked or received prior to January 2, 1996, will not be accepted.

The Texas State Travel Guide is designed to encourage readers to explore and travel in Texas. The guide lists cities and towns by major metropolitan areas and alphabetically, featuring population figures and recreational travel sites for each, along with maps and four-color photography. The guide also presents sections listing the lakes of Texas; state parks; and national and state forests, as well as information on hunting and fishing. The State of Texas distributes this vacation guide to Texas travelers and to

those who request information while planning their recreational travel.

The rate card information for potential advertisers is included in this publication as Figures 1-5.

101 - Rate Schedule
Figure 1

ORDER FORM

GENERAL POLICY

Invoices are payable 30 days from date of invoice.

It is understood and agreed that all terms and conditions are subject to acceptance by the publisher.

Unacceptable items include, but are not limited to, out-of-state travel-tourism features, locations, destinations, facilities, or services, unless augmenting Texas travel or tourism; alcoholic beverages; tobacco products; sexually-oriented products and services; advertising considered misleading or a misrepresentation of facts; other subjects not related to travel and tourism.

No advertising from any entity that discriminates against customers on the basis of race, color, creed, religion, sex, or national origin.

.....

ORDER FORM

Company Name_____Contact Name_____

Billing Address_____

Phone_____ Fax_____

Ad Size_____Position_____

Total Cost $_____

I have read and I agree to the terms and conditions stated herein.

Authorized Signature:_____ Date:_____

Mail Completed Form to ADVERTISING, P.O. Box 141009, Austin, TX 78714-1009

101-Rate Schedule

Figure 2.

CIRCULATION

Travel Guide Mailings Generated by Phone Requests

REGION	1994	1993	1992
East North Central	129,385	122,467	112,535
East South Central	49,202	45,168	46,071
Middle Atlantic	67,204	81,490	79,087
Mountain	49,771	43,584	40,649
New England	31,873	29,118	29,191
Pacific	93,505	80,545	71,840
South Atlantic	123,754	110,889	108,905
West North Central	86,420	89,068	81,275
West South Central	321,722	273,158	262,294
Canada	22,502	18,746	14,847
Other Foreign	8,487	15,295	8,008
Total Mailings	1,003,825	909,528	854,702

Travel Guides Distributed at Tourist Information Centers*

1994	1993	1992
764,393	242,379	398,577

TOTAL Travel Guides Distributed By Year

1994	1993	1992
1,768,218	1,151,907	1,253,279

**There are ten Tourist Information Centers at points of entry around the state.*

101-Rate Schedule
Figure 3

TEXAS TRAVELER PROFILE

★ FREQUENCY OF TRAVEL
67% Have traveled to Texas more than once

★ SINGLE/MARRIED - MALE/FEMALE
24% Single/ 76% Married
45% Male/ 55% Female

★ AGE
24% Under 35
26% Age 35-45
22% Age 55-65

★ OCCUPATION
22% Retired
22% Managerial/Professional

★ HOUSEHOLD INCOME

42% Under $35,000
29% $35,000-$50,000
29% Over $50,000

★ ACCOMMODATIONS
68% Used Hotel/Motel/Resort
26% Stayed with friends or relatives

★ PURPOSE OF TRIP
52% Vacation
35% Visit friends or relatives

★ CHILDREN IN PARTY
16% One child
12% Two children
9% Over two children

Source:
Texas Dept. of Commerce 1993 One and Two Year Study Conversion Analysis

101-Rate Schedule

Figure 4

RATES

ADVERTISING RATES

All Rates Based on 4-Color (No Black and White)

Full Page	$28,000
Half Page	$16,800
One/Fourth Page	$ 9,800
One/Sixth Page	$ 7,500

Premium Positions:

Inside Front Cover	$37,300
Inside Back Cover	$35,000
Outside Back Cover	$42,600
Inside Front Cover/Page 1 Spread	$49,300

Closings:

Space	December 1
Copy	December 15
First Distribution	February

101-Rate Schedule
Figure 5

SPECIFICATIONS

ADVERTISING SIZES

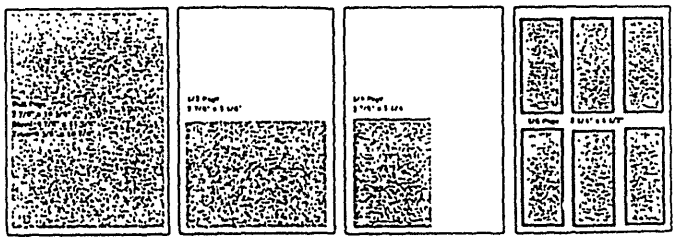
Full Page	7 7/8" X 10 3/8"
Full Page/Trim	8 3/8" X 10 7/8"
Full Page/Bleed	8 7/8" X 11 3/8"
Half Page	7 7/8" X 5 1/8"
One/Fourth Page	3 7/8" X 5 1/4"
One/Sixth Page	2 1/4" X 4 1/2"

MECHANICAL REQUIREMENTS

All live copy and non-bleed elements should be at least 1/2" from final trim size.

Binding: Perfect bound, inside gutter for spread should be split by 1/4" for spreads

Printing Material: Composite film (offset negatives, right reading emulsion side down) 150 line screen.



Requests for additional information should be addressed to Cynthia Castile at (512) 483-3685.

Issued in Austin, Texas, On October 20, 1995.

TRD-9513495 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Filed: October 20, 1995

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The University of Texas Health Science Center at San Antonio

Consultant Request for Proposal

The University of Texas Health Science Center at San Antonio (UTHSCSA) requests, pursuant to the provisions of the Government Code, Chapter 2254, the submission of proposals for a compensation study on its administrative and professional positions. The purpose of this study is to assist the UTHSCSA Office of Human Resources in the development and implementation of a job evaluation and compensation program for administrative and professional job classifications, excluding executive officers. The results of the compensation study should produce a methodology to provide competitive salaries to recruit and retain qualified employees to support the strategic mission of the institution.

The objectives of this study include but are not limited to the following:

Development of a UTHSCSA compensation philosophy that is consistent with the institution's mission and strategic plan

Development of job descriptions for the administrative and professional positions

Development of a job evaluation methodology

Development of a plan and guidelines for administering the recommended compensation program

Recommendations on an automated system to support the administration of the program

Development of cost estimates to implement the recommended program Assistance in implementing the program

Firms responding to the Request for Proposal (RFP) must have substantial experience, analytical and technical skills, and an in-depth knowledge of job evaluation and compensation practices. Firms must comply with the specifications as outlined in the RFP. The firm awarded the contract, if any, will be the respondent whose proposal conforming to the RFP, is deemed to be the most advantageous by UTHSCSA. Factors in awarding a contract will include, but not limited to, demonstrated competence, knowledge, experience and reasonableness of cost. Proposals must remain valid for acceptance and may not be withdrawn for a period of 90 days after the proposal closing date.

UTHSCSA reserves the right to accept or reject any or all proposals submitted.

Each firm interested in responding to this RFP must attend the Pre-Bid Conference scheduled for November 14, 1995, 2:00 p.m. CDT in the UTHSCSA Training Room 112 in the Administration Building. Attendance at this Pre-Bid Conference is mandatory. Proposals will not be considered or accepted from firms who do not attend.

An original plus three copies of the full proposal must be submitted to the UTHSCSA Purchasing Office no later than December 7, 1995, at 3:00 p.m. CDT. Proposals received thereafter will not be considered and will be returned unopened. Proposals must be sent to the address indicated as follows.

For further information or to obtain a complete RFP package (RFP Number 745-6-77833), contact The University of Texas Health Science Center at San Antonio, Purchasing Department, Administration Building Room 314, 7703 Floyd Curl Drive, San Antonio, Texas 78284-7962, (210) 567-6030.

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

TRD-9513621 Arthur H. Dilly
Executive Secretary to the Board of Regents
The University of Texas Health Science Center at San Antonio

Filed: October 23, 1995

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