

# TEXAS REGISTER

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Volume 20, Number 83 November 3, 1995

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Texas Register, ISSN 0362-4781, is published semi-weekly 100 times a year except July 7, November 10, November 28, and December 29, 1995. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: one year - printed, \$95 and electronic, \$90; six-month printed, \$75 and electronic, \$70. Single copies of most issues are available at \$7 per copy.

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The Texas Register is published under the Government Code, Title 10, Chapter 2002. Second class postage is paid at Austin, Texas.

POSTMASTER: Please send form 3579 changes to the Texas Register, P.O. Box 13824, Austin, TX 78711-3824.

How to Use the Texas Register

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

Governor - Appointments, executive orders, and proclamations.

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

Secretary of State - opinions based on the election laws.

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

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

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

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

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

Open Meetings - notices of open meetings.

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

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

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

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

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

Texas Administrative Code

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

The TAC volumes are arranged into Titles (using

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

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

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

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

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

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

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
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The Table of TAC Titles Affected is cumulative for each volume of the Texas Register (calendar year).

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

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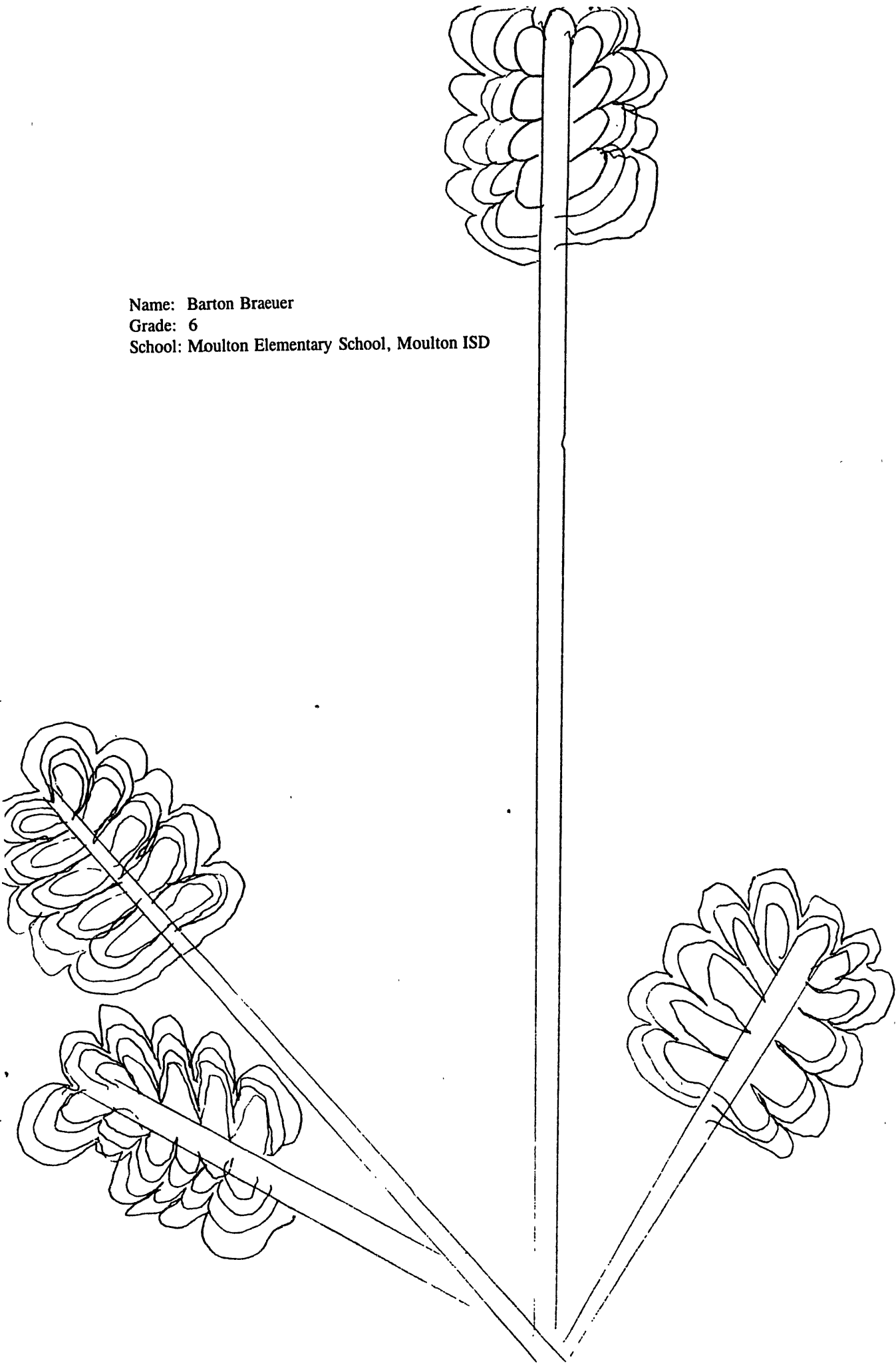
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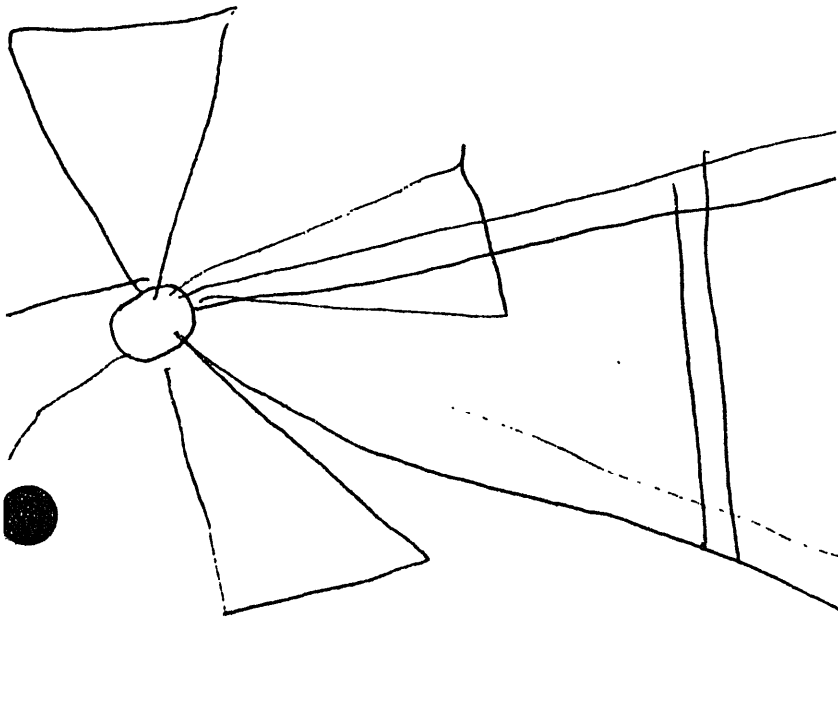
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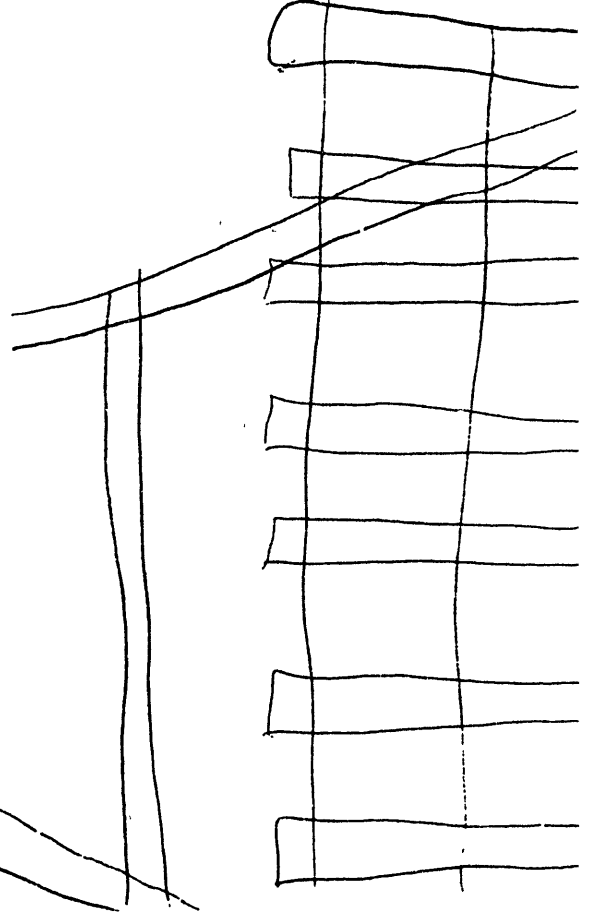
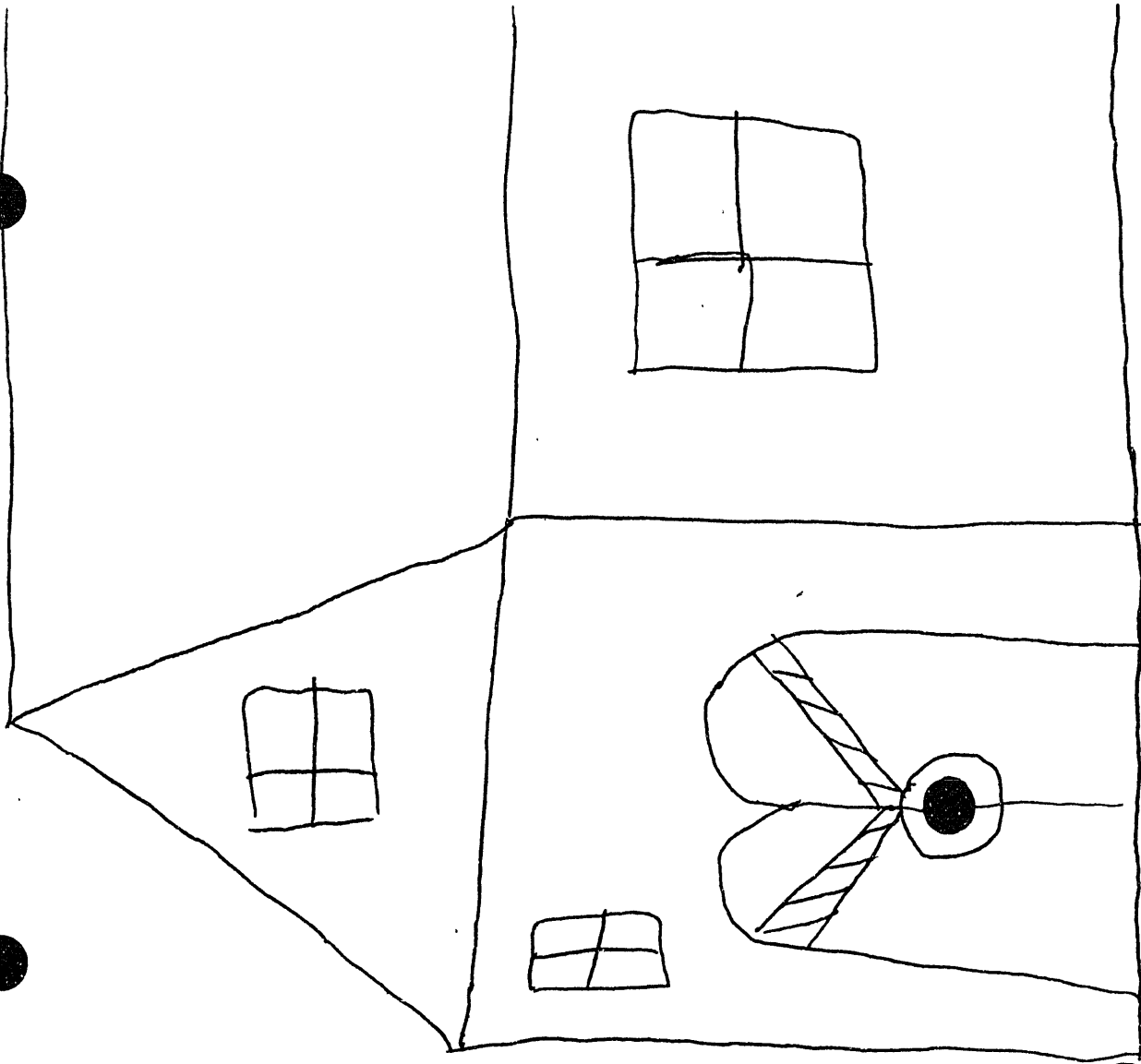
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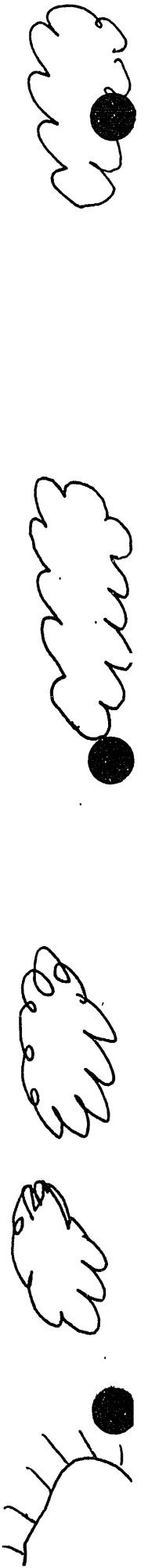
Name: Barton Braeuer  
Grade: 6  
School: Moulton Elementary School, Moulton ISD



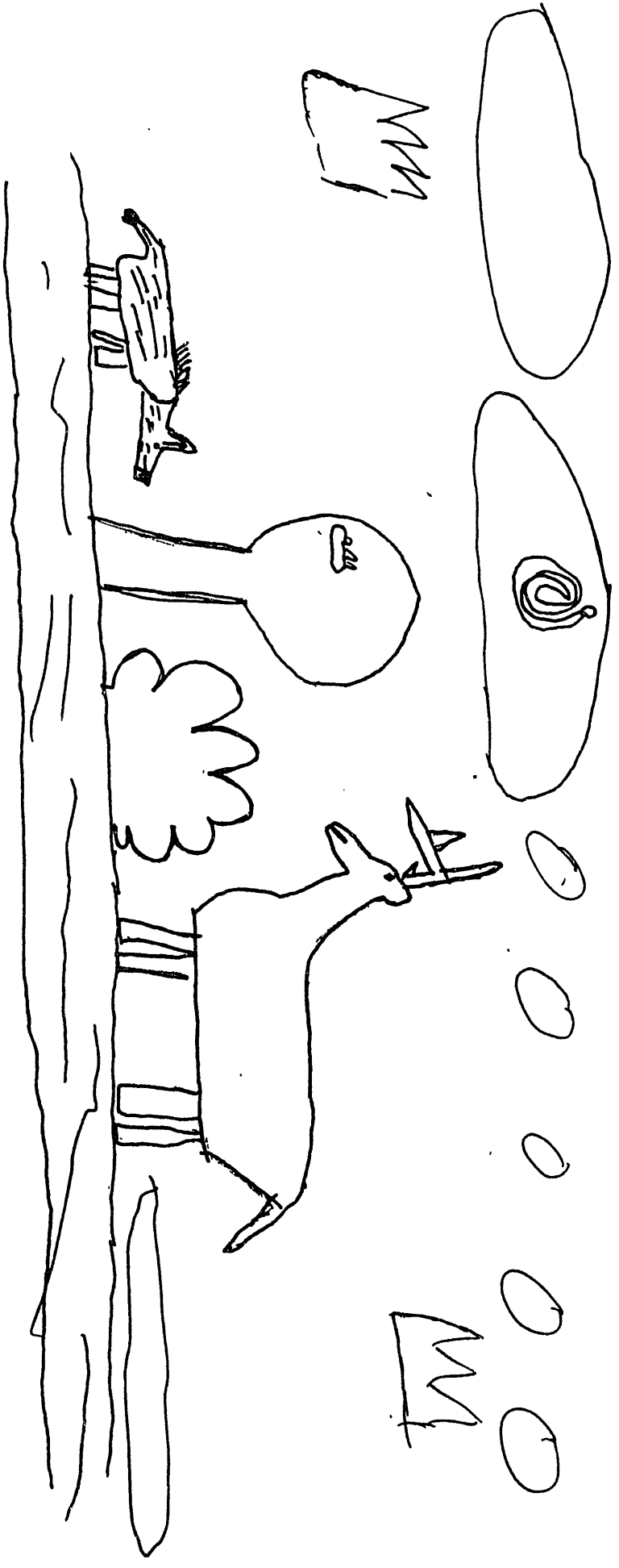


Name: Preston Koncaba  
Grade: 6  
School: Moulton Elementary School, Moulton ISD

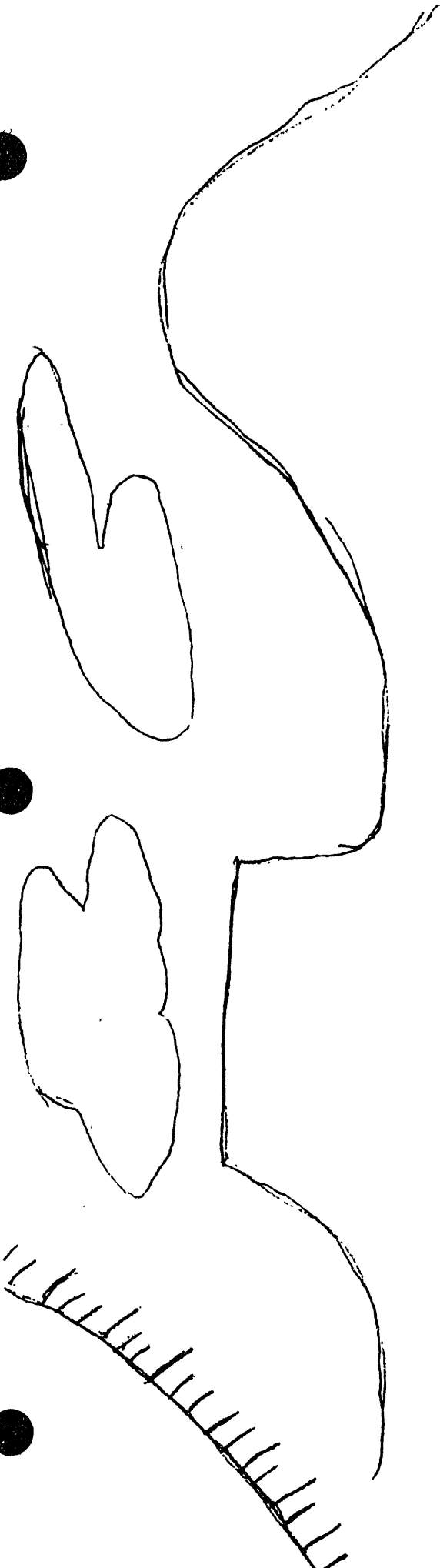




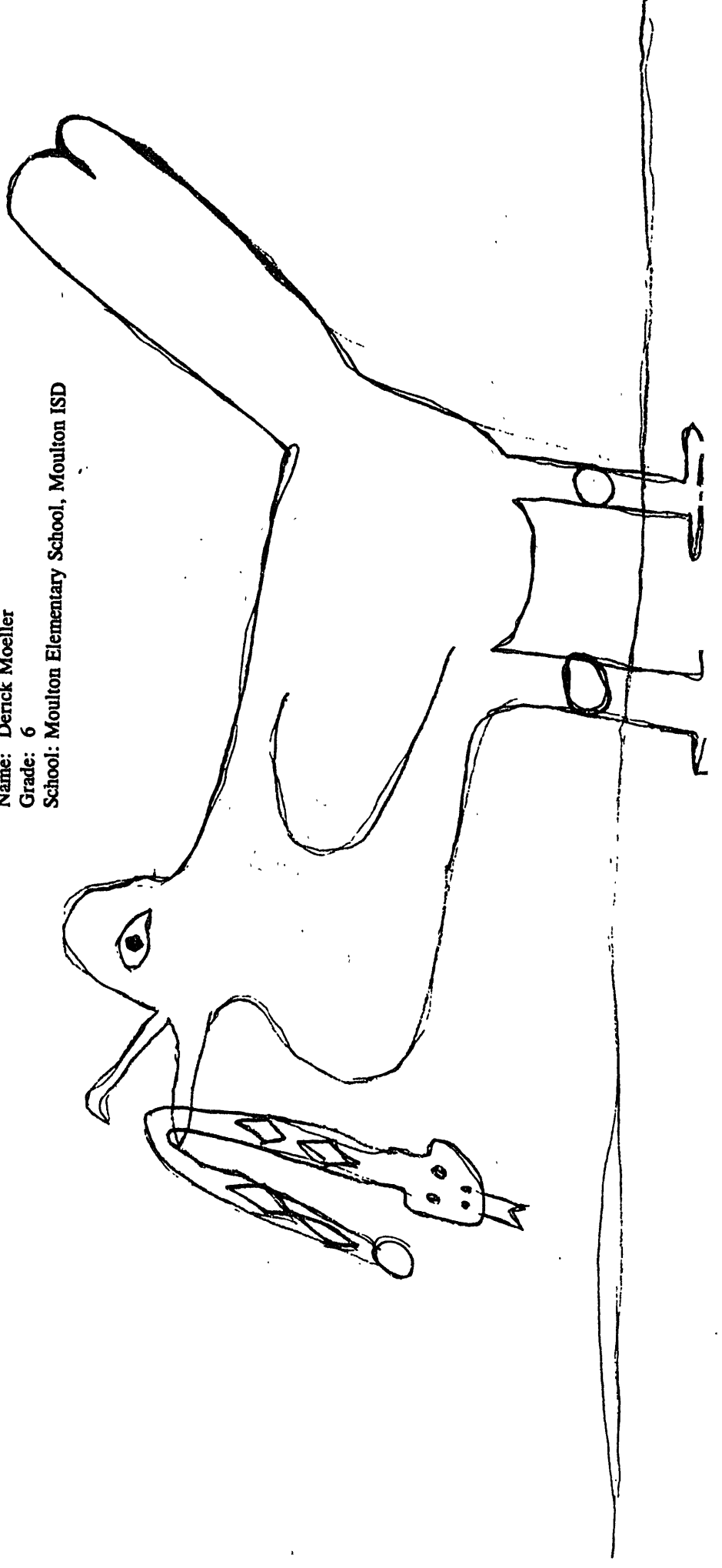
Name: Toby Rothbauer  
Grade: 6  
School: Moulton Elementary School, Moulton ISD



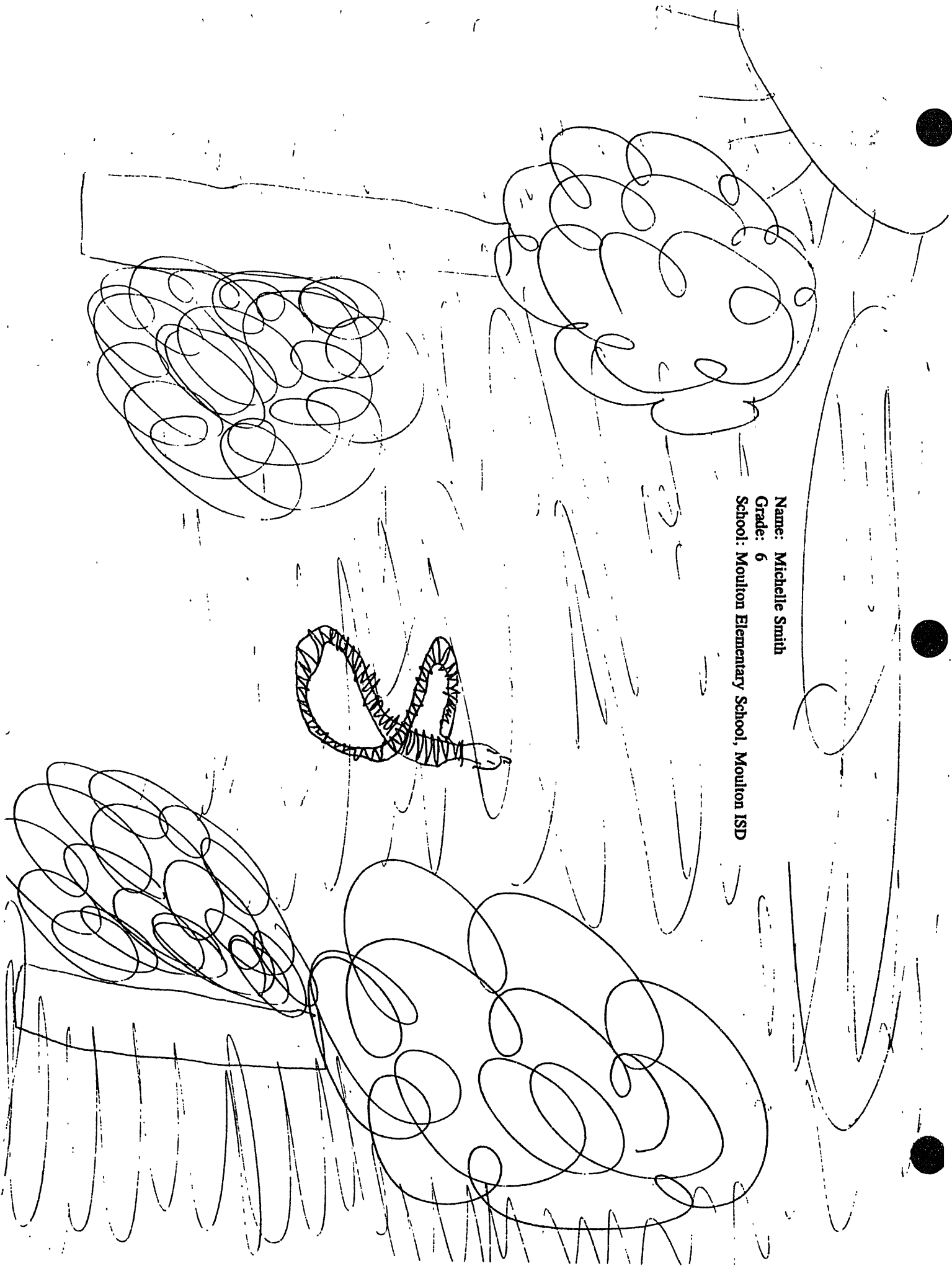




Name: Derick Moeller  
Grade: 6  
School: Moulton Elementary School, Moulton ISD



Name: Michelle Smith  
Grade: 6  
School: Moulton Elementary School, Moulton ISD



# THE GOVERNOR

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

## Appointments Made October 23, 1995

To be a member of the **Texas Higher Education Coordinating Board** for a term to expire August 31, 2001: Jodie L. Jiles, 4720 Post Oak Timber #23, Houston, Texas 77056. Mr. Jiles will be replacing Patricia S. Prather of Houston whose term expired.

To be a member of the **Texas Commission on the Arts** for a term to expire August 31, 1999: Idell G. Rabin, 30 Royal Way, Dallas, Texas 75229. Mrs. Rabin will be filling the unexpired term of Raymond Donald Nasher of Dallas who was not confirmed by the Senate.

To be a member of the **Texas Commission on the Arts** for a term to expire August 31, 2001: Malouf Abraham, Jr., M.D., 520 Nelson, Canadian, Texas 79014. Dr. Abraham will be replacing James D. Tittle of Abilene whose term expired.

To be a member of the **Texas Commission on the Arts** for a term to expire August 31, 2001: Doris Alexander, 3201 Hawthorne Drive, Amarillo, Texas 79109. Mrs. Alexander will be replacing Ruth Fox of Austin whose term expired.

To be a member of the **Texas Commission on the Arts** for a term to expire August 31, 2001: Anne Lamkin Kinder, 2121 Kirby Drive-123, Houston, Texas 77019. Mrs. Kinder will be replacing William James Hill of Houston whose term expired.

To be a member of the **Texas Commission on the Arts** for a term to expire August 31, 2001: Mary Anne McCloud, 515 South Lamar Street, Eastland, Texas 76448. Mrs. McCloud will be replacing Dorothy Anne Conn of Beaumont whose term expired.

To be a member of the **Texas Commission on the Arts** for a term to expire August 31, 2001: Alyn Brown Morton, 6111 Los Robles Drive, El Paso, Texas 79912. Ms. Morton will be replacing Richard Alvarado of El Paso whose term expired.

To be a member of the **Texas Commission on the Arts** for a term to expire August 31, 2001: Constance M. "Connie" Ware, Route 1, Box 254, Marshall, Texas 75670. Mrs.

Ware will be replacing Lisa Hembry of Dallas whose term expired.

To be a member of the **Texas State Technical College System Board of Regents** for a term to expire August 31, 1997: Jere M. Lawrence, 2 Lakewood Drive, Sweetwater, Texas 79556. Mr. Lawrence will be filling the unexpired term of Odelia M. (Lita) McEachern of Sweetwater who resigned.

To be a member of the **Texas State Technical College System Board of Regents** for a term to expire August 31, 2001: Thomas L. "Tommy" Whaley, Sr., 217 Pitts Avenue, Marshall, Texas 75670. Mr. Whaley will be replacing Jere J. Ruff of Longview whose term expired.

To be a member of the **Texas State Technical College System Board of Regents** for a term to expire August 31, 2001: Jerilyn Kyker Pfeifer, 2525 Christopher, Abilene, Texas 79602. Ms. Pfeifer will be replacing Mollie Anna Solomon of Port Arthur whose term expired.

To be a member of the **Texas State Technical College System Board of Regents** for a term to expire August 31, 2001: C. "Connie" de la Garza, 2814 Lotus, Harlingen, Texas 78550. Mr. de la Garza will be replacing Ricardo Gutierrez of Rio Grande City whose term expired.

To be a member of the **Texas Appraiser Licensing and Certification Board** for a term to expire January 31, 1996: Ben E. Barnett, P.O. Box 50903, Dallas, Texas 75250. Mr. Barnett will be replacing Lynette T. Fornerette of Houston whose term expired.

To be a member of the **Texas Appraiser Licensing and Certification Board** for a term to expire January 31, 1996: Debra S. Runyan, 124 Lyman, San Antonio, Texas 78209. Ms. Runyan will be replacing Robert Allen Martin of Grand Prairie whose term expired.

To be a member of the **Texas Appraiser Licensing and Certification Board** for a term to expire January 31, 1996: Maria (Teran) Almanza, 720 Willow Glen, El Paso, Texas 79915. Ms. Almanza is being reappointed.

To be a member of the **Texas Appraiser Licensing and Certification Board** for a term to expire January 31, 1997: A. E. "Butch" Nelson, Jr., #30 Lytle Place, Abilene, Texas 79602. Mr. Nelson is being reappointed.

To be a member of the **Texas Appraiser Licensing and Certification Board** for a term to expire January 31, 1997: Leonel Garza, Jr., Rural Route 7, Box 552, McAllen, Texas 78504. Mr. Garza will be replacing Mary Jo Hutton of San Antonio whose term expired.

To be a member of the **Texas Appraiser Licensing and Certification Board** for a term to expire January 31, 1997: Vidal Gonzalez, 100 Royal Way, Del Rio, Texas 78840. Mr. Gonzalez will be replacing Gary W. Schur of Munday whose term expired.

To be a member of the **Texas Appraiser Licensing and Certification Board** for a term to expire January 31, 1997: Cecil Wayne Wimberly, P.O. Box 235, Meridian, Texas 76665. Mr. Wimberly will be replacing Leroy Singleton, Sr. of Hempstead whose term expired.

To be a member of the **Automobile Theft Prevention Authority** for a term to expire February 1, 2001: James Philip Donovan, 5405 Holly, Bellaire, Texas 77401. Mr. Donovan will be filling the unexpired term of Robert L. Springer who resigned.

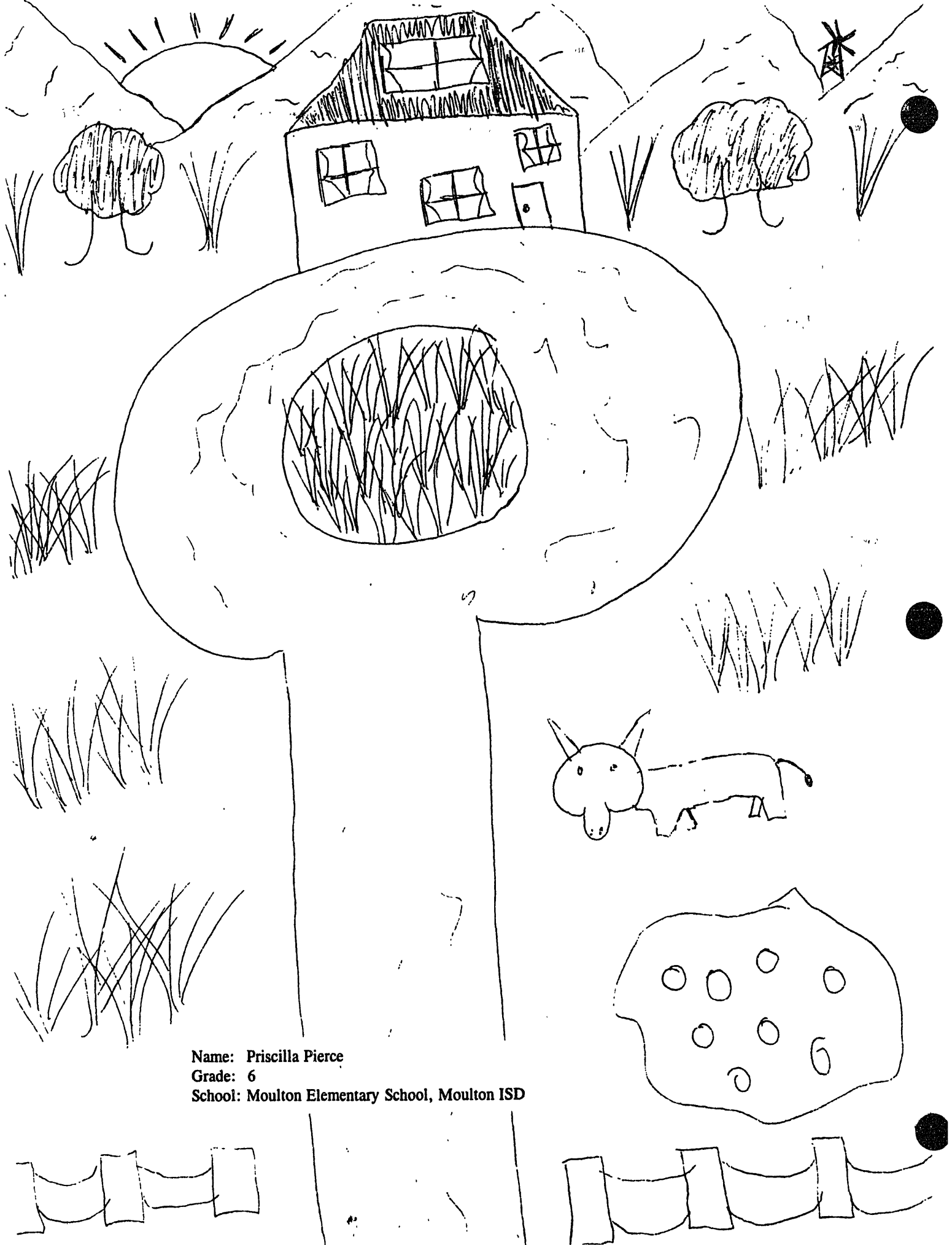
To be a member of the **Sulphur River Basin Authority Board of Directors** for a term to expire February 1, 2001: Patsy R. McClain, 628 Rasure Circle, Sulphur Springs, Texas 75482. Mrs. McClain will be replacing David Baucom of Sulphur Springs whose term expired.

To be a member of the **Sulphur River Basin Authority Board of Directors** for a term to expire February 1, 2001: Robert L. Parker, 3170 Clark Lane, Paris, Texas 75460. Mr. Parker will be replacing Curtis R. Fendley of Paris whose term expired.

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

TRD-9513763

George W. Bush  
Governor of Texas



Name: Priscilla Pierce  
Grade: 6  
School: Moulton Elementary School, Moulton ISD

# TEXAS ETHICS COMMISSION

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

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

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## Texas Ethics Commission

### Advisory Opinion Requests

**AOR-322.** The Texas Ethics Commission has been asked to consider whether an individual may accept political contributions and make political contributions in connection with a campaign for a position of district judge if the individual does not yet know which court he will be campaigning for. The court he will be campaigning for depends on whether the United States Justice Department approves the creation of a new district court.

**AOR-323.** Whether holiday greeting cards sent by an officeholder and paid for from political contributions must have a political advertising disclosure.

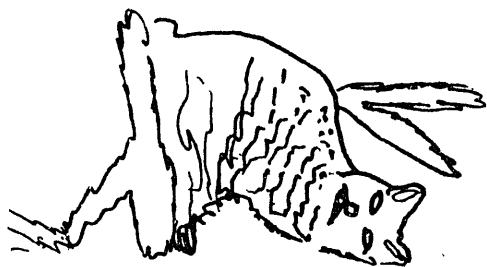
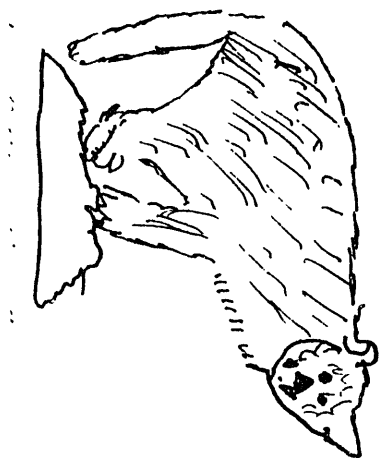
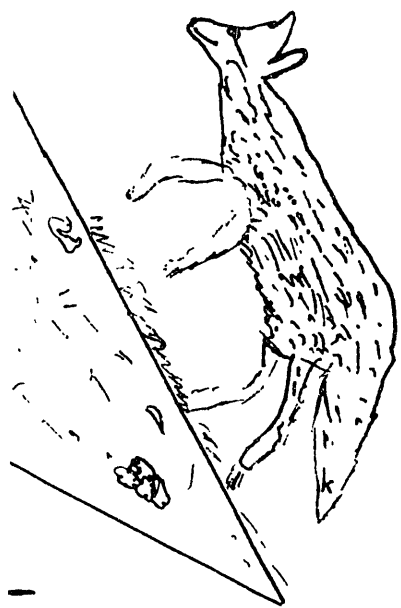
Issued in Austin, Texas, on October 26, 1995.

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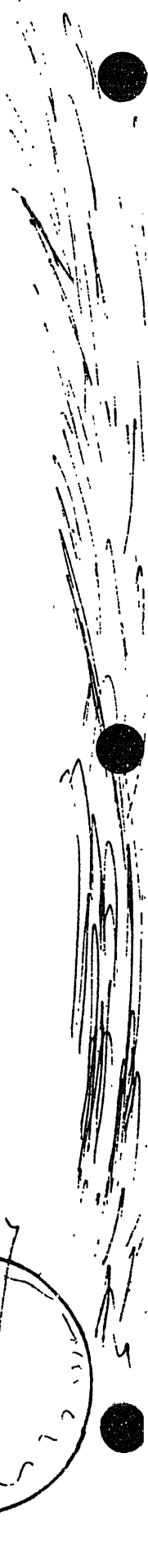
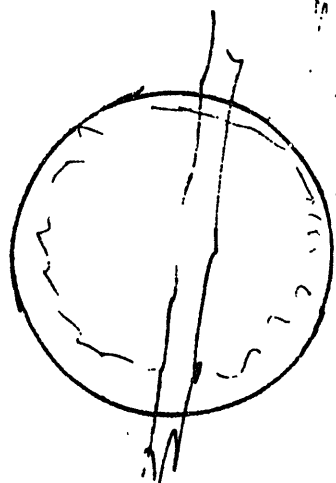
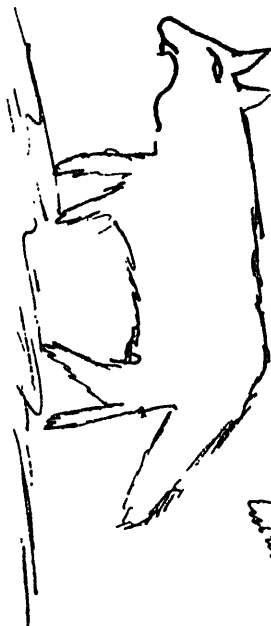
Lucia Dodson  
Executive Assistant  
Texas Ethics Commission

Filed: October 27, 1995





Name: Brian Smolik  
Grade:  
School: Moulton Elementary School, Moulton ISD



# EMERGENCY RULES

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

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

## TITLE 43. TRANSPORTATION

### Part I. Texas Department of Transportation

#### Chapter 27. Toll Projects

##### Subchapter B. Texas Turnpike Authority

###### • 43 TAC §§27.20-27.26

The Texas Department of Transportation adopts on an emergency basis new §§27.20-27.26 concerning the Texas Turnpike Authority.

Transportation Code, Chapters 361 and 362, require that the Texas Transportation Commission authorize feasibility studies funded from the Texas Turnpike Authority Feasibility Study Fund and that the commission approve environmental reviews of authority projects, the location of authority projects, and any transfer of an authority project to another entity. Transportation Code, §362.051, prohibits the authority from initiating construction of a toll road, toll bridge, or turnpike without first obtaining commission approval if the project is to become part of the state highway system.

Senate Bill 1360 enacted by the 74th Texas Legislature, 1995, amended the Transportation Code by creating §362.0041. This legislation allows the commission, upon approval of the Governor, to transfer an existing segment of a state highway to the authority for operation as a toll road when such a transfer is the most feasible and economic means to accomplish necessary enlargements, improvements or extensions of the state highway system.

Section 27.20 explains that the purpose of the rules is to establish the criteria and procedures for the approval of certain phases of the development of turnpike projects constructed, maintained and operated by the authority; transfer existing free public highways to the authority to accomplish needed enlargements, improvements, or extensions; authorization of authority feasibility studies and approval of the authority's environmental reviews, project locations, projects, control of access, and transfer of projects.

Section 27.21 defines words and terms used in the new subchapter.

Section 27.22 requires that the authority submit a written request for authorization to conduct a project feasibility study, and provides that the commission shall consider the potential for environmental impact and the project's general compatibility with the state and regional transportation plans.

Section 27.23 requires that the authority submit a written request for approval of an environmental review, requires that the authority's environmental review shall be conducted in accordance with the authority's rules, and provides that the commission will approve the authority's environmental review if it complies with this section and applicable laws.

Section 27.24 authorizes the authority to designate the location, and establish, limit and control the points of ingress and egress from projects; provides that upon payment of all bonds and acceptance by the commission a turnpike project shall become part of the free state highway system; provides that certain governmental entities may not begin construction of a toll or turnpike project without commission approval if the project is to become part of the state highway system; requires that the authority submit a written request for project approval and provides a list of the required documentation; and provides the criteria for commission approval including effective integration into the state highway system, the department's ability to construct any connecting roads necessary for the project to generate sufficient revenue, and location of points of ingress and egress which ensure proper operation and maintenance.

Section 27.25 provides that turnpike projects may be transferred to certain entities if the authority, the commission, and the Governor approve the transfer as being in the best interest of the state and the local government, requires that the authority submit a written request to lease, sell or otherwise convey a project from the authority to another entity and that such request must be accompanied by a written commitment from the accepting entity to maintain the facility in a safe and efficient manner, and an evaluation of the impact of such action on regional mobility and project financial viability; and establishes the criteria that the commission will consider before approving the lease, sale or conveyance of a project.

Section 27.26 provides that if the commission finds that the conversion of an existing public highway (or segment of highway) to a toll facility is the most feasible and economic

means to accomplish necessary enlargements, improvements or extensions to the state highway system, that segment may, on approval of the Governor, be transferred to the authority; requires the commission to conduct a public hearing prior to transferring an existing highway to the authority; requires publication of public hearing notices; requires the department to prepare a public hearing summary; requires the authority to reimburse the commission for the cost of a transferred highway unless the commission finds that the transfer will result in a substantial net benefit to the state; establishes the criteria that the commission will consider before agreeing to transfer an existing highway; authorizes the commission to request approval from the Governor to execute such a transfer; requires the commission to remove a transferred segment from the designated state highway system; and requires the authority to assume responsibility and liability for maintenance and operation of the transferred facility.

It is necessary to adopt these new sections on an emergency basis in order: to comply with Transportation Code, Chapters 361 and 362; to minimize the potential for serious adverse economic impact due to the current transportation funding shortfall facing Texas while enhancing safety and mobility; to expedite certain projects which will alleviate critical traffic congestion and adverse air quality and economic conditions; and to facilitate the authority's and the commission's actions concerning transportation projects.

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically Transportation Code, Chapters 361 and 362, which provides that the commission must approve various aspects of turnpike project development and transfer of authority projects to other governmental entities; and may, upon approval of the Governor, transfer an existing public highway to the authority for conversion to a toll facility.

§27.20. *Purpose.* Transportation Code, Chapter 361, and Transportation Code, Chapter 362, Subchapter B, require the approval of the Texas Transportation Commission and the Texas Department of Transportation for certain phases of the development of turnpike projects constructed,

maintained, and operated by the Texas Turnpike Authority. Transportation Code, §362.0041, also authorizes the commission to transfer existing free public highways to the authority to accomplish needed enlargements, improvements, or extensions. This subchapter governs authorization of authority feasibility studies funded through the authority's Feasibility Study Fund and approval of the authority's environmental reviews, project locations, projects, control of access, and transfer of projects. It also establishes the criteria and procedures by which the commission may transfer an existing public highway to the authority for conversion to a turnpike project.

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

**Authority**—The Texas Turnpike Authority.

**Commission**—The Texas Transportation Commission.

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

**Executive director**—The chief administrative officer of the department.

**Feasibility study**—Collectively, all evaluations and analyses necessary to ascertain the financial, technical, and environmental viability of a proposed project, including route location, environmental and financial investment studies.

**Metropolitan planning organization**—An organization designated by the governor to carry out the transportation planning process in prescribed urbanized areas as required by 23 United States Code, §134.

**Turnpike project**—A project of the Texas Turnpike Authority as defined by Transportation Code, Chapter 361.

**§27.22. Texas Turnpike Authority Feasibility Study Fund.** Transportation Code, §361.182, provides that project feasibility studies funded from the Texas Turnpike Authority Feasibility Study Fund require approval of the commission. To secure approval the authority shall submit a written request to the executive director prior to initiating such a study. When acting on the authority's request, the commission shall consider the potential for environmental impact and the project's general compatibility with the adopted state transportation plan and, if pertinent, the regional transportation plan adopted by a metropolitan planning organization having jurisdiction in the project area.

**§27.23. Environmental Review.**

(a) Request. Transportation Code, §361.103, provides that the environmental review of a turnpike project must be approved by the commission before construc-

tion of that project begins. To secure that approval the authority must submit a written request to the executive director.

(b) General Requirements. An environmental review submitted for approval under this section shall be conducted in accordance with the rules of the authority concerning environmental review of its projects.

(c) Approval. The commission will approve the authority's environmental review if it finds that the review has complied with the requirements of this section. When acting on the authority's request for environmental review approval, the commission will consider applicable provisions of state and federal laws, rules and regulations.

**§27.24. Project Approval.**

(a) Requirements. Transportation Code, §361.101, authorizes the authority to construct, maintain, repair, and operate projects at such locations within the state as may be determined by the authority subject to approval as to location by the commission. Transportation Code, §361.043, authorizes the authority to designate the location, and establish, limit, and control such points of ingress to and egress from, each project as may be necessary and desirable in the judgment of the authority and the department to ensure the proper operation and maintenance of said project. Transportation Code, §361.238, provides that upon payment of all bonds and the acceptance by the commission as being in good condition and repair, a turnpike project shall become a part of the state highway system to be operated free of tolls. Transportation Code, §362.051 provides that certain governmental entities may not begin construction of a toll road, toll bridge, or turnpike without the approval of the commission if the project is to become part of the state highway system.

(b) Request. To secure approval under this section the authority shall submit a written request for approval to the executive director. The request must be accompanied by:

(1) documentation of the financial viability of the proposed project for purposes of seeking the approval described in subsection (c)(2) of this section;

(2) a detailed schematic indicating the location of interchanges, mainlanes, and ingress and egress ramps;

(3) a report identifying revisions or changes to state highway system facilities necessitated by the proposed project; and

(4) an evaluation of the project integration with the state highway system.

(c) Approval. The commission will approve a project if it finds that:

(1) the project may be effectively integrated into the state highway system;

(2) the department is able to construct any connecting roads necessary for the project to generate sufficient revenue to pay the debt incurred for its construction; and

(3) points of ingress and egress are located in a manner that ensures the proper operation and maintenance of the project.

**§27.25. Transfer of Turnpike Projects.**

(a) Requirements. Transportation Code, §361.282, authorizes the transfer of a turnpike project to certain entities if the authority, the commission, and the governor approve the transfer of the project as being in the best interests of the state and the local government.

(b) Request. To secure approval under this section to lease, sell, or otherwise convey a turnpike project to another entity the authority shall submit to the executive director a written request. Such request shall be accompanied by:

(1) a written commitment to the commission from the accepting entity to maintain the facility in a safe and efficient manner; and

(2) an evaluation of the impact of such action on regional mobility and project financial viability.

(c) Approval. The commission will approve the lease, sale, or conveyance of a project if it finds that such transfer:

(1) is in the best interests of the state;

(2) is in the best interests of the county in which the project is located, or, if the project will be transferred to a municipality, is in the best interests of the municipality in which the project is located; and

(3) will not adversely affect:

(A) the financial viability of the project; or

(B) regional mobility.

**§27.26. Transfer of Existing Public Highways.**

(a) Purpose. Transportation Code, §362.0041, provides that if the commission finds that the conversion of an existing segment of the free state highway system to a toll facility is the most feasible and economic means to accomplish necessary enlargements, improvements, or extensions to the state highway system, that segment may, on approval of the governor, be trans-



ferred by order of the commission to the authority.

(b) Public involvement. Prior to transferring an existing segment of the state highway system to the authority, the commission will conduct a public hearing for the purpose of receiving comments from interested persons concerning the proposed transfer. Notice of the hearing will be published in the *Texas Register*, one or more newspapers of general circulation, and a newspaper, if any, published in the county or counties in which the involved segment of highway is located. The department will prepare a summary of the public hearing and all comments received in response to the hearing.

(c) Reimbursement. The authority will reimburse the commission for the cost of the transferred highway, unless the commission finds that the transfer will result in substantial net benefits to the state, the department, and the traveling public that exceed that cost. The cost shall include the total dollar amount expended by the department for the original construction of the transferred highway (and all necessary appurtenant facilities), including all costs associated with the preliminary engineering and design engineering for plans, specifica-

tions and estimates, and acquisition of necessary right-of-way.

(d) Criteria. The commission may transfer an existing highway to the authority, provided that:

(1) the authority agrees, through binding written commitment, to accept the highway for maintenance and operation in a safe and efficient manner while protecting and preserving the state's investment in the facility;

(2) the authority demonstrates that based on existing and/or forecasted traffic volumes the project is capable of generating revenue from the toll rates set by the authority sufficient to satisfy project-related debt (including, if applicable, commission reimbursement) and maintenance and operation expenses;

(3) the transfer will not adversely affect regional mobility;

(4) construction of the necessary enlargement, improvement or extension can be accomplished efficiently, expeditiously, and with a minimum public investment; and

(5) if the transferred segment or a facility of which it will become a part is to be enlarged, improved, or extended by

the authority, the requirements of §27.23 of this title (relating to Environmental Review) and §27.24 (relating to Project Approval) are satisfied.

(e) Transfer. Provided the commission finds that the conversion of a segment of the existing state highway system to a toll facility is the most feasible and economic means to accomplish necessary enlargements, improvements, or extensions to the state highway system and that such conversion is in the best interest of the State of Texas, the commission will request approval from the governor to execute such a transfer. Coincident with the transfer, the commission will remove the segment of highway from the designated state highway system, and the authority shall assume all responsibility and liability for maintenance and operation of the facility.

Issued in Austin, Texas, on October 26, 1995.

TRD-9513799

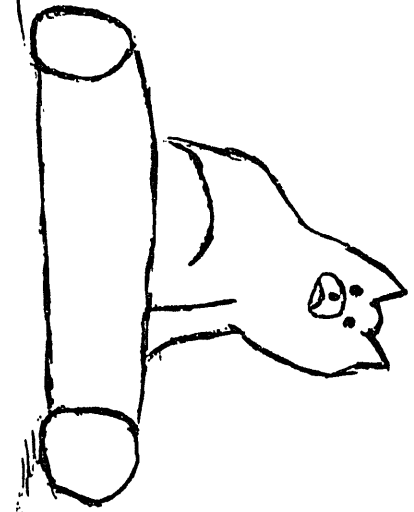
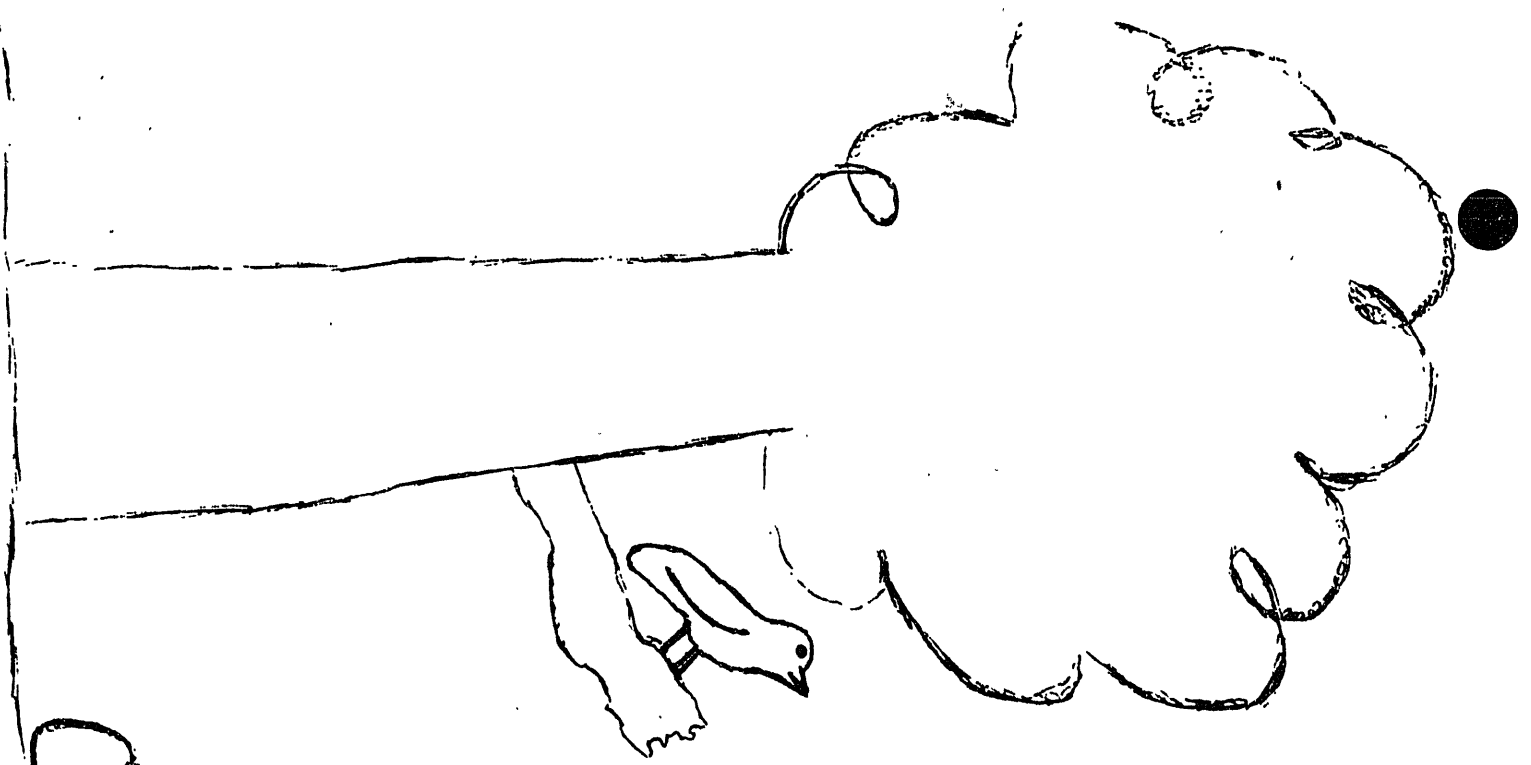
Robert E. Shaddock  
General Counsel  
Texas Department of  
Transportation

Effective date: October 26, 1995

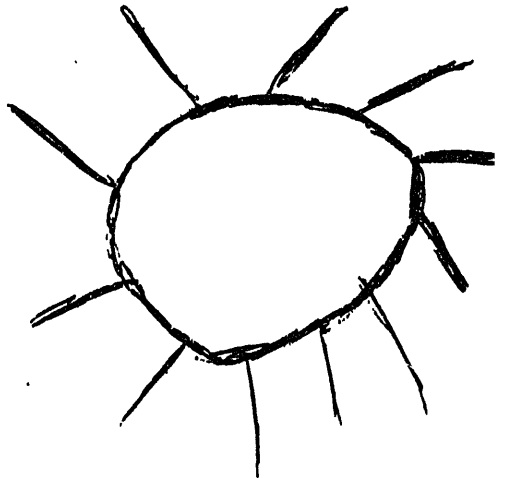
Expiration date: February 23, 1996

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

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# PROPOSED RULES

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

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

## TITLE 4. AGRICULTURE Part III. Texas Feed and Fertilizer Control Service Chapter 61. Commercial Feed Rules

### Inspection, Sampling, and Analysis

#### • 4 TAC §61.41

The Office of the Texas State Chemist, Feed and Fertilizer Control Service proposes an amendment to §61.41 to reflect changes in the name of the document referred to and to permit the Service to select alternate methods when such selection is scientifically sound.

Dr. George W. Latimer, Jr., the Texas State Chemist, 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.

Dr. Latimer 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 that the rule is necessary to allow the Service to receive the best possible data on which to base its 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.

Comments on the proposal may be submitted to Dr. George W. Latimer, Jr., by mail at Office of the Texas State Chemist, P.O. Box 3160, College Station, Texas 77841-3160 or Fax: (409) 845-1389.

The amendment is proposed under the Texas Agriculture Code, Chapter 141, §141.004, which provides Texas Feed and Fertilizer Control Service with the authority to adopt rules relating to the distribution of commercial feeds.

The Texas Agriculture Code, Texas Commercial Feed Control Act, 4 TAC Chapter 141, Subchapter E, §141.102, is affected by this proposed amendment.

§61.41. *Sampling and Analytical Procedures.*

(a) The Service hereby adopts by reference the 16th [last-published] edition of the *Official Methods of Analysis of the AOAC International* [Association of Official Analytical Chemists] as delineating the sampling and analytical procedures to be applied under the Act and this title. [Copies can be obtained by writing to P.O. Box 3160, College Station, Texas 77841.]

(b) The Service may substitute alternate methods for any AOAC sampling or analytical procedure if it deems the alternate procedure more appropriate to the circumstance and sample and there is scientific data or reasoning to support the substitution.

(c) Copies of sampling or analytical procedures can be obtained by writing to Office of the Texas State Chemist, P.O. Box 3160, College Station, Texas 77841 or by writing to AOAC International, 481 North Frederick Avenue, Suite 500, Gaithersburg, Maryland 20877.

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 College Station, Texas, on October 25, 1995.

TRD-9513765

Dr. George W. Latimer, Jr.  
State Chemist  
Texas Feed and Fertilizer  
Control Service

Proposed date of adoption: January 1, 1996

For further information, please call: (512) 845-1121

## TITLE 7. BANKING AND SECURITIES Part IV. Texas Savings and Loan Department Chapter 67. Savings and Deposit Accounts

#### • 7 TAC §67.17

The Finance Commission of Texas (the commission) proposes new §67.17, concerning

user safety at unmanned teller machines, sometimes referred to as automated teller machines (ATMs), or remote service units.

Texas Civil Statutes, Article 342-903d (referred to as the ATM User Safety Act), as enacted by Act of May 27, 1995, 74th Legislature, Chapter 647, 1995 Texas Session Law Service 3528, governs user safety at unmanned teller machines. Provisions in the ATM User Safety Act purport to cross-reference to other provisions of the Texas Banking Code, Texas Civil Statutes, Articles 342-101 et seq, for definitional purposes, but the Texas Banking Code was in large part repealed by Act of May 18, 1995, 74th Legislature, Chapter 914, §26, 1995 Texas Session Law Service 4451, 4551, in connection with the adoption of the Texas Banking Act. Proposed §67.17(a) therefore contains definitions designed to facilitate understanding of these cross-references to repealed statutes.

The commission is aware that physical security of customers, employees, and property is of great concern to financial institutions and has been federally regulated by the Bank Protection Act of 1968 (12 United States Code, §1882) and Regulation P (12 Code of Federal Regulations, §§216.1 et seq). The ATM User Safety Act expands these requirements by specifying detailed requirements for unmanned teller machine security procedures, and further requires the commission to adopt rules to implement it. Accordingly, the proposed section provides additional clarification in those areas in which the ATM User Safety Act is not already explicit or is otherwise ambiguous. Safety procedures at ATMs must be in place no later than September 1, 1996, and required notices to customers must occur no later than January 1, 1996, and annually thereafter.

In developing the proposed section, the commission was mindful of trends relating to the Bank Protection Act. That federal statute was implemented by extremely detailed regulations with specifications relating to security cameras and specific requirements for all manner of equipment and procedures. Over a period of time, the regulation became outdated on a more and more frequent basis so that the requirements of the regulation did not keep pace adequately with changes in the security field. As a result, in 1991 the regulatory scheme was amended to provide a broad framework with each financial institution expected to implement the security require-

ments as fit the institution, its community, changes in technology, and other relevant factors. In developing the proposed section, the commission expects the same sort of procedure to be used by affected institutions. In other words, only a broad framework is established by the proposed section.

Proposed §67.17(b) clarifies that candle foot power of lighting is to be measured under normal conditions, i.e., without complicating factors such as fog, rain, snow, sand or duststorm. Special procedures for addressing noncompliance by landlords or owners of leased property on which ATMs are located is addressed by proposed §67.17(c). Annual safety evaluations are required in proposed §67.17(d). Financial institutions should notify landlords who fail to follow recommendations to improve the safety of an access area. The requirement of ATM User Safety Act, §5, that customers be notified of basic safety precautions, is set forth in proposed §67.17(e), including required timing and recommended content of the notice.

The ATM User Safety Act, §7(b)(1), grants authority to the commission to require video surveillance equipment at ATM sites. The commission has determined that video surveillance equipment at ATM sites has limited utility and practicality, and may in fact lead a customer into a false sense of security. Accordingly, the commission declines to require video surveillance equipment at all ATM sites. Whether video surveillance equipment, alarm systems, or security officers are appropriate at a particular ATM sites will depend on the safety evaluation of the owner or operator of the ATM that is required under the ATM User Safety Act, §4. The owner or operator may determine that unconnected or fake video surveillance equipment is appropriate. If the owner or operator determines that working video surveillance equipment is appropriate, the owner or operator must provide for selecting, testing, operating, and maintaining appropriate equipment. Proposed §67.17(g) indicates that the ATM User Safety Act applies to ATMs located in a savings association vestibule if there is 24-hour access from outside the building. Proposed §67.17(h) requires that the security officer of a financial institution certify compliance with the ATM User Safety Act and this subchapter on an annual basis.

James L. Pledger, Savings and Loan Commissioner, 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. Pledger estimates that, for the first five years the proposed section is in effect, no economic costs will affect regulated entities as a result of complying with the proposed section. No difference will exist between the cost of compliance for small businesses and the cost of compliance for the largest businesses affected by this section.

As required by the Act, §1.012(b), in proposing this section, the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of

state savings associations with federal savings associations and other depository institutions in this state consistent with the safety and soundness of state savings associations and the state thrift system, and allow for economic development within this state.

Comments on the proposed section may be submitted in writing to James L. Pledger, Commissioner, Savings and Loan Department, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294.

The new section is proposed under Texas Civil Statutes, Article 342-903d, §7(a), as enacted by Act of May 27, 1995, 74th Legislature, Chapter 647, 1995 Texas Session Law Service 3528, 3530, which require the commission to adopt rules regarding enforcement and implementation of that statute.

The following is the article and section affected by the proposed new section: Texas Civil Statutes, Article 852a.

*§67.17. User Safety at Unmanned Teller Machines.*

(a) Definitions. Words and terms used in this subchapter that are defined in the ATM User Safety Act, §1, have the same meanings as defined in the ATM User Safety Act. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Access device—A card, code, or any combination thereof, or other means of access, to a customer's account at a financial institution, that may be used by the customer to initiate a transaction at an ATM.

(2) ATM—A machine, sometimes referred to as an unmanned teller machine or remote service unit, other than a telephone or customer convenience terminal, as defined in paragraph (4) of this subsection, capable of being operated solely by a customer, by which a customer may communicate to the financial institution:

(A) a request to withdraw money directly from the customer's account or from the customer's account pursuant to a line of credit previously authorized by the financial institution for the customer;

(B) an instruction to deposit funds into the customer's account with the financial institution;

(C) an instruction to transfer funds between one or more accounts maintained by the customer with the financial institution but not as between the customer's account and an account maintained in the financial institution or in some other financial institution by some other customer;

(D) an instruction to apply funds against an indebtedness of the customer to the financial institution;

(E) a request for information concerning the balance of the account of the customer with the financial institution; or

(F) any other form of transaction a customer may conduct at an ATM using an access card.

(3) ATM User Safety Act—Texas Civil Statutes, Article 342-903d, as enacted by Act of May 27, 1995, 74th Legislature, Chapter 647, 1995 Texas Session Law Service 3528.

(4) Customer convenience terminal—A particular kind of unmanned teller machine, the use of which does not involve personnel of a financial institution by which:

(A) a customer of a financial institution can authorize and effect the electronic transfer of funds from the customer's account at the financial institution in order to obtain cash or purchase or rent or pay for goods or services or both; and

(B) the merchant can ascertain that the transaction has been completed and the funds have been or will be transferred to the merchant's account at the merchant's financial institution.

(5) Department—The Savings and Loan Department.

(b) Measurement of Candle foot Power. For purposes of measuring compliance with the ATM User Safety Act, §3, candle foot power should be determined under normal, dry weather conditions, without complicating factors such as fog, rain, snow, sand or duststorm, or other similar condition.

(c) Leased Premises.

(1) Noncompliance by Landlord. Pursuant to the ATM User Safety Act, §3(c), the landlord or owner of property is required to comply with the safety procedures of the ATM User Safety Act if an access area or defined parking area for an ATM is not controlled by the owner or operator of the ATM. If an owner or operator of an ATM on leased premises is unable to obtain compliance with safety procedures from the landlord or owner of the property, the owner or operator shall notify the landlord in writing of the requirements of the ATM User Safety Act and of those provisions for which the landlord is in noncompliance.

(2) Enforcement. Noncompliance with safety procedures required by the

ATM User Safety Act by a landlord or owner of property after receipt of written notification from the owner or operator constitutes a violation of the Act, which may be enforced by the Texas Attorney General.

(d) Safety evaluations.

(1) The owner or operator of an ATM shall evaluate the safety of each machine on a basis no less frequently than annually.

(2) The safety evaluation shall consider at the least the factors identified in the ATM User Safety Act, §4.

(3) The owner or operator of the ATM may provide the landlord or owner of the property with a copy of the safety evaluation if an access area or defined parking area for an ATM is not controlled by the owner or operator of the machine.

(e) Notice.

(1) Existing Accounts. No later than January 1, 1996, an issuer of access devices shall furnish its customers with a notice of basic safety precautions that each customer should employ while using an ATM. The notice may be included as a statement stuffer with another mailing or may be delivered personally or mailed to each customer whose mailing address is in this state and who has been issued an access device.

(2) New Access Devices. An issuer of access devices shall furnish its customer with a notice of basic safety precautions at the time the initial disclosure of terms and conditions is provided to such customer.

(3) Annual Notice. After January 1, 1996, an issuer of access devices shall furnish its customers with a notice of basic safety precautions on a basis no less frequently than annually.

(4) Content. The notice of basic safety precautions required by this subsection must be provided in written form which can be retained by the customer and may include recommendations or advice regarding:

(A) security at walk-up ATMs;

(B) security at drive-up ATMs;

(C) protection of code or personal identification numbers;

(D) procedures for lost or stolen cards;

(E) reaction to suspicious circumstances.

(F) safekeeping and disposition of ATM receipts, such as the inadvisability of leaving an ATM receipt near the ATM;

(G) the inadvisability of sur-rendering information about the customer's access device over the telephone;

(H) safeguarding and protecting of the customer's access device, such as a recommendation that the customer treat the access device as if it was cash;

(I) protection against ATM fraud, such as a recommendation that the customer compare ATM receipts against the customer's monthly statement; and

(J) other recommendations that the issuer reasonably believes are appropriate to facilitate the security of its ATM customers.

(f) Video Surveillance Equipment. Video surveillance equipment is not required to be installed at all ATMs. The owner or operator must determine whether video surveillance or unconnected video surveillance equipment should be installed at a particular ATM site, based on the safety evaluation required under the ATM User Safety Act, §4. If an owner or operator determines that video surveillance equipment should be installed, the owner or operator must provide for selecting, testing, operating, and maintaining appropriate equipment.

(g) ATMs Located in a Savings Association Vestibule. The provisions of the ATM User Safety Act and this section are applicable to an ATM located in a savings association vestibule if there is 24 hour access to the vestibule from outside the building.

(h) Certification of Compliance. The security officer of each depository shall certify compliance with the ATM User Safety Act and this regulation on a basis no less frequently than annually.

(i) Mandatory Compliance Date. Subject to the exemption provided by ATM User Safety Act, §6, compliance with the safety requirements of the ATM User Safety Act and this section is required not later than September 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 27, 1995.

TRD-9513887

James L. Pledger  
Commissioner  
Texas Savings and Loan  
Department

Earliest possible date of adoption: December 4, 1995

For further information, please call: (512) 475-1350

Chapter 77. Loans,  
Investments, Savings and  
Deposits

Savings and Deposits

• 7 TAC §77.115

The Finance Commission of Texas (the commission) proposes new §77.115, concerning user safety at unmanned teller machines, sometimes referred to as automated teller machines (ATMs), or remote service units.

Texas Civil Statutes, Article 342-903d (referred to as the ATM User Safety Act), as enacted by Act of May 27, 1995, 74th Legislature, Chapter 647, 1995 Texas Session Law Service 3528, governs user safety at unmanned teller machines. Provisions in the ATM User Safety Act purport to cross-reference to other provisions of the Texas Bank Code, Texas Civil Statutes, Articles 342-101 et seq, for definitional purposes, but the Texas Banking Code was in large part repealed by Act of May 18, 1995, 74th Legislature, Chapter 914, §26, 1995 Texas Session Law Service 4451, 4551, in connection with the adoption of the Texas Banking Act. Proposed §77.115(a) therefore contains definitions designed to facilitate understanding of these cross-references to repealed statutes.

The commission is aware that physical security of customers, employees, and property is of great concern to financial institutions and has been federally regulated by the Bank Protection Act of 1968 (12 United States Code, §1882) and Regulation P (12 Code of Federal Regulations, §§216.1 et seq). The ATM User Safety Act expands these requirements by specifying detailed requirements for unmanned teller machine security procedures, and further requires the commission to adopt rules to implement it. Accordingly, the proposed section provides additional clarification in those areas in which the ATM User Safety Act is not already explicit or is otherwise ambiguous. Safety procedures at ATMs must be in place no later than September 1, 1996, and required notices to customers must occur no later than January 1, 1996, and annually thereafter.

In developing the proposed section, the commission was mindful of trends relating to the Bank Protection Act. That federal statute was implemented by extremely detailed regulations with specifications relating to security cameras and specific requirements for all manner of equipment and procedures. Over a period of time, the regulation became outdated on a more and more frequent basis so that the requirements of the regulation did not keep pace adequately with changes in the security field. As a result, in 1991, the regulatory scheme was amended to provide a broad framework with each financial institution expected to implement the security requirements as fit the institution, its community, changes in technology, and other relevant factors. In developing the proposed section, the commission expects the same sort of procedure to be used by affected institutions. In other words, only a broad framework is established by the proposed section.

Proposed §77.115(b) clarifies that candle foot power of lighting is to be measured under normal conditions, i.e., without complicating factors such as fog, rain, snow, sand or duststorm. Special procedures for addressing noncompliance by landlords or owners of leased property on which ATMs are located is addressed by proposed §77.115(c). Annual safety evaluations are required in proposed §77.115(d). Financial institutions should notify landlords who fail to follow recommendations to improve the safety of an access area. The requirement of ATM User Safety Act, §5, that customers be notified of basic safety precautions, is set forth in proposed §77.115(e), including required timing and recommended content of the notice.

The ATM User Safety Act, §7(b)(1), grants authority to the commission to require video surveillance equipment at ATM sites. The commission has determined that video surveillance equipment at ATM sites has limited utility and practicality, and may in fact lead a customer into a false sense of security. Accordingly, the commission declines to require video surveillance equipment at all ATM sites. Whether video surveillance equipment, alarm systems, or security officers are appropriate at a particular ATM sites will depend on the safety evaluation of the owner or operator of the ATM that is required under the ATM User Safety Act, §4. The owner or operator may determine that unconnected or fake video surveillance equipment is appropriate. If the owner or operator determines that working video surveillance equipment is appropriate, the owner or operator must provide for selecting, testing, operating, and maintaining appropriate equipment. Proposed §77.115(g) indicates that the ATM User Safety Act applies to ATMs located in a savings bank vestibule if there is 24 hour access from outside the building. Proposed §77.115(h) requires that the security officer of a financial institution certify compliance with the ATM User Safety Act and this subchapter on an annual basis.

James L. Pledger, Savings and Loan Commissioner, 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. Pledger estimates that, for the first five years the proposed section is in effect, no economic costs will affect regulated entities as a result of complying with the proposed section. No difference will exist between the cost of compliance for small businesses and the cost of compliance for the largest businesses affected by this section.

As required by the Act, §1.012(b), in proposing this section, the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state savings banks with federal savings associations, national banks and other depository institutions in this state consistent with the safety and soundness of state savings banks and the state thrift system, and allow for economic development within this state.

Comments on the proposed section may be submitted in writing to James L. Pledger,

Commissioner, Savings and Loan Department, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294.

The new section is proposed under Texas Civil Statutes, Article 342-903d, §7(a), as enacted by Act of May 27, 1995, 74th Legislature, Chapter 647, 1995 Texas Session Law Service 3528, 3530, which require the commission to adopt rules regarding enforcement and implementation of that statute.

The following is the article and section affected by the proposed new section: Texas Civil Statutes, Article 489e.

*§77.115. User Safety at Unmanned Teller Machines.*

(a) Definitions. Words and terms used in this subchapter that are defined in the ATM User Safety Act, §1, have the same meanings as defined in the ATM User Safety Act. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Access device—A card, code, or any combination thereof, or other means of access, to a customer's account at a financial institution, that may be used by the customer to initiate a transaction at an ATM.

(2) ATM—A machine, sometimes referred to as an unmanned teller machine or remote service unit, other than a telephone or customer convenience terminal, as defined in paragraph (4) of this subsection, capable of being operated solely by a customer, by which a customer may communicate to the financial institution:

(A) a request to withdraw money directly from the customer's account or from the customer's account pursuant to a line of credit previously authorized by the financial institution for the customer;

(B) an instruction to deposit funds into the customer's account with the financial institution;

(C) an instruction to transfer funds between one or more accounts maintained by the customer with the financial institution but not as between the customer's account and an account maintained in the financial institution or in some other financial institution by some other customer;

(D) an instruction to apply funds against an indebtedness of the customer to the financial institution;

(E) a request for information concerning the balance of the account of the customer with the financial institution; or

(F) any other form of transaction a customer may conduct at an ATM using an access card.

(3) ATM User Safety Act—Texas Civil Statutes, Article 342-903d, as enacted by Act of May 27, 1995, 74th Legislature, Chapter 647, 1995 Texas Session Law Service 3528.

(4) Customer convenience terminal—A particular kind of unmanned teller machine, the use of which does not involve personnel of a financial institution by which:

(A) a customer of a financial institution can authorize and effect the electronic transfer of funds from the customer's account at the financial institution in order to obtain cash or purchase or rent or pay for goods or services or both; and

(B) the merchant can ascertain that the transaction has been completed and the funds have been or will be transferred to the merchant's account at the merchant's financial institution.

(5) Department—The Savings and Loan Department.

(b) Measurement of Candle foot Power. For purposes of measuring compliance with the ATM User Safety Act, §3, candle foot power should be determined under normal, dry weather conditions, without complicating factors such as fog, rain, snow, sand or duststorm, or other similar condition.

(c) Leased Premises.

(1) Noncompliance by Landlord. Pursuant to the ATM User Safety Act, §3(c), the landlord or owner of property is required to comply with the safety procedures of the ATM User Safety Act if an access area or defined parking area for an ATM is not controlled by the owner or operator of the ATM. If an owner or operator of an ATM on leased premises is unable to obtain compliance with safety procedures from the landlord or owner of the property, the owner or operator shall notify the landlord in writing of the requirements of the ATM User Safety Act and of those provisions for which the landlord is in noncompliance.

(2) Enforcement. Noncompliance with safety procedures required by the ATM User Safety Act by a landlord or owner of property after receipt of written notification from the owner or operator constitutes a violation of the Act, which may be enforced by the Texas Attorney General.

(d) Safety evaluations.

(1) The owner or operator of an ATM shall evaluate the safety of each ma-

chine on a basis no less frequently than annually.

(2) The safety evaluation shall consider at the least the factors identified in the ATM User Safety Act, §4.

(3) The owner or operator of the ATM may provide the landlord or owner of the property with a copy of the safety evaluation if an access area or defined parking area for an ATM is not controlled by the owner or operator of the machine.

(e) Notice.

(1) Existing Accounts. No later than January 1, 1996, an issuer of access devices shall furnish its customers with a notice of basic safety precautions that each customer should employ while using an ATM. The notice may be included as a statement stuffer with another mailing or may be delivered personally or mailed to each customer whose mailing address is in this state and who has been issued an access device.

(2) New Access Devices. An issuer of access devices shall furnish its customer with a notice of basic safety precautions at the time the initial disclosure of terms and conditions is provided to such customer.

(3) Annual Notice. After January 1, 1996, an issuer of access devices shall furnish its customers with a notice of basic safety precautions on a basis no less frequently than annually.

(4) Content. The notice of basic safety precautions required by this subsection must be provided in written form which can be retained by the customer and may include recommendations or advice regarding:

(A) security at walk-up ATMs;

(B) security at drive-up ATMs;

(C) protection of code or personal identification numbers;

(D) procedures for lost or stolen cards;

(E) reaction to suspicious circumstances;

(F) safekeeping and disposition of ATM receipts, such as the inadvisability of leaving an ATM receipt near the ATM;

(G) the inadvisability of surrendering information about the customer's access device over the telephone;

(H) safeguarding and protecting of the customer's access device, such as a recommendation that the customer treat the access device as if it was cash;

(I) protection against ATM fraud, such as a recommendation that the customer compare ATM receipts against the customer's monthly statement; and

(J) other recommendations that the issuer reasonably believes are appropriate to facilitate the security of its ATM customers.

(f) Video Surveillance Equipment. Video surveillance equipment is not required to be installed at all ATMs. The owner or operator must determine whether video surveillance or unconnected video surveillance equipment should be installed at a particular ATM site, based on the safety evaluation required under the ATM User Safety Act, §4. If an owner or operator determines that video surveillance equipment should be installed, the owner or operator must provide for selecting, testing, operating, and maintaining appropriate equipment.

(g) ATMs Located in a Savings Bank Vestibule. The provisions of the ATM User Safety Act and this section are applicable to an ATM located in a savings bank vestibule if there is 24-hour access to the vestibule from outside the building.

(h) Certification of Compliance. The security officer of each depository shall certify compliance with the ATM User Safety Act and this regulation on a basis no less frequently than annually.

(i) Mandatory Compliance Date. Subject to the exemption provided by ATM User Safety Act, §6, compliance with the safety requirements of the ATM User Safety Act and this section is required not later than September 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 27, 1995.

TRD-9513888

James L. Pledger  
Commissioner  
Texas Savings and Loan  
Department

Earliest possible date of adoption: December 4, 1995

For further information, please call: (512) 475-1350



## TITLE 16. ECONOMIC REGULATION

### Part IV. Texas Department of Licensing and Regulation

#### Chapter 61. Boxing

##### Subchapter B. Elimination Tournaments

• 16 TAC §§61.200-61.202, 61.204-61.212

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

The Texas Department of Licensing and Regulation proposes the repeal of §§61.200-61.202 and 61.204-61.212, concerning Elimination Tournaments. These sections are proposed for repeal to allow adoption of new sections.

Jimmy G. Martin, Manager, Consumer Protection Section, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

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

Comments on the proposal may be submitted to Jimmy G. Martin, Manager, Consumer Protection Section, P.O. Box 12157, Austin, Texas 78711.

The repeals are proposed under Texas Civil Statutes, Article 8501-1, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the Texas Boxing Act.

Texas Civil Statutes, Article 8501-1, is affected by these repeals.

§61.200. General.

§61.201. Definitions.

§61.202. Registration Requirements.

§61.204. Reporting Requirements—Promoter.

§61.205. General Prohibitions.

§61.206. *Responsibilities of the Promoter.*

§61.207. *Responsibilities of the Ringside Physician.*

§61.208. *Responsibilities of the Responsibilities of the Registrant-Female Contestant.*

§61.209. *Fees.*

§61.210. *Technical Requirements.*

§61.211. *Technical Requirements-Contestant's Weigh-in and Time Requirements.*

§61.212. *Technical Requirements-Contestant Safety.*

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 26, 1995.

TRD-9513826

Jack W. Garison  
Executive Director  
Texas Department of  
Licensing and  
Regulation

Earliest possible date of adoption: December 4, 1995

For further information, please call: (512) 463-7357

◆ ◆ ◆  
• 16 TAC §§61.200-61.202,  
61.204-61.211

The Texas Department of Licensing and Regulation proposes new §§61. 200-61.202 and 61.204-61.211, concerning the regulation of elimination tournaments. The new sections regulate elimination tournaments in the State of Texas and correspond with legislative changes.

Jimmy G. Martin, Manager, Consumer Protection Section, 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. Martin 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 clearer implementation of the statute. There will be no effect on small businesses. There is no anticipated cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Jimmy G. Martin, Manager, Consumer Protection Section, Texas Department of Licensing and Regulation, P.O. Box 12157, 920 Colorado, Eighth Floor, Austin, Texas 78711.

The new sections are proposed under Texas Civil Statutes, Article 8501-1, which provide the Texas Department of Licensing and Reg-

ulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the Texas Boxing Act.

Texas Civil Statutes, Article 8501-1 is affected by these new sections.

§61.200. *General.* All rules set out in Chapter 61, Subchapter A of this title (relating to Professional and Amateur Boxing) apply to Elimination Tournaments unless specifically modified in this subchapter or in Texas Civil Statutes, Article 8501-1, Article 2, Elimination Tournaments.

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

Contestant—An elimination tournament contestant.

§61.202. *Registration Requirements.*

(a) The requirements for licensing as a referee, judge, timekeeper, manager, and second of elimination tournaments are as specified in §§61.21-61.26 of this title (relating to Licensing Requirements-Referee, Matchmaker, Judge, Timekeeper, Manager, and Second).

(b) The fee for referee, judge, timekeeper, manager, and second of elimination tournaments are as specified in §61.80 of this title (relating to Fees-Annual Application Fees).

(c) Before an individual performs as an elimination tournament contestant, he shall be registered by the Commissioner. A registered elimination tournament contestant shall keep the registration receipt in his possession. Each elimination tournament contestant applicant shall submit:

- (1) a completed application form;
- (2) state approved picture I.D.; and
- (3) annual registration fee of \$30.

§61.204. *Reporting Requirements-Promoter.* Reporting requirements for elimination tournament promoters are as specified in §61.41 of this title (relating to Reporting Requirements-Promoter).

§61.205. *General Prohibitions.*

(a) General prohibitions applicable to elimination tournaments are as specified in §61.62 of this title (relating to General Prohibitions).

(b) The department and elimination tournament promoters will jointly hold a drawing for all matches in each weight cate-

§61.206. *Responsibilities of the Promoter.*

(a) Responsibilities of the promoter of an elimination tournament are as specified in Texas Civil Statutes, Article 8501-1, §16.

(b) The elimination promoter must notify the department in writing two hours before the commencement of the event of their decision not to use headgear. Such notification must contain a list of all contestants who will not be required to wear headgear by name, date of birth, social security number, name of closest living relative, address and telephone number.

§61.207. *Responsibilities of the Ringside Physician.* Responsibilities of ringside physicians in elimination tournaments are as specified in §61.72 of this title (relating to Responsibilities-Ringside Physicians).

§61.208. *Responsibilities of the Registrant-Female Contestant.* Responsibilities of female contestants in elimination tournaments are as specified in §61.79 of this title (relating to Responsibilities-Female Boxer).

§61.209. *Fees.*

(a) License fees are as specified in §61. 80 of this title (relating to Fees-Annual Application Fees).

(b) The annual registration fee for an elimination tournament contestant is \$30.

§61.210. *Technical Requirements.*

(a) Elimination tournaments consist of a minimum of 24 scheduled rounds on each night.

(b) If a contestant is disqualified during a pre-tournament physical examination, the physician shall notify the department and promoter immediately.

(c) If otherwise still qualified, contestants who do not win the first evening can still compete on the second evening at the option of the promoter.

§61.211. *Technical Requirements-Contestant's Weigh-in and Time Requirements.* Each contestant must be of the proper weight class in which he will compete pursuant to §61.110 of this title (relating to Technical Requirements-Boxer's Weigh-in and Time Requirements).

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 26, 1995.

TRD-9513827

Jack W. Garison  
Executive Director  
Texas Department of  
Licensing and  
Regulation



Earliest possible date of adoption: December 4, 1995

For further information, please call: (512) 463-7357

## TITLE 22. EXAMINING BOARDS

### Part VII. Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids

#### Chapter 141. Definitions and Procedures

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (Committee) with the approval of the Texas Board of Health (Board) proposes the repeal of existing §§141.1-141.13, 141.15, 141.17-141.22, 141.24, 141.26-141.31, and 141.35-141.38; and new §§141.1-141.18, concerning the committee's regulation and licensure of fitters and dispensers of hearing instruments. The repealed sections are the rules promulgated by the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids, which was abolished by Acts 1993, 73rd Legislature, Chapter 441, §29, effective September 1993. The new sections establish regulations for the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments for the regulation and licensure of licensed fitters and dispensers of hearing aids as required by Texas Civil Statutes, Article 4566-1.04.

These sections are proposed to define what an individual must do to become licensed as a fitter and dispenser of hearing instruments. The sections cover definitions and terms commonly used in the profession; set the standards for licensure as a fitter and dispenser of hearing instruments; establish procedures for application, examination, licensure, continuing education, and complaint submittal; and provide procedures for denial, revocation or suspension of a license certificate. The new sections also cover the committee; licensees and the committee; consumer information; application procedures; processing procedures; issuance of permits; issuance of licenses; reciprocity; filing of a bond; surrender of a license or permit; renewal of a license; continuing education requirements; examinations; conditions of sale; complaints and violations; and formal hearings.

Bernie Underwood, C.P.A., Chief of Staff, Associateship for Health Care Quality and Standards, has determined that for the first five-year period the sections will be in effect the fiscal implications for state government are anticipated to be negligible. The cost and process of administering the program will be generated by revenues from fees. There will be no fiscal implications for local government as a result of enforcing or administering the sections as proposed.

Ms. Underwood also has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be continued protection of the health, safety, and welfare of the citizens of Texas from the harmful effects if the fitting and dispensing of hearing instruments is practiced by incompetent persons. The proposed sections will assure that fees are set in sufficient amounts to cover the cost of regulation and enforcement. The anticipated cost to persons who are required to comply with the sections as proposed are set in the statute. There is no anticipated cost or effect on small businesses. There will be no anticipated effect in local employment.

Comments on the proposal may be submitted to Bobby D. Schmidt, Executive Director, State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 834-6784. Comments will be accepted for 30 days after publication of the sections in the *Texas Register*. In addition, public hearing has been scheduled as follows: for Friday, December 1, 1995, 9:00 a.m., Austin North Hilton and Towers, 6000 Middle Fiskville Road, Austin.

- 22 TAC §§141.1-141.13, 141.15, 141.17-141.22, 141.24, 141.26-141.31, 141.35-141.38

*(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 Board of Examiners in the Fitting and Dispensing of Hearing Aids or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeals are proposed under Texas Civil Statutes, Article 4566-1.04, which require the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments to adopt rules, with the approval of the Texas Board of Health, that are reasonably necessary for the proper performance of its duties under the Act.

This action affects Texas Civil Statutes, Article 4566.

§141.1. Supervision.

§141.2. Measurement of Human Hearing.

§141.3. Human Hearing Acuity.

§141.4. Environmental Noise Level.

§141.5. Adjustment of Hearing Aid.

§141.6. Filling Vacancies.

§141.7. Terms of Officers.

§141.8. Duties of the Board.

§141.9. Committee on Applications.

§141.10. Inspectors.

§141.11. Procedures for Action by the Board.

§141.12. Investigations by the Executive Director.

§141.13. Actions of Executive Director.

§141.15. Applications.

§141.17. Mailing Notice of Examination.

§141.18. Temporary Training Permit

§141.19. Written Submission of Complaints.

§141.20. Evidence of Permanent Business Address.

§141.21. Examination Question.

§141.22. Ethics on Examination.

§141.24. Authority to Adopt Procedural Rules.

§141.26. Notification of Business Name Change.

§141.27. Hearing Procedure.

§141.28. Person (Texas Civil Statutes Article 4566-1.11(f)).

§141.29. Description of New Hearing Aids.

§141.30. Person (Texas Civil Statutes Article 4566-1.15(a)).

§141.31. Mail Sales Prohibited.

§141.35. Training Guidelines.

§141.36. Requirements for Licensure.

§141.37. Reciprocal Arrangements.

§141.38. Board Organization and Meetings.

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 30, 1995.

Earliest possible date of adoption: December 4, 1995

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

◆ ◆ ◆  
**Chapter 141. Fitting and  
Dispensing of Hearing  
Instruments**

• **22 TAC §§141.1-141.18**

The new sections are proposed under Texas Civil Statutes, Article 4566-1.04, which require the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments to adopt rules, with the approval of the Texas Board of Health, that are reasonable necessary for the proper performance of its duties under the Act.

The action affects Texas Civil Statutes, Article 4566.

**§141.1. Purpose.** The purpose of this chapter is to implement the provisions of Texas Civil Statutes, Articles 4566-1.01 et seq, concerning the licensure and regulation of fitters and dispensers of hearing instruments.

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

**Act**—Texas Civil Statutes, Articles 4566-1.01 et seq, relating to the licensing of persons authorized to fit and dispense hearing instruments.

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

**Applicant**—A person who applies for licensure under the Act.

**Apprentice permit**—A permit issued by the committee to a person who meets the requirements of Articles 4566-1.09A et seq, Texas Civil Statutes.

**Bill of sale**—See definition for "written contract for services."

**Board**—The Texas Board of Health.

**Committee**—The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments.

**Contact hour**—A period of time equal to 55 minutes.

**Contract**—See definition for "written contract for services."

**Contested case**—A proceeding in accordance with Administrative Procedure Act (APA) in this chapter, including but not restricted to rule enforcement and licensing, in which the legal rights, duties, or privileges of a party are to be determined by the

committee after an opportunity for an adjudicative hearing.

**Continuing education**—Education intended to maintain and improve the quality of professional services in the fitting and dispensing of hearing instruments, to keep licensees knowledgeable of current research, techniques, and practices, and provide other resources which will improve skills and competence in the fitting and dispensing of hearing instruments.

**Department**—The Texas Department of Health.

**Direct supervision**—The requirement of the presence of the supervisor on the premises and the availability of the supervisor for prompt consultation.

**Fitting and dispensing hearing instruments**—The measurement of human hearing by the use of an audiometer, or by any means, for the purpose of making selections, adaptations, or sales of hearing instruments. The term includes the making of impressions for earmolds to be used as a part of the hearing instrument and any necessary post-fitting counseling for the purpose of fitting and dispensing hearing instruments.

**Formal hearing**—A hearing or proceeding in accordance with this chapter, including a "contested case" as defined in this section.

**Indirect supervision**—The daily review by a supervisor of a temporary training permit holder's patient contact and daily work.

**License**—A license issued by the committee under Texas Civil Statutes, Articles 4566-1.01 et seq, and this chapter to a person authorized to fit and dispense hearing instruments.

**Licensee**—Any person licensed by the committee.

**Ownership of dispensing practice**—A person who owns, maintains, or operates an office or place of business where the person employs or engages under contract a person who practices the fitting and dispensing of hearing instruments shall be considered also to be engaged in the practice of fitting and dispensing of hearing instruments under this Act.

**Person**—An individual, corporation, partnership, or other legal entity.

**Sell or sale**—A transfer of title or the right to use by lease, bailment, or any other contract. For the purpose of Texas Civil Statutes, Articles 4566-1.01 et seq, the term "sell" or "sale" shall not include sales at wholesale by manufacturers to persons licensed under this Act, or to the distributors for distribution and sale to persons licensed under Texas Civil Statutes Articles 4566-1.01 et seq, and this chapter.

**Sponsor**—Provider of a continuing education activity.

**Supervisor**—A supervisor is a person licensed by the committee as a licensed hearing instrument dispenser who:

(A) meets the qualifications established by Texas Civil Statutes, Articles 4566-1.01 et seq, and this chapter;

(B) has an established place of business;

(C) is responsible for direct and indirect supervision and education of a temporary training permit holder; or

(D) is responsible for indirect supervision of an apprentice permit holder.

**Temporary training permit**—A permit issued by the committee to persons authorized to fit and dispense hearing instruments only under the direct or indirect supervision as appropriate of a person who holds a license under Texas Civil Statutes, Articles 4566-1.01 et seq, and this chapter.

**Working days**—Working days are Monday through Friday, 8:00 a.m. to 5:00 p.m.

**Written contract for services**—A written agreement or bill of sale, between the licensee and purchaser of a hearing instrument as set out in §141.16(c) of this title (relating to Conditions of Sale).

**30-day trial period**—The period in which person may cancel the purchase of a hearing instrument.

**§141.3. The Committee.**

(a) **Meetings.** Meetings shall be announced and conducted under the provisions of the Texas Open Meetings Act, the Government Code, Chapter 551.

(b) **Transaction of official business.**

(1) The committee may transact official business only when in a legally constituted meeting with a quorum present. Five members of the committee constitute quorum.

(2) The committee shall not be bound in any way by any statement or action on the part of any committee or staff member except when a statement or action is pursuant to specific instructions of the committee.

(3) Robert's Rules of Order Revised shall be the basis of parliamentary decisions except as otherwise provided in this chapter.

(c) **Agendas.**

(1) The executive director shall be responsible for preparing and submitting an agenda to each member of the board prior to each meeting which includes items requested by members, items required by law, and other matters of committee business which have been approved for discussion by the president.

(2) The official agenda of a meeting shall be filed with the Texas Secretary of State as required by law.

(d) Minutes.

(1) The minutes of a committee meeting are official only when affixed with the original signatures of the president and the executive director.

(2) Drafts of the minutes of each meeting shall be forwarded to each member of the committee for review and comments or corrections prior to approval by the committee.

(3) The official minutes of the committee meetings shall be kept in the office of the executive director and shall be available to any person desiring to examine them.

(e) Elections.

(1) At the meeting held nearest to August 31 of each year, the committee shall elect a president and a vice-president.

(2) A vacancy which occurs in the office of vice-president may be filled at any regular meeting as required.

(f) Officers.

(1) President. The president:

(A) shall preside at all meetings at which he or she is in attendance and perform all duties prescribed by law or this chapter; and

(B) is authorized by the committee to make day-to-day minor decisions regarding committee activities in order to facilitate the responsiveness and effectiveness of the committee.

(2) Vice-president. The vice-president shall:

(A) perform the duties of the president in the absence or disability of the president; and

(B) serve as president until a successor is appointed should the office of the president become vacant.

(g) Subcommittees.

(1) The committee or the president may establish subcommittees deemed necessary to carry out committee responsibilities.

(2) The president shall appoint members of the committee to serve on subcommittees.

(3) Subcommittees shall make regular reports to the committee.

(4) Subcommittees may direct all reports or other materials to the executive director for distribution.

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

(h) Executive director. The executive director shall:

(1) keep the minutes on proceedings of the committee and shall be custodian of the files and records of the committee unless another custodian is designated by the committee;

(2) exercise general supervision over persons employed in the administration of the act. The executive director may delegate responsibilities to other staff members when appropriate;

(3) be responsible for the investigation of complaints and for the presentation of formal complaints;

(4) be responsible for all correspondence for the committee and obtain, assemble, or prepare reports and information that the committee may direct, or as authorized or required by the department or other agency with appropriate statutory authority;

(5) have the responsibility of assembling and evaluating materials submitted for approval as set out in §141.7 of this title (relating to Processing Procedures). Final determination shall be made by the executive director with regard to approval of applications for licensure. Determinations made by the executive director, that propose denial of licensure are subject to the approval of the applications committee of the committee; and

(6) serve as the administrator of licensure examinations or designate a substitute to serve.

(i) Reimbursement for expenses.

(1) A committee member is entitled to per diem and transportation expenses as provided by the General Appropriations Act.

(2) Payment to committee members of per diem and transportation expenses shall be on official state vouchers which have been approved by the executive director.

(j) Official records of the committee.

(1) Requests for committee records may be made under the Texas Open Records Act, the Government Code, Chapter 552. Records which are public may be reviewed by inspection, duplication, or both upon written request.

(2) When any person's request for records would be unreasonably disruptive to the ongoing business of the office or

when the safety of any record is at issue, physical access by inspection may be denied and the applicant will be provided the option of receiving duplicate copies at the requestor's cost.

(3) Applicable cost of duplication shall be paid by the applicant at the time of or before the duplicated records are sent or given to the applicant. The charge for copies shall be the same as set by the department for copies.

(k) Impartiality. Any committee member who is unable to be impartial in the determination of an applicant's eligibility for licensure or in a disciplinary action against a licensee or permit holder shall so declare this to the committee and shall not participate in any committee proceedings involving that applicant, licensee, or permit holder.

(l) Applicants with disabilities.

(1) The committee shall comply with the Americans with Disabilities Act.

(2) Applicants with disabilities shall inform the committee 30 days in advance of any special accommodations needed.

§141.4. Licensees and the Committee.

(a) All licensees are bound by the provisions of Texas Civil Statutes, Articles 4566-1.01 et seq (Act) and this chapter.

(b) A licensee shall have the responsibility of reporting alleged violations of the Act or this chapter to the committee office.

(c) A licensee shall keep his or her committee file updated by notifying the committee in writing of changes of name, highest academic degree granted, address, telephone number, and employment. The committee is not responsible for lost, misdirected, or undelivered mail.

(d) A licensee shall cooperate with the committee by furnishing required documents or information and by responding to a request for information from or a subpoena issued by the committee or its authorized representative.

(e) A licensee shall comply with any order by the committee relating to the licensee.

(f) A licensee shall not interfere with a committee investigation by the willful misrepresentation of facts to the committee or its authorized representative or by the use of threats or harassment against any person.

(g) A licensee shall not file a complaint with the committee in bad faith.

§141.5. Consumer Information. A licensee shall:

(1) inform each consumer of the name, address, and telephone number of the committee office for the purpose of reporting violations of Texas Civil Statutes, Article 4566-1.01 et seq(Act), or this chapter on:

(A) each written contract for services; and

(B) a sign prominently displayed in the primary place of business;

(2) display the license certificate and current renewal card issued by the committee in a prominent place in the primary location of practice;

(3) not display a license certificate or current renewal card issued by the committee which has been reproduced or is expired, suspended, or revoked; and

(4) not make any alterations on a license certificate or renewal card issued by the committee.

#### §141.6. Application Procedures.

(a) Purpose. The purpose of this section is to set out the application procedures for examination and licensure.

(b) General.

(1) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official forms of the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (committee).

(2) The committee will not consider an application as officially submitted until the applicant pays the application fee. The fee must accompany the application form(s).

(3) The committee shall send a notice listing the additional materials required to an applicant who does not complete the application in a timely manner. An application not completed within 60 days after the date of notice shall be invalid; however, by written request to the committee an applicant may request that his or her application be kept active for an additional year. Deficient applications will be retained for one year; however, after that year an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

(c) Fees paid to the committee by applicants are not refundable except in accordance with §141.7 of this title (relating to Processing Procedures).

(d) Remittances submitted to the committee in payment of fees may be in the form of a cashier's check or money order.

(e) The fees for administering Texas Civil Statutes, Articles 4566-1.01 et seq (Act), and this chapter shall be as follows:

(1) temporary training permit-\$200;

(2) examination fee-\$250;

(3) apprentice permit-\$200;

(4) licensure fee-\$200;

(5) licensure renewal fee-\$200; and

(6) duplicate document fee-\$25.

§141.7. Processing Procedures. Committee staff shall comply with the following procedures in processing applications for a temporary training permit, apprentice permit, license, and renewal of a regular license.

(1) The following periods of time shall apply from the date of an receipt of an application and applicable fee until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a completed application. The time periods are as follows:

(A) letter of acceptance of application-20 working days; and

(B) letter of application deficiency-20 workings days.

(2) The following periods of time shall apply from the receipt of all documentation necessary to complete the application until the date of issuance of written notice approving or denying the application. The time periods for denial end on the day notice of the proposed decision is mailed to the applicant. The time periods are as follows:

(A) letter of approval for examination-20 working days;

(B) initial letter of approval for a license-90 working days; and

(C) letter of denial of a license-30 working days after presentation to the subcommittee and its subsequent action thereon.

(3) The period of time from the receipt of the application for renewal of a regular license until the renewal card is issued or written notice is given that the application is deficient and additional spe-

cific information is required shall be 20 working days. The regular license renewal may be issued in lieu of notice of acceptance. The period of time from the receipt of the last time necessary to complete the application for renewal until issuance of the renewed license or notification of denial of renewal shall be 14 working days. The committee is not responsible for lost, misdirected, or undelivered mail.

(4) The materials required for application are as follows.

(A) Application form. The application form shall contain:

(i) specific information regarding personal data, birth date, place of employment, other state licenses and certifications held, felony, and misdemeanor convictions, educational background, supervised experience and references;

(ii) a statement that the applicant has read Texas Civil Statutes, Articles 4566-1.01 et seq (Act), and this chapter and agrees to abide by them;

(iii) the applicant's permission to the committee to seek any information or references it deems necessary to determine the applicant's qualifications;

(iv) a statement that the applicant, if issued a temporary training permit, apprentice permit or license, shall return the license to the committee upon revocation or suspension of the license;

(v) a statement that the applicant understands that fees submitted are not refundable;

(vi) a statement that the applicant understands that materials submitted to the committee become the property of the committee and are not returnable (unless prior arrangements have been made);

(vii) a statement that the information in the application is truthful and that the applicant understands that providing false information of any kind may result in denial of the application and failure to be granted any license or permit, or the revocation of any license or permit issued;

(viii) a statement that if issued a license or permit, the applicant shall keep the committee advised of his or her current mailing address;

(ix) the applicant's dated and notarized signature; and

(x) the dated and notarized signature of the supervisor or supervisors who can formally attest to the applicant's direct supervised experience.

(B) Supervised experience form. The supervised experience forms must be completed by the temporary train-

ing permit holder and the supervisor or supervisors and contain:

(i) the name of the temporary training permit holder;

(ii) the name, address, and licensure status of the temporary training permit holder's supervisor or supervisors;

(iii) the name and address of the business or organization where the practicum experience was gained;

(iv) the inclusive dates and types of supervised experience and the total number of hours of experience;

(v) the supervisor's notarized signature; and

(vi) the temporary training permit holder's notarized signature.

(C) Education records. Applicants must submit:

(i) a photocopy which has been notarized as a true and exact copy of an unaltered:

(I) official diploma or official transcript indicating graduation from high school; or

(II) certificate of high school equivalency issued by the appropriate education agency; or

(ii) official diploma or official transcripts from an accredited college or university indicating a college degree was obtained.

(D) Applicant's affidavit. The facts in the application shall be sworn to by the applicant before a notary.

(5) Applications may be denied as follows.

(A) The committee may deny an application if the applicant:

(i) has not completed the requirements in this section;

(ii) has failed to remit any applicable fees required in by §12 of the Act;

(iii) has failed or refused to properly complete or submit any application form(s) or endorsements, or deliberately presented false information on the application form and any other form or document required by the department to verify the applicant's qualifications;

(iv) has been in violation of the Act, or any other applicable provision of this chapter;

(v) has been convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a fitter and dispenser of hearing instruments as set out in the Act; or

(vi) holds a license, certificate, registration, or permit to practice fitting and dispensing of hearing instruments in another state or jurisdiction and that license, certificate, registration, or permit has been suspended, revoked, or otherwise restricted by the licensing entity in that state or jurisdiction for reasons relating to the person's professional competence or conduct which could adversely affect the health and welfare of a client.

(B) If after review the executive director determines that the application should be denied, the executive director shall ask the applications subcommittee to renew the application. The applications subcommittee shall take one of the following actions.

(i) If the subcommittee concurs that the application should be denied, they shall instruct the executive director to give the applicant written notice of the reason for the denial and the opportunity for a formal hearing.

(I) The formal hearing, if requested, shall be conducted in accordance with the provisions of the Administrative Procedures Act, Government Code, Chapter 2001.

(II) If the applicant fails to respond within ten days after the receipt of the notice of opportunity for hearing, or if the applicant notifies the executive director that the hearing is waived, the committee shall deny the application.

(ii) If the subcommittee determines that the application should be approved, the executive director shall approve the application.

#### §141.8. Issuance of Permits.

(a) Temporary training permit.

(1) The training period begins on the date of the issuance of the temporary permit.

(2) The committee shall issue a temporary training permit to an applicant who:

(A) has filed an application form and temporary training permit fee; and

(B) has met all of the academic requirements for licensure.

(3) The temporary training must be done under the supervision of an individual who holds a valid license, from the committee, to fit and dispense hearing instruments in the State of Texas.

(4) A person shall obtain a temporary training permit prior to person receiving supervision.

(5) A temporary training permit holder shall maintain a temporary training permit during his or her supervised practicum experience.

(6) The supervising fitter and dispenser of hearing instruments must submit a written notification of termination of supervision to the committee and the temporary training permit holder within ten days of cessation of supervision. The committee notification of termination of supervision shall include:

(A) the name, temporary training permit number, and signature of the supervisor, and the name and license number of the supervisee;

(B) a statement that supervision has terminated;

(C) the reason for termination;

(D) the date of termination of supervision; and

(E) a statement indicating whether the supervisor and the temporary training permit holder has complied with the requirements of Texas Civil Statutes, Article 4566-101 et seq (Act), and this chapter.

(7) The temporary training permit holder shall apply to the committee for transfer of supervision within 60 days of notification of termination to the committee. One extension of 60 days of the transfer of the supervision requirements may be granted upon written request to the committee by the temporary training permit holder.

(8) A temporary training permit holder shall be required to have at least 150 hours of directly supervised practicum that shall include the following:

(A) 25 contact hours of pure tone air conduction, bone conduction, and speech audiometry with both recorded and live voice with 15 of the required hours being with actual clients;

(B) 25 client hours of hearing instrument evaluation including field measurements with recorded and live voice;

(C) 20 contact hours of instrument fittings with actual consumers;

(D) 10 contact hours of earmold orientation types, uses, and terminology;

(E) five contact hours of earmold impressions and otoscopic examinations of the ear;

(F) 15 contact hours of troubleshooting of defective hearing instruments;

(G) 20 contact hours of case history with actual consumers;

(H) 10 contact hours of the laws governing the licensing of persons fitting and dispensing hearing instruments and Federal Food and Drug Administration and Federal Trade Commission regulations relating to the fitting and dispensing of hearing instruments; and

(I) 20 hours of supplemental work in one or more of the areas described in subparagraphs (A) -(H) of this paragraph.

(9) On completion of the 150 hours of directly supervised practicum under paragraph (8) of this subsection a temporary training permit holder shall complete the permit holder's training under the indirect supervision of the permit holder's supervisor.

(b) Apprentice permit.

(1) A temporary training permit holder who has taken all parts of the examination given by the committee and has passed all parts of the examination with a score of 70% or greater shall be issued an apprentice permit to fit and dispense hearing instruments. An apprentice permit remains valid for one year unless it is extended by the committee for an additional period not to exceed six months.

(2) The committee shall issue an apprentice permit to an applicant who:

(A) has filed an application form and apprentice permit fee; and

(B) has taken and passed all parts of the examination with a score of 70% or greater.

(3) The supervisor shall periodically conduct a formal evaluation of the applicant's progress in the development of professional skills.

(4) A supervisor of an apprentice permit holder is responsible for services to the consumer that may be performed by the apprentice permit holder. The supervisor must ensure that all services provided are in compliance with the Act and this chapter.

(5) The apprenticeship must be done under the supervision of an individual who holds a valid license, from the committee, to fit and dispense hearing instruments in the State of Texas.

(6) Prior to the issuance of an apprentice permit, the supervisor's affidavit form must be filed with the committee office.

(7) The apprentice permit holder shall complete 18 hours of classroom continuing education in one or more of the following approved subjects:

(A) basic physics of sound;

(B) structure and function of hearing instruments;

(C) fitting of hearing instruments;

(D) pure tone audiometry, including air conduction testing and bone conduction testing;

(E) live voice and recorded voice speech audiometry;

(F) masking when indicated for air conduction, bone conduction, and speech;

(G) recording and evaluation of audiogram and speech audiometry to determine the candidacy for hearing instruments;

(H) selection and adaption of hearing instruments, testing of hearing instruments, and verification of aided hearing instrument performance;

(I) taking of earmold impressions;

(J) verification of hearing instrument fitting and functional gain measurements using a calibrated system;

(K) anatomy and physiology of the ear;

(L) counseling and aural rehabilitation of an individual with a hearing

impairment for the purpose of fitting and dispensing hearing instruments;

(M) use of an otoscope for the visual observation of the entire ear canal; and

(N) laws, rules, and regulations of this state and the United States.

(8) The supervisor must submit written notification of cessation of supervision to the committee and the apprentice permit holder within ten days of cessation of supervision. Notification of termination of supervision shall include:

(A) the name and permit number of the apprentice, and the signature of the supervisor;

(B) a statement that supervision has been terminated;

(C) the reason for termination;

(D) the date of termination of supervision; and

(E) a statement indicating whether the supervisor and the apprentice permit holder have complied with the requirements of the Act and this chapter.

(9) The apprentice permit holder shall apply for transfer of supervision within 60 days of notification of termination to the committee. Upon the apprentice permit holder's written request to the committee, one extension of 60 days of the transfer of supervision requirement may be granted.

(10) The dated and notarized signature of the supervisor or supervisors who can formally attest to the apprentice permit holder's supervised experience.

(11) The supervised experience forms must be completed by the apprentice permit holder and the supervisor or supervisors and contain:

(A) the name of the apprentice permit holder;

(B) the name, address, and licensure status of the apprentice permit holder's supervisor or supervisors;

(C) the name and address of the business or organization where the apprentice permit holder practices;

(D) the inclusive dates of the supervised experience;

(E) the supervisor's notarized signature; and

(F) the apprentice permit holder's notarized signature.

(c) Other conditions for supervised experience for temporary training permit or apprentice permit.

(1) A temporary training permit holder or an apprentice permit holder may be employed on a salary basis or be a consultant or volunteer.

(2) The full professional responsibility for the fitting and dispensing of hearing instruments and related activities of a permit holder shall rest with the permit holder's supervisor.

(3) A supervisor may not supervise more than two permit holders of any type at one time.

(4) A supervisor may delegate training activities to another supervisor or licensees for the supervision of a temporary training permit holder. The supervisor shall be responsible for the day-to-day supervision of a trainee. The supervisor shall also be ultimately responsible for services provided to a consumer by the temporary training permit holder. A supervisor shall not delegate the responsibility of supervision.

(5) A permit holder may not pay the licensee providing supervision of the permit holder for the supervised experience.

#### §141.9. Issuance of Licenses.

(a) Application form. The committee will send a licensure form to each applicant who has satisfactorily fulfilled all requirements for licensure. The applicant must complete the form and return it to the committee office with the licensure fee.

(b) License certificate. Upon receiving the licensure form and fee, the committee shall issue to the licensee, a license certificate which indicates the licensee's name and license number.

(1) Regular licenses shall be signed by the committee members and be affixed with the seal of the committee.

(2) Temporary training permits and apprentice permits shall be signed by the committee president and executive director.

(3) Any license certificate or renewal card issued by the committee remains the property of the committee and must be surrendered to the committee on demand.

(c) Replacement card. The committee will replace a lost, damaged, or destroyed license certificate or renewal card

upon a written request from the licensee and payment for a duplicate document. Requests must include a notarized statement detailing the loss or destruction of the licensee's original license or card or be accompanied by the damaged certificate or card.

(d) Duplicate card. Upon the written request and payment of a duplicate document fee by a licensee, the committee will provide a licensee with a duplicate certificate for a second place of practice which is designated in a licensee's file.

§141.10. Reciprocity. In determining whether the licensing requirements of another jurisdiction are equivalent to or higher than Texas, the following criteria shall be considered by the committee:

- (1) written examination;
  - (2) practical examination;
  - (3) temporary training permit;
- and
- (4) apprentice permit.

#### §141.11. Filing of a Bond.

(a) A sole proprietor, partnership, corporation, or other legal entity engaged in the fitting and dispensing of hearing instruments shall file a bond or a surety in lieu of a bond in the amount of \$10,000 with the committee conditioned on the promise to pay all:

(1) taxes and contributions due to the state and political subdivisions of the state by the sole proprietor, partnership, corporation, or other legal entity; and

(2) judgments that the sole proprietor, partnership, corporation, or other legal entity may be required to pay for negligently or improperly dispensed hearing instruments or for breaching a contract relating to the dispensing of hearing instruments.

(b) A sole proprietor, partnership, corporation, or other legal entity subject to subsection (a) of this section may file with the committee a cash deposit or other negotiable security acceptable to the committee in the amount required in subsection (a) of this section in lieu of a bond.

(c) The bond for a licensee must be received on or before the date of issuance of the license.

(d) The bond for a non-licensed entity engaged in the fitting and dispensing of hearing instruments must be received within 180 days of the effective date of these rules, or prior to the initiation of the fitting and dispensing of hearing instruments following such 180 day time limit.

#### §141.12. Surrender of a License or Permit.

(a) Surrender by licensee or permit holder.

(1) A licensee or permit holder may at any time voluntarily offer to surrender his or her license or permit for any reason.

(2) The license or permit may be delivered to the committee office by hand or certified mail.

(3) If there is not complaint pending, the committee office may accept the surrender and void the license or permit.

(b) Formal disciplinary action.

(1) When a licensee or permit holder has offered the surrender of his or her license or permit after a complaint has been filed, the committee shall consider whether to accept the surrender of the license or permit.

(2) When the committee has accepted such a surrender, the surrender is deemed to be the result of a formal disciplinary action and a committee order accepting the surrender may be prepared.

(c) Reinstatement. A license which has been surrendered may not be reinstated; however, a person may apply for a new license in accordance with the Act and this chapter.

#### §141.13. Renewal of License.

(a) General.

(1) A regular license must be renewed annually.

(2) A person who holds a regular license must have fulfilled any continuing education requirements prescribed by the committee in §141.14 of this title (relating to Continuing Education Requirements) in order to renew a license.

(3) Each person who holds a regular license is responsible for renewing the license and shall not be excused from paying late renewal fees or renewal penalty fees.

(4) The committee shall deny the renewal of the license of a licensee who is in violation of Texas Civil Statutes, Articles 4566-1.01 et seq (Act) or this chapter at the time of application for renewal.

(5) A person whose license has expired shall return his or her license certificate to the committee.

(6) A persons whose license has expired shall not practice the fitting and dispensing of hearing instruments.

(7) The deadlines established for renewals, late renewals, and license renewal penalty fees in this section are based on the postmarked date of the documentation sub-

mitted by the licensee if legible and on the date stamped at the Texas Department of Health if the postmark is not legible.

(8) The committee shall deny renewal upon any findings relating to defaults on guaranteed students loans as required by the Education Code, §57.491.

(b) Staggered renewals. The committee shall use a staggered system for license renewals.

(1) The renewal date of a license shall be the last day of the licensee's birth month.

(2) Licensure fees will be prorated if the licensee's initial renewal date is determined by the committee to have occurred less than 12 months after the original date of licensure.

(3) Prorated fees may be rounded off to the nearest dollar.

(c) License renewal.

(1) At least 45 days prior to the expiration of a regular license, the committee will send notice to a licensee that includes:

(A) the expiration date of the license;

(B) a schedule of the renewal and late fees; and

(C) the number of hours needed to complete any continuing education requirements.

(2) A license renewal form shall be furnished to licensees eligible for renewal. The form shall require the licensee to provide:

(A) current addresses;

(B) telephone numbers; and

(C) information regarding continuing education that has been completed.

(3) The committee shall not renew a license until it receives the:

(A) completed license renewal form;

(B) renewal fee and any late fees;

(C) required documents detailed in this section; and

(D) the documentation showing that the licensee has complied with applicable continuing education requirements.

(4) The committee shall issue a renewal certificate to a licensee who has met all the requirements for renewal. The licensee must display the renewal certificate in association with the license.

(5) The license of a person who made a timely and sufficient request for renewal of his or her license does not expire until the application for renewal is finally determined by the committee; or in case the application is denied or the terms of the new license limited, until the last day for seeking review of the committee's order or a later date fixed by order of a reviewing court.

(6) A license that is not revoked or suspended as a result of a formal hearing shall be renewed provided that all other requirements are met.

(7) In the case of delay in the license renewal process because of a formal hearing, late fees and penalty fees shall not apply.

(8) Each license to fit and dispense hearing instruments shall be issued for the term of one year and shall, unless suspended or revoked, be renewed annually on payment of the renewal fee and compliance with this section by the licensee.

(9) A licensee may renew an unexpired license by meeting the requirements of this section and by paying the required renewal fee to the committee before the expiration date of the license.

(10) If a person's license has been expired for not more than 90 days, the person may renew the license by paying the required renewal fee and a fee that is one-half of the examination fee for the license to the committee.

(11) If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by paying all unpaid renewal fees and a fee that is equal to the examination for the license to the committee.

(12) If a person's license has been expired for two years or more, the person may not renew the license. The person may obtain a new license by submitting to re-examination and complying with the requirements and procedures for obtaining an original license set out in this chapter.

(13) Before a license can be renewed, the committee shall require certification that all testing equipment, both portable and stationary, used by the licensee has been calibrated within one year prior to the renewal date.

(14) Before a license can be renewed, a licensee must demonstrate compliance with the requirements of continuing education established by the committee under the Act in §141.14 of this title (relating to Continuing Education Requirements).

(15) Fitting and dispensing a hearing instrument without a current license as provided by this subsection shall be subject to the same penalties as fitting and dispensing a hearing instrument without a license.

(16) Before a license can be renewed, the licensee must submit a copy of the written contract for services employed by the licensee.

#### §141.14. Continuing Education Requirements.

(a) Purpose. The purpose of this section is to establish the continuing education requirements which a licensee must complete every year for the renewal of a regular license. These requirements are intended to maintain and improve the quality of professional services in fitting and dispensing of hearing instruments provided to the public and to keep the licensee knowledgeable of current research, techniques and practices, and to provide other resources which will improve skill and competence in the fitting and dispensing of hearing instruments.

(b) General requirements. The committee shall require that a fitter and dispenser licensed under Texas Civil Statutes, Article 4566-1.01 et seq (Act) and this chapter, complete 20 clock-hours of continuing education each year. For purposes of this section:

(1) each year runs concurrently with the effective date of a license issued under the Act and this chapter;

(2) a clock hour shall be 60 minutes of attendance; and

(3) no more than 5 clock hours of the 20 clock-hours required may be obtained from a course sponsored by a manufacturer.

(c) Exemption by examination. A licensee may take the state examination given by the committee or its designee, upon written request to the committee. A licensee who pays the examination fee and passes the examination shall be exempt from the continuing education requirement for the year that the test is taken.

(d) Credit hours for publications. A licensee may be credited with continuing education credit hours for a published book or article written by the licensee that contributes to the licensee's professional competence.

(1) No more than five credit hours for preparation of a publication may be claimed by a licensed holder in an annual reporting period.

(2) The continuing education subcommittee may grant credit hours based on the degree that the published book or article advanced knowledge regarding the



fitting and dispensing of hearing instruments.

(e) Non compliance. A licensee who has not complied with the continuing education requirements of this section may not be issued a renewal license unless the licensee:

(1) has served in the regular armed forces of the United States during any part of the 12 months before the annual reporting date;

(2) submits proof from an attending physician that the licensee suffered a serious disabling illness or physical disability that prevented compliance with the requirements of this section during the 12 months before the annual reporting date; or

(3) was licensed for the first time during the 12 months before the annual reporting date.

(f) Attendance. A licensee shall provide written proof of attendance and completion of an approved course on a form prescribed by the committee.

(g) Renewal period for continuing education. Continuing education requirements for renewal shall begin on the first day of a licensee's renewal year and end on the last day of the licensee's renewal year.

(h) Course categories. Continuing education shall be acceptable if the education falls in one or more the following categories:

(1) participation in those sections of programs (e.g., institutes, seminars, workshops, and conferences) which are designed to increase professional knowledge related to the practice of fitting and dispensing of hearing instrument and are conducted by persons qualified within their respective professions by appropriate state license or certification where state licensure or certification exists, or in states outside of Texas where licensure or certification does not exist by completion of a degree in audiology or a related field and certification by their respective professional associations if such certification exists;

(2) completion of academic courses at an accredited institution in areas supporting development of skills and competence in the fitting and dispensing of hearing instruments; and

(3) participation or teaching in programs directly related to the fitting and dispensing of hearing instruments (e.g., institutes, seminars, workshops, or conferences) which are approved or offered by an accredited college or university.

(i) Requests for credit. Individuals and organizations may initiate requests for committee approval and hour credit of specific programs for continuing education credit at least 30 days prior to the first scheduled presentation.

(1) Each licensee is responsible for providing the information necessary for the committee to make a determination of the applicability of the program to the continuing education requirements.

(2) Sponsors may initiate their own requests and when approval is obtained, shall announce, prior to the commencement of the continuing education activity, the number of hours approved and the content of the continuing education activity as submitted and pre-approved by the committee. When approval is requested by a sponsor, the sponsor shall provide each participant with written documentation of participation which shall set forth that participant's name, the number of approved continuing education hours, the title and date(s) of the program as approved by the committee, and the signature of the sponsor.

(j) Evaluation of continuing education programs. Each continuing education program submitted by a licensee or approved sponsor will be evaluated on the basis of the following criteria:

(1) relevance of the subject matter to increase or support the development of skills and competence in the fitting and dispensing of hearing instruments or in areas of studies or disciplines related to fitting and dispensing of hearing instruments;

(2) objectives of specific information and skills to be learned;

(3) subject matter, educational methods, materials, and facilities utilized, including the frequency and duration of sessions, and the adequacy to implement learner objectives; and

(4) sponsorship and leadership of program including:

(A) the name of the sponsoring individual(s) or organization(s);

(B) program leaders, if different from sponsor(s); and

(C) contact person if different from the preceding.

(k) Academic requirements. Completion of academic work shall be in accordance with subsection (j) of this section. Official transcripts from accredited school showing completion of hours in appropriate areas for which the licensee received at least a passing grade is required.

(l) Approved credit. The committee shall credit continuing education experience as follows.

(1) Parts of programs which meet the criteria of this section shall be credited on a one-for-one basis with one clock-hour of credit for each clock-hour spent in the continuing education activity.

(2) Teaching in programs which meet the committee's criteria as set out in this section shall be credited on the basis of one clock-hour of credit for one clock-hour taught plus two clock-hour credits for preparation for each hour taught. No more than 10 of the 20 hours of required continuing education can be credited under this option, and credit may be granted for the same presentation or program not more than twice during any continuing education period. The remaining hours of continuing education required in each renewal period must be obtained under another of the available options in accordance with paragraphs (1) or (3) of this subsection.

(3) Completion of academic work at an institution which meets the accreditation standards acceptable to the committee shall be credited on the basis of 15 clock-hours of credit for each semester hour, 10 clock-hours of credit for each quarter hour completed and for which a passing grade was received as evidenced on an official transcript.

(m) Reporting. The requirements for reporting continuing education shall be as follows.

(1) A licensee may submit the required report at renewal time. Continuing education must be reported and approved prior to renewal at the end of the renewal period. Each licensee is responsible for ensuring that the committee receives timely notice of the licensee's completion of continuing education activities.

(2) Each report must be accompanied by appropriate documentation of the continuing education claimed on the report as follows:

(A) for a program attended, signed certification by a program leader or instructor of the licensee's participation in the program by certificate, letter or letterhead of the sponsoring agency, or official continuing education validation form of the sponsoring agency;

(B) for teaching or consultation in approved programs, a letter on the sponsoring agency's letterhead giving the name of the program, location, dates, and subjects taught and indicating total clock-hours credited;

(C) for completion of work from accredited schools, an official transcript showing course credit with at least a passing grade; or

(D) for official verification of a course at a regionally accredited academic institution, a letter from the dean of the academic institution or professor which

includes the actual number of clock-hours attended.

(n) Disapproved credit. The committee will not give continuing education credit to any licensee for:

(1) education incidental to the regular professional activities of a licensee such as knowledge gained through experience or research;

(2) organization activity such as serving on committees or councils or as an officer in a professional organization; and

(3) any program which does not fit the types of acceptable continuing education in this section.

(o) Mandatory continuing education. The mandatory 5 of the 20 required continuing education hours will be conveyed in the committee newsletter and renewal packet.

#### §141.15. Examination.

(a) Purpose. This section sets out provisions governing the administration, content, grading, and other procedures for examination in the fitting and dispensing of hearing instruments.

(b) Application for examination.

(1) The committee shall notify the applicant whose application has been approved at least 45 days prior to the next scheduled examination. This notice shall include the examination registration form. Applications which are received incomplete or late may cause the applicant to miss the examination deadline.

(2) An examination registration form must be completed and returned to the committee office by the applicant with the required examination fee and any requests for special accommodations at least 30 days prior to the date of the examination.

(c) Examination.

(1) The examination shall consist of a written section and a practical section. The examination will consist of the following areas as they relate the fitting and dispensing of hearing instruments:

(A) basic physics of sound;

(B) structure and function of hearing instruments;

(C) fitting of hearing instruments;

(D) pure tone audiometry, including air conduction testing and bone conduction testing;

(E) live voice and recorded voice speech audiometry;

(F) masking when indicated for air conduction, bone conduction, and speech;

(G) recording and evaluation of audiograms and speech audiometry to determine the candidacy for hearing instrument;

(H) selection and adaption of hearing instruments, testing of hearing instruments, and verification of aided hearing instrument performance.

(I) taking of earmold impressions;

(J) verification of hearing instrument fitting and functional gain measurements using a calibrated system;

(K) anatomy and physiology of the ear;

(L) post-counseling and aural rehabilitation of an individual with a hearing impairment for the purpose of fitting and dispensing hearing instruments;

(M) use of an otoscope for the visual observation of the entire ear canal; and

(N) laws, rules, and regulations of this state and the United States.

(2) The examination may not test knowledge of the diagnosis or treatment of any disease or injury to the human body.

(d) Failure of examination.

(1) An applicant who fails an examination may retake the failed portion or portions of the examination after payment of an additional examination fee. The applicant must be re-examined within 12 months of the unsuccessful examination.

(2) If the applicant fails the second examination, the committee may require the applicant to submit evidence of satisfactory completion of additional courses of study prescribed by the committee.

(3) The examinee has 30 days after notification of failing the examination to request in writing that the committee furnish the examinee with an analysis of that person's performance on the examination.

#### §141.16. Conditions of Sale.

(a) Compliance with other state and federal regulations. A licensee or permit holder under Texas Civil Statutes, Articles 4566-1.01 et seq (Act) shall:

(1) adhere to the Federal Food and Drug Administration regulations in accordance with 21 Code of Federal Regulations (CFR) §801.420 and §801.421;

(2) receive a written statement before selling a hearing instrument that is signed by a physician or surgeon duly licensed by the Texas State Board of Medical Examiners, who specializes in diseases of the ear and states that the consumer's hearing loss has been medically evaluated during the preceding six-month period and that the consumer is age 18 or older, the licensee may inform the consumer that the medical evaluation requirement may be waived as long as the licensee:

(A) informs the consumer that the exercise of the waiver is not in the consumer's best health interest;

(B) does not encourage the consumer to waive the medical evaluation; and

(C) gives the consumer an opportunity to sign a statement that says: "I have been advised by (licensee's or permit holder's name) that the Food and Drug Administration has determined that my best health interest would be served if I had a medical evaluation by a licensed physician (preferably a physician or surgeon who specializes in diseases of the ear) before purchasing one or more hearing instruments. I do not wish to receive a medical evaluation before purchasing a hearing instrument";

(3) not sell a hearing instrument to a person under 18 years of age unless the prospective user, parent, guardian has presented to the licensee or permit holder a written statement signed by a licensed physician specializing in diseases of the ear that states that the consumer's hearing loss has been medically evaluated and the consumer may be considered a candidate for a hearing instrument. The evaluation must have taken place within the preceding six months; and

(4) advise consumers who appear to have any of the following otologic (hearing) conditions to consult promptly with a physician:

(A) visible, congenital or traumatic deformity of the ear;

(B) history of active drainage from the ear within the previous 90 days;

(C) history of sudden or rapidly progressive hearing loss within the previous 90 days;

(D) acute or chronic dizziness;

(E) unilateral hearing loss of sudden or recent onset within the previous 90 days;

(F) audiometric air-bone gap equal to or greater than 15 decibels at 500 hertz (Hz), 1,000 Hz, and 2,000 Hz;

(G) visible evidence of significant cerumen accumulation or a foreign body in the ear canal; and

(H) pain or discomfort in the ear.

(b) Guidelines for a 30-day trial period.

(1) It is the intent of this section that all consumers be informed of a 30-day trial period by written contract for services and all charges associated with such trial period be included in this written contract for services, which shall include the name, address, and telephone number of the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments.

(2) Any consumer of one or more hearing instruments shall be entitled to a refund of the purchase price advanced by the consumer for the hearing instrument(s), less the agreed-upon amount associated with the trial period, upon return of the instrument(s), in good working order, to the licensee within the 30-day trial period ending 30 days from the date of delivery. Should the order be canceled by the consumer prior to the delivery of the hearing instrument(s), the licensee may retain the agreed-upon charges and fees as specified in the written contract for services. The consumer shall receive the refund due no later than the 30th day after the date on which the consumer cancels the order or returns the hearing instrument(s), in good working order, to the licensee.

(c) Written contract for services to consumer-consumer protection. Upon the sale of any hearing instrument(s), the licensee or permit holder shall provide the consumer with a signed, written contract for services containing the following:

(1) the date of sale;

(2) the make and model of the hearing instrument(s);

(3) the name, address, and telephone number of the principal place of business of the licensee;

(4) a statement that the hearing instrument is new, used, or reconditioned;

(5) the terms of any guarantee or express warranty made to the consumer with respect to the hearing instrument(s);

(6) a copy of the written forms (relating to waiver forms);

(7) a statement on or attached to the written contract for services, in no smaller than 10-point bold type, as follows: "The consumer has been advised at the outset of his relationship with the undersigned fitter and dispenser of hearing instruments that any examination or representation made by a licensed fitter and dispenser of hearing instruments in connection with the fitting and selling of the hearing instrument(s) is not an examination, diagnosis or prescription by a person duly licensed and qualified as a physician or surgeon authorized to practice medicine in the State of Texas and, therefore, must not be regarded as medical opinion or advice";

(8) a statement on the face of the written contract for services, in no smaller than 10-point bold type, as follows: "If you have a complaint against a licensed fitter and dispenser of hearing instruments, you may contact the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments, 1100 West 49th Street, Austin, Texas 78756-3183, telephone 1-800-942-5540";

(9) the licensee's or permit holder's printed name, signature and license or permit number;

(10) the supervisory arrangement reflected on a written contract for services by signature of both the permit holder and licensee with both the permit holder's license number and the licensee's license number; and

(11) the date of the follow-up appointment within the 30-day trial period.

(d) Terms of sale.

(1) There shall be a full and complete disclosure of the cost of financing the purchase of hearing instruments.

(2) The written contract for services shall state:

(A) the complete terms of service, including cost of service, and what services are available;

(B) by whom and for how long such service will be provided, including house or office calls, when applicable; and

(C) the terms of aftercare fitting.

(3) If the initial price of the hearing instrument(s) furnished is reduced by trade-in allowance or discount, the written contract for services shall conspicuously state:

(A) the initial price of the aid before trade-in allowance or discount;

(B) the amount of the trade-in allowance or discount; and

(C) the final price to the consumer.

(e) Record keeping.

(1) It is the licensee's responsibility to keep records on every consumer to whom the licensee renders service in connection with the fitting and dispensing of hearing instruments. Such records shall be preserved for at least five years after the fitting and dispensing of the hearing instrument(s) to the consumer. If other hearing instruments are subsequently fitted and dispensed to that consumer, cumulative records must be maintained for at least five years after the latest fitting and dispensing of the hearing instrument(s) to that consumer. The records must be available for the committee's inspection and will include but not be limited to the following:

(A) consumer's case history;

(B) source of referral and appropriate documents;

(C) medical evaluation or waiver of evaluation;

(D) copies of writing contracts for services and receipts executed in connection with the fitting and dispensing of each hearing instrument provided;

(E) a complete record of hearing tests, hearing test results, and services provided, including follow-up appointment within the 30-day trial period; and

(F) all correspondence specifically related to services provided to the consumer or the hearing instrument(s) fitted and dispensed to the consumer.

(2) A complete record of tests and test results shall be available for the consumer.

(f) Audiometers and audiometric testing devices.

(1) Audiometers and audiometric testing devices shall meet the current standards of the American National Standards Institute or as otherwise specified by the Texas Department of Health (department).

(2) Current audiometer or audiometric testing device calibration records shall be maintained with each audiometer or audiometric testing device. Audiometer or audiometric testing device calibration records and data shall be maintained for inspection by the department for a period of three years.

(g) Audiometric testing not conducted in a stationary acoustical enclosure.

(1) A notation shall be made on the hearing test if testing was done in a stationary acoustical enclosure.

(2) Ambient noise level of location of audiometric testing, if not done in a stationary acoustical enclosure, shall include a notation on the hearing test of the following items:

(A) type(s) of equipment used to determine ambient noise level;

(B) model and serial number of equipment used to determine ambient noise level; and

(C) date of last calibration of equipment used to determine ambient noise level.

(3) If audiometric testing is not conducted in a stationary acoustic enclosure the test environment shall have a dBA equivalent maximum allowable ambient noise level of 50 dBA.

(4) A stationary acoustical enclosure includes, but is not limited to, an audiometric test room.

(A) An audiometric test room is any enclosed space in which a listener is located for the purpose of testing hearing. An audiometric test room may also be known as:

- (i) an audiometric test area;
  - (ii) a hearing test space;
- or
- (iii) a hearing test room.

(B) An example of an audiometric test room would be a prefabricated room known as:

(i) an audiometric test booth;

(ii) a suite; or

(iii) a sound treated room.

(C) The primary and necessary requirement of an audiometric test room is to ensure that the maximum permissible ambient noise levels established by the American National Standards Institute do not exceed the levels for an audiometric test room for ears covered 250-8000 Hz. The levels are as follows:

FIGURE 1: 22 TAC §141.16(g)(4)(C)

#### §141.17. Complaints and Violations.

(a) Disciplinary action; notices.

(1) The committee may refuse to issue or renew a license; may revoke or suspend a license or permit; may probate disciplinary action; or may issue a reprimand to a person who has:

(A) violated any provision of Texas Civil Statutes, Articles 4566-1.01 et seq (Act);

(B) violated any rule adopted by the committee;

(C) engaged in false, misleading or deceptive practices in competitive bidding or advertising; or

(D) been convicted of a misdemeanor that involved moral turpitude or a felony.

(2) Prior to initiation of formal proceeding to refuse to issue or renew a license, revoke or suspend a license or permit, probate disciplinary action, or issue a reprimand to a permit holder or licensee, the committee or its designee shall give written notice to the licensee, permit holder, or applicant by certified mail, return receipt requested, of the facts or conduct alleged to warrant the action, including the complainant's name if appropriate; and the licensee, permit holder, or applicant shall be given the opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter, as required by Texas Civil Statutes, §2001.054(c)(2).

(3) If suspension of a license or permit of an applicant is proposed, the committee or its designee shall give written notice by certified mail, return receipt requested, of the basis for the proposal and that the licensee, permit holder, or applicant must request, in writing, a formal hearing within ten days of receipt of the notice, or the right to a hearing shall be waived and the committee may refuse to issue or renew a license, revoke or suspend a license or

permit; probate disciplinary action, or reprimand a licensee or permit holder.

(4) Receipt of a notice described under paragraph (1), (2), or (3) of this subsection is presumed to occur on the 10th day after the notice is mailed to the last address known to the committee unless another date is reflected on a United States Postal Service return receipt.

(b) Power to sue. The committee may institute a suit in its own name and avail itself of any other action, proceeding, or remedy authorized by law to enjoin the violation of Texas Civil Statutes, Article 4566. The suit is in addition to any other action, proceeding, or remedy authorized by law.

(c) Reporting alleged violations.

(1) Any licensee, permit holder, person, or committee member wishing to report an alleged violation of Texas Civil Statutes, Articles 4566-1.01 et seq (Act) or the rules shall notify the executive director. The initial notification may be in writing, by telephone, or by personal visit to the committee office.

(2) Upon receipt of a complaint, the executive director shall send an acknowledgment letter to the complainant with an official form which the complainant shall be asked to complete and return the form to the committee before further action can be taken. The executive director may accept an anonymous complaint if there is sufficient information for investigation.

(3) A complaints subcommittee shall be appointed to work with the executive director to:

(A) review each complaint and determine whether the complaint fits within the category of a complaint affecting the health and safety of clients or other persons;

(B) ensure that complaints are not dismissed without appropriate consideration;

(C) ensure that a person who files a complaint has an opportunity to explain the allegations made in the complaint; and

(D) resolve the issues of the complaint which arise under the Act or this chapter.

(4) The executive director shall request a notarized response from the licensee or permit holder against whom the alleged violation has been filed and gather information required by the complaints subcommittee.

(5) If the complaints subcommittee determines that there are insufficient grounds to support the complaint, the subcommittee shall dismiss the complaint and give written notice of the dismissal to both the licensee or permit holder against whom the complaint has been filed and the complainant.

(6) If it is determined that there are facts which may establish a violation of the Act or this chapter, the matters in question shall be investigated.

(7) At each 90-day interval, following the receipt of the complaint until the complaint is finally resolved or closed, the committee shall notify a complainant of the status of his or her complaint unless the notice would jeopardize an undercover investigation.

(8) The committee shall address all complaints in a timely manner. After review of each complaint, the executive director shall establish a schedule for conducting each phase of the complaint procedure not later than the 30th day after the date the complaint is received. The schedule shall be kept in the information file for the complaint. A change in the schedule must be noted in the complaint information file.

(9) The executive director shall notify the complaints subcommittee if a change extends the time prescribed for resolving the complaint.

(d) Licensing of persons with criminal backgrounds.

(1) The purpose of this subsection is designed to set out the requirements and criteria for the eligibility of persons with criminal backgrounds to obtain and retain licenses or permits.

(2) The committee may consider the felony conviction of a licensee, permit holder or applicant as grounds for the disciplinary action against the licensee, permit holder, or applicant and may review the conviction.

(3) The committee may suspend or revoke an existing license or permit, disqualify a person from receiving a license or permit, or deny to a person the opportunity to be examined for a license or permit because of a person's conviction of a felony or misdemeanor involving moral turpitude, if the crime directly relates to the duties and responsibilities of a licensee. In considering whether a criminal conviction directly relates to the profession of fitting and dispensing of hearing instruments, the committee shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purpose for requiring a license or permit to practice the fitting and dispensing of hearing instruments;

(C) the extent to which a license or permit might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensee or permit holder.

(4) In determining the present fitness of a person who has been convicted of a crime, the following shall be considered:

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

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

(C) the amount of time that has elapsed since the person's last criminal activity;

(D) the conduct and work activity of the person prior to and following the criminal activity;

(E) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release;

(F) other evidence of the person's present fitness, including letters of recommendation from:

- (i) prosecution;
- (ii) law enforcement;
- (iii) correctional officers

who:

(I) prosecuted;

(II) arrested; or

(III) had custodial responsibility for the person;

(iv) the sheriff and chief of police in the community where the person resides; and

(v) any other persons in contact with the convicted person; and

(G) recommendations of the prosecution, law enforcement, and correctional authorities as required under the Act shall be secured and provided to the committee by the applicant to the extent possible; the licensee, permit holder or applicant shall also furnish proof in such form as may be required by the committee that he or she has maintained a record of steady employment and has supported his or her dependents and has otherwise maintained record of good conduct and has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted.

(5) The following felonies and misdemeanors relate to the license or permit because these criminal offenses may indicate an inability or a tendency to be unable to perform as a licensee or permit holder:

(A) the misdemeanor of knowingly or intentionally practicing fitting and dispensing of hearing instruments without a license;

(B) an offense involving moral turpitude;

(C) a misdemeanor involving deceptive business practices;

(D) the offense of assault or sexual assault;

(E) the felony offense of insurance claim fraud;

(F) a misdemeanor and/or felony offense under various titles of the Texas Penal Code concerning:

(i) Title 5 offenses against the person;

(ii) Title 7 offenses against property;

(iii) Title 9 offenses against public order and decency;

(iv) Title 10 offenses against public health, safety, and morals; and

(v) Title 4 offenses of attempting or conspiring to commit any of the offenses in subparagraphs (A)-(D) of this paragraph or clauses (i)-(iv) of this subparagraph; and

(G) any other misdemeanor or felony which would indicate an inability or a tendency to be unable to perform as a licensee or permit holder including viola-

tions of federal laws, laws of other states and laws of other nations.

(6) The executive director shall give written notice to a person with a criminal background when the committee intends to take disciplinary action after a hearing in accordance with the hearing procedures in §141.18 of this title (relating to Formal Hearings).

(e) Suspension, temporary suspension, probation, denial or revocation of a license or permit, or reprimand of a licensee or permit holder.

(1) If the committee suspends a license or permit, the suspension shall remain in effect for the period of time stated in the order or until the committee determines that the reason for the suspension no longer exists.

(2) If a suspension overlaps a license renewal date, the suspended fitter and dispenser of hearing instruments shall comply with the renewal procedures in this chapter; however, the suspension shall remain in effect pursuant to paragraph (1) of this subsection.

(3) Upon revocation or suspension of a license or permit, a licensee or permit holder shall return his or her license certificate or permit to the committee.

(f) Default orders.

(1) If the right to a hearing is waived under subsection (a) of this section, the committee shall consider an order taking disciplinary action as described in written notice to the licensee, permit holder, or applicant.

(2) The licensee, permit holder, or applicant and the complainant shall be notified of the date, time, and place of the committee meeting at which the default order will be considered.

(3) Upon an affirmative majority vote, the committee shall enter an order imposing appropriate disciplinary action.

(g) Monitoring of licensees.

(1) The executive director shall maintain a complaint tracking system.

(2) The committee may require each licensee, permit holder, or applicant that has had disciplinary action taken against his or her license or permit to submit regularly scheduled reports. The report, if required, shall be scheduled at intervals appropriate to each individual situation.

(3) The executive director shall review the reports and notify the complaints subcommittee if the requirements of the disciplinary action are not met.

(4) The complaints subcommittee may consider more severe disciplinary proceedings if noncompliance occurs.

#### §141.18. Formal Hearings.

(a) Purpose. This section covers the formal hearing procedures and practices that will be used by the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments, or appropriate subcommittee thereof in the handling of denials, suspensions, probations, and revocations of a license or permit, reprimands of a licensee or permit holder, and requirements of additional continuing education for a licensee or permit holder; and implements the contested case provisions of the Administrative Procedure Act (APA), Government Code, Chapter 2001, and this section.

(1) The committee or appropriate subcommittee on its own motion or on request from a licensee, permit holder or applicant may initiate a formal hearing. A formal hearing and all related proceedings shall be conducted in accordance with the provisions of the APA, and this section.

(2) If the licensee, permit holder or applicant fails to appear or be represented at the scheduled hearing, the person is deemed to be in agreement with the allegations and proposed action and to have waived the right to a hearing. Appropriate disciplinary action may be taken by the committee.

(b) Recording the hearing. The hearing examiner will keep either a stenographic or other taped record of the hearing proceeding. In the event an independent contract court reporter is utilized in the making of the record of the proceedings, the committee shall bear the cost of the per diem or other appearance fee for the reporter. Any party desiring a written transcript of the proceedings shall contract directly with such court reporter and be responsible for payment of same pursuant to the authority of the APA. In those cases when a tape recording of the formal hearing is made, the hearing examiner shall make such recording available to any party requesting permission to hear or, with appropriate protective measures, allow such recording to be duplicated. Upon appeal of any final order of the committee necessitating the forwarding of the record to a court of law, the committee may assess the cost of the transcript to the appealing party.

(c) Action after the hearing.

(1) Reopening of hearing for new evidence.

(A) The committee upon recommendation of the hearing examiner may reopen a hearing where new evidence is offered which was unobtainable or unavailable at the time of the hearing. The committee may refer the matter to the hearing examiner to accept the new evidence and alter his or her proposal for decision as necessary.

(B) The committee will reopen a hearing to include such new evidence as part of the record if the committee deems such evidence necessary for a proper and fair determination of the case. The reopened hearing will be limited to only such new evidence.

(C) Notice and procedural requirements will be the same as for the original hearing.

(2) Pleading after close. At any time after the record has been closed in a contested case, and prior to the administrative decision becoming final in such case, all briefs, exceptions, written objections, motions (including motion for rehearing), replies to the foregoing, and all other written documents shall be filed with the executive director. The party filing such instrument shall provide copies of the same to all other parties of record by first-class United States mail or personal services and certify, in writing thereon, the names and addresses of the parties to whom copies have been furnished, as well as the date and manner of service.

(3) Final orders or decisions.

(A) The final order or decision will be rendered by the committee. The committee may refuse to issue or renew a license, suspend, or revoke a license or permit; or may probate disciplinary action, or may issue a reprimand to a licensee or permit holder as it deems appropriate and lawful. A decision of the committee may include any requirement to be imposed upon the licensee or applicant which is related to the individual's practice as a licensee and is deemed by the committee to be appropriate and lawful.

(B) All final orders or decisions shall be in writing and shall set forth the findings of fact and conclusions required by law.

(C) All final orders shall be signed by the president of the committee;

(D) A copy of all final orders and decisions shall be timely provided to all parties as required by law.

(4) Motion for rehearing. A motion for rehearing shall be governed directly by the APA, Government Code, Chapter 2001, and shall be addressed directly to the committee and filed with the executive director.

(5) Appeals. All appeals from final committee orders or decisions shall be governed by the APA, the Government Code, Chapter 2001; and communications

regarding any appeal shall be to the executive director of the committee.

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 30, 1995.

TRD-9513946

Susan K. Steeg  
General Counsel  
Texas Board of Examiners  
in the Fitting and  
Dispensing of Hearing  
Aids

Earliest possible date of adoption: December 4, 1995

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

## Chapter 143. Consumer Information and Complaints

### • 22 TAC §143.1

*(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 Board of Examiners in the Fitting and Dispensing of Hearing Aids or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (committee) with the approval of the Texas Board of Health (board) proposes the repeal of §143.1, concerning consumer information and complaints guidelines for a 30-day trial period.

The proposed repeal will remove obsolete language.

Bernie Underwood, C.P.A., Chief of Staff, Associateship for Health Care Quality and Standards, has determined that for the first five-year period the repeal will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal as proposed.

Ms. Underwood also has determined that for each year of the first five years the proposed repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the removal of obsolete rules. There will be no cost to small businesses. There will be no costs to persons. There will be no anticipated effect on local employment.

Comments on the proposal may be submitted to Bobby D. Schmidt, Executive Director, State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 834-6784. Comments will be accepted for 30 days after publication of the sections in the *Texas Register*. In addition, public hearing has been scheduled as follows: for Friday, December 1, 1995, 9:00 a.m., Austin North Hilton and Towers, 6000 Middle Fiskville Road, Austin.

The repeal is proposed under Texas Civil Statutes, Article 4566-1.04, which require the State Committee of Examiners in the Fitting

and Dispensing of Hearing Instruments to adopt rules, with the approval of the Texas Board of Health, that are reasonably necessary for the proper performance of its duties under the Act.

This action affects Texas Civil Statutes, Article 4566.

### §143.1. Guidelines for a 30-day Trial 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 30, 1995.

TRD-9513947

Susan K. Steeg  
General Counsel  
Texas Board of Examiners  
in the Fitting and  
Dispensing of Hearing  
Aids

Earliest possible date of adoption: December 4, 1995

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

## Chapter 145. Continuing Education

### • 22 TAC §145.1

*(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 Board of Examiners in the Fitting and Dispensing of Hearing Aids or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (committee) with the approval of the Texas Board of Health (board) proposes the repeal of §145.1, concerning general requirements for continuing education for licensed fitters and dispensers of hearing aids.

The proposed repeal will remove obsolete language.

Bernie Underwood, C.P.A., Chief of Staff, Associateship for Health Care Quality and Standards, has determined that for the first five-year period the repeal will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal as proposed.

Ms. Underwood also has determined that for each year of the first five years the proposed repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the removal of obsolete rules. There will be no cost to small businesses. There will be no costs to persons. There will be no anticipated effect on local employment.

Comments on the proposal may be submitted to Bobby D. Schmidt, Executive Director, State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 834-6784. Comments will be accepted for 30 days after publication of the sections in

the *Texas Register*. In addition, public hearing has been scheduled as follows: for Friday, December 1, 1995, 9:00 a.m., Austin North Hilton and Towers, 6000 Middle Fiskville Road, Austin.

The repeal is proposed under Texas Civil Statutes, Article 4566-1.04, which require the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments to adopt rules, with the approval of the Texas Board of Health, that are reasonably necessary for the proper performance of its duties under the Act.

This action affects Texas Civil Statutes, Article 4566.

### §143.5. General Requirements for Continuing Education.

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 30, 1995.

TRD-9513948

Susan K. Steeg  
General Counsel  
Texas Board of Examiners  
in the Fitting and  
Dispensing of Hearing  
Aids

Earliest possible date of adoption: December 4, 1995

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

## Part XX. Texas Board of Private Investigators and Private Security Agencies

### Chapter 423. Rules of Procedure and Seal Code of Professional Responsibility and Conduct

#### Hearings, Grievances, and Appeal Procedures

##### • 22 TAC §423.22

The Texas Board of Private Investigators and Private Security Agencies proposes an amendment to §423.22, concerning Form and Content of Pleadings. The section specifies that letter size paper be used for pleadings instead of legal size paper. The Board has determined that this amendment is necessary to comply with changes in federal statute.

Clema D. Sanders 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. Sanders 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 is will be to minimize the waste of paper and conserve natural resources. 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 Clema D. Sanders, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 4413(29bb), §11(a)(3), which provide the Texas Board of Private Investigators and Private Security Agencies with the authority to promulgate all rules and regulations necessary in carrying out the provisions of this Act.

No other statute, code or article is affected by this rule:

§423.22. Form and Content of Pleadings.

(a) Typewritten or Printed: Pleadings shall be typewritten or printed upon paper 8 inches wide by 11 [14] inches long with an inside margin at least one inch wide and exhibits annexed thereto either shall be folded to the same size or shall be smaller. Reproductions are acceptable, provided all copies are clear and permanently legible.

(b)-(f) (No change.)

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

Issued in Austin, Texas, on October 27, 1995.

TRD-9513852 Clema D. Sanders  
Executive Director  
Texas Board of Private  
Investigators and  
Private Security  
Agencies

Earliest possible date of adoption: December 4, 1995

For further information, please call: (512) 463-5545



Chapter 451. Registration of Employees or Private Investigators

• 22 TAC §451.4

The Texas Board of Private Investigators and Private Security Agencies proposes an amendment to §451.4, concerning Fingerprints. The Board has determined that this amendment is necessary in order comply with House Bill 713 of the 74th Texas Legislature. This amendment requires that all employees who are required to be registered must be fingerprinted prior to beginning employment in order that a criminal history background check may be done on every registered employee in the industry.

Clema D. Sanders 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. Sanders 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 that all applicants for registration in the private investigation and private security industry will have their background checked for criminal history even if they are only employed for a short time. 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 Clema D. Sanders, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 4413(29bb), §11(a)(3), which provide the Texas Board of Private Investigators and Private Security Agencies with the authority to promulgate all rules and regulations necessary in carrying out the provisions of this Act.

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

§451.4. Fingerprints.

(a) Unless an employee who is required to register under the provisions of Section 32 of this Act has been terminated from previous registration for a period of time less than six [three] months, new fingerprints are required for registration with a new employer.

(b) Fingerprints required by the Act or Board Rules shall be obtained prior to an individual beginning employment.

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 27, 1995.

TRD-9513851 Clema D. Sanders  
Executive Director  
Texas Board of Private  
Investigators and  
Private Security  
Agencies

Earliest possible date of adoption: December 4, 1995

For further information, please call: (512) 463-5545



• 22 TAC §451.5

(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 Board of Private Investigators and Private Security Agencies or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Board of Private Investigators and Private Security Agencies proposes the repeal of §451.5, concerning Color Photographs. The Board has determined that this repeal is necessary in order comply with House Bill 713 of the 74th Texas Legislature. It repeals the requirement that photographs of each applicant be submitted to the Board.

Clema D. Sanders 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.

Ms. Sanders 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 none. The cost of compliance with the rule for small businesses will be: Minimal. 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 Clema D. Sanders, Texas Board of Private Investigators and Private Security Agencies, P.O. Box 13509, Austin, Texas 78711.

The repeal is proposed under Texas Civil Statutes, Article 4413(29bb), §11(a)(3), which provide the Texas Board of Private Investigators and Private Security Agencies with the authority to promulgate all rules and regulations necessary in carrying out the provisions of this Act.

No other statute, code or article is affected by this repeal.

§451.5. Color Photographs.

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 27, 1995.

TRD-9513850 Clema D. Sanders  
Executive Director  
Texas Board of Private  
Investigators and  
Private Security  
Agencies

Earliest possible date of adoption: December 4, 1995

For further information, please call: (512) 463-5545



TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 169. Zoonosis Control Rabies Control and Eradication

• 25 TAC §§169.22, 169.23, 169.25-169.29, 169.31, 169.33, 169.34

The Texas Department of Health (department) proposes amendments to §§169.22, 169.23, 169.25-169.29, 169.31, 169.33, and 169.34, concerning the control of rabies. Specifically, the sections cover definitions, information relating to the control of rabies, reports of human exposure to rabies, facilities for the quarantining of animals, quarantine method and testing, public and private entities that operate a quarantine facility, vaccination requirement for dogs and cats, submissions of specimens for laboratory ex-



amination and area quarantine. The amendments reflect the need for enhanced safety measures to be taken because of two rabies epizootics occurring in Texas; indicate that the department's Bureau of Veterinary Public Health has been abolished and the responsibilities listed in these sections are now under the Zoonosis Control Division; clarify terms used in the sections; expand humane and security requirements for rabies quarantine facilities; reduce the age for initial rabies vaccination of dogs and cats from four months to three months; include the term "custodian" in addition to owner; mandate that only rabies vaccine with a three-year duration of immunity be used; clarify the procedure for submitting specimens for rabies testing; and reflect amendments to Texas Health and Safety Code, Chapter 826, by Chapter 44, Acts of the 74th Legislature, Regular Session, 1995. Chapter 44 changed the name of the local health authority for rabies control in Chapter 826 to the local rabies control authority in order to minimize ambiguity, and restricted the movement within and from Texas of animals at high risk for transmitting rabies.

Dr. Keith A. Clark, Director, Zoonosis Control Division, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state government as a result of enforcing or administering the sections. Some local governments and private animal shelters contracting with local governments may have expenses associated with modifying their rabies quarantine facilities to include solid partitions between runs and cages as well as a cover to these runs and cages; however, the Zoonosis Control Division has been encouraging these structural changes for several years and most facilities are already in compliance. Further economic costs will be incurred by some quarantine facilities (private and public) by requiring cooling of indoor facilities. Economic costs will be incurred by animal shelters because they will be required to rabies vaccinate all dogs and cats over three months of age prior to releasing the animal. These costs may be recouped through increased adoption or reclamation fees when the animal is released to an owner.

Dr. Keith Clark 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 to minimize the potential transmission of rabies to Texas residents. Small businesses, particularly veterinary clinics, will incur a slight increase in expense because the cost of the three-year rabies vaccine is slightly higher per dose (approximately \$.30) than the one-year duration vaccine. This expense may be passed on to pet owners (persons). There will be no impact on local employment.

Written comments may be submitted to Dr. Keith A. Clark, Director, Zoonosis Control Division, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7255. Comments on the proposed rule will be accepted for 30 days following publication in the *Texas Register*.

The amendments are proposed under the Texas Health and Safety Code, Chapter 826, "Rabies," §826.011, which provides the board with the authority to administer the rabies control program and adopt rules necessary to

effectively administer this program; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

The amendments affect the Texas Health and Safety Code, Chapter 826.

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

**Animal**—Any [live or dead] mammal, domesticated or wild.

[**Cat**—Any live or dead cat (*Felis catus*).]

**Currently vaccinated**—Vaccinated and satisfying the following criteria.

(A) The animal must have been vaccinated against rabies at [least] three months of age or earlier as prescribed by the United States Department of Agriculture (USDA) [at the time of vaccination].

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

**Custodian**—A person or agency which feeds, shelters, harbors, [or] has possession or control, or has the responsibility to control an animal.

**Department**—The Texas Department of Health (TDH) [(DOH)].

**Dog**—Any [live or dead dog] *Canis familiaris* [(*Canis familiaris*)], including [excluding] hybrids.

**Domestic animal**—Any animal normally adapted to live in intimate association with humans or for the advantage of humans.

**Domestic dog**—Any *Canis familiaris*, excluding hybrids.

**Guide dog**—Domestic dog that is in service to a legally blind person.

**High risk animals**—Those animals which have a high probability of transmitting rabies; they include skunks, bats, species of foxes indigenous to North America, coyotes, and raccoons.

**Isolation**—The separation of an animal exposed or potentially exposed to rabies.

**Local rabies control [health] authority**—The officer designated by the municipal or county governing body under the Texas Health and Safety Code, Chapter 826 [Texas Civil Statutes, Article 4477-6a, §2.02].

**Police dog**—Domestic dog that is owned or employed by a governmental law enforcement agency.

**Quarantine facility**—A structure where animals are held for rabies observation.

**Zoonosis Control Division (ZCD)**—The Division within [of] the [Bu-

reau of Veterinary Public Health of the] Texas Department of Health to which the responsibility for implementing these rules is assigned.

**§169.23. Information Relating to the Control of Rabies.** The Texas Department of Health's Zoonosis Control Division (ZCD) will assume the responsibility of collecting, analyzing, and preparing monthly and annual summations of rabies activity in the state. These reports will be forwarded to national, state, and municipal agencies as required, and selected statistics will be sent to [the practitioners of] veterinary medical [medicine] organizations throughout the state.

**§169.25. Reports of Human Exposure to Rabies.**

(a) Any person having knowledge of a potential rabies exposure [an animal bite] to a human as defined in the Texas Health and Safety Code, §826. 041 will report the incident to the local rabies control [health] authority as soon as possible, but not later than 24 hours from the time of the incident. This requirement does not apply to bites by low risk animals as defined in §169.22 of this title (relating to Definitions).

(b) The owner or custodian of the potentially rabid [biting] animal will place that animal in quarantine [as] or submit it for testing as prescribed in §169.27 of this title (relating to Quarantine Method and Testing).

(c) The local rabies control [health] authority will investigate each potential exposure and assure appropriate resolution [bite incident, utilizing standardized reporting forms provided by Texas Department of Health].

**§169.26. Facilities for the Quarantining of Animals.**

(a) Generally.

(1) Structural strength. Housing facilities shall be structurally sound and shall be maintained in good repair in order to protect the animals from injury, to contain them, and to prevent exposure to other animals and the public.

(2)-(5) (No change.)

(6) Management. The manager of a quarantine facility should be either a licensed veterinarian or an [animal control officer] individual who has satisfactorily completed an appropriate TDH training course [certified by the department].

(b) Facilities—indoor.

(1) Heating. Indoor housing facilities shall be sufficiently heated when

necessary to protect the animals;[] the room temperature must not fall below 50 degrees Fahrenheit (7.2 degrees Celsius) for more than four consecutive hours at any time dogs or cats are present.

(2) **Cooling.** The room temperature of an indoor housing facility must not rise above 85 degrees Fahrenheit (29.5 degrees Celsius) for more than four consecutive hours at any time dogs or cats are present.

(3)[(2)] **Ventilation.** Indoor housing facilities shall be adequately ventilated to provide for the health and comfort of the animals at all times. Such facilities shall be provided with fresh air either by means of windows, doors, vents, or air conditioning and shall be ventilated so as to minimize drafts, odors, and moisture condensation.

(4) [(3)] **Lighting.** Indoor housing facilities shall have ample light of sufficient intensity to permit routine inspection and cleaning during the entire work period. Primary enclosures shall be situated to protect the animals from excess illumination.

(5)[(4)] **Interior surfaces.** The interior building surfaces shall be constructed and maintained so that they are impervious to moisture and may be readily sanitized.

(6) [(5)] **Drainage.** A suitable method shall be provided to rapidly eliminate excess water from indoor housing facilities. If drains are used, they shall be properly constructed and kept in good repair to avoid foul odors therefrom. If closed drainage systems are used, they shall be equipped with traps and so installed as to prevent any backup of sewage onto the floor of the room.

(c)-(h) (No change.)

#### *§169.27. Quarantine Method and Testing.*

(a) When a domestic dog or cat which has bitten a human has been identified, the owner or custodian will be required to place the animal in quarantine. Unvaccinated animals should not be vaccinated against rabies during the observation period. The ten-day observation period will begin on the day of the bite incident. The animal must be placed in a Texas Department of Health (department) approved facility specified by the local rabies control [health] authority and observed at least twice daily. However, the owner or custodian of the animal may request permission from the local rabies control [health] authority for home quarantine if the following criteria can be met.

(1) Secure facilities must be available at the home of the animal's owner or custodian, and must be approved by the local rabies control [health] authority.

(2) (No change.)

(3) The local rabies control [health] authority or a licensed veterinarian must observe the animal at least on the first and last days of the quarantine period. If the animal becomes ill during the observation period, the local rabies control [health] authority must be notified by the person having possession of the animal. At the end of the observation period, the release from quarantine must be accomplished in writing.

(4) The animal was not a stray (as defined in the Texas Health and Safety Code, §826.002) at the time of the bite.

(b) A dog or cat which has bitten a human and has been designated by the local rabies control [health] authority as unclaimed may be humanely killed in such a manner that the brain is not mutilated. The brain shall be submitted to a department certified laboratory for rabies diagnosis.

(c) (No change.)

(d) If the biting animal is a low risk animal, neither quarantine nor rabies test will be required unless the local rabies control [health] authority has cause to believe the biting animal is rabid, in which case it should be humanely killed and tested for rabies.

(e) The local rabies control [health] authority may require an animal which has inflicted multiple bite wounds, punctures, or lacerations to the face, head, or neck of a person to be humanely killed and the brain tested for rabies.

(f) If the biting animal is not included in subsections (a), (b), (c), (d), or (e) of this section, the biting animal will be humanely killed and the brain tested for rabies or the local rabies control [health] authority may require the animal to be confined for a 30-day observation period as an alternate method to killing and testing, otherwise conforming to the requirements delineated in subsection (a) of this section.

(g) (No change.)

(h) Currently vaccinated guide dogs in service or currently vaccinated police dogs when a bite is inflicted in the line of duty shall not be required to be placed in quarantine.

#### *§169.28. Public and Private Entities That Operate a Quarantine Facility.*

(a) Quarantine procedures.

(1) (No change.)

(2) Biting animals and animals suspected of rabies that are placed in confinement for observation must be separated from all other animals in such a manner that there is no possibility of physical contact

between animals. To avoid contact between animals, a solid partition extending from the floor to ceiling of the confinement chamber is required between chambers such as runs or cages. Half wire-half solid partitions between runs and cages or an empty chamber between animals are not acceptable alternatives. To prevent escape, the chamber must be enclosed on all sides, including the top.

(3) (No change.)

(4) The local rabies control [health] authority may require a written agreement by the owner or the custodian at the time of quarantine and the animal may be disposed of according to terms of this agreement.

(b) (No change.)

(c) Inspection requirements of quarantine facilities.

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

(3) The quarantine facility manager has the right to appeal the results of the inspection evaluation. If the opinion of management of the quarantine facility is in conflict with the inspection evaluation, he or she may request a review of the inspection by the director of the department's Zoonosis Control Division. In the event points of difference still remain, the supervisor may request a review of the inspection by the chief of the department's Bureau of Communicable Disease Control [Veterinary Public Health]. Each of the appeals listed in this paragraph, when required, will be made in writing through the public health region director's office in whose area the animal facility is located.

#### *§169.29. Vaccination Requirement.*

(a) The owner or custodian of each dog or cat shall have the dog or cat vaccinated against rabies at [by the time it is] three [four] months of age or earlier as prescribed by the United States Department of Agriculture (USDA) and within each subsequent 12-month interval thereafter. Only USDA-licensed rabies vaccines with a three-year duration of immunity or a vaccine which has been licensed for less than two years, and for which testing to obtain approval for three-year duration of immunity is in progress, may be used.

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

(d) If a veterinarian ceases the practice of veterinary medicine, the duplicate rabies vaccination certificates retained by that practice shall be turned over to the local rabies control [health] authority. This does not apply to the sale or lease of a practice, when the records of the practice are transferred to a new owner.

**§169.31. Interstate Movement of Dogs and Cats into Texas.**

(a) All dogs and cats to be transported into Texas for any purpose shall be admitted only when currently vaccinated against rabies and identified by vaccination certificates showing date of vaccination and signed by a licensed veterinarian.

(b) (No change.)

**§169.33. Submission of Specimens for Laboratory Examination.** Preparation of specimens either for shipment or for personal delivery for rabies diagnosis shall include the following.

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

(4) If specimens are shipped, two containers shall be used for packing.

(A) The immediate (inner) container. Only one head shall be placed in each immediate container which shall be [a metal container or] double plastic bags. Attach the owner's name or an identification number to each double-sealed plastic bag. Adhesive tape is useful. Do not use masking tape. A completed Texas Department of Health Form G-9 [G-172], Rabies Submission Form [Laboratory Test for Rabies (see the form following this section), or the information requested on this form], which is available at the department's Bureau of Laboratories, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, shall be placed in a separate water-proof bag [and attached to each immediate container]. The form must contain identical information as located on the specimen bag. One form is required for each head submitted.

(B) The shipping (outer) container.

(i) The immediate container(s) shall be placed in an insulated shipping container of adequate strength to withstand shipping conditions, such as a styrofoam container inside a cardboard box.

(ii) Sufficient refrigerant shall be added so the head will remain chilled for a minimum of 48 hours. Do not use dry ice. Gel packs or similar refrigerants are recommended. Ice is not recommended but, if used, must be double-bagged in heavy-duty plastic bags.

(iii) Packing material, such as newspaper, shall be added to absorb water and blood in the event of leakage and buffer the specimens.

(iv) Submission form(s) shall be placed in a water-proof bag on top of the packing material, just under the box top.

(v)[(iv)] Labeling on the outside of the shipping container shall be legible and include:

(I) name, [and] address, and phone number of the appropriate laboratory (listed in paragraph (6) of this section);

(II) the return address, name and telephone number of the shipper; and

(III) the following statement [statements]: "RABIES SUSPECT-REFRIGERATE ON ARRIVAL [CONTAINS (number) ANIMAL HEAD(S) FOR RABIES TESTING. HANDLE WITH CARE. UPON ARRIVAL CALL (telephone number of appropriate laboratory)]."

(5) The following procedures are required for shipment:

(A) shipment shall be by bus or other reliable carrier; the department does not recommend the United States Postal Service. If an overnight carrier is used, such as United Parcel Service (UPS) or Federal Express, ship the specimen such that it will arrive by Friday or delay shipment until Monday. These services do not deliver to the department on the weekend;

(B) (No change.)

(C) at the time of the shipment, the shipper shall telephone the appropriate laboratory and notify them of the shipment; and

(D) the shipper shall provide the return postage (in the form of stamps, not money) if return of the shipping container is desired.

(6) The certified laboratories in Texas are:

(A) Austin-Bureau of Laboratories, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, telephone the rabies shipment notification hotline at 1-800-252-8163, or the local telephone at: (512) 458-7598 or (512) 458-7515.[:]

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

(D) San Antonio-Laboratory, San Antonio Metropolitan Health District, 332 West Commerce Street, Room 203[205], San Antonio, Texas 78205, telephone: (210) 207-8780 [(512) 299-8820].

**§169.34. Area Quarantine.**

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

(c) Declaration. The board declares an area rabies quarantine.

(1) (No change.)

(2) Animals subject to the area quarantine. Any live: domestic dog, wolf-dog hybrid, or cat over three months of age for which an official rabies vaccination certificate as described in §169.29(b) of this title (relating to Vaccination Requirement) cannot be produced, or coyote (*Canis latrans*), raccoon (*Procyon lotor*), or species of foxes indigenous to North America [coyote (*Canis latrans*), raccoon (*Procyon lotor*), red fox (*Vulpes fulva*), desert fox (*Vulpes macrotis*), swift fox (*Vulpes velox*), gray fox (*Urocyon cinereoargenteus*), dog, wolf-dog hybrid, or cat over three months of age for which an official rabies vaccination certificate as described in §169.29(b) of this title (relating to Vaccination Requirement) cannot be produced], is subject to the area quarantine.

(3) Transport exceptions. Animals subject to the area quarantine may be transported by employees or contractors of governmental entities, when such transport is a part of their official duty. If an exempt individual transports such animals for release, the animals must be released within a ten-mile radius or within ten miles of the city limits of where they were originally captured.

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

(f) Prohibited acts. A person shall not remove from, nor transport within the area quarantine, any animal described in subsection (c)(2) of this section. For dogs and cats, submission to the court of a valid rabies certificate issued prior to the date of the citation or a signed euthanasia release form describing the transported animal, shall be a valid defense to a charge of violation of this quarantine.

[(g) Exceptions. Notwithstanding the prohibition in subsection (f) of this section, animals described in subsection (c)(2) of this section may be transported in the following circumstances:

[(1) animals may be transported between zoos or other institutions accredited by the American Association of Zoological Parks and Aquariums;

[(2) animals may be transported by employees or contractors of governmental entities, when such transport is a part of their official duty; and,]

[(g)[(h)] Special provisions for rehabilitation of raccoons. Raccoons being rehabilitated shall be:

(1) vaccinated with a vaccine approved for use in raccoons by the United States Department of Agriculture and held

for 30 days after vaccination without clinical signs [symptoms] of rabies;

(2) released within a ten-mile radius or within ten miles of the city limits of where they were originally captured; and

(3) transported by employees or contractors of a city or county animal control agency.

(h)(i) Rehabilitation of other wild animals. Rehabilitation of other wild animals listed in subsection (c)(2) of this section is prohibited.

(i)(j) Violation of quarantine. As provided in Texas Health and Safety Code, §826.046:

(1) a person commits an offense if the person violates or attempts to violate subsection (f) of this section; and

(2) an offense is a Class C misdemeanor.

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 26, 1995.

TRD-9513840

Susan K. Steeg  
General Counsel  
Texas Department of  
Health

Earliest possible date of adoption: December 4, 1995

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

The Texas Department of Health (department) proposes amendments to §§169.62-169.64, repeal of §169.65, and new §169.65, concerning the requirements for training and certification of animal shelter personnel. Specifically, the sections define levels of proficiency, prerequisites for certification, and certification of proficiency of animal shelter personnel. The amendments and the repeal will remove requirements of the department to provide for the certification of animal shelter personnel and the new section will define the training as prescribed in Texas Health and Safety Code, §823.004.

Connie K. Matthies, staff services Officer, Zoonosis Control Division, has determined that for the first five-year period the sections are in effect there will be fiscal implications as a result of administering the sections as proposed. The effect on state government will be an estimated savings of approximately \$28,500 per year as a result of discontinuing the certification of animal shelter personnel. There will be no fiscal implications for local governments

Keith A. Clark, D.V.M., director, Zoonosis Control Division, has determined that for each year of the first five years the sections are in effect the public health benefit will be an anticipated decrease in rabies cases and human exposures to rabies by increasing the

accessibility of training courses for animal shelter personnel. There will be no effect on small businesses. There will be a decrease in economic cost of \$10 for persons who voluntarily comply with the sections by attending a training course. The only department fee for attending a course will be an at-cost charge for an optional training manual, which is in the process of being developed independent of the proposed revisions. There will be no impact on local employment.

Written comments may be submitted to Dr. Keith A. Clark, Director, Zoonosis Control Division, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7255. Comments on the proposed rule will be accepted for 30 days following publication in the *Texas Register*.

### Training of Animal Shelter Personnel [Animal Shelters]

#### • 25 TAC §§169.62-169.65

The amendments and new section are proposed under the Texas Health and Safety Code, §823.004, which provides the board with the authority to prescribe standards for training animal shelter personnel in animal health and disease control, humane care and treatment of animals, control of animals in an animal shelter, and the transportation of animals; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

The amendments and new section affect the Texas Health and Safety Code, §823.004.

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

[Board—The Texas Board of Health.]

Course—Any training session administered by the Texas Department of Health for basic animal control officers, advanced animal control officers, or administrative animal control officers, or animal control officer instructors for which a certificate is issued.]

[Director—The director of the Texas Department of Health's Zoonosis Control Division.]

#### *§169.63. Levels of Proficiency.*

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

[(d) The instructor level requires the expertise of an advanced level officer, and the ability to impart those skills and information to others.]

#### *§169.64. Prerequisites for Course Attendance [Certification].*

(a) Basic, advanced, or administrative. A person must:

[(1)] apply for attendance with the department's Regional Zoonosis Con-

trol Program conducting the course. Course enrollment will be based on space availability policies. [have at least six months' experience in animal shelter work;

[(2) have the ability to read and write in the English language;

[(3) provide written recommendation from the animal control officer's (ACO) supervisor, if employed; and

[(4) pay a \$10 fee by check or money order, payable to the Texas Department of Health (TDH).]

(b) Advanced. A person must:

(1) have satisfactorily completed a [current] basic course and, subsequently, [certification and] have been employed in animal shelter work [certified for] at least one year; and

(2) provide proof of high school graduation or equivalency.;

[(3) provide written recommendation from the ACO's supervisor, if employed; and

[(4) pay a \$10 fee by check or money order, payable to TDH.]

(c) Administrative. A person must:

(1) have satisfactorily completed an advanced course; and [a current advanced certification;]

(2) have completed 30 hours of college credit (each year of full-time employment as a supervisor or administrator in animal control may be substituted for five hours of college credit).;

[(3) provide written recommendation from the ACO's supervisor, if employed; and

[(4) pay a \$10 fee by check or money order, payable to TDH.

[(d) Instructor. A person must:

[(1) be currently certified at the advanced or administrative level;

[(2) have satisfactorily completed an instructor course approved by the Texas Department of Health;

[(3) have satisfactorily instructed in at least two ACO certification courses and have written verification from the involved regional zoonosis veterinarian; and

[(4) pay a \$10 fee by check or money order, payable to the Texas Department of Health.]

*§169.65. Course Content.* The basic and advanced courses will include coverage of topics deemed pertinent to animal shelter personnel by the department's Zoonosis Control Division (ZCD) including, but not limited to, animal capture, restraint, im-

poundment, and disposition; animal health, including zoonotic diseases; animal identification; sanitation and disease control; record keeping; shelter safety and occupational hazards; public relations; and animal laws and regulations relating to these topics. The administrative course will include coverage of supervisory and management skills.

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 27, 1995.

TRD-9513910 Susan K. Steeg  
General Counsel  
Texas Department of  
Health

Earliest possible date of adoption: December 4, 1995

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

## Animal Shelters

### • 25 TAC §169.65

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

The repeal is proposed under the Texas Health and Safety Code, §823.004, which provides the board with the authority to prescribe standards for training animal shelter personnel in animal health and disease control, humane care and treatment of animals, control of animals in an animal shelter, and the transportation of animals; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

The repeal affects the Texas Health and Safety Code, §823.004.

### §169.65. Certification of Proficiency.

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 27, 1995.

TRD-9513909 Susan K. Steeg  
General Counsel  
Texas Department of  
Health

Earliest possible date of adoption: December 4, 1995

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

## TITLE 28. INSURANCE

### Part I. Texas Department of Insurance

#### Chapter 7. Corporate and Financial Regulation

##### Subchapter B. Insurance Holding Company System Regulatory Act

### • 28 TAC §§7.201-7.205, 7.209

The Texas Department of Insurance proposes amendments to §§7.201-7.205 and 7.209 concerning administrative regulation under the Insurance Holding Company System Regulatory Act (the Insurance Code, Article 21.49-1). The amendments are necessary to implement amendments made to the Act by the 74th Legislature, 1995, to improve the administrative efficiency of the Texas Department of Insurance, and to promote compliance by entities subject to the Act. The amendment to §7.201(a)(2) reduces the number of originally signed copies of filings required by the Act, §5, from three to two. The amendment to §7.202(a)(3) implements House Bill 2793, §1, which adjusts the definition of commercially domiciled insurer by increasing the threshold proportion of gross written premiums written in Texas from 20% to 30%. The amendment to §7.202(a)(9) corrects an editorial error by inserting "or" between reciprocal and interinsurance. Section 7.202(b) is amended to eliminate reference to the discretionary exemption which was made automatic by an amendment to the Act, §2(r), by House Bill 2710 which deleted the commissioner's authority to approve exemptions of insurance holding company systems from regulation under the Act. Section 7.202(b)(2) is renumbered and a new paragraph added to clarify that a commercially domiciled insurer that has withdrawn from writing all lines of insurance in the state under the Insurance Code, Article 21.49-2C, is not subject to the Act. This implements House Bill 2793, §6(b). Section 7.203(a) is amended to clarify that an insurer exempted from regulation by the Act, §2(r), must file a registration statement in compliance with the Act, §3, if the insurer ceases to be exempted. The amendments to §7.203(e) delete a provision which is no longer utilized and provide that the time for reporting of the acquisition of an additional voting security in connection with a disclaimer of control or affiliation is extended to 15 days after the end of the month from five business days. The amendment to §7.204(d)(2)(B) provides that one of the thresholds for determination of an extraordinary dividend for an insurer other than a life or title insurer shall be the net income instead of the net investment income. This amendment is pursuant to an amendment to the Act, §4(c)(2), by House Bill 1243. The amendment to §7.205 reflects the department's position as a result of the repeal, by House Bill 2710, of the commissioner's authority to exempt insurance holding company systems with five or fewer securityholders who are natural persons from regulation under the Act. The repeal of the commissioner's authority makes the exemp-

tion from regulation of the insurance holding company system automatic; however, the department takes the position that the acquisition of control of an exempt insurer is not the regulation of the insurance holding company system, but a duty placed on the person seeking to acquire control of the insurance holding company system. An amendment to §7.205(b) reflects the codification of the Administrative Procedures and Texas Register Act. The amendments to §7.209 provide for disclosure of the identity of each individual proposed to be an executive officer or director of the domestic insurer and for the filing of biographical affidavit forms for each such individual. Form HCDividend, adopted under §7.203(n), is revised to incorporate technical corrections to line numbers; change net investment income to net income for Fire/Casualty companies as a result of House Bill 1243; and remove the requirement for disclosure of the states in which Fire/Casualty companies are licensed.

Jose Montemayor, associate commissioner for financial, has determined that, for the first five-year period the proposed sections will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections and 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 proposed sections are in effect, the public benefits anticipated as a result of enforcing the sections 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 amended sections, as proposed, other than the minimal cost of completion of the appropriate forms and obtaining approval of the Commissioner.

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, Financial Program, Mail Code 305-2A, Texas Department of Insurance, P.O. Box 149104, 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 amendments are proposed under the Insurance Code, Article 21.49-1, §11, which authorizes the Commissioner of Insurance of the Texas Department of Insurance to issue such rules, regulations, and orders as shall be consistent with and shall carry out the provisions of the Insurance Holding Company System Regulatory Act and to govern the conduct of its business and proceedings under the Act.

The following are the articles of the Insurance Code that are affected by these amendments: Texas Insurance Code, Article 21.49-1; §7.202-Texas Insurance Code, Article 21.49-2C.

§7.201. *Forms Filings.*

(a) General requirements.

(1) (No change.)

(2) Two [Three] complete originally signed copies (unless additional copies are requested by the commissioner) of each statement, notice, or application, including exhibits and all other papers and documents filed as a part thereof, in connection with any acquisition statement filed under §7.209 of this title (relating to Form A), and one complete originally signed copy of every other statement, notice, or application, including exhibits and all other papers and documents filed as a part thereof, shall be filed with the commissioner by personal delivery or by mail addressed to: Financial Monitoring, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149099, 333 Guadalupe, Austin, Texas 78714-9099. Each statement, notice, or application shall be subject to the appropriate filing fee provided for in §7.1301 of this title (relating to Regulatory Fees). The appropriate filing fee shall be forwarded to Financial Monitoring of the Texas Department of Insurance under separate cover along with a copy of the letter transmitting the statement, notice, or application.

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

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

§7.202. *Definitions.*

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

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

(3) Commercially domiciled insurer—A foreign or alien insurer authorized to do business in this state that during its three preceding fiscal years taken together, or any lesser period if it has been licensed to transact business in this state only for that lesser period, has written an average of more gross premiums in this state than it has written in its state of domicile during the same period, and such gross premiums constitute 30% [20%] or more of its total gross premiums everywhere in the United States for that three-year or lesser period, as reported in its three most recent annual statements. To determine if an insurer is a commercially domiciled insurer, the annual average ratio for premium receipts addressed in subparagraphs (A) and (B) of this paragraph shall be calculated, as follows:

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

(4)-(8) (No change.)

(9) Director—A person elected or appointed as a member of a board of directors responsible for the management of an insurer. The term shall also include an attorney-in-fact of a Lloyds or reciprocal or interinsurance exchange who is charged with responsibility for the management of an insurer.

(10)-(20) (No change.)

(b) Exemption—Commercially Domiciled Insurer.

(1) [Certain insurance holding company systems of the type specified in the Act, §2(r), may be exempted or partially exempted from the Act and these sections in the manner provided in the Act, §2(r).]

[(2)] The commissioner may exempt from the provisions of the Act and these sections, except the registration requirement, any commercially domiciled insurer if the commissioner determines that the insurer has assets physically located in this state or an asset to liability ratio sufficient to justify the conclusion that there is no reasonable danger that the operations or conduct of the business of the insurer could present a danger of loss to the policyholders of this state. The [order granting the] exemption granted under this subsection shall set forth the specific criteria under which it is granted and shall be subject to annual review. The commissioner may, after notice and hearing, rescind an exemption granted to a commercially domiciled insurer under the provisions of the Act and these sections. A rescission of an exemption shall set forth the rationale for the rescission. Requests for an exemption under this subsection shall be filed with Financial Monitoring, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149099, 333 Guadalupe, Austin, Texas 78714-9099. The request must contain a signed and notarized affidavit of an executive officer of the insurer that, should the exemption be granted, the insurer has agreed to notify Financial Monitoring within ten days after it no longer meets the criteria set out in this section on which the exemption is based. In determining that a commercially domiciled insurer has sufficient assets to justify the conclusion that there is no reasonable danger that the operations or conduct of the business of the insurer could present a danger or loss to policyholders of this state, the commissioner shall give consideration to the matters contained in subparagraphs (A)-(D) of this paragraph in connection with an exemption requested under the Act, §2(s), and these sections.

(A) Assets in Texas, which are either:

(i) permanent, free, and unencumbered and physically located in Texas in an amount equal to the total unpaid losses attributable to Texas risks; or

(ii) qualifying authorized investments under the Insurance Code comprising 20% of the insurer's admitted assets and physically located in Texas.

(B) Adequacy of policyholder surplus, based upon:

(i) an asset-to-liability ratio of two to one, if the insurer is a property and casualty insurer;

(ii) an asset-to-liability ratio of one and one-half to one, if the insurer is a life, accident and health insurer;

(iii) the insurer having capital and surplus equal to 250% of the minimum risk-based capital described in §7.410 of this title (relating to Minimum Risk-Based Capital and Surplus Requirements for Stock Property/Casualty Insurers) or §7.401 of this title (relating to Minimum Risk-Based Capital and Surplus Requirements for Life, Accident and Health Insurers); or

(iv) the insurer having total capital and surplus of at least \$50 million.

(C) Consideration may be given to financial conditions specified in §8.3 of this title (relating to Hazardous Conditions) to justify the conclusion that there is no reasonable danger that the operations or conduct of the business of the insurer could present a danger of loss to the policyholders of this state.

(D) Consideration may be given to other positive factors regarding an insurer's operations or conduct.

(2) The provisions of this subchapter shall not apply to a foreign or alien insurer if the commissioner has approved a total withdrawal plan from writing all lines of insurance for such insurer under the Insurance Code, Article 21.49-2C.

§7.203. *Registration of Insurers.*

(a) Except as provided by the Act, every insurer which is authorized or incorporated to do business in this state and which is a member of an insurance holding company system shall register in accordance with the Act, §3. An insurer which is a member of an insurance holding company system which ceases to be exempt from regulation under the Act, §2(r), shall register in accordance with the Act, §3. The exemption from registration for a foreign insurer does not apply to a commercially domiciled insurer doing business in this state; nor to a commercially domiciled insurer granted an exemption under §7.202 of this title (relating to Definitions). The

Commissioner shall terminate the registration of a commercially domiciled insurer when it is demonstrated that it no longer meets the definition of commercially domiciled insurer in subparagraph (3) of §7.202 of this title (relating to Definitions).

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

(e) Amendments to registration statements. Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions (whether single transactions or cumulative in total). Such amendment shall be in accordance with §7.210 of this title (relating to Form B), the registration statement, the cover page requirements of §7.201(d) of this title (relating to Forms Filings), and with a positive statement as to the items of the form not being amended instead of setting out such unamended portions. Such amendment shall be filed within 15 days after the end of the month in which the registered insurer learns of each such change or addition. [Within 60 days after the effective date of these sections, each insurer shall amend its registration statement to comply with these sections.] Any transaction that is formally approved by official order of the commissioner under any of the following enumerated provisions shall be deemed to be an amendment to the registration statement without further action or filing:

(1)-(12) (No change.)

(f)-(k) (No change.)

(l) Disclaimer. Any person may file with the commissioner a disclaimer of control or affiliation with any insurer, or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall be in accordance with §7.211 of this title (relating to Form C) and shall disclose all material relationships and bases for affiliation between such persons and such insurer as well as the basis for disclaiming such affiliation. A copy of any disclaimer filed with the commissioner, if the affected insurer is not a party thereto, shall also be furnished by the applicant to the insurer at the same time it is filed with the commissioner. The insurer shall, within 15 business days after receipt thereof, unless the time is extended by the commissioner for good cause, respond to the matters raised in the disclaimer. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under subsection (a) of this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such a disclaimer. Unless disallowed by the commissioner, a disclaimer filed under this subsection relieves a person of the duty to comply with the requirements of the Act,

§5(a)-(c). The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance. After a disclaimer of control or affiliation has been filed by any person, any acquisition, in any manner, directly or indirectly, of a voting security of the domestic insurer by such person shall be subject to the Act, §5, in absence of the filing within 15 [five business] days after the end of the month in which the acquisition of an additional voting security occurs, of an amendment which shall make current the disclaimer of control or affiliation previously filed pursuant to this subsection.

(m) (No change.)

(n) Dividends and distributions. Each registered insurer shall, by personal delivery, by telecopy, or by mail addressed to: Financial Monitoring, Mail Code 303-1D, Texas Department of Insurance, P.O. Box 149099, 333 Guadalupe, Austin, Texas 78714-9099, provide notice to the commissioner of all dividends and other distributions to shareholders within two business days following the declaration thereof and at least ten days prior to payment in the form prescribed by the commissioner and adopted herein by reference as Form HCDividend (Rev. September 13, 1995) and such notice shall be deemed an amendment to the registration statement without further action or filing. Prepayment notices will be considered promptly. Each prepayment notice shall be accompanied by documentation supporting each of the standards specified in the Act, §4(b), unless such documentation has previously been provided during the current calendar year and the person to whom such documentation was sent is identified. Dividends and distributions[, including those declared by property and casualty insurers where the dividend exceeds the net income as of the preceding December 31.] shall be reviewed by the commissioner and, if the standards in the Act, §4(b) are not met, the commissioner shall take appropriate action, including but not limited to that provided under the Insurance Code, Articles 1.10, 1.10A, 1.32, 21.28, 21.28-A, 21.31, and 21.32. All reported dividends and distributions shall be reviewed annually in the registration statement filed pursuant to §7.210 of this title (relating to Form B). See §7.204(d) of this title (relating to Commissioner's Approval Required) for requirements regarding extraordinary dividends and distributions.

§7.204. *Commissioner's Approval Required.*

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

(d) Extraordinary dividends and other distributions.

(1) (No change.)

(2) For purposes of these sections an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds the greater of:

(A) (No change.)

(B) the net gain from operations of such insurer, if such insurer is a life or title insurer, or the net [investment] income, if such insurer is not a life or title insurer, for the 12-month period ending the 31st day of December next preceding;

(C)-(D) (No change.)

(3) (No change.)

(e) (No change.)

§7.205. *Acquisition Statements—Filing Requirements.*

(a) Filing Requirements. Filing and other regulatory requirements for acquisitions of control and certain other matters as specified in the Act, §5(a), are governed by the Act, §5(a). For purposes of this subsection, a domestic insurer as defined in the Act, §5(a)(2), shall include any person controlling a domestic insurer, including a commercially domiciled insurer, unless such person is either directly or through its affiliates primarily engaged in business other than the business of insurance. A change or substitution of an attorney-in-fact of a Lloyds' or reciprocal or interinsurance exchange is subject to the Act, §5. An acquisition of control of a domestic insurer is subject to the Act, §5, regardless of the domestic insurer's exemption from regulation under the Act, §2(r). A failure to file complete and accurate information in all material respects is grounds for a denial by the commissioner under the Act, §5(c).

(b) Form and content of statement. The statement required by subsection (a) of this section (elsewhere referred to as acquisition statement) shall be made in accordance with §7.209 of this title (relating to Form A), the acquisition statement. The acquiring party shall provide additional financial information in the form or substance as required by the commissioner which is material to the finding required by the Act, §5(c)(1)(iii). Any financial information required under the Act, §5(b)(3), may be waived by the commissioner if such information is not deemed material. No statement required by subsection (a) of this section shall be deemed filed with the commissioner until on the date all such material required and sufficient to constitute a full

statement has been provided. At any time after the submission or resubmission to the commissioner of a statement filed under the Act, §5(a) regardless of whether the statement is complete and accurate, the matter may be placed on the commissioner's contested case docket to hear any prehearing matters and motions permitted under the Administrative Procedure Act, Texas Government Code, Chapter 2001 [the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a)].

(c)-(p) (No change.)

§7.209. Form A.

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

(f) Future plans for insurer.

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

(3) For the domestic insurer, provide the full name of each individual proposed to be an executive officer or director of the domestic insurer and the full name of each individual who will be responsible for major areas of operations of the domestic insurer, including but not limited to, supervision of agents, underwriting, advertising, production of business through agents and through reinsurance, policyholder services, premium accounting, claims processing and litigation, reinsurance cessions, investments, and financial accounting and reporting. For each such position [area], evidence of such individual's ability and experience to perform same by providing biographical data in the form of the biographical affidavit form adopted by reference under §7.201(a)(1) of this title (relating to Forms Filings).

(4) (No change.)

(g)-(n) (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 27, 1995.

TRD-9513905 Alicia M. Fechtel  
General Counsel and Chief  
Clerk  
Texas Department of  
Insurance

Earliest possible date of adoption: December 4, 1995

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

## TITLE 30. ENVIRONMENTAL QUALITY

### Part I. Texas Natural Resource Conservation Commission

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

The Texas Natural Resource Conservation Commission (commission or TNRCC) proposes amendments to §§335.1, 335.29, 335.69, 335.112, 335.118, 335.124, 335.125, 335.152, 335.168-335.170, 335.173-335.175, 335.222, and 335.224, concerning industrial solid waste and municipal hazardous waste.

Most amendments are proposed strictly for the purpose of ensuring that Texas state rules are equivalent to the federal regulations after which they are patterned. In many cases, the amendments incorporate federal regulations into the state rules by reference to the applicable regulations. In other instances, the amendments introduce language intended to ensure that state rules are equivalent to the corresponding federal regulation.

The amendments to Chapter 335 specifically address changes to the federal hazardous waste regulations that became 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. Because the state hazardous waste program procedures will not need to be duplicated with the federal agency, the resultant benefit will be a reduced cost to participants. As discussed later in this preamble, there are only two proposed areas of deviation from the federal regulations. One relates to the use of sorbents to treat free liquids to be disposed in hazardous waste landfills. The other pertains to financial assurance responsibilities.

The next several paragraphs will identify the group of proposed amendments to Chapter 335 that incorporate the language of federal regulations by reference. After describing these proposed adoptions by reference, this preamble will identify the group of proposed amendments that change the language of the state regulations to make those regulations equivalent to the corresponding federal regulations, in a manner not involving adoption by reference. The reader should note that, by so grouping the descriptions of the proposed rules, the preamble addresses the proposed rules in ascending order of section numbers only within each of the two aforementioned groups.

The proposed amendment to §335.29 references changes to the appendices of 40 Code of Federal Regulations (CFR), Part 261. Specifically, the proposed amendment to §335.29(2) references revisions to 40 CFR, Part 261, Appendix II concerning the toxicity characteristic leaching procedure. Likewise,

the proposed amendment to §335.29(4) references the revisions to 40 CFR, Part 261, Appendix VII, which concerns the basis for the hazardous waste listing for chlorinated toluene production wastes.

The proposed amendment to §335.112(a)(1) include references to changes made under 40 CFR, Part 265, Subpart B. These changes address the "General Facility Standards" for "interim status" hazardous management facilities including inspection requirements and construction quality assurance requirements pertinent to liners and leak detection systems at land disposal units. The proposed amendment to §335.112(a)(1) also addresses waste analysis requirements pertinent to the hazardous waste land disposal restrictions and liquids in landfills, by reference to all revisions made to 40 CFR, Part 265, Subpart B up to and through November 18, 1992.

The proposed amendment to §335.112(a)(4) incorporates by reference certain changes in federal regulations made through January 29, 1992, under 40 CFR, Part 265, Subpart E, relating to "interim status" operating record requirements.

The proposed amendment to §335.112(a)(5) references changes that were made to 40 CFR, §265.91(a)(iii). This section allows the placement of downgradient wells in alternate locations when existing physical obstacles prevent locating wells at the edge of the waste management area to be monitored.

The proposed amendment to §335.112(a)(6) references changes made to 40 CFR, §265.112(d)(2) and §265.113(a) and (b) regarding closure of boilers and industrial furnaces that have burned hazardous waste, and changes made to 40 CFR, §265.110(b) and §265.111(c) with regard to closure and post-closure care applicability and performance standards relating to containment buildings.

The proposed amendment to §335.112(a)(7) references changes made to 40 CFR, Part 265, Subpart H, relating to financial requirements, with certain provisions which are discussed later in this preamble.

Section 335.112(a)(10) is proposed to be amended to reference changes made to 40 CFR, Part 265, Subpart K, regarding design, construction, and operating requirements for newly regulated hazardous waste surface impoundments.

Proposed amendment to §335.112(a)(10), (11), and (13) also corresponds to changes found in federal regulations at 40 CFR, Part 265, Subparts K, L, and N, respectively. The changes incorporate by reference certain federal requirements pertinent to the design and operating requirements, action leakage rates, response actions, monitoring and inspection requirements and closure and post-closure care requirements for interim status surface impoundments (Subpart K), waste piles (Subpart L) and landfills (Subpart N).

Section 335.112(a)(13) is also proposed to be amended to reference additional changes made to 40 CFR, Part 265, Subpart N. These changes address design, construction, operation, leak detection system and corrective action requirements for hazardous waste landfills.



The proposed amendment to §335.112(a)(21) references a significant new set of interim status requirements for hazardous waste containment buildings, thus incorporating requirements found at 40 CFR, Part 265, Subpart DD.

The proposed amendment to §335.152(a)(1) includes references to changes made under 40 CFR, Part 264, Subpart B. These changes address the "General Facility Standards" for permitted hazardous management facilities including inspection requirements and construction quality assurance requirements pertinent to liners and leak detection systems at land disposal units. The proposed amendment to §335.152(a)(1) also addresses waste analysis requirements pertinent to the hazardous waste land disposal restrictions and liquids in landfills, by reference to all revisions made to 40 CFR, Part 264, Subpart B up to and through November 18, 1992.

The proposed amendment to §335.152(a)(4) incorporates by reference certain changes in federal regulations made through January 29, 1992, under 40 CFR, Part 264, Subpart E, relating to operating record permitting requirements.

The proposed amendment to §335.152(a)(5) references changes made to 40 CFR, §§264.110(b), 264.111(c), and 264.112(a) with regard to closure and post-closure care applicability and performance standards relating to containment buildings.

Proposed amendment to §335.152(a)(9), (10), and (12) corresponds to changes found in federal regulations at 40 CFR, Part 264, Subparts K, L, and N, respectively. The changes incorporate by reference certain federal requirements pertinent to the design and operating requirements, action leakage rates, response actions, monitoring and inspection requirements and closure and post-closure care requirements for permitted surface impoundments (Subpart K), waste piles (Subpart L) and landfills (Subpart N). The proposed amendment to §335.152(a)(12) also includes adoption by reference of certain revisions to hazardous waste permitting standards under 40 CFR, §264.316 concerning disposal of small containers of hazardous waste in overpacked drums.

The proposed amendment to §335.152(a)(19) references a significant new set of permitting requirements for hazardous waste containment buildings, thus incorporating requirements found at 40 CFR, Part 264, Subpart DD.

The next several paragraphs will identify amendments in this proposal that change the language of the state regulations to make those regulations equivalent to the corresponding federal regulations—rather than incorporating the federal regulations into the state regulations by reference.

The first of these is the proposed amendment to §335.1, which is intended to ensure that state regulations define the following terms in a manner which is equivalent to the federal regulations: "containment building," "infrared incinerator," "miscellaneous unit," "pile," "plasma arc incinerator," "replacement unit," "sorberent," and "sump."

Next is the proposed amendment to §335.69. A typographical correction is made at §335.69, relating to the "accumulation time" exemption from hazardous waste permitting requirement. The correction involves moving certain text concerning the exemption from §335.69(a)(1)(C) to its proper location under §335.69(a). The proposed amendment also establishes that the "accumulation time" exemption would apply to operations where hazardous waste is stored in containment buildings for no more than 90 days if operations are otherwise conducted in accordance with the provisions in that rule. This new exemption is found in proposed §335.69(a)(1)(D). The corresponding federal rule change can be found at 40 CFR, §262.34(a)(1)(iv).

The language under existing §335.112(b) is proposed to be amended, and proposed as §335.112(b) and (c), to update references to the commission, and to update certain federal and state statutory and regulatory references.

The amendment proposed for §335.118(a) is the addition of the clarifying words "the procedures outlined in". The amendment proposed for §335.118(b) is intended to make clear that changes to closure plans for hazardous waste management units to which §335.118 applies must conform not only to the requirements of Chapter 335, and to 40 CFR, §§265.111-265.115, but also to the requirements contained in 40 CFR, §264.1102. The amendment proposed under §335.118(b) also includes deletion of out-of-date language concerning owners or operators who plan to begin closure before November 19, 1981.

The amendment proposed for §335.124(e) concerning general operating requirements for landfills is the addition of the language: "The waste analysis plan must also include analyses needed to comply with §335.125 (relating to Special Requirements for Bulk and Containerized Waste)."

The language of §335.125(a) and (b) is proposed to be amended. The word "sorberent" now replaces previous use of the word "absorbent" in the corresponding federal regulation, which can be found at 40 CFR, §265.314.

The proposed amendments to §§335.168-335.170, 335.173, and 335.174, relate to post-closure care requirements for hazardous waste surface impoundments and landfills, and design and operating requirements for hazardous waste surface impoundments, waste piles, and landfills. These amendments ensure that the state regulations correspond to the federal requirements, because state regulations did not originally incorporate all aspects of 40 CFR, Part 264, Subparts K, L, and N. The incorporations by reference at §335.152(a)(9), (10), and (12) identified earlier in this preamble are supplemented by amendments to these sections.

The language of §335.175(a) and (b) is proposed to be amended. The word "sorberent" now replaces previous use of the word "absorbent" in the corresponding federal regulation, which can be found at 40 CFR, §264.314.

The proposed amendment to §335.222(c)(2) includes federal clarification which can be found at 40 CFR, §266.101(c)(2). It provides more precise language regarding an exemption available to owners and operators who only burn their own hazardous waste (i.e., hazardous waste which they generate), in on-site boilers or industrial furnaces that are exempt under the small quantity burner provisions of 40 CFR, §266.108.

The proposed amendment to §335.224(5)(H) corresponds to 40 CFR, §266.103(b)(6). The amendment changes the notice that owners and operators of "existing" boilers and industrial furnaces must issue in order to comply with "interim status" public notice requirements at precompliance under this section. Specifically, the notice must state locations where the operating records of the facility can be viewed by interested persons. The operating records must include both the administrative records kept by the TNRCC regional office and the correspondence file kept at the facility site.

The proposed amendment to §335.224(5)(J) simply updates the reference to the commission.

The proposed amendment to §335.224(14) corresponds to the requirement of 40 CFR, §266.103(e). If an owner or operator of a hazardous waste boiler or industrial furnace fails to meet any of the eligibility-to-operate deadlines under the "interim status" rules, then the owner or operator must cease all hazardous waste burning as of that deadline. For purposes of compliance with closure requirements under these circumstances, the proposed amendment intends to clarify that the boiler or industrial furnace has received "the known final volume of hazardous waste" on the date that the deadline was missed.

As previously mentioned, it is intended that all amended rules in this proposal be equivalent with their federal rule counterparts except in two areas. Since 1985, §335.125 and §335.175 have been more stringent than federal regulations regarding the use of sorbents to treat free liquids destined for placement in hazardous waste landfills. These stringencies are not changed by these proposed amendments.

The second area of difference in this proposal pertains to financial responsibility. Under both EPA and Texas hazardous waste rules, a hazardous waste management facility can choose among several mechanisms for providing financial assurance for liability coverage and for closure and post-closure care. Reference 40 CFR, Parts 264 and 265, Subpart H; and 30 TAC §§335.152(a) (6), 335.178, 335.179, 335.112(a)(7), and 335.127. These mechanisms include letters of credit, surety bonds, trust funds, insurance, a self-test demonstration, and/or a corporate guarantee. In 1992, the EPA set forth regulations which broadened the corporate guarantee options to allow an applicant to show guarantees from sister corporations and from corporations with a "substantial business relationship" for closure and post-closure financial assurance requirements, published in the September 16, 1992, issue of the *Federal Register* (57 FedReg 42832). In this proposal, amendments to §335.152(a)(6)(iii) and

§335.112(a)(7) provide that for closure and post-closure care cost purposes, the TNRCC will accept corporate guarantees only from a direct or higher-tier parent corporation of the owner or operator. Proposals to adopt broader financial assurance requirements are deferred to a later date.

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. To the extent that these proposed sections will incorporate into state regulation existing federal regulations which are currently in effect, no additional cost implications will be realized by affected facilities subject to these proposed sections, beyond those costs which could have been attributable to the underlying federal regulation. The proposed sections that are not consistent with federal regulation, relating to the use of sorbents in the treatment of liquid wastes and financial assurance requirements, are not amended to impose costs above the costs of compliance with existing state regulations. Likewise, no potential costs savings to affected facilities will result from continued enforcement of regulations more stringent than the federal regulations. 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, P.O. 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 A. Industrial Solid Waste and Municipal Hazardous Waste Management in General

### • 30 TAC §335.1, §335.29

The amendments are proposed under the Texas Water Code, §§5.103, 5.105, and 26.011, which provides the commission with authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state.

The amendments are also proposed under the Texas Health and Safety Code, Texas

Solid Waste Disposal Act, §361.017 and §361.024, which provides the commission the authority to regulate industrial solid wastes and hazardous municipal wastes and to adopt and promulgate rules consistent with the general intent and purposes of the Act.

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

**Containment building**—A hazardous waste management unit that is used to store or treat hazardous waste under the provisions of §335.152(a)(19) or §335.112(a)(21) of this title.

**Infrared incinerator**—Any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

**Miscellaneous unit**—A hazardous waste management unit where hazardous waste is stored, processed, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under Chapter 331 of this title (relating to Underground Injection Control), corrective action management unit, containment building, or unit eligible for a research, development, and demonstration permit or under Chapter 305, Subchapter K of this title (relating to Research Development and Demonstration Permits).

**Pile**—Any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for processing or storage, and that is not a corrective action management unit or a containment building.

**Plasma arc incinerator**—Any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

**Replacement unit**—A landfill, surface impoundment, or waste pile unit:

(A) from which all or substantially all the waste is removed; and

(B) that is subsequently re-used to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or EPA or State approved corrective action.

**Sorbent**—A material that is used to soak up free liquids by either adsorption

or absorption, or both. Sorb means to either adsorb or absorb, or both.

**Sump**—Any pit or reservoir that meets the definition of tank in this section and those troughs/trenches connected to it that serve[s] to collect hazardous waste for transport to hazardous waste storage, processing, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

**§335.29. Adoption of Appendices by Reference.** The following appendices contained in 40 Code of Federal Regulations, Part 261 are adopted by reference as amended and adopted through April 1, 1987 and as further amended as indicated in each paragraph:

(1) Appendix I—Representative Sampling Methods;

(2) Appendix II—Method 1311 Toxicity Characteristic Leaching Procedure (TCLP) (as amended through February 2, 1993, at 58 FedReg 6854) [September 25, 1990];

(3) Appendix III—Chemical Analysis Test Methods (as amended through March 9, 1990, at 55 FedReg 8948);

(4) Appendix VII—Basis for Listing Hazardous Waste (as amended through October 15, 1992, at 57 FedReg 47376);

(5) Appendix VIII—Hazardous Constituents;

(6) Appendix IX—Wastes Excluded Under §260.20 and §260.22; and

(7) Appendix X—Method of Analysis for Chlorinated Dibenzo-p-dioxins and Dibenzofurans.

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-9513679

Kevin McCalla  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

Earliest possible date of adoption: December 4, 1995

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

## Subchapter C. Standards Applicable to Generators of Hazardous Waste

### • 30 TAC §335.69

The amendment is proposed under the Texas Water Code, §5.103 and §26.011, which provides the commission with authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. The amendment is also proposed under the Texas Solid Waste Disposal Act, §361.017, which provides the commission the authority to regulate industrial solid wastes and hazardous municipal wastes and all other powers necessary or convenient to carry out its responsibilities.

#### §335.69. Accumulation Time.

(a) Generators that comply with the requirements of §335.69(a)(1) are exempt from all requirements adopted by reference in §335.112(a)(6) and (7) of this title (relating to Standards), except 40 Code of Federal Regulations, §265.111 and §265.114. Except as provided in subsections (f)-(h) of this section, a generator may accumulate hazardous waste on-site for 90 days without a permit or interim status provided that:

(1) the waste is placed:

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

(C) on drip pads and the generator complies with §335.112(a)(18) of this title (relating to drip pads) and maintains the following records at the facility: a description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal, or[. In addition, such a generator is exempt from all requirements adopted by reference in §335.112(a)(6) and (7) of this title (relating to Standards), except 40 Code of Federal Regulations, §265.111 and §265.114.]

(D) the waste is placed in containment buildings and the generator complies with Subpart DD of 40 Code of Federal Regulations, Part 265, has placed its professional engineer certification that the building complies with the design standards specified in 40 Code of Federal Regulations, §261.1101 in the facility's operating record prior to operation of the unit. The owner or operator shall maintain the following records at the facility:

(i) a written description of procedures to ensure that each waste volume remains in the unit for no more

than 90 days, a written description of the waste generation and management practices for the facility showing that they are consistent with respecting the 90-day limit, and documentation that the procedures are complied with; or

(ii) documentation that the unit is emptied at least once every 90 days.

(2)-(4) (No change.)

(b)-(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 23, 1995.

TRD-9513680

Kevin McCalla  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

Earliest possible date of adoption: December 4, 1995

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

## Subchapter E. Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities

### • 30 TAC §§335.112, 335.118, 335.124, 335.125

The amendments are proposed pursuant to the Texas Water Code (Vernon Supplement 1991), §5.103 and §5.105, which authorizes the Texas Natural Resource Conservation Commission to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state.

The amendments are also proposed pursuant to the Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code Annotated, Chapter 361 (Vernon Supplement 1992), §361.017 and §361.024, which further authorizes the Texas Natural Resource Conservation Commission to promulgate rules necessary for accomplishing the purposes of the Act, including the control of all aspects of the management of industrial solid and municipal hazardous wastes.

#### §335.112. Standards.

(a) The following regulations contained in 40 Code of Federal Regulations, Part 265 (including all appendices to Part 265) (except as otherwise specified herein), are adopted by reference as amended and adopted in the Code of Federal Regulations through June 1, 1990, at [(see] 55 FedReg 22685[)] (see 55 FedReg 22685) and as further amended as indicated in each paragraph of this section:

(1) Subpart B-General Facility Standards (as amended through November 18, 1992, at 57 FedReg 54452) [April 26, 1991 in (56 FedReg 19290)];

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

(4) Subpart E-Manifest System, Recordkeeping and Reporting (as amended through January 29, 1992, at 57 FedReg 3492) [April 26, 1991 in 56 FedReg 19290], except 40 Code of Federal Regulations, §§265.71, 265.72, and 265.75-265.77;

(5) Subpart F-Groundwater Monitoring (as amended through December 23, 1991, at 56 FedReg 66369), except 40 Code of Federal Regulations, §265.90 and §265.94;

(6) Subpart G-Closure and Post-Closure (as amended through August 18, 1992, at 57 FedReg 37194) [February 21, 1991 in 56 FedReg 7207]; except 40 Code of Federal Regulations, §265.112(d) (3) and (4) and §265.118(e) and (f);

(7) Subpart H-Financial Requirements (as amended through September 16, 1992, at 57 FedReg 42832) [July 1, 1991 at 56 FedReg 30200]; except 40 Code of Federal Regulations, §265.142(a)(2); provided that the corporate guarantee for closure or for post-closure care, described in 40 Code of Federal Regulations, §265.143(e)(10) or §265.145(e)(11), respectively, may be provided only by a direct or higher-tier parent corporation of the owner or operator; [and facilities qualifying for a corporate guarantee for liability are subject to §265.147(g)(2);]

(8)-(9) (No change.)

(10) Subpart K-Surface Impoundments (as amended through August 18, 1992, at 57 FedReg 37194-37282);

(11) Subpart L-Waste Piles (as amended through January 29, 1992, at 57 FedReg 3493), except 40 Code of Federal Regulations, §265.253;

(12) (No change.)

(13) Subpart N-Landfills (as amended through July 10, 1992, at 57 FedReg 30658), except 40 Code of Federal Regulations, §§265.302, 265.314, and 265.315;

(14)-(18) (No change.)

(19) Subpart AA-Air Emission Standards for Process Vents (as amended through April 26, 1991, at 56 FedReg 19290); [and]

(20) Subpart BB-Air Emission Standards for Equipment Leaks (as amended through April 26, 1991, at 56 FedReg 19290); and[.]

(21) Subpart DD-Containment Buildings (as amended through August 18, 1992, at 57 FedReg 37194).

(b) The regulations of the Environmental Protection Agency that are adopted by reference in this section are adopted subject to the following changes:

(1) The term "regional administrator" is changed to the "executive director" of the Texas Natural Resource Conservation Commission or to the commission, consistent with the organization of the commission as set out in the Texas Water Code, Chapter 5, Subchapter B;

(2) The term "treatment" is changed to "processing;"

(3) References to the Resource Conservation and Recovery Act, §3008(h) are changed to the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated (Vernon Pamphlet 1993), §361.303 (relating to Corrective Action);

(4) References to 40 Code of Federal Regulations, §§260.10, 264.90, 264.101, 270.41, or 270.42, are changed to §335.1 of this title (relating to Definitions), §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response), §335.167 of this title (relating to Corrective Action for Solid Waste Management Units), §305.62 of this title (relating to Amendment), or §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), respectively;

(5) References to 40 Code of Federal Regulations, Part 264, Subpart F are changed to §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response), §335.157 of this title (relating to Required Programs), §335.158 of this title (relating to Groundwater Protection Standard), §335.159 of this title (relating to Hazardous Constituents), §335.160 of this title (relating to Concentration Limits), §335.161 of this title (relating to Point of Compliance), §335.162 of this title (relating to Compliance Period), §335.163 of this title (relating to General Groundwater Monitoring Requirements), §335.164 of this title (relating to Detection Monitoring Program), §335.165 of this title (relating to Compliance Monitoring Program), §335.166 of this title (relating to Corrective Action Program), and §335.167 of this title (relating to Corrective Action for Solid Waste Management Units);

(6) References to 40 Code of Federal Regulations, Part 265, Subpart F are changed to include §335.116 of this title (relating to Applicability of Groundwater Monitoring Requirements) and §335.117 of this title (relating to Recordkeeping and Reporting), in addition to the reference to 40 Code of Federal Regulations, Part 265, Subpart F, except §265.90 and §265.94; and

(7) References to the EPA are changed to the Texas Natural Resource Conservation Commission.

[(b) Where there is a reference in the Environmental Protection Agency (EPA) regulations adopted by reference in this section to the "regional administrator," the reference is more properly made, for purposes of state law, to the executive director of the Texas Water Commission, or to the Texas Water Commission, consistent with the organization of the agency as set forth in the Texas Water Code, Chapter 5, Subchapter B. Where there is a reference in the EPA regulations to the term "treatment," the reference is more properly made, for purposes of state law, to the term "processing." A copy of 40 Code of Federal Regulations, Part 265 is available for inspection at the library of the Texas Water Commission, located on the Fifth Floor of the Stephen F. Austin State Office Building, 1700 North Congress Avenue, Austin.]

(c) A copy of 40 Code of Federal Regulations, Part 265 is available for inspection at the library of the Texas Natural Resource Conservation Commission, located on the First Floor of Building A at 12100 Park 35 Circle, Austin, Texas.

§335.118. *Closure Plan; Submission and Approval of Plan.*

(a) Except as provided in this section, the owner or operator must submit his closure plan to the executive director in accordance with procedures outlined in Code of Federal Regulations, §265.112. The owner or operator must submit his closure plan to the executive director no later than 15 days after:

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

(b) The executive director will provide the owner or operator and the public, through newspaper notice, the opportunity to submit written comments on the plan and request modifications of the plan within 30 days of the date of the notice. The owner or operator is responsible for the cost of publication. The executive director may, in response to a request or at his own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a closure plan. The executive director will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The executive director will approve, modify, or disapprove the plan within 90 days of receipt. If the executive director does not approve the plan, he shall provide the owner or operator with a detailed written statement of reasons for the refusal and the

owner or operator must modify the plan or submit a new plan within 30 days after receiving such written statement. The executive director will approve or modify this plan in writing within 60 days. If the executive director modifies the plan, this modified plan becomes the approved closure plan. The executive director's decision must assure that the approved closure plan is consistent with 40 Code of Federal Regulations, §§265.111-265.115, and the applicable closure requirements contained in this chapter for specific waste management methods contained in 40 Code of Federal Regulations, §264.1102 copy of this modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator. [If the owner or operator plans to begin closure before November 19, 1981, he must submit the closure plan by May 19, 1981.]

§335.124. *General Operating Requirements (Landfills).*

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

(e) As required by 40 Code of Federal Regulations, §265.13, the waste analysis plan must include analyses needed to comply with 40 Code of Federal Regulations, §265.312 (relating to Special Requirements for Ignitable or Reactive Waste) and 40 Code of Federal Regulations, §265.313 (relating to Special Requirements for Incompatible Wastes). The waste analysis plan must also include analyses needed to comply with §335.125 (relating to Special Requirements for Bulk and Containerized Waste). As required by 40 Code of Federal Regulations, §265.73 (relating to Operating Record), the owner or operator must place the results of these analyses in the operating record of the facility.

§335.125. *Special Requirements for Bulk and Containerized Waste.*

(a) Bulk or non-containerized liquid waste or waste containing free liquids may be placed in a landfill prior to May 8, 1985, only if prior to disposal, the liquid waste or waste containing free liquids is processed or stabilized, chemically or physically (e.g., by mixing with a sorbent [an absorbent] solid), so that free liquids are no longer present.

(b) Effective May 8, 1985, the placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents [absorbents] have been added) in any landfill is prohibited.

(c)-(f) (No change.)

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

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

TRD-9513681

Kevin McCalla  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

Earliest possible date of adoption: December 4, 1995

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

◆ ◆ ◆  
**Subchapter F. Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities**

- 30 TAC §§335.152, 335.168-335.170, 335.173-33.175

The amendments are proposed pursuant to §5.103 and §5.105 of the Texas Water Code (Vernon Supplement 1991), which authorizes the Texas Natural Resource Conservation Commission to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state.

The amendments are also proposed pursuant to the Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code, Chapter 361 (Vernon Supplement 1992), §361.017 and §361.024, which further authorizes the Texas Natural Resource Conservation Commission to promulgate rules necessary for accomplishing the purposes of the Act, including the control of all aspects of the management of industrial solid and municipal hazardous wastes.

*§335.152. Standards.*

(a) the following regulations contained in 40 Code of Federal Regulations Part 264 (including all appendices to Part 264), are adopted by reference as amended and adopted in the Code of Federal Regulations through June 1, 1990 at [(see) 55 FedReg 22685[]] and as further amended and adopted as indicated in each paragraph of this section:

(1) Subpart B—General Facility Standards (as amended through November 18, 1992 at 57 FedReg 54452) [June 21, 1990 at 55 FedReg 25494]; in addition, the facilities which are subject to 40 Code of Federal Regulations, Part 264 Subpart X are subject to regulation under 40 Code of Federal Regulations, §264.15(b)(4) and 264.18(b)(1)(ii);

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

(4) Subpart E—Manifest System, Recordkeeping, and Reporting (as amended through January 29, 1992 at 57 FedReg 3462) [June 21, 1990 at 55 FedReg 25494], except 40 Code of Federal Regulations §264.71, §264.72, §274.75, §264.76

and §264.77; facilities which are subject to 40 Code of Federal Regulations Part 264 Subpart X are subject to 40 Code of Federal Regulations §264.73(b)(6);

(5) Subpart G—Closure and Post-Closure (as amended through August 18, 1992 at 57 FR 37194) [February 21, 1991 at 56 FedReg 7207]; facilities which are subject to 40 Code of Federal Regulations, Part 264, Subpart X, are subject to 40 Code of Federal Regulations, §264.90(d), §264.111(c), §264.112(a)(2), §264.114, §264.117(a)(1)(i) and (ii), and §264.118(b)(1) and (2)(i) and (ii);

(6) Subpart H—Financial Requirements (as amended through September 16, 1992 in 57 FedReg 42832); except 40 Code of Federal Regulations §264.142(a)(2); and subject to the limitations set forth in this section:

(A) Facilities [facilities] which are subject to 40 Code of Federal Regulations Part 264 Subpart X are subject to 40 Code of Federal Regulations §264.142(a), §264.144(a) and §264.147(b);

(B) Facilities [and facilities] which qualify for the corporate guarantee for liability are additionally subject to §264.147(g)(2) and §264.151(h)(2); and

(C) The corporate guarantee for closure or for post-closure care, described in 40 CFR §264.143(f)(10) or §264.145(f)(11), respectively, may be provided only by a direct or higher-tier parent corporation of the owner or operator;

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

(9) Subpart K—Surface Impoundments (as amended and adopted through January 29, 1992 at 57 FedReg 3462), except 40 Code of Federal Regulations §264.221 and §264.228.

(A) References to 40 CFR 264.221 are changed to §335.168 of this title (relating to Design and Operating Requirements);

(B) References to 40 CFR 264.228 are changed to §335.169 of this title (relating to Closure and Post-Closure Care);

(10) Subpart L—Waste Piles (as amended and adopted through January 29, 1992 at 57 FedReg 3462), except 40 CFR §264.251;

(11) (No change.)

(12) Subpart N—Landfills (as amended through November 18, 1992 at 57 FedReg 54452), except 40 Code of Federal Regulations §264.301, §264.310, §264.314 and §264.315;

(13)-(17) (No change.)

(18) Subpart BB—Air Emission Standards for Equipment Leaks (as amended through April 26, 1991 at 56 FedReg 19290); [.] (19) Subpart DD—Containment Buildings (as amended through August 18, 1992 at 57 FedReg 37194).

(b) The provisions of 40 Code of Federal Regulations §264.18(b) are applicable to owners and operators of hazardous waste management facilities, for which a permit is being sought, which are not subject to the requirements of §§335.201-335.206 of this title (relating to Location Standards for Hazardous Waste Storage, Processing, or Disposal). A copy of 40 Code of Federal Regulations §264.18(b) is available for inspection at the library of the Texas Natural Resource Conservation [Water] Commission, located on the first [fifth] floor of Building A at 12100 Park 35 Circle, [the Stephen F. Austin Building, 1700 North Congress Avenue] Austin, Texas.

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

*§335.168. Design and Operating Requirements (Surface Impoundments).*

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

(c) The owner or operator of each new surface impoundment unit on which construction commences after January 29, 1992, each lateral expansion of a surface impoundment unit on which construction commences after July 29, 1992 and each replacement of an existing surface impoundment unit that is to commence reuse after July 29, 1992 must meet the requirements of 40 CFR §264.221(c), as amended through January 29, 1992 at 57 FedReg 3487. [The owner or operator of each new surface impoundment, each new surface impoundment unit at an existing facility, each replacement of an existing surface impoundment unit, and each lateral expansion of an existing surface impoundment unit, must install two or more liners and a leachate collection system between such liners. The liners and leachate collection system must protect human health and the environment. The requirements of this subsection shall apply with respect to all waste received after the issuance of the permit. The requirement for the installation of two or more liners in this subsection may be satisfied by the installation of a top liner designed, operated and constructed of materials to prevent the migration of any constituent into such liner during the period such facility remains in operation (including any post-closure monitoring period), and a lower liner designed, operated, and constructed to prevent the migration of any constituent through such liner during such period. A lower liner shall

be deemed to satisfy this requirement if it is constructed of at least a three-foot thick layer of recompacted clay or other natural material with a permeability of no more than  $1 \times 10^{-7}$  centimeter per second.]

(d) The executive director may approve alternative design or operating practices to those specified in subsection (c) of this section if the owner or operator demonstrates to the executive director that he meets the requirements of 40 CFR 264.221(d), as amended through January 29, 1992 at 57 FedReg 3462. [Subsection (c) of this section will not apply if the owner or operator demonstrates to the commission and the commission finds for such surface impoundment, that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituent into the groundwater or surface water at least as effectively as such liners and leachate collection systems.]

(e) (No change.)

(f) The owner or operator of any replacement surface impoundment unit is exempt from subsection (c) of this section if:

(1) The existing unit was constructed in compliance with the design standards of §3004(o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act; and

(2) There is no reason to believe that the liner is not functioning as designed.

(g)[(f)] A surface impoundment must be designed, constructed, maintained, and operated to prevent overtopping resulting from normal or abnormal operations, overflowing, wind, and wave action; rainfall; run-off, malfunctions of level controllers, alarms, and other equipment; and human error.

(h)[(g)] A surface impoundment must have dikes that are designed, constructed, and maintained with sufficient structural integrity to prevent massive failure of the dikes. In ensuring structural integrity, it must not be presumed that the liner system will function without leakage during the active life of the unit.

(i)[(h)] The commission will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

(j)[(i)] A surface impoundment (except for an existing portion of a surface impoundment) that will be closed in accordance with §335.169(a)(2) of this title (relating to Closure and Post-Closure Care (Surface Impoundments)) must have an additional liner to that required in subsection (a) of this section which:

(1) prevents any migration of wastes out of the impoundment to the adjacent subsurface soil or groundwater or surface water at any time prior to the end of the post-closure care period; and

(2) minimizes the rate of migration of wastes out of the impoundment to the adjacent subsurface soil or groundwater or surface water so as not to pose a substantial present or potential hazard to human health and the environment.

*§335.169. Closure and Post-Closure Care (Surface Impoundments).*

(a) (No change.)

(b) If some waste residues or contaminated materials are left in place at final closure, the owner or operator must comply with all post-closure requirements contained in 40 Code of Federal Regulations §§264.117-264.120, including maintenance and monitoring throughout the post-closure care period (specified in the permit under 40 Code of Federal Regulations §264.117). The owner or operator must:

(1) maintain the integrity and effectiveness of the final cover including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events;

(2) maintain and monitor the leak detection system in accordance with 40 CFR §§264.221(c)(2)(iv) and (3) and 264.226(d), and comply with all other applicable leak detection system requirements of this subchapter;

(3)[(2)] maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of §§335.156-335.166 of this title (relating to Applicability of Groundwater Monitoring and Response; Required Programs; Groundwater Protection Standard; Hazardous Constituents; Concentration Limits; Point of Compliance; Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; Compliance Monitoring Program; and Corrective Action Program); and

(4)[(3)] prevent run-on and run-off from eroding or other wise damaging the final cover.

(c) (No change.)

*§335.170. Design and Operating Requirements (Waste Piles).*

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

(c) The owner and operator of each new waste pile unit on which construction commences after January 29, 1992, each lateral expansion of a waste pile unit on which construction com-

mences after July 29, 1992, and each replacement of an existing waste pile unit that is to commence reuse after July 29, 1992, must comply with the requirements of 40 CFR §264. 251(c), as amended through January 29, 1992 at 57 FedReg 3488.

(d) The executive director may approve alternative design or operating practices to those specified in subsection (c) of this section if the owner or operator demonstrates to the executive director that such design and operating practices, together with location characteristics:

(1) Will prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as the liners and leachate collection and removal systems specified in subsection (c) of this section; and

(2) will allow detection of leaks of hazardous constituents through the top liner at least as effectively.

(e) Subsection (c) of this section does not apply to monofills that are granted a waiver by the Commission in accordance with §335.168(e) of this title (relating to Design and Operating Requirements (Surface Impoundments)).

(f) The owner or operator of any replacement waste pile unit is exempt from subsection (c) of this section if:

(1) The existing unit was constructed in compliance with the design standards of §3004(o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act; and

(2) There is no reason to believe that the liner is not functioning as designed.

(g) [(c)] The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the pile during peak discharge from at least a 100-year storm.

(h)[(d)] The owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume from active portions resulting from a 24-hour, 100-year storm.

(i)[(e)] Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(j)[(f)] If the pile contains any particulate matter which may be subject to wind dispersal, the owner or operator must cover or otherwise manage the pile to control wind dispersal.

(k)[(g)] The commission will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

*§335.173. Design and Operating Requirements (Landfills).*

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

(c) The owner or operator of each new landfill unit on which construction commences after January 29, 1992, each lateral expansion of a landfill unit on which construction commences after July 29, 1992, and each replacement of an existing landfill unit that is to commence reuse after July 29, 1992, must comply with 40 CFR 264.301(c) as amended through January 29, 1992 at 57 FedReg 3489. [The owner or operator of each new landfill, each new landfill unit at an existing facility, each replacement of an existing landfill unit, and each lateral expansion of an existing landfill unit, must install two or more liners and a leachate collection system above and between the liners. The liners and leachate collection systems must protect human health and the environment. The requirement for the installation of two or more liners in this subsection may be satisfied by the installation of a top liner designed, operated and constructed of materials to prevent the migration of any constituent into such liner during the period such facility remains in operation (including any post-closure monitoring period), and a lower liner designed, operated, and constructed to prevent the migration of any constituent through such liner during such period. A lower liner shall be deemed to satisfy this requirement if it is constructed of at least a three-foot thick layer of recompacted clay or other natural material with a permeability of no more than  $1 \times 10^{-7}$  centimeter per second.]

(d) The executive director may approve alternative design or operating practices to those specified in subsection (c) of this section if the owner or operator demonstrates to the executive director that such design and operating practices, together with location characteristics: [Subsection (c) of this section will not apply if the owner or operator demonstrates to the commission and the commission finds for such landfill, that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituent into the groundwater or surface water at least as effectively as such liners and leachate collection systems.]

(1) Will prevent the migration of any hazardous constituent into the ground water or surface water at least as effectively as the liners and leachate collection and removal systems specified in subsection (c) of this section; and

(2) will allow detection of leaks of hazardous constituents through the top liner at least as effectively.

(e) (No change.)

(f) The owner or operator of any replacement landfill unit is exempt from subsection (c) of this section if:

(1) The existing unit was constructed in compliance with the design standards of §3004(o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act; and

(2) There is no reason to believe that the liner is not functioning as designed.

(g)[(f)] The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the landfill during peak discharge from at least a 100-year storm.

(h)[(g)] The owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume from active portions resulting from a 24-hour, 100-year storm.

(i)[(h)] Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(j)[(i)] If the landfill contains any particulate matter which may be subject to wind dispersal, the owner or operator must cover or otherwise manage the landfill to control wind dispersal.

(k)[(j)] The commission will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

*§335.174. Closure and Post-Closure Care (Landfills).*

(a) (No change.)

(b) After final closure, the owner or operator must comply with all post-closure requirements contained in 40 Code of Federal Regulations §§264.117-264.120, including maintenance and monitoring throughout the post-closure care period (specified in the permit under 40 Code of Federal Regulations §264.117). The owner or operator must:

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

(3) Maintain and monitor the leak detection system in accordance with 40 CFR §264.301(c)(3)(iv) and (4) and §264.303(c), and comply with all other

applicable leak detection system requirements of this subchapter.

(4)[(3)] Maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of §§335.156-335.166 of this title (relating to Applicability of Groundwater Monitoring and Response; Required Programs; Groundwater Protection Standard; Hazardous Constituents; Concentration Limits; Point of Compliance; Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; Compliance Monitoring Program; and Corrective Action Program);

(5)[(4)] Prevent run-on and run-off from eroding or otherwise damaging the final cover; and

(6)[(5)] Protect and maintain surveyed benchmarks used in complying with 40 Code of Federal Regulations §264.309.

*§335.175. Special Requirements for Bulk and Containerized Waste.*

(a) Bulk or non-containerized liquid waste or waste containing free liquids may be placed in a landfill prior to May 8, 1985, only if before disposal, the liquid waste or waste containing free liquids is treated or stabilized, chemically or physically (e.g., by mixing with a sorbent [an absorbent] solid), so that free liquids are no longer present

(b) Effective May 8, 1985, the placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents [absorbents] have been added) in any landfill is prohibited.

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

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

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

TRD-9513682

Kevin McCalla  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

Earliest possible date of adoption: December 4, 1995

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

## Subchapter H. Standards for the Management of Specific Wastes and Specific Types of Facilities

### Hazardous Waste Burned for Energy Recovery

#### • 30 TAC §335.222, §335.224

The amendments are proposed pursuant to the Texas Water Code (Vernon Supplement 1991), §5.103 and §5.105, which authorizes the Texas Natural Resource Conservation Commission to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state.

The amendments are also proposed pursuant to the Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code Annotated, Chapter 361 (Vernon Supplement 1992), §361.017 and §361.024, which further authorizes the Texas Natural Resource Conservation Commission to promulgate rules necessary for accomplishing the purposes of the Act, including the control of all aspects of the management of industrial solid and municipal hazardous wastes.

#### §335.222. Management Prior To Burning.

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

(c) Storage facilities. The provisions listed under paragraph (1) of this subsection apply to storage or processing by burners and by intermediaries such as processors, blenders, and distributors between the generator and the burner.

(1) (No change.)

(2) Owners and operators of facilities that burn, in an on-site boiler or industrial furnace exempt from regulations under the small quantity burner provisions of 40 Code of Federal Regulations, §266.108, only hazardous waste that they generate are exempt from regulation under the provisions listed above in paragraph (1) of this subsection applicable to storage units for those units that store[, with respect to the storage or processing of] mixtures of hazardous waste and the primary fuel to the boiler or industrial furnace in tanks that feed the fuel mixture directly to the burner. Storage or processing of hazardous waste by such owners and operators prior to mixing with the primary fuel is subject to regulation as prescribed in paragraph (1) of this subsection.

§335.224. Additional Interim Status Standards for Burners. In addition to the interim status standards for burners under §335.221(a)(7)-(14) of this title (relating to Applicability and Standards), owners and operators of "existing" boilers and industrial furnaces that burn hazardous waste are subject to the following provisions, including

the applicable provisions of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General) and Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities, as follows:

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

(5) On or before August 21, 1992, the owner or operator must submit a notice for publication in a newspaper regularly published, and generally circulated within the county and area wherein the facility is located and send a copy of the notice of those persons and entities listed under §305.103(b)(2)-(12) of this title (relating to Notice by Mail). The owner and operator must provide to the executive director, with the certification of precompliance, evidence of submittal of the notice for publication. The public notice requirements of this subsection do not apply to recertifications under 40 Code of Federal Regulations, §266.103(b)(8). The notice shall be entitled "Notice of Certification of Precompliance with Hazardous Waste Burning Requirements of 40 Code of Federal Regulations, §266.103(b) and 30 [31] TAC §335.224(4) and (5)." An owner or operator who satisfied the public notice requirements under 40 Code of Federal Regulations, §266.103(b)(6) will be considered compliant with this paragraph provided that the owner or operator submits evidence of such public notice on or before 30 days after the effective date of this paragraph. The notice shall include:

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

(H) locations where the [operating] record for the facility can be viewed and copied by interested parties. These records and locations shall at a minimum include:

(i) The administrative record kept by the [The] local Texas Natural Resource Conservation [Water] Commission regional [district] office; and

(ii) The BIF correspondence file kept at the [The] facility site where the device is located. The correspondence file must include all correspondence between the facility and the Regional Director of the EPA, State and local regulatory officials, including copies of all certifications and notifications, such as the precompliance certification, precompliance public notice, notice of compliance testing, compliance test report, compliance certification, time extension requests and approvals or denials, enforcement notifications of violations, and copies of EPA and State site visit reports submitted to the owner or operator.

(I) (No change.)

(J) location (mailing address) of the local Texas Natural Resource Conservation [Water] Commission (TNRCC) [TWC] regional [district] office, where further information can be obtained on TNRCC [TWC] regulation of hazardous waste burning;

(6)-(13) (No change.)

(14) If the owner or operator does not comply with the interim status compliance schedule provided by paragraphs (4)-(6), (9), or (11) of this section, hazardous waste burning must terminate on the date of the deadline, closure activities must begin under 40 Code of Federal Regulations, §266.103(l), and hazardous waste burning may not resume except under an operating permit issued under Chapter 305 of this title (relating to Consolidated Permits).; and] For purposes of compliance with the closure provisions of paragraph (4) of this subsection and 40 Code of Federal Regulations, §265.112(d)(2) and §265.113 (as adopted in §335.112(a)(6)) the boiler or industrial furnace has received "the known final volume of hazardous waste" on the date that the deadline is missed.

(15) (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-9513683

Kevin McCalla  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

Earliest possible date of adoption: December 4, 1995

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

The Texas Natural Resource Conservation Commission (TNRCC) proposes amendments to §335.24, Subchapter A, concerning industrial solid waste and hazardous waste in general and §335.221, Subchapter H, concerning standards for the management of specific wastes and specific types of facilities. The amendments concern used oil management, recovered oil put into a petroleum refining process, broadening the exemption from hazardous waste for petroleum coke, a new exemption on mercury metal recovery, and making these sections consistent with the latest federal rule changes

Some of these amendments to §335.24 and §335.221 were previously proposed in the October 20, 1995, issue of the *Texas Register* (20 TexReg 8583), but were withdrawn,



which will appear in the withdrawn section of this issue, so they could be combined with amendments to §335.24 that are necessary to implement the new 40 Code of Federal Regulations Part 279 on Standards for the Management of Used Oil. Section 335.24(b)(3) and (c)(3) are proposed to be deleted and the subsequent paragraphs renumbered, so that used oil requirements can be found primarily in one new rule chapter (30 TAC Chapter 324, Subchapter A). Section 335.24(c)(5) is proposed to be renumbered to §335.24(c)(4) and amended to add essentially the same language added to 40 CFR §261.6(a)(3)(iv) (59 FedReg 38545) as published July 28, 1994, stating the exemption from regulation for fuels produced from the refining of oil-bearing hazardous waste does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded from being a solid waste when inserted into a petroleum refining process. Section 335.24(c)(6) is deleted (as is 40 CFR §261.6(a)(3) (v) per 59 FedReg 38545) because it has been replaced by the exclusion from solid waste for recovered oil inserted into a petroleum refining process. Section 335.24(c)(7) is also deleted (as was 40 CFR §261.6(a)(3)(vii) per 56 FedReg 7207). This was the exclusion for coke and coal tar from the iron and steel production process that contains EPA Hazardous Waste Number K087 (decanter tank tar sludge from coking operations). Section 335.24(c)(8) is proposed to be renumbered to §335.24(c)(5) and its subparagraphs (A), (B), and (C) are proposed to be amended by changing an old 40 CFR Part 266 citation to the new 40 CFR Part 279 citation that replaces it. Section 335.24(c)(9) is proposed to be renumbered to §335.24(c)(6) and amended to broaden the coke exemption so that it also applies to coke produced by a single petroleum refining entity, where the coker is located a different facility from where the hazardous wastes are generated. Subsections 335.24(g) and (h) are proposed to be amended to account for the previous deletions.

Section 335.221(a) is proposed to be amended to add the adoption by reference of changes to 40 CFR Part 266, §266.100(c)(1) and (3) and addition of Appendix XIII, Mercury Bearing Wastes That May Be Processed in Exempt Mercury Recovery Units (59 FedReg 48042-48043) as published September 19, 1994. These federal rule changes make mercury recovery furnaces, that meet these requirements, exempt from the Boiler and Industrial Furnace rule. Section 335.221(b)(2) is amended to account for the deletion and renumbering of §335.24(c) paragraphs. Other changes to the federal regulations applicable to the burning of hazardous waste in boilers and industrial furnaces are proposed to be adopted by reference by specifically including the following *Federal Register* citations under §335.221(a): 57 FedReg 27880, June 22, 1992; 57 FedReg 38558, August 25, 1992; and 57 FedReg 44999, September 30, 1992. These changes include: requirements applicable to the burning of hazardous waste in boilers and industrial furnaces, including requirements relating to applicability, namely the end of the Coke Oven Administrative

Stay; various technical amendments and corrections, including those relating to interim status standards; limits on interim status operating conditions; standards to control organic emissions, metals emissions, hydrogen chloride and chlorine gas; the small quantity on-site burner exemption; regulation of residues; limits on operating conditions; and various typographical corrections.

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

Mr. Minick also has determined that for the first five years the rules as proposed 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, used oil recycling, and improper management of used oil. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Written comments 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), 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 A. Industrial Solid Waste and Municipal Hazardous Waste Management in General

#### • 30 TAC §335.24

The amendment is 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. These amendments 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 amendment implements the Texas Water Code, Chapters 5 and 26 and the Health and Safety Code, Chapters 361 and 371.

*§335.24. Requirements For Recyclable Materials and Nonhazardous Recyclable Materials.*

(a) (No change.)

(b) The following recyclable materials are not subject to the requirements of

this section, except as provided in subsections (g) and (h) of this section, but are regulated under the applicable provisions of Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities) and all applicable provisions in Chapter 305 of this title (relating to Consolidated Permits) and Chapter 261 of this title (relating to Introductory Provisions); Chapter 263 of this title (relating to General Rules); Chapter 265 of this title (relating to Procedures Before Public Hearing); Chapter 267 of this title (relating to Procedures During Public Hearing); Chapter 269 of this title (relating to Procedures After Public Hearing Before an Examiner); Chapter 271 of this title (relating to Procedures After Public Hearing Before the Full Commission); and Chapter 273 of this title (relating to Procedures After Final Decision):

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

[(3) Used oil that exhibits one or more of the characteristics of hazardous waste and is burned for energy recovery in boilers and industrial furnaces that are not regulated under the provisions governing incinerators that are adopted by reference in §335.112(a)(14) of this title (relating to Standards) and §335.152(a)(13) of this title (relating to Standards);]

(3)[(4) Recyclable materials from which precious metals are reclaimed.

(4)[(5) Spent lead-acid batteries that are being reclaimed.

(c) The following recyclable materials are not subject to regulation under Subchapters B-I and O of this chapter, (relating to Hazardous Waste Management-General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; Prohibition on Open Dumps and Land Disposal Restrictions), respectively, or Chapters 261, 263, 265, 267, 269, 271, 273, and 305 of this title (relating to Introductory Provisions; General Rules; Procedures Before Public Hearing; Procedures During Public Hearing; Procedures After Public Hearing Before an Examiner; Procedures After Public Hearing Before the Full Commission; Procedures After Final decision; and Consolidated Permits), except as provided in subsections (g) and (h) of this section:

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

[(3) Used oil that exhibits one or more of the characteristics of hazardous waste but is recycled in some other manner than being burned for energy recovery;]

(3)[(4)] Scrap metal;

(4) [(5)] Fuels produced from the refining of oil-bearing hazardous wastes along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under §335.1 of this title (relating to Definitions, "Solid waste"));

[(6)] Oil reclaimed from hazardous waste resulting from normal petroleum refining, production, and transportation practices, which oil is to be refined along with normal process streams at a petroleum refining facility;

[(7)] coke and coal tar from the iron and steel industry that contains EPA Hazardous Waste Number K087 (decanter tank tar sludge from coking operations) hazardous waste from the iron and steel production process;]

(5)[(8)] The following hazardous waste fuels:

(A) hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production or transportation practices, or produced from oil reclaimed from such hazardous wastes where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under 40 Code of Federal Regulations §279.11 [§266.40(e)] and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

(B) hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under 40 Code of Federal Regulations §279.11 [§266.40(e)];

(C) oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under 40 Code of Federal Regulations §279.11 [§266.40(e)]; and

(6)[(9)] Petroleum coke produced from petroleum refinery hazardous

wastes containing oil by the same person who generated the waste [at the same facility at which such wastes were generated], unless the resulting coke product exceeds one or more of the characteristics of hazardous waste in 40 Code of Federal Regulations Part 261, Subpart C.

(d)-(f) (No change.)

(g) Except as provided in subsection (h) of this section, recyclable materials (excluding those listed in subsection (c)(1) and (4) [(5)]-(6) [(9)] of this section) remain subject to the requirements of §§335.4, 335.6, and 335.9-335.15 of this title (relating to General Prohibitions; Notification requirements; Recordkeeping and Annual Reporting Procedures Applicable to Generators; Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste; Shipping Requirements for Transporters of Hazardous Waste or Class I Waste; Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities; Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class I Waste; Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class I Waste; and Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities; respectively), as applicable;

(h) Industrial solid wastes that are non-hazardous recyclable materials; and recyclable materials listed in subsections (b) (4) [(5)] and (c)(2) and (3)[-(4)] of this section remain subject to the requirements of §335.4 of this title (relating to General Prohibitions) and §335.6 of this title (relating to Notification Requirements). Such wastes may also be subject to the requirements of §§335.10-335.15 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste); Shipping Requirements for Transporters of Hazardous Waste or Class I Waste; Shipping Requirements Applicable to Owners or Operators of Storage, Processing or Disposal Facilities; Record-keeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste; Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class I Waste; and Record-keeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities; respectively), as applicable, if the executive director determines that such requirements are necessary to protect human health §335.11 of this title (relating to Shipping Requirements for Transporters of

Hazardous Waste or Class I Waste), §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing or Disposal Facilities), §335.13 of this title (relating to Record-keeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste), §335.14 of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class I Waste), and §335.15 of this title (relating to Record-keeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), as applicable, if the executive director determines that such requirements are necessary to protect human health and the environment. In making the determination, the executive director shall consider the following criteria:

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

(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 30, 1995.

TRD-9513927

Kevin McCalla  
Director, Legal Division  
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Earliest possible date of adoption: December 4, 1995

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

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Subchapter H. Standards for  
the Management of Specific  
Wastes and Specific Types  
of Facilities

Hazardous Waste Burned for  
Energy Recovery

• 30 TAC §335.221

The amendment is proposed under the Texas Water Code, §§5.103, 5.105, and 26.11, which provides the commission with authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and the Texas Solid Waste Disposal Act, Texas Health and Safety Code, §361.017 and §361.024, which provide the commission authority to regulate industrial solid wastes and hazardous municipal wastes and to adopt and promulgate rules consistent with the general intent and purposes of the Act.

The proposed amendment implements the Texas Water Code, Chapters 5 and 6 and the Health and Safety Code, Chapters 361 and 371.

§335.221. *Applicability and Standards.*

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 266 (including all appendices to Part 266) are adopted by reference, as amended and adopted in the Code of Federal Regulations through June 1, 1990 (see FedReg 22685) and as published and adopted in the February 21, 1991, July 17, 1991, August 27, 1991, [and] September 5, 1991, June 22, 1992, August 25, 1992, September 30, 1992, and September 19, 1994 issues of the *Federal Register* (see 56 FedReg 7239, 32688, 42504, [and] 43874, 57 FedReg 27880, 28558, 44999 and 59 FedReg 48042-48043):

(1)-(23) (No change.)

(b) The following hazardous wastes and facilities are not regulated under this section and §§335.222-335.229 of this title (relating to Hazardous Waste Burned in Boilers and Industrial Furnaces):

(1) (No change.)

(2) hazardous wastes that are exempt from regulation under the provisions of 40 Code of Federal Regulations §261.4 and §335.24(c)(5)-(6) [(9)] of this title (relating to Requirements for Recyclable Materials and Non-Hazardous Recyclable Materials), and hazardous wastes that are subject to the special requirements for conditionally exempt small quantity generators under the provisions of §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators);

(3)-(4) (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 30, 1995.

TRD-9513928

Kevin McCalla  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

Earliest possible date of adoption: December 4, 1995

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

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### Part I. General Land Office

#### Chapter 17. Hearing

##### Procedures for Administrative Penalties and Removal of Unauthorized or Dangerous Structures on State Land

###### • 31 TAC §17.2

The Texas General Land Office proposes an amendment to §17.2 of this title, concerning Definitions. The Texas Natural Resources Code, Chapter 51, authorizes the commissioner of the General Land Office to assess penalties against any person who constructs, maintains, owns or possesses a facility or structure on state land which presents an imminent and unreasonable threat to public health, safety or welfare. Further, the commissioner is authorized to remove and dispose of this type of facility or structure, including any attachments to the facility or structure. For purposes of clarifying statutory references to this type of structure or facility, and for brevity in the rules promulgated pursuant to the statute, the proposed amendment labels such structure or facility a "dangerous structure." Further, the proposed amendment provides a definition of the term "attachment."

Christopher K. Price, Deputy Commissioner of the Asset Management Division, Texas General Land Office, 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.

Mr. Price 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 clarification of statutory language and brevity in the rules promulgated pursuant to such statutes. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Lenora DuBose, Legal Services Division, Texas General Land Office, 1700 North Congress Avenue, Austin, Texas 78701-1495, Fax: (512) 463-6311. Comments must be received by 5:00 p.m. on Monday, December 4, 1995.

The amendment is proposed under Texas Natural Resource Code, §51.3021, which provides the commissioner with the authority to make and enforce rules consistent with the law.

Texas Natural Resources Code, §51.3021, is affected by this proposal.

*§17.2. Definitions.* The following words and terms, when used in this chapter, shall

have the following meanings, unless the context clearly indicates otherwise.

**Attachment**—Any appurtenant, fixture, or other item, property or structure of any type which is incidental to or associated with a structure or facility.

**Dangerous structure or facility**—Any structure or facility on state land which presents, in the commissioner's sole determination, an imminent and unreasonable threat to public health, safety or welfare. In making such determination, the commissioner shall consider whether or not a structure or facility:

(A) is fit for its intended purpose;

(B) is safe for its foreseeable use by the public;

(C) is hidden or not visibly apparent to the public;

(D) is contaminating or has the immediate potential to contaminate air, water or other natural resources; or

(E) possesses other characteristics or conditions which threaten public safety, health or welfare.

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 27, 1995.

TRD-9513912

Garry Mauro  
Commissioner, General  
Land Office  
General Land Office

Earliest possible date of adoption: December 4, 1995

For further information, please call: (512) 305-9129

###### • 31 TAC §17.41

The Texas General Land Office proposes an amendment to §17.41 of this title, concerning Compliance or Petition for Judicial Review. The Texas Natural Resources Code authorizes the commissioner of the General Land Office to assess penalties against any person who constructs, maintains, owns or possesses a facility or structure on State land without a proper permit, easement or lease. The commissioner may remove and dispose of a facility or structure placed on State land without a permit, easement or lease, as well as any improvement which presents an imminent and unreasonable threat to public health, safety or welfare. According to the Texas Natural Resources Code, the person or entity which constructed, maintained, owned or possessed the unauthorized or dangerous structure may be held liable for any costs,

expenses and fees associated with the removal action. These statutory remedies, assessed in a final administrative order issued by the commissioner, allow for effective management and control of State property for the benefit of the public. To effectively implement and enforce these laws, the General Land Office proposes an amendment to §17.41 of this title establishing the proper procedures for collection of assessed penalties, costs, expenses and fees.

The Texas Legislature amended the Texas Natural Resources Code, §51.3021, in 1993 to provide several alternative methods by which the commissioner of the General Land Office may collect penalties, costs, expenses and fees which are owed to the State by a person or entity who constructs, maintains, owns or possesses an unauthorized or dangerous structure on State land. The proposed amendment will conform the administrative rules to the amended law and clarify when a person or entity must comply with the commissioner's administrative order.

Christopher K. Price, Deputy Commissioner of the Asset Management Division, Texas General Land Office, has determined that for the first five-year period the rule is in effect there will be no fiscal implications to local governments as a result of enforcing or administering the rule. The effects on State government will be payment of nominal recording fees for liens and/or releases of liens and other administrative costs, as well as expenditure of costs associated with removal and disposal of unauthorized or dangerous structures. All of the fees and costs incurred by the State will be recouped through enforcement of the proposed amendments which allow the State to collect fees and penalties owed by persons using State resources. The long-term effect of the proposed amendment will be an increase in revenue to the Permanent School Fund commensurate with the use of State property.

Mr. Price 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 efficient enforcement of coastal easements and leases, increased revenue from the use of State coastal land and assured compliance with Texas law. The effect on small businesses and/or economic costs to persons required to comply with the rule cannot be determined. The proposed amendment provides no greater authority nor authorize any penalty which is not currently provided in the Texas Natural Resources Code. The proposed amendment will only effect businesses and individuals that are not in compliance with the requirements of Texas Natural Resources Code Annotated, Chapters 33 and/or 51, or fail to comply with an order of the commissioner of the General Land Office.

Comments on the proposal may be submitted to Lenora DuBose, Legal Services Division, Texas General Land Office, 1700 North Congress Avenue, Austin, Texas 78701-1495, Fax: (512) 463-6311. Comments must be received by 5:00 p.m. on Monday, December 4, 1995.

The amendment is proposed under Texas Natural Resource Code, §51.3021, which

provides the commissioner with the authority to make and enforce rules consistent with the law.

Texas Natural Resources Code, §51.3021, is affected by this proposal.

*§17.41. Compliance or Petition for Judicial Review.*

(a) Not later than the 30th day after the date on which the commissioner's order is effective [final], pursuant to §17.43 of this chapter (relating to Effective Date of Order), the order shall be complied with or a petition for judicial review shall be filed.

(b) Judicial review of the order or decision of the commissioner shall be under the Administrative Procedure and Texas Register Act, §19 (Texas Government Code, Chapter 2001). [(Texas Civil Statutes, Article 6252-13a).]

(c) If neither the commissioner nor the party affected by the order files a petition for judicial review, the private party must pay all assessed penalties, removal costs, and other assessed fees, costs and expenses within 60 days after the date on which the commissioner's order is final. If the private party neither seeks judicial review nor pays the full assessed amount within 60 days, the commissioner may:

(1) sell salvageable parts or attachments of the unauthorized or dangerous structure to offset any penalties, costs, and other fees and expenses assessed;

(2) record a lien against such adjacent littoral property, as may be owned by the party who constructed, maintained, owned or possessed the unauthorized or dangerous structure, in the total amount of the penalties, costs, and other fees and expenses assessed;

(3) request the attorney general to institute civil proceedings to collect the penalties, costs, and other fees and expenses remaining unpaid; or

(4) use any combination of the remedies prescribed by this subsection or other remedies authorized by law to collect the unpaid penalties, costs, and other fees and expenses assessed.

(d) For purposes of this section, the term "costs" includes any and all costs of removal, clean up, transportation, fill, disposal, remediation, administration, agency overhead and other indirect costs (computed according to custom and practice in the agency and state government), attorney and/or expert witness fees, and any other cost the agency incurs as a result of removing and disposing of the unauthorized or danger-

ous structure and placing state land as nearly as possible in the condition in which it existed prior to construction of the unauthorized or dangerous structure. The agency may recover all such costs, without limitation, whether performing the activities itself using agency employees or by using third-party vendors or contractors with the agency.

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 27, 1995.

TRD-9513913 Garry Mauro  
Commissioner  
General Land Office

Earliest possible date of adoption: December 4, 1995

For further information, please call: (512) 305-9129

◆ ◆ ◆  
**TITLE 34. PUBLIC FINANCE**  
**Part I. Comptroller of Public Accounts**  
**Chapter 3. Tax Administration**  
**Subchapter L. Motor Fuels Tax**  
• 34 TAC §3.193

The Comptroller of Public Accounts proposes an amendment to §3.193, concerning bad debt deductions. The 74th Legislature, 1995, amended the Tax Code, Chapter 153, to allow the comptroller to collect a penalty equal to the amount of unpaid tax from persons who issue an insufficient check to a permitted distributor or permitted supplier for the payment of a debt that includes the motor fuel tax. The amendment prescribes procedures and records required of a permitted distributor or permitted supplier when notifying the comptroller of receiving an insufficient payment for tax-paid gasoline or diesel fuel.

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. 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 section.

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, §153.409.

§3.193. *Bad Debt Deductions.*

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

(d) Collection of 100% penalty on certain bad checks.

(1) A permitted gasoline distributor or diesel fuel supplier may notify the comptroller of a customer that has issued a check for insufficient funds as payment of a debt or obligation that included the tax on gasoline and/or diesel fuel. Before notifying the comptroller of such an occurrence, the distributor or supplier must have complied with the provisions of subsection (a)(2)-(4) of this section. When notifying the comptroller of such an occurrence, the distributor or supplier must furnish the comptroller with a photocopy of both sides of the returned check.

(2) The issuer of a bad check identified under paragraph (1) of this subsection may receive a written warning from the comptroller for the first occurrence. The comptroller may assess a penalty equal to 100% of the gasoline and/or diesel fuel tax amount included in the bad check. If assessed, this penalty will be imposed in addition to penalties, interest, and collection actions authorized by the Tax Code.

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 26, 1995.

TRD-9513807 Martin Cherry  
Chief, General Law  
Comptroller of Public  
Accounts

Earliest possible date of adoption: December 4, 1995

For further information, please call: (512) 463-4062

◆ ◆ ◆  
Subchapter V. Franchise Tax

◆ ◆ ◆  
• 34 TAC §3.556

The Comptroller of Public Accounts proposes an amendment to §3.556, concerning earned surplus: S corporations. The amendment reflects recent changes in the franchise tax enacted by Senate Bill 644, 74th Legislature, 1995.

Subsection (b)(2) provides for an updated definition of the Internal Revenue Code.

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. 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 section.

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.

◆ ◆ ◆  
§3.556. *Earned Surplus: S Corporations.*

(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) (No change.)

(2) 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].

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

(c)-(f) (No change.)

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

Issued in Austin, Texas, on October 26, 1995.

TRD-9513808 Martin Cherry  
Chief, General Law  
Comptroller of Public  
Accounts

Earliest possible date of adoption: December 4, 1995

For further information, please call: (512) 463-3725

◆ ◆ ◆  
• 34 TAC §3.558

The Comptroller of Public Accounts proposes an amendment to §3.558, concerning earned surplus: officer and director compensation. The amendment reflects changes in the franchise tax enacted by Senate Bill 644, 74th Legislature, 1995. Subsection (b)(1) provides for an updated definition of the Internal Revenue Code.

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. 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 section.

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.

§3.558. *Earned Surplus: Officer and Director Compensation.*

(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) 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].

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

(c)-(h) (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 26, 1995.

TRD-9513809  
Martin Cherry  
Chief, General Law  
Comptroller of Public  
Accounts

Earliest possible date of adoption: December 4, 1995

For further information, please call: (512) 463-3725

• 34 TAC §3.562

The Comptroller of Public Accounts proposes an amendment to §3.562, concerning limited liability companies. The amendment reflects changes in the franchise tax enacted by Senate Bill 644, 74th Legislature, 1995. Subsection (b)(2) provides for an updated definition of the Internal Revenue Code

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. 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 section.

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.

§3.562. *Limited Liability Companies.*

(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) (No change.)

(2) 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 differ-

ences 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 federal tax year beginning on or after January 1, 1990, and before January 1, 1991, and any regulations adopted under that code applicable to that period].

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

(c)-(h) (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 26, 1995.

TRD-9513810  
Martin Cherry  
Chief, General Law  
Comptroller of Public  
Accounts

Earliest possible date of adoption: December 4, 1995

For further information, please call: (512) 463-3725

◆ ◆ ◆  
TITLE 37. PUBLIC  
SAFETY AND CORREC-  
TIONS

Part III. Texas Youth  
Commission

Chapter 81. Administrative  
Provisions

• 37 TAC §81.17

The Texas Youth Commission (TYC) proposes an amendment to §81.17, concerning research projects. The amendment clarifies the approval process for proposals to conduct research involving TYC staff and/or youth and adds that a copy of the final report will be furnished to TYC.

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 the provision of specific guidelines for TYC staff and research consultants. 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, §61.041, which provides the Texas Youth Commission with the authority to conduct continuing inquiry into the effectiveness of the treatment methods it employs in the reformation of children.

The proposed rule implements the Human Resource Code, §61.034.

#### §81.17. Research Projects.

(a) (No change.)

(b) Rules. Procedures for research projects are managed through the research and planning department according to the following rules:

(1) Research Proposals. Project directors other than those employed by the research and planning department must submit a research proposal to the research and planning department. [including:] The proposal should include as much of the following information as possible:

(A)-(J) (No change.)

(2) Approval of Proposals.

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

(C) On-site research proposals are circulated to affected field administrators for their review, comment and indication of level of support. [approval.]

(D) Proposals requiring TYC staff time but not involvement of TYC youth may be approved by the affected field administrators.

(E)[(D)] Proposals requiring use of TYC [staff time and/or] youth will be presented to the director of institutions, director of community services or deputy executive director as appropriate. [executive committee or to the executive director for approval.]

(F)[(E)] Approved non-TYC staff proposals requiring experimental procedural change involving TYC [field work and interaction with] youth [and staff] are presented to the board by the research and planning department for approval.

(3) Research Agreement. Commencement of an outside research project is authorized following entry into a research agreement by TYC and the research consultant. The agreement shall contain the following:

(A) (No change.)

(B) an agreement to maintain the confidentiality of individual youth; [and]

(C) a clause providing that any patentable product, process, or idea that results from the performance of the research agreement, and for which TYC has expended appropriated funds, shall become the property of the Texas Youth Commission; and

(D) an agreement to furnish TYC with a copy of the final report.

(4) (No change.)

(5) Research Results. The research and planning department will:

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

(C) recommend to the deputy executive director any changes in programs or operations that the research results indicate.

(6) Demonstration Programs.

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

(C) Deputy executive director approval is required for all demonstration programs.

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 30, 1995.

TRD-9513949

Steve Robinson  
Executive Director  
Texas Youth Commission

Earliest possible date of adoption: December 4, 1995

For further information, please call: (512) 483-5244

## Chapter 91. Discipline and Control

### Control

#### • 37 TAC §91.69

The Texas Youth Commission (TYC) proposes an amendment to §91.69, concerning

detention. The amendment provides that youth committed to TYC who are age 18 or older and have escaped from a TYC placement or violated a condition of parole may be referred to detention in an adult jail.

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 to ensure protection of the public safety. 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, §61.075, which provides the Texas Youth Commission with the authority to order the child's confinement under conditions it believes best designed for the child's welfare and the interests of the public.

The proposed rule implements the Human Resource Code, §61.034.

#### §91.69. Detention.

(a) Policy. Youth committed to the Texas Youth Commission (TYC) who are age 18 or older and have escaped from a TYC placement or violated a condition of parole may be referred to detention in an adult jail. For youth under 18 years old, TYC may make use of juvenile community detention facilities to hold its youth with the consent of local authorities as allowed the Human Resources Code. TYC will utilize community detention facilities in a manner consistent with local policies. If community detention is not available, a youth may be detained in the security unit of a TYC training school. References to detention in this policy mean juvenile detention centers.

(b) Rules.

(1) (No change.)

(2) Criteria for Detention.

(A) A youth may be detained when there is probable cause to believe the youth engaged in delinquent conduct, a major rule violation, or conduct indicating a need for supervision and one of the following criteria is met:

(i) (No change.)

(ii) suitable supervision, care, or protection for the youth is not being

provided by the parent or guardian to ensure protection of the public safety or prevention of youth self-injury and a less restrictive temporary shelter is not available or is inappropriate; or

(iii) (No change.)

(B) (No change.)

(3)-(4) (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 26, 1995.

TRD-9513762 Steve Robinson  
Executive Director  
Texas Youth Commission

Earliest possible date of adoption: December 4, 1995

For further information, please call: (512) 483-5244

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 12. Special Nutrition Programs

##### Child and Adult Care Food Program

###### • 40 TAC §12.3, §12.25

The Texas Department of Human Services (DHS) proposes amendments to §12.3 and §12.25, concerning eligibility of contractors and facilities and denials and terminations, in its Special Nutrition Programs chapter. The purpose of the amendments is to require sponsoring organizations who are applying for program participation to have signed agreements with a minimum of 50 licensed or registered day care home providers who are providing care to nonresidential children, unless the applicant is approved to sponsor fewer than 50 day care homes. Also, once a sponsor is approved for participation, his CACFP contract will be terminated if the sponsor submits claims for reimbursement for fewer than 50 day care homes for three consecutive months.

Burton F. Raiford, commissioner, has determined that for the first five-year period the proposed 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. Raiford 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 increased efficiency in the operation and administration of the program. There will be no effect on

small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Karen Van Reenen at (512) 467-5827 in DHS's Special Nutrition Programs. Written comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Media and Policy Services-057, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The amendments implement the Human Resources Code, §§22.001-22.024 and §§33.001-33.024.

#### §12.3. Eligibility of Contractors and Facilities.

(a) (No change.)

(b) To be eligible to participate in the CACFP as a day care home sponsor, applicants [contractors] must provide documentation that verifies that a minimum of 50 registered or licensed day care homes have signed an application and agreement, as specified by DHS, [demonstrate that at least 50 day care homes can be expected] to participate under the contractor's [their] sponsorship. Each day care home must be providing child care to at least one nonresidential child. Day care homes must be eligible to execute a sponsorship agreement in accordance with §12.6(f) of this title (relating to Agreement). DHS may approve applications for fewer than 50 day care homes, if the [contractor demonstrates that there is an unmet need for services, or if] sponsorship of day care homes is an integral but subordinate part of an existing nonprofit or governmental community service provided by the sponsor.

(c)-(i) (No change.)

#### §12.25. Denials and Terminations.

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

(f) DHS terminates agreements with contractors that sponsor day care homes if they receive reimbursement for fewer than 50 day care homes for three consecutive months.

(g)[(f)] Sponsoring organizations of day homes must:

(1) terminate the participation of any day care home provider that they have determined has knowingly claimed meals for a child not enrolled for child care or not in attendance on a day that meals were claimed for the child; and

(2) submit the provider for inclusion on a list of seriously deficient providers.

(h)[(g)] Sponsoring organizations of day homes must:

(1) terminate the participation of any day care home provider that refuses to enter into or comply with a corrective action plan designed to achieve compliance with program requirements; and

(2) submit the provider for inclusion on a list of seriously deficient providers.

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 27, 1995.

TRD-9513854 Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

Earliest possible date of adoption: December 4, 1995

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

## Chapter 47. Primary Home Care

The Texas Department of Human Services (DHS) proposes the repeal of §47.2906 and §47.2911, concerning orientation of attendants and make-up services; and proposes amendments to §§47.2902-47.2905, 47.2912, and 47.6901, concerning requesting prior approval for primary home care, provider agency requirements after verbal referral for primary home care, critical omissions/errors for primary home care, initiation of service, service plan changes, and performance-based sanctions, in its primary home care (PHC) chapter. The purpose of the repeals and amendments is: to require a registered nurse (RN) to conduct an initial onsite health assessment for primary home care/family care clients to determine if the attendant should be supervised by an RN or someone who is not an RN; to allow clients to receive services from provider agencies based on the clients' needs; to avoid duplication of home and community support services agencies licensing standards; and to make minor clarifications to the sections.

Burton F. Raiford, commissioner, has determined that for the first five-year period the proposal will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposal.

Mr. Raiford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that clients can receive services from provider agencies based on the clients' needs. Also, clients will



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

Questions about the content of the proposal may be directed to Maria Garcia Montoya at (512) 438-3155 in DHS's Community Care Program Services section. Written comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Media and Policy Services-075, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

## Service Requirements

### • 40 TAC §47.2906, §47.2911

*(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 are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The repeals implement the Human Resources Code, §§22.001-22.024 and §§32.001-32.041.

#### §47.2906. Orientation of Attendants.

#### §47.2911. Make-up Services.

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

Issued in Austin, Texas, on October 30, 1995.

TRD-9513934 Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

Proposed date of adoption: February 1, 1996

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

### ◆ ◆ ◆ • 40 TAC §§47.2902-47.2905, 47.2912

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement the Human Resources Code, §§22.001-22.024 and §§32.001-32.041.

#### §47.2902. Requesting Prior Approval for Primary Home Care.

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

(d) [Before requesting prior approval, the RN supervisor] A registered nurse (RN) must conduct an initial onsite health [nursing] assessment for primary home care/family care clients, [of the client.] using the client health assessment form, to determine if the attendant should be supervised by an RN or someone who is not an RN.

(e) If the RN supervisor cannot conduct the health [nursing] assessment within 14 days of the referral date, the provider agency must notify the caseworker about the reason for delay. The notification must be sent on the case information form, within the 14-day period.

(f) Using the [proposed] service plan form, the RN supervisor must develop a [proposed] service plan for the client. The [proposed] service plan must include:

(1) (No change.)

(2) the [proposed] service plan; and

(3) (No change.)

(g) After the RN supervisor conducts the health [nursing] assessment, he must obtain a physician's order by sending the physician's order form to the client's physician. If the provider agency cannot obtain the physician's order within 14 days of the referral date, the provider agency must notify the caseworker about the reason for delay by sending the case information form within the 14-day period. The case information form must include the date of the health [nursing] assessment and must be dated after the health [nursing] assessment date.

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

#### §47.2903. Provider Agency Requirements after Verbal Referral for Primary Home Care.

(a) When a provider agency is contacted by a caseworker about the need for verbal prior approval, the RN supervisor must make an onsite health [nursing] assessment of the applicant and must contact the applicant's physician to get the verbal or written physician's order.

(b) The RN supervisor must verbally request prior approval and give the regional nurse:

(1) a summary of the [proposed] service plan, including:

(A) (No change.)

(B) results of the health [nursing] assessment; and

(C) (No change.)

(2) -(4) (No change.)

(c)-(f) (No change.)

#### §47.2904. Critical Omissions/Errors for Primary Home Care.

(a) If the client health assessment/[proposed] service plan form or the physician's order for primary home care is missing, or if any of the following critical omissions or errors has occurred in the required documentation, the provider agency cannot obtain prior approval.

(1) The RN supervisor fails to sign or date the client health assessment/[proposed] service plan or omits the RN credentials that should follow his signature.

(2) (No change.)

(3) Service plan tasks are not identified on the [proposed] service plan form.

(4) The [attendant service schedule or the] total number of service hours per week is not specified on the [proposed] service plan form.

(5) For clients who require renewal of prior approval as specified in §47.2902(a) of this title (relating to Requesting Prior Approval), the client health assessment/[proposed] service plan form has a date that is earlier than 60 days before the end of the prior approval period.

(6)-(13) (No change.)

(b) (No change.)

#### §47.2905. Initiation of Service.

(a) (No change.)

(b) The provider agency must provide services to the client according to the client's individual service plan. [tasks and hours authorized on the prior approval/confirmation of services form and according to the specific schedule designated by the caseworker on the prior approval for CCAD services-referral response form.]

(c) The attendant must document on the service delivery record that services are provided to the client [according to the prior approval/confirmation of services form].

(d)-(f) (No change.)

#### §47.2912. Service Plan Changes.

(a) No later than the first Texas Department of Human Services workday after

becoming aware of the change, the provider agency must verbally notify the caseworker or staff in the caseworker's office about any change that may require an increase in hours [a service plan change] or service termination. The provider agency must follow up this verbal notification with further notification in writing, to the caseworker, using the attendant orientation/supervisory visit form. Written notification must occur within seven days after verbal notification.

(b) When a caseworker initiates an increase in hours, [a service plan change,] he authorizes the increase in hours [service plan change] on the prior approval/confirmation of services form.

(c) The provider agency must implement an increase in hours [service plan changes] on the beginning date of coverage indicated on the prior approval/confirmation of services form.

(d) If the caseworker notifies the supervisor that an immediate change is needed, the supervisor and the caseworker discuss:

(1) the increase in hours [service plan change];

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

(e) The supervisor must send the attendant orientation/supervisory visit form to the caseworker within 30 days of receiving verbal approval for a client needing an immediate increase in hours [service plan change]. The form must include the following documentation:

(1) the effective date of the verbal approval of the increase in hours [service plan change];

(2) the increase in hours [service plan changes]; and

(3) (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 30, 1995.

TRD-9513935 Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

Proposed date of adoption: February 1, 1996

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

◆ ◆ ◆  
**Sanctions**

• 40 TAC §47.6901

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001-22.024 and §§32.001-32.041.

*§47.6901. Performance-based Sanctions.*

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

(c) Formal agency reviews. All provider agencies are subject to a systematic

review of client case records to determine if the provider agency's performance meets the minimum compliance level established for primary home care, and family care, if provided. If the provider agency fails to meet the minimum compliance level for two consecutive formal reviews, the department terminates the provider agency's contract.

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

(3) The department reviews a sample of the provider agency's cases to determine the provider agency's compliance with the contract document and the primary home care provider manual in the following areas:

(A) health [nursing] assessments;

(B)-(I) (No change.)

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

(d)-(n) (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 30, 1995.

TRD-9513936 Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

Proposed date of adoption: February 1, 1996

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

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the **Texas Register**. The notice is effective immediately upon filing or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the **Texas Register**, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the **Texas Register**.

## TITLE 16. ECONOMIC REGULATION

### Part IV. Texas Department of Licensing and Regulation

#### Chapter 61. Boxing

##### Subchapter B. Elimination Tournaments

- 16 TAC §§61.201, 61.202, 61.205, 61.206, 61.210-61.212

The Texas Department of Licensing and Regulation has withdrawn from consideration for permanent adoption the proposed amendments to §§61.201, 61.202, 61.205, 61.206, and 61.210-61.212, which appeared in the August 11, 1995, issue of the *Texas Register* (20 TexReg 6070). The effective date of this withdrawal is October 26, 1995.

Issued in Austin, Texas, on October 26, 1995.

TRD-9513825      Jack W. Garrison  
Executive Director  
Texas Department of  
Licensing and  
Regulation

Effective date: October 26, 1995

For further information, please call: (512)  
463-7357

## TITLE 25. HEALTH SER- VICES

### Part I. Texas Department of Health

#### Chapter 1. Texas Board of Health

##### Investigation of Abuse, Ne- glect, or Exploitation of Children or Elderly or Dis- abled Persons

- 25 TAC §1.208

The Texas Department of Health has with-  
drawn from consideration for permanent

adoption a proposed new §1.208, which ap-  
peared in the June 9, 1995, issue of the  
*Texas Register* (20 TexReg 4197). The effec-  
tive date of this withdrawal is November 16,  
1995.

Issued in Austin, Texas, on October 26, 1995.

TRD-9513823      Susan K. Steeg  
General Counsel  
Texas Department of  
Health

Effective date: November 16, 1995

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

## TITLE 30. ENVIRONMEN- TAL QUALITY

### Part I. Texas Natural Resource Conservation Commission

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

##### Subchapter A. Industrial Solid Waste and Municipal Haz- ardous Waste in General

- 30 TAC §335.24

The Texas Natural Resource Conservation  
Commission has withdrawn from consider-  
ation for permanent adoption a proposed  
amendment to §335.24, which appeared in  
the October 20, 1995, issue of the *Texas  
Register* (20 TexReg 8586). The effective  
date of this withdrawal is October 25, 1995.

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

TRD-9513775      Kevin McCalla  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

Effective date: October 25, 1995

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

### Subchapter H. Hazardous Waste Burned for Energy Recovery

- 30 TAC §335.221

The Texas Natural Resource Conservation  
Commission has withdrawn from consider-  
ation for permanent adoption a proposed  
amendment to §335.221, which appeared in  
the October 20, 1995, issue of the *Texas  
Register* (20 TexReg 8590). The effective  
date of this withdrawal is October 25, 1995.

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

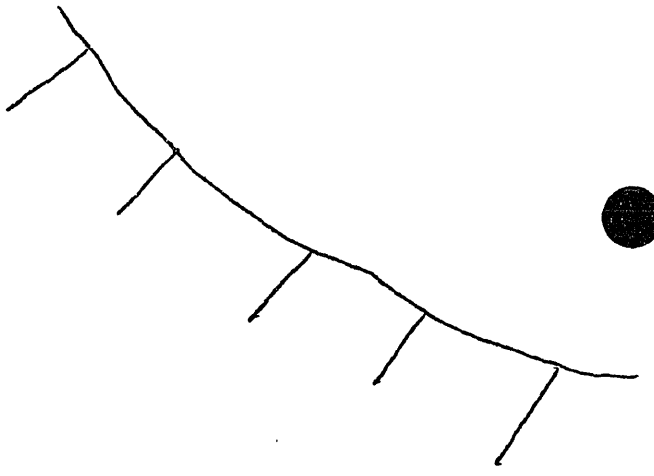
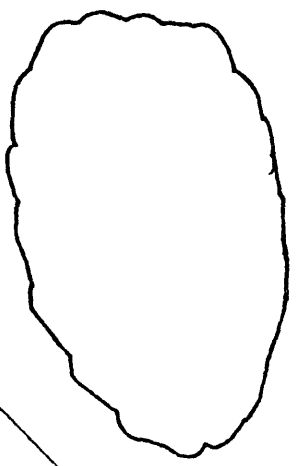
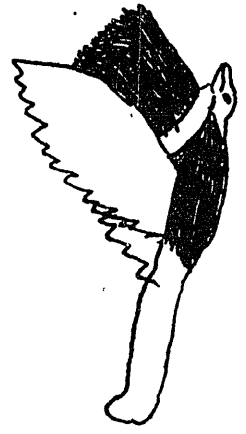
TRD-9513774      Kevin McCalla  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

Effective date: October 25, 1995

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



Name: Bradley Dornak  
Grade: 6  
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 7. BANKING AND SECURITIES

### Part IV. Texas Savings and Loan Department

#### Chapter 53. Additional Offices

##### • 7 TAC §53.15, §53.16

The Finance Commission of Texas adopts amendments to §53.15, regarding the procedures after an application to operate a remote service unit is received by the Department, and §53.16, regarding the findings necessary to approve an application to operate a remote service unit, without changes to the proposed text as published in the July 25, 1995, issue of the *Texas Register* (20 TexReg 5460).

The amendments will streamline the application process for remote service units.

Section 53.15 will be amended to clarify and streamline the application process for remote service units and require a hearing only if the application is protested. The findings needed for approval in §53.16 will be expanded to include there being no basis for supervisory objection and no undue harm caused to any other savings and loan association or savings bank operating in the community where the proposed remote service unit would be located or relocated.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Banking Act, §1.013, House Bill 1543, Acts, 74th Legislature, Regular Session, which provides the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

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 27, 1995.

TRD-9513889 James L. Pledger  
Commissioner  
Texas Savings and Loan  
Department

Effective date: November 17, 1995

Proposal publication date: July 25, 1995

For further information, please call: (512)  
475-1350

#### Chapter 61. Hearings

##### • 7 TAC §§61.1-61.6

The Finance Commission of Texas adopts the repeal of §§61.1-61.6, regarding the hearing procedures for the Savings and Loan Department, without changes to the proposed text as published in the July 25, 1995, issue of the *Texas Register* (20 TexReg 5461).

This chapter is being repealed and replaced concurrently with §§61.1-61.3 to incorporate the Texas Banking Act, §1.011(b), House Bill 1543, Acts, 74th Legislature, Regular Session, which authorizes the Finance Commission to employ a hearing officer, who for purposes of the Government Code, Vernon's Texas Codes Annotated, §2003.21, is an employee of the Savings and Loan Department, Department of Banking and the Office of the Consumer Credit Commissioner (together, the "FC agencies").

Previously, all hearings conducted by the Department in conjunction with the Texas Savings and Loan Act were required to be handled by the State Office of Administrative Hearings. The new §61.1 designates the Finance Commission's hearings officer as hearings officer for the Department. The new §61.2 incorporates by reference standard rules for the Finance Commission hearing officer to apply in conducting contested hearings for the Finance Commission agencies. The new §61.3 gives the commissioner the flexibility to amend a notice of hearing for publication to facilitate joint publication of the notice with other regulatory agencies having jurisdiction in the matter, expedite the hearing process, or provide other information relevant to the hearing or arrangement and scheduling therefor.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Banking Act, §1.013, House Bill 1543, Acts, 74th Legislature, Regular Session, which provides the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

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 27, 1995.

TRD-9513890 James L. Pledger  
Commissioner  
Texas Savings and Loan  
Department

Effective date: November 17, 1995

Proposal publication date: July 25, 1995

For further information, please call: (512)  
475-1350

##### • 7 TAC §§61.1-61.3

The Finance Commission of Texas adopts new §§61.1-61.3, regarding the hearing procedures for the Savings and Loan Department, without changes to the proposed text as published in the July 25, 1995, issue of the *Texas Register* (20 TexReg 5431).

This chapter is being repealed and replaced with §§61.1-61.3 to incorporate the Texas Banking Act, §1.011(b), House Bill 1543, Acts, 74th Legislature, Regular Session, which authorizes the Finance Commission to employ a hearing officer, who for purposes of the Government Code, Vernon's Texas Codes Annotated, §2003.21, is an employee of the Savings and Loan Department, Department of Banking and the Office of the Consumer Credit Commissioner (together, the "FC agencies").

Previously, all hearings conducted by the Department in conjunction with the Texas Savings and Loan Act were required to be handled by the State Office of Administrative Hearings. New §61.1 designates the Finance Commission's hearings officer as hearings officer for the Department. New §61.2 incorporates by reference standard rules for the Finance Commission hearing officer to apply in conducting contested hearings for the Finance Commission agencies. The new §61.3 gives the commissioner the flexibility to amend a notice of hearing for publication to facilitate joint publication of the notice with other regulatory agencies having jurisdiction in the matter, expedite the hearing process, or provide other information relevant to the hearing or arrangement and scheduling therefor.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Banking Act, §1.013, House Bill 1543, Acts, 74th Legislature, Regular Session, which provides the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

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 27, 1995.

TRD-9513891 James L. Pledger  
Commissioner  
Texas Savings and Loan  
Department

Effective date: November 17, 1995

Proposal publication date: July 25, 1995

For further information, please call: (512) 475-1350

## Chapter 63. Fees and Charges

### • 7 TAC §§63.9, 63.11, 63.12

The Finance Commission of Texas adopts amendments to §63.9, regarding fees for reorganization, merger, and consolidation; §63.11, regarding fees for change of control; and §63.12, regarding fees for the formation of subsidiaries, without changes to the proposed text as published in the July 25, 1995, issue of the *Texas Register* (20 TexReg 5462).

The amendments are being adopted to clarify and simplify the fee structure, more closely match fees with the amount of staff processing and investigating time required for these applications.

The amended fees will be charged on the respective applications.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Banking Act, §1.013, House Bill 1543, Acts, 74th Legislature, Regular Session, which provides the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

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 27, 1995.

TRD-9513892 James L. Pledger  
Commissioner  
Texas Savings and Loan  
Department

Effective date: November 17, 1995

Proposal publication date: July 25, 1995

For further information, please call: (512) 475-1350

## Chapter 64. Books, Records, Accounting Practices, Financial Statements, and Reserves

### • 7 TAC §§64.4, 64.7-64.9

The Finance Commission of Texas adopts amendments to §64.4, relating to the requirement for annual publication and submission of a statement of financial condition as of December 31 by each savings and loan association; §64.7, regarding the net worth requirements; §64.8, giving the commissioner the ability to increase or decrease the minimum requirements for net worth; and new §64.9 providing the commissioner with the flexibility to extend the examination frequency cycle, without changes to the proposed text as published in the July 25, 1995, issue of the *Texas Register* (20 TexReg 5462).

These changes will update certain requirements in accordance with other state and federal financial institutions.

The requirement for annual or more frequent publication of a statement of condition in §64.4 has been removed for other state and federal financial institutions, this adopted amendment will eliminate such publication requirement for savings and loan associations. Section 64.7 and §64.8 will update the language for capital or net worth requirements, and the commissioner's ability to increase or decrease the minimum requirements based on data available to him.

Additionally, §64.9 is a new rule adopted to provide the commissioner with the flexibility to extend the examination frequency cycle by up to six months consistent with the savings and loan association's historical performance as measured by its last examination and off-site financial monitoring by the Department. This change is responsive to efforts at both the state and federal level to relieve regulatory burden on those saving and loan associations that are well managed and well capitalized. As adopted, the rule will also provide needed flexibility to coordinate scheduling of joint, concurrent and alternating examinations with federal regulators who already have such authority.

No comments were received regarding adoption of the amendments and new section.

The amendments and new section are adopted under Texas Banking Act, §1.013, House Bill 1543, Acts, 74th Legislature, Regular Session, which provides the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

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 27, 1995.

TRD-9513893 James L. Pledger  
Commissioner  
Texas Savings and Loan  
Department

Effective date: November 17, 1995

Proposal publication date: July 25, 1995

For further information, please call: (512) 475-1350

## Chapter 69. Reorganization, Merger, Consolidation, Acquisition and Conversion

### • 7 TAC §69.1

The Finance Commission of Texas adopts an amendment to §69.1, regarding the procedures for state savings and loan associations seeking approval for a purchase and assumption transaction, without changes to the proposed text as published in the July 25, 1995, issue of the *Texas Register* (20 TexReg 5464).

The revised rule clarifies what is included in a purchase and assumption transaction.

Section 69.1 is revised to clarify that a purchase and assumption transaction includes a purchase or sale of assets, deposit accounts or other liabilities in bulk which are not made in the ordinary course of business.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Banking Act, §1.013, House Bill 1543, Acts, 74th Legislature, Regular Session, which provides the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

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 27, 1995.

TRD-9513894 James L. Pledger  
Commissioner  
Texas Savings and Loan  
Department

Effective date: November 17, 1995

Proposal publication date: July 25, 1995

For further information, please call: (512) 475-1350

## Chapter 73. Subsidiary Corporation

### • 7 TAC §73.1, §73.6

The Finance Commission of Texas adopts amendments to §73.1, regarding subsidiary corporations and §73.6, regarding operating subsidiaries, without changes to the proposed text as published in the July 25, 1995, issue of the *Texas Register* (20 TexReg 5464).

The changes in subsidiary corporation rules are adopted to clarify previous language of the sections.

Changes in subsidiary corporation rules will clarify in §73.1 that the commissioner's approval must be obtained for a subsidiary to

engage in an additional or substitute activity, and the amendment to §73.6 will require that operating subsidiaries must meet all other requirements of this chapter that apply to non-operating subsidiaries.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Banking Act, §1.013, House Bill 1543, Acts, 74th Legislature, Regular Session, which provides the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

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 27, 1995.

TRD-9513895

James L. Pledger  
Commissioner  
Texas Savings and Loan  
Department

Effective date: November 17, 1995

Proposal publication date: July 25, 1995

For further information, please call: (512) 475-1350

## Chapter 75. Applications

### Additional Offices

#### • 7 TAC §75.35, §75.37

The Finance Commission of Texas adopts amendments to §75.35 and §75.37, regarding the requirements for the establishment of mobile facilities and remote service units by savings banks, without changes to the proposed text as published in the July 25, 1995, issue of the *Texas Register* (20 TexReg 5465).

The changes adopted will make a technical correction and will streamline the application process for remote service units.

The adopted change in §75.35 regarding mobile facilities is a technical correction which will remove an inadvertent reference to a loan office. The remote service unit application process in §75.37 will streamline the application process for remote service units and require a hearing only if the application is protested.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Banking Act, §1.013, House Bill 1543, Acts, 74th Legislature, Regular Session, which provides the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

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 27, 1995.

TRD-9513896

James L. Pledger  
Commissioner  
Texas Savings and Loan  
Department

Effective date: November 17, 1995

Proposal publication date: July 25, 1995

For further information, please call: (512) 475-1350

### Reorganization, Merger, Consolidation, Conversion, Purchase and Assumption and Acquisition

#### • 7 TAC §75.81, §75.89

The Finance Commission of Texas adopts amendments to §75.81, regarding the procedures for state savings banks seeking approval for a purchase and assumption transaction and §75.89, regarding the procedures for state savings banks converting to another financial institution charter, without changes to the proposed text as published in the July 25, 1995, issue of the *Texas Register* (20 TexReg 5465).

The revisions clarify what is included in a purchase and assumption transaction and a technical correction to the original adopted language.

The revised §75.81 will clarify that a purchase and assumption transaction includes a purchase or sale of assets, deposit accounts or other liabilities in bulk which are not made in the ordinary course of business. The change to §75.89 is a technical correction which will remove an inadvertent reference to the new charter as only a federal savings bank after conversion. State savings banks are authorized to convert to any other financial institution charter, including state savings and loan association, federal savings bank or savings and loan association, or a state or national bank.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Banking Act, §1.013, House Bill 1543, Acts, 74th Legislature, Regular Session, which provides the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

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 27, 1995.

TRD-9513897

James L. Pledger  
Commissioner  
Texas Savings and Loan  
Department

Effective date: November 17, 1995

Proposal publication date: July 25, 1995

For further information, please call: (512) 475-1350

## Change of Control

### • 7 TAC §75.123

The Finance Commission of Texas adopts an amendment to §75.123, regarding hearings in change of control applications of a state savings bank, without changes to the proposed text as published in the July 25, 1995, issue of the *Texas Register* (20 TexReg 5466).

The change will conform the section with the statutory changes of House Bill 1020 enacted by the 74th Legislature.

The adopted change will clarify the commissioner's authority to require a hearing on an application for acquisition of control of a savings bank if he deems it desirable to accumulate a complete record of information in support of approval or denial of the application. Such a hearing is solely within the discretion of the commissioner and change of control applications may be approved without a hearing. In the event that a change of control application is denied, the applicant would be entitled to a hearing.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Banking Act, §1.013, House Bill 1543, Acts, 74th Legislature, Regular Session, which provides the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

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 27, 1995.

TRD-9513898

James L. Pledger  
Commissioner  
Texas Savings and Loan  
Department

Effective date: November 17, 1995

Proposal publication date: July 25, 1995

For further information, please call: (512) 475-1350

## Chapter 77. Loans, Investments, Savings and Deposits

### Authorized Loans and Investments

#### • 7 TAC §§77.4, 77.5, 77.7, 77.10, 77.72, 77.73, 77.91, 77.96

The Finance Commission of Texas adopts amendments to §§77.4, 77.5, 77.7, 77.10, 77.72, 77.73, 77.91, and 77.96, relating to authorized loans and investments for state savings banks. Section 77.73 is adopted with changes to the proposed text as published in the July 28, 1995, issue of the *Texas Register* (20 TexReg 5576). Sections 77.4, 77.5, 77.7, 77.10, 77.72, 77.91, and 77.96 are adopted without changes and will not be republished.

The text of §77.73 is being republished due to submission and publication errors in the *Texas Register*.

The amendment to §77.4 and §77.5 will make technical corrections removing the requirement that a list of approved appraisers be maintained by the board of directors for these types of loans and to update the identity of the real estate. The requirement that the board of directors of a savings bank maintain an approved list of appraisers was deleted from companion rules for other types of loans effective July 11, 1994, to conform with revisions made in federal regulations. The amendment to §77.7 clarifies that real estate loans under this provision may also include as security all structures and improvements added to the property, while limiting the term of such loans to five years and requiring at least semi-annual interest payments. These changes will make savings banks rules consistent with state S&L rules for similar loans. The amendment to §77.10 will conform the non-real estate commercial loan lending authority in this rule to the statutory changes made in House Bill 1020, Acts, 74th Legislature, Regular Session. The amendment to §77.72 will revise the base for the savings bank liquidity calculation on average daily deposits as revised by House Bill 1020, instead of assets as is currently required and provide more definitive guidance on the type of investments eligible for inclusion as liquid assets. The amendment to §77.73 will limit the holding period for real estate held for future expansion and real estate acquired in satisfaction of debt to no more than five years, unless an extension of the period is approved by the commissioner. This change will conform the rule to standards applied to state and federal S&Ls. The other change in §77.73 will provide the savings banks with the full statutory authority to invest no more than 100% of the savings bank's capital in its premises and equipment. The amendment to §77.91 will clarify that the commissioner's approval must be obtained for a subsidiary to engage in an additional or substitute activity. The amendment to §77.96 will require that operating subsidiaries meet all other requirements of this chapter that apply to non-operating subsidiaries.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Banking Act, §1.013, House Bill 1543, Acts, 74th Legislature, Regular Session, which provides the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

*§77.73. Investment in Banking Premises and Other Real Estate Owned.*

(a) No savings bank, without prior written consent of the commissioner, shall invest an amount in excess of its capital in fixed assets, including land, improvements, furniture and fixtures, and other depreciable assets, and capital leases.

(b) No savings bank shall acquire real estate, other than its domicile, except in

satisfaction or partial satisfaction of indebtedness, or in the ordinary course of the collection of loans and other obligations owing the savings bank, or for the use of the bank in future expansion of its banking facilities.

(c) If real estate acquired for the future expansion of the savings bank's facilities is not improved and occupied as banking facilities within three years from the date of its acquisition, the savings bank shall sell or otherwise dispose of such property; provided that the commissioner may for good cause shown grant an extension of time for a period of one year or more.

(d) Real estate acquired in satisfaction or partial satisfaction of indebtedness, or in the ordinary course of the collection of loans and other obligations owing the savings bank shall be held by a savings bank for no more than five years, unless the commissioner extends in writing the holding period for such property.

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 27, 1995.

TRD-9513899 James L. Pledger  
Commissioner  
Texas Savings and Loan  
Department

Effective date: November 17, 1995

Proposal publication date: July 28, 1995

For further information, please call: (512) 475-1350

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**Chapter 79. Miscellaneous**

**Books, Records, Accounting Practices, Financial Statements, and Reserves**

• 7 TAC §79.4, §79.7

The Finance Commission of Texas adopts an amendment to §79.4, relating to the requirement for annual publication and submission of a statement of financial condition as of December 31 by each savings bank, and to the requirement for an annual independent audit of each savings bank; and new §79.7 giving the commissioner the flexibility to extend the examination frequency cycle by up to six months, without changes to the proposed text as published in the July 25, 1995, issue of the *Texas Register* (20 TexReg 5466).

These changes will update certain requirements in accordance with other state and federal financial institutions.

The requirement for annual or more frequent publication of a statement of condition has been removed for other state and federal financial institutions, this amendment will eliminate such publication requirement for

savings banks. House Bill 1020, Acts, 74th Legislature, Regular Session, eliminated the requirement for an annual independent audit of savings banks with assets under \$500 million that are rated in the two highest categories on the Uniform Financial Institutions' Rating System (CAMEL). Existing §79.4 will incorporate this statutory change in the rule, and to provide clarification and consistent definition to the annual financial report required to be submitted to the commissioner by those savings banks not required to have an independent audit.

Additionally, §79.7 is a new rule to provide the commissioner with the flexibility to extend the examination frequency cycle by up to six months consistent with the savings bank's historical performance as measured by its last examination and off-site financial monitoring by the Department. This change is responsive to efforts at both the state and federal level to relieve regulatory burden on those savings banks that are well managed and well capitalized. The rule will also provide needed flexibility to coordinate scheduling of joint, concurrent and alternating examinations with federal regulators who already have such authority.

No comments were received regarding adoption of the amendment and new section.

The amendment and new section are adopted under the Texas Banking Act, §1.013, House Bill 1543, Acts, 74th Legislature, Regular Session, which provides the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

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 27, 1995.

TRD-9513900 James L. Pledger  
Commissioner  
Texas Savings and Loan  
Department

Effective date: November 17, 1995

Proposal publication date: July 25, 1995

For further information, please call: (512) 475-1350

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**Foreign Savings Banks**

• 7 TAC §79.61

The Finance Commission of Texas adopts an amendment to §79.61, regarding the applicability of the rules and regulations to foreign savings banks, without changes to the proposed text as published in the July 25, 1995, issue of the *Texas Register* (20 TexReg 5467).

A foreign savings bank is a savings bank whose principal office is located outside this state and that has been organized under the laws of a state or territory of the United States other than this state or under the laws of the United States. The amendment removes the



reference to §75.40 relating to Agencies. Rules requiring application and prior approval for Agency arrangements were repealed effective November 21, 1994.

The amendment will remove the reference to §75.40 relating to Agencies.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Banking Act, §1.013, House Bill 1543, Acts, 74th Legislature, Regular Session, which provides the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

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 27, 1995.

TRD-9513901 James L. Pledger  
Commissioner  
Texas Savings and Loan  
Department

Effective date: November 17, 1995

Proposal publication date: July 25, 1995

For further information, please call: (512) 475-1350

## Hearings

### • 7 TAC §§79.71-79.76

The Finance Commission of Texas adopts the repeal of §§79.71-79.76, regarding the hearing procedures for the Savings and Loan Department, without changes to the proposed text as published in the July 25, 1995, issue of the *Texas Register* (20 TexReg 5468).

These changes will incorporate the Texas Banking Act, §1.011(b), House Bill 1543, Acts, 74th Legislature, Regular Session, which authorizes the Finance Commission to employ a hearing officer, who for purposes of the Government Code, §2003.21, Vernon's Texas Codes Annotated, is an employee of the Savings and Loan Department, Department of Banking and the Office of the Consumer Credit Commissioner (together, the "FC agencies").

Previously, all hearings conducted by the Department in conjunction with the Texas Savings Bank Act were required to be handled by the State Office of Administrative Hearings. New §79.71 designates the Finance Commission's hearings officer as hearings officer for the Department. New §79.72 incorporates by reference standard rules for the Finance Commission hearing officer to apply in conducting contested hearings for the Finance Commission agencies. The new §79.73 gives the commissioner the flexibility to amend a notice of hearing for publication to facilitate joint publication of the notice with other regulatory agencies having jurisdiction in the matter, expedite the hearing process, or provide other information relevant to the hearing or arrangement and scheduling therefor.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Banking Act, §1.013, House Bill 1543, Acts, 74th Legislature, Regular Session, which provides the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

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 27, 1995.

TRD-9513902 James L. Pledger  
Commissioner  
Texas Savings and Loan  
Department

Effective date: November 17, 1995

Proposal publication date: July 25, 1995

For further information, please call: (512) 475-1350

### • 7 TAC §§79.71-79.73

The Finance Commission of Texas adopts new §§79.71-79.73, regarding the hearing procedures for the Savings and Loan Department, without changes to the proposed text as published in the July 25, 1995, issue of the *Texas Register* (20 TexReg 5468).

These changes will incorporate the Texas Banking Act, §1.011(b), House Bill 1543, Acts, 74th Legislature, Regular Session, which authorizes the Finance Commission to employ a hearing officer, who for purposes of the Government Code, §2003.21, Vernon's Texas Codes Annotated, is an employee of the Savings and Loan Department, Department of Banking and the Office of the Consumer Credit Commissioner (together, the "FC agencies").

Previously, all hearings conducted by the Department in conjunction with the Texas Savings Bank Act were required to be handled by the State Office of Administrative Hearings. New §79.71 designates the Finance Commission's hearings officer as hearings officer for the Department. New §79.72 incorporates by reference standard rules for the Finance Commission hearing officer to apply in conducting contested hearings for the Finance Commission agencies. The new §79.73 gives the commissioner the flexibility to amend a notice of hearing for publication to facilitate joint publication of the notice with other regulatory agencies having jurisdiction in the matter, expedite the hearing process, or provide other information relevant to the hearing or arrangement and scheduling therefor.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Banking Act, §1.013, House Bill 1543, Acts, 74th Legislature, Regular Session, which provides the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

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 27, 1995.

TRD-9513903 James L. Pledger  
Commissioner  
Texas Savings and Loan  
Department

Effective date: November 17, 1995

Proposal publication date: July 25, 1995

For further information, please call: (512) 475-1350

## Fees and Charges

### • 7 TAC §§79.99, 79.101, 79.102

The Finance Commission of Texas adopts amendments to §79.99, regarding fees for reorganization, merger, and consolidation, §79.101, regarding fees for change of control, and §79.102, regarding fees for the formation of subsidiaries, without changes to the proposed text as published in the July 25, 1995, issue of the *Texas Register* (20 TexReg 5468).

These amendments will clarify and simplify the fee structure, more closely match fees with the amount of staff processing and investigating time required for these applications.

The amended fees will be charged for the respective applications.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Banking Act, §1.013, House Bill 1543, Acts, 74th Legislature, Regular Session, which provides the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

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 27, 1995.

TRD-9513904 James L. Pledger  
Commissioner  
Texas Savings and Loan  
Department

Effective date: November 17, 1995

Proposal publication date: July 25, 1995

For further information, please call: (512) 475-1350

## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 1. Texas Board of Health

The Texas Department of Health (department) adopts the repeal of §1.201 and new

§§1.201-1.207, concerning investigations of reports of abuse, neglect, or exploitation of children or elderly or disabled persons. Sections 1.201-1.207 are adopted with changes to the proposed text as published in the June 9, 1995, issue of the *Texas Register* (20 TexReg 4193). Proposed §1.208 is withdrawn. The repeal is adopted as proposed and therefore the repeal will not be republished.

Specifically, the sections cover purpose; application; definitions; what constitutes abuse, neglect, and exploitation; reports and investigations; completion of investigations; confidentiality of investigative process and report; and facilities operated by the department. The new sections are adopted pursuant to the Family Code, Chapter 261 (formerly Chapter 34) relating to abuse or neglect of a child and the Human Resources Code, Chapter 48, relating to the abuse, neglect, or exploitation of elderly or disabled persons. The previous Family Code, Chapter 34 was codified into new Chapter 261 pursuant to Acts 1995, 74th Legislature, Chapter 20 (House Bill 655) as amended by Acts 1995, 74th Legislature, Chapter 751, §§86-100 (House Bill 433). The Human Resources Code, Chapter 48 was amended by Acts 1995, 74th Legislature, Chapter 303 (House Bill 1111). Other amendments to these laws were contained in Acts 1995, 74th Legislature, Chapter 1039 (House Bill 2029), Chapter 943 (House Bill 2569) and Chapter 76 (Senate Bill 959). The department has determined that the inclusion of the legislative amendments in these new sections does not require reproposal of the sections. In accordance with these laws as amended, the department is required to investigate reports relating to abuse, neglect, or exploitation in facilities operated, licensed, certified, or registered by the department. Proposed new §1.208 is withdrawn as a result of comments; however the language in subsection (c) was revised and moved to §1.206(i). The new sections will replace existing §1.201 (being repealed) which addresses such investigations.

These sections will insure uniformity in investigations of abuse, neglect, or exploitation performed by the department in compliance with the laws relating to such investigations.

A summary of the comments received and the department's responses are as follows.

**Comment:** In §1.201, a commenter stated that the Family Code, Chapter 34 was recodified in Chapter 261 pursuant to Acts 1995, 74th Legislature, Chapter 20 (House Bill 655) as amended by Acts 1995, 74th Legislature, Chapter 751, §§86-100 (House Bill 433).

**Response:** The department agrees and has revised the reference to reflect Chapter 261 in §1.201. The other reference in §1.205(d) to Chapter 34 has been changed to Chapter 261.

**Comment:** In §1.202, a commenter stated that it was not clear whether the investigation was done by the department or the facility.

**Response:** The department agrees and has revised the section to clarify that the rules apply to a department investigation. Section 1.205 and §1.206 already state that the department is the entity performing the investigations.

**Comment:** In §1.203, a commenter stated that under the definition of "client" some clients may be receiving custodial care such as those within a skilled nursing facility wing of a hospital, rather than health care services.

**Response:** The department agrees and has deleted the reference to "health care" in the definition of "client".

**Comment:** In §1.203, a commenter stated that the definition of "disabled person" was changed in the last legislative session by Acts 1995, 74th Legislature, Chapter 303 (House Bill 1111) which amended the Human Resources Code, Chapter 48.

**Response:** The department agrees and has revised the definition of "disabled person" in accordance with House Bill 1111.

**Comment:** In §1.203, a commenter asked that the definition of "facility" be revised to include licensed end stage renal disease facilities.

**Response:** The department agrees and has revised the definition to include end stage renal disease facilities. Such facilities will be required to be licensed by September 1, 1996, pursuant to the Health and Safety Code, Chapter 251 as added by Acts 1995, 74th legislature, Chapter 608, (House Bill 1023). The department will be authorized to investigate in such facilities once they are licensed.

**Comment:** In §1.203, a commenter asked whether the definition of "facility" should include a licensed home and community support services agency or reference emergency medical services (EMS) or hospice.

**Response:** A hospice is licensed as a home and community support services agency. A home and community support services agency is not a "facility". Legislation was filed which would have included such agencies in the definition of "facility" but it did not pass. EMS does not license any type of "facility" but does license certain providers of EMS services. No change was made due to this comment.

**Comment:** In §1.203, a commenter asked whether the use of the word "child" in the definition of "incest" should reference other family members.

**Response:** The department disagrees because the term "incest" was only used in the definition of abuse of a child found in proposed §1.204(1)(E) and (F). As used in those subparagraphs, the reference was clearly to incest with a child. However, because House Bill 655 and House Bill 433 revised the definition of "abuse" of a child to exclude the term "incest", the term has now been deleted from the definitions.

**Comment:** In §1.203, a commenter asked whether under the definition of "nonserious physical injury" an injury would still be nonserious if multiple lacerations, contusions, or abrasions occurred.

**Response:** The department believes that such could constitute a serious physical injury and has added such to the definition of "serious physical injury" in §1.203 and made minor punctuation changes necessitated by the addition.

**Comment:** In §1.203, a commenter stated that "serious physical injury" should also include first degree scald burns if greater than the percentage of the body involved or it involving hands, feet, face, or genitals.

**Response:** The department agrees and has added this language to the definition.

**Comment:** In §1.203, a commenter stated that the term "sexual abuse" has been more clearly addressed in the revisions to the Human Resources Code, Chapter 48, found in House Bill 1111.

**Response:** The department agrees and has added the language from the definition of "abuse" of an elderly or disabled person in House Bill 1111 to the definition of "sexual abuse".

**Comment:** In §1.203, a commenter asked that the definition of "sexual exploitation" be revised by deleting the last sentence and substituting a sentence stating that the "term does not include discussing sexual subject matter within standard accepted practice". Another commenter pointed out that the section of the Penal Code (§21.14) from which this definition was taken was repealed effective September 1, 1994.

**Response:** Because the legislature repealed the criminal definition of "sexual exploitation" and because that term is only used in the definition of "sexual abuse", the department has deleted the definition of "sexual exploitation" and revised the definition of "sexual abuse" to delete the term.

**Comment:** In §1.204(a)(1)(E) and (F), a commenter stated that this part of the definition of abuse of a child was revised by House Bill 433 amending the Family Code.

**Response:** The department agrees and has revised subparagraphs (E) and (F) to reflect the new statutory language of House Bill 433.

**Comment:** In §1.204(a)(2), a commenter stated that House Bill 1111 revised the definition of abuse of an elderly or disabled person.

**Response:** The department agrees and has revised the definition to reflect the language of House Bill 1111.

**Comment:** In §1.204(a)(3), a commenter stated that this definition of abuse is not found in either the Human Resources Code or the Family Code and should be deleted.

**Response:** The department agrees and has deleted all of proposed paragraph (3). Such interpretations of the statutory definitions of "abuse" may be appropriate for interpretive guidelines established by the department. In addition, some of the language of paragraph (3) went beyond the statutory definitions of "abuse" in either the Human Resources Code or the Family Code. Proposed paragraph (4) was renumbered as paragraph (3).

**Comment:** In §1.204(b)(1), a commenter stated that the definition of neglect of a child was revised by House Bill 433.

**Response:** The department agrees and has revised the definition in paragraph (1)(A) and added (B)(iv) to reflect the language in House Bill 433.

**Comment:** In §1.204(b)(1)(B)(ii), a commenter stated that some persons fail to

follow through with medical care for a child due to lack of knowledge or lack of money.

Response: The department understands that such may occur; however, the language used is the statutory definition of neglect of a child and cannot be changed by the department.

Comment: In §1.204(b)(2), a commenter stated that House Bill 1111 revised the definition of neglect of an elderly or disabled person.

Response: The department agrees and has revised the definition to reflect the language in House Bill 1111.

Comment: In §1.204(b)(2), a commenter asked whether neglect of an elderly or disabled person could include an individual's neglect of himself or herself.

Response: The definition does include an individual's self neglect; however, the department recognizes that it is unlikely that such a situation would arise in a facility. Because this is the statutory language, the department will not revise the definition.

Comment: In §1.204(b)(3), a commenter stated that this definition of "neglect" is not found in any statute.

Response: The department agrees and has deleted the language so that only statutory definitions are included.

Comment: In §1.204(c), a commenter stated that House Bill 1111 revised the definition of exploitation of an elderly or disabled person.

Response: The department agrees and has revised the definition to reflect the language found in House Bill 1111.

Comment: In §1.204(c), a commenter asked whether the term "improper act" should be defined.

Response: This term is found in the statutory definition. Because of the difficulty in defining "improper act" to cover every possible situation, the department has not chosen to define the term.

Comment: A commenter stated that there is nothing in the sections about client to client or peer to peer conduct.

Response: The department disagrees. The sections may cover such conduct in §1.204(a)(1) relating to abuse of a child "by any person," in §1.204(a)(2) relating to abuse of an elderly or disabled person which could include abuse by a peer or other client, and in §1.204(b)(1)(B) relating to neglect of a child "by any person." See also §1.205(b) and (c)(5). These sections are intended to address only the situations covered by the Family Code, Chapter 261 or the Human Resources Code, Chapter 48. Abuse or neglect which cannot be investigated by the department could be referred to law enforcement agencies or other appropriate entities.

Comment: A commenter stated that there is nothing about neglect by a facility, e.g., lack of staff or failure to seek medical intervention.

Response: The department disagrees. While staffing ratios are not abuse under §1.204(a)(3)(D), a situation created by a facility could be neglect under §1.204(b)(1)(B) or (2) if the situation fits within those definitions.

Comment: In §1.204, a commenter asked why the proposed sexual exploitation language only referred to children, not disabled or elderly persons.

Response: In the proposed rules sexual exploitation only referred to children because the Human Resources Code, Chapter 48 did not expressly address sexual conduct. The revisions by House Bill 1111 added sexual abuse of elderly or disabled persons and §1.204(a)(2) has been revised to include that language.

Comment: In §1.205(a), a commenter asked who within the department will investigate allegations.

Response: The program within the department which licenses, certifies, registers, or operates the facility where the abuse, neglect or exploitation occurred will be responsible for the investigation unless the department should determine otherwise. There is no need to reflect that internal decision in these rules.

Comment: In §1.205(c)(1), a commenter stated that some allegations will need to be referred to Child Protective Services as well as the stated Adult Protective Services Division of the Texas Department of Protective and Regulatory Services.

Response: The department agrees and has removed the reference to the Adult Protective Services Division.

Comment: In §1.205(c)(2), a commenter was concerned because no responsibility was placed on the facility which may have been a contributing agent in the abuse or neglect if the allegation was turned over to another licensing agency.

Response: The paragraph has been clarified by revising subparagraph (A) so the licensing agencies will still receive allegations involving clinical issues and a health care professional licensed by that agency but the department will investigate the portion of the allegations which do not involve clinical issues.

Comment: In §1.205(c)(2)(B), a commenter stated that the Family Code, §201.101(d) requires the reporter's identity to be kept confidential except by court order or to law enforcement.

Response: The department agrees and has revised §1.205(c)(2)(B) to keep the identity of a person reporting any abuse or neglect confidential.

Comment: In §1.205(e)(2), a commenter stated that the Texas Department of Protective and Regulatory Services and the Texas Commission on Alcohol and Drug Abuse already refer dually licensed facilities to the department for its investigation.

Response: Section 1.205(e)(2) has been revised to require notice to the other licensing agency only if the other agency is not already aware of the investigation. If another agency referred the allegation to the department for the department's investigation, coordination has already occurred.

Comment: A commenter stated that the Family Code was amended at §261.301(f) and (g) by House Bill 2569 to require joint investigations for certain allegations, if possible.

Response: The department agrees and has added §1.205(e)(3) to reflect the requirements of the Family Code, §261.301(f) and (g).

Comment: In §1.205(h), a commenter asked whether this language changes the department's policy of ruling an allegation of abuse or neglect as not valid if no violation of department rules is found.

Response: State law requires a determination as to whether abuse, neglect or exploitation occurred or is likely to occur. It makes absolutely no difference as to whether or not regulatory violations are found. The department's policy under the previous §1.201 and previous state law is and has been that a finding of abuse, neglect or exploitation is made without regard to regulatory violations. The department will continue to follow that policy under §1.205(h).

Comment: In §1.205(i)(1), a commenter stated that the alleged victim is not always available or the attending physician may feel it would be detrimental to treatment to interview the person.

Response: The department agrees and has revised the paragraph to require the interview, if appropriate.

Comment: In §1.205(i)(2), a commenter asked why a visit to the place of residence of an elderly or disabled person is required but a visit to the place of residence of a child is at the discretion of the investigator.

Response: The difference was due to the difference in language between the Family Code and Human Resources Code. Because of revisions contained in House Bill 655 and House Bill 1111, the reference to a visit to the place of residence has been deleted entirely and the subsequent paragraphs have been renumbered.

Comment: In §1.205(j)(2), a commenter stated that House Bill 433 and House Bill 655 revised the cited section so that it no longer references investigations of this department.

Response: The department agrees and has revised paragraph (2) to reflect the new section of the Family Code.

Comment: In §1.205(k), a commenter stated that the term "frivolous" is more appropriate than "spurious".

Response: The department agrees, especially since the term "frivolous" is found in the Human Resources Code, and has revised the wording.

Comment: In §1.206(c), a commenter asked who are the "appropriate department personnel."

Response: The programs within the department which will conduct the investigations will determine who must review the reports. Such an internal decision does not require further clarification in the subsection.

Comment: In §1.206, a commenter asked about budget, personnel and Health Care Financing Administration (HCFA) time frames in relationship to the time frames for investigations.

Response: The department is required by

state law to conduct these investigations. HCFA is the federal Medicare certification organization and its time frames do not apply to these investigations. Budget and personnel issues were considered when the fiscal note for the proposed rules was prepared. There is no revision to the time frames in this section.

Comment: In §1.206(e)(1), a commenter stated that House Bill 1111 revises the Human Resources Code to require a report to law enforcement agencies if an investigation reveals that an elderly or disabled person has been abused in a manner that constitutes a criminal offense under any law, including the Penal Code, §22.04. Another commenter stated that the Family Code requires reports to law enforcement agencies if any abuse or neglect of a child without regard to whether it would be a criminal offense.

Response: The department agrees and has added a new paragraph (4) to reflect the language on elderly and disabled persons and revised paragraph (1) to address child abuse or neglect.

Comment: In §1.206(e), a commenter stated that this subsection places a heavy burden on the department to notify law enforcement without any input from the "victim."

Response: State law requires the department to notify law enforcement agencies when abuse, neglect or exploitation is found or when such would be a criminal offense. This subsection reflects state law in the revisions to §1.206(e)(1) and (4).

Comment: In §1.206(e)(2), a commenter stated that all investigative reports do not have to go to the Department of Protective and Regulatory Services under the revised state laws.

Response: The department agrees and has added language to say the reports will be forwarded if protective services are necessary.

Comment: In §1.206(e)(3), a commenter stated that the Family Code relating to children would not allow a probate court to automatically receive a copy of the report.

Response: The department agrees and has revised paragraph (3) to only address elderly or disabled persons.

Comment: In §1.206(f), a commenter stated that the Family Code relating to children would not permit information relating to the identity of the reporter to be forwarded to a state agency and the Human Resources Code, §48.101(f) permits release to other state agencies only for the purpose of providing services to elderly or disabled persons.

Response: The department agrees and has added a sentence so that the identity of the reporter will be deidentified in any report sent to another state agency.

Comment: In §1.206(f), a commenter pointed out that some health care professionals are certified or registered. Another commenter pointed out that the department may not always want to send the entire copy of the investigative report because only part of the report may involve the health care professional. Another commenter thought that the term "involving" should actually be the preposition "by".

Response: The department agrees with all the comments and has revised the subsection to use the term "by"; to reference a licensed, certified, or registered health care professional; and to state that the department "may" forward a copy of the report.

Comment: In §1.206(g), a commenter stated that the reporter may not be known and therefore could not be contacted about the outcome of the investigation.

Response: The department agrees and has revised the subsection to reference known reporters.

Comment: In §1.206(h), a commenter asked whether notification of the alleged victim would require more than notice that the allegation was found to be valid or not valid.

Response: The notice does not require more than that. No change was made to the subsection.

Comment: In §1.207(a), a commenter stated that the subsection should reference changes made by House Bill 433 and House Bill 1111 by including the word "communications", a reference to papers that are used or developed in the investigation, and a reference to both the Human Resources Code, §48.101 and §48.038 and the Family Code, §261.201.

Response: The department agrees and has made these changes to the subsection.

Comment: In §1.207(d), a commenter stated that House Bill 433 and House Bill 1111 contain specific requirements relating to disclosure under a court order.

Response: The department agrees and has added a reference to court order in subsection (d) and deleted the reference to civil or criminal litigation.

Comment: In §1.207(e), a commenter stated that documents should not be released to a victim if there is an ongoing criminal investigation.

Response: The department agrees and has revised subsection (e) to state that documents may be released to a victim if there is no ongoing criminal investigation.

Comment: In §1.207(e), a commenter stated the Family Code, §261.201(f) and the Human Resources Code, §48.101(d) require deidentification of individuals whose safety might be endangered by the disclosure.

Response: The department agrees and has added the language.

Comment: In §1.207, a commenter stated that the Family Code, §261.201(c) and (e) provide for disclosure to adoptive parents, prospective adoptive parents and adults who were the subject of an investigation as a child.

Response: The department agrees and has added subsection (g) to address these disclosures.

Comment: In proposed §1.208(a) and (b), a commenter stated that the department is no longer required to notify the Texas Department of Protective and Regulatory Services about allegations received about facilities operated by the department or of investigative reports.

Response: The department agrees and has deleted these subsections but has revised §1.208(e)(2) requiring investigative reports to go to that department if protective services are necessary.

Comment: In proposed §1.208(c) and (d), a commenter asked why there is a difference between investigations relating to children and investigations relating to an elderly or disabled person. Another commentator stated that House Bill 1111 revised the requirements relating to a complaint about an investigation relating to an elderly or disabled person.

Response: Proposed subsections (c) and (d) were different because of the differences between the Family Code and the Human Resources Code; however, because of changes made to House Bill 1111, the department has deleted subsection (d) and revised subsection (c) to state that any complaint about a department investigation in a facility (whether licensed or operated by the department) should be referred to the appropriate associate commissioner or office which oversees the investigations in that particular facility. This subsection was then moved to §1.206(l).

The following provided comments on the proposed rules: the Texas Psychological Association, the Texas Department of Protective and Regulatory Services and department staff. None of the commenters were against the rules, but they expressed questions and made recommendations which have been incorporated as discussed above.

### Investigations of Abuse, Neglect, or Exploitation in a Facility Operated, Licensed, or Certified by the Texas Department of Health

#### • 25 TAC §1.201

The repeal is adopted under the Health and Safety Code, §12.001, which provides the Board of Health with 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; the Family Code, §261.401, requiring rules relating to the investigation of abuse or neglect of a child; and the Human Resources Code, §48.083, requiring rules relating to the investigation of abuse, exploitation, or neglect of an elderly or disabled person.

#### §1.201. Investigations of Abuse, Neglect, or Exploitation.

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 26, 1995.

TRD-9513821 Susan K. Steeg  
General Counsel  
Texas Department of  
Health

Effective date: November 16, 1995

Proposal publication date: June 9, 1995

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



## Investigations of Abuse, Neglect, or Exploitation of Children or Elderly or Disabled Persons

### • 25 TAC §§1.201-1.207

The new sections are adopted under the Health and Safety Code, §12.001, which provides the Board of Health with 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; the Family Code, §261.401, requiring rules relating to the investigation of abuse or neglect of a child; and the Human Resources Code, §48.083, requiring rules relating to the investigation of abuse, exploitation, or neglect of an elderly or disabled person.

*§1.201. Purpose.* The purpose of these sections is to:

(1) define abuse or neglect of a child and describe procedures for reporting and investigating in accordance with the Family Code, Chapter 261; and

(2) define abuse, neglect or exploitation of an elderly or disabled person and describe procedures for reporting and investigating in accordance with the Human Resources Code, Chapter 48.

*§1.202. Application.* The provisions of this undesignated head shall apply to the Texas Department of Health's investigation of abuse or neglect of a child or abuse, neglect or exploitation of an elderly or disabled person which occurs in any facility licensed, certified, registered, or operated by the Texas Department of Health.

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

**Agent**—An individual not employed by a facility but working under the auspices of the facility, such as a volunteer, student, or consultant.

**Allegation**—A report by a person believing or having knowledge that a child has been or may be abused or neglected in a facility or that an elderly or disabled person has been or may be abused, neglected or exploited in a facility.

**Caretaker**—An owner, operator, manager, employee, or agent of a facility in which a patient or client is located.

**Child**—A person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.

**Client**—A child, disabled person or elderly person receiving services in a facility.

**Clinical issues**—Issues relating to unsafe practice by a licensed health care professional or a violation of a state law or rule relating to the licensure or practice of a licensed health care professional.

**Confirmed**—A finding that an allegation of abuse, neglect, or exploitation is supported by the preponderance of the evidence.

**Department**—The Texas Department of Health.

**Disabled person**—A person with a mental, physical, or developmental disability that substantially impairs the person's ability to provide adequately for the person's care or protection and who is either 18 years of age or older or who is under 18 years of age and has the disabilities of minority removed.

**Elderly person**—A person 65 years of age or older.

**Facility**—A facility providing health care services which is operated, licensed, certified, or registered by the department. Such facilities include licensed general or special hospitals, licensed private psychiatric hospitals, licensed special care facilities, licensed abortion facilities, licensed ambulatory surgical centers, licensed birthing centers, licensed end stage renal disease facilities, the two state chest hospitals operated by the department, and public health clinics operated by the department. This term includes any owner, operator, manager, employee, or agent of a facility.

**Guardian**—Anyone named as "guardian of the person" of a child, elderly person, or disabled person by a probate court order.

**Inconclusive**—A finding that an allegation of abuse, neglect, or exploitation leads to no conclusion or definite result due to a lack of witnesses or other relevant evidence.

**Nonserious physical injury**—Any injury determined not to be serious by the examining physician. Examples of nonserious injury may include superficial laceration, contusion, or abrasion.

**Observable and material impairment**—Discernable and substantial damage or deterioration.

**Patient**—A child, disabled person, or elderly person receiving health care services in a facility.

**Perpetrator**—The person who has committed an act of abuse or neglect of a child or abuse, neglect, or exploitation of an elderly or disabled person.

**Perpetrator unknown**—The term used to describe an incidence in which abuse, neglect, or exploitation is confirmed but positive identification of the responsible person can not be made and in which self injury has been eliminated as the cause.

**Preponderance of evidence**—The greater weight of evidence or evidence which is more credible and convincing to the mind.

**Reporter**—The person filing a report of abuse, neglect, or exploitation, either the:

(A) victim of alleged abuse, neglect, or exploitation;

(B) a third party filing a report on behalf of the alleged victim; or

(C) both.

**Serious physical injury**—An injury determined to be serious by the examining physician. Examples of serious injury may include fracture; dislocation of any joint; internal injury; any contusion larger than two and one-half inches in diameter; concussion; second or third degree burns; first degree scald burns greater than the percentage of the body involved or involving hands, feet, face or genitals; or multiple lacerations, contusions or abrasions.

**Sexual abuse**—Any sexual activity, including any involuntary or nonconsensual sexual conduct that would constitute an offense under the Penal Code, §21.08 (indecent exposure) or Chapter 22 (assaulting offenses), involving a facility and a patient or client. Sexual activity includes but is not limited to kissing, hugging, stroking, or fondling with sexual intent; oral sex or sexual intercourse; and request, suggestion or encouragement for the performance of sex.

**Substantial harm**—Real and significant physical injury or damage to a child that includes, but is not limited to, bruises, cuts, welts, skull or other bone fractures, brain damage, subdural hematoma, internal injuries, burns, scalds, wounds, poisoning, human bites, concussions, and dislocations and sprains.

**Substantial risk**—Real and significant possibility or likelihood.

**Unconfirmed**—A finding that an allegation of abuse, neglect or exploitation is not supported by the preponderance of the evidence.

**Unfounded**—A finding that an allegation of abuse, neglect, or exploitation is spurious or patently without factual basis.

### *§1.204. Abuse, Neglect, and Exploitation Defined.*

(a) Abuse defined.

(1) Abuse of a child includes the following acts or omissions by any person:

(A) mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(B) causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(C) physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident (an unforeseen event that causes or threatens physical injury despite prudent efforts to avoid the risk of injury) or reasonable discipline (correction of behavior that does not result in or risk substantial harm from physical injury) by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;

(D) failure to make a reasonable effort to prevent an action (effort that an ordinary and prudent person would take to stop an action from occurring) by another person that results in physical injury that results in substantial harm to the child;

(E) sexual conduct harmful to a child's mental, emotional, or physical welfare;

(F) failure to make a reasonable effort to prevent sexual conduct harmful to a child;

(G) compelling or encouraging the child to engage in sexual conduct as defined by the Penal Code, §43.01 (This is met whether the child actually engages in sexual conduct or simply faces a substantial risk of doing so.); or

(H) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene (as defined by the Penal Code) or pornographic. (This is met whether or not the child voluntarily participates.)

(2) Abuse of an elderly or disabled person means:

(A) the negligent or wilful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain or mental anguish; or

(B) sexual abuse.

(3) Abuse does not include:

(A) the proper use of restraints or seclusion in accordance with federal or state laws or regulations or court order;

(B) other actions taken in accordance with federal or state laws or regulations or court order;

(C) actions an employee may reasonably believe to be immediately necessary to avoid imminent harm to self, patients or clients, or other individuals if such actions are limited only to those actions reasonably believed to be necessary under the existing circumstances. Such actions do not include acts of unnecessary force or the inappropriate use of restraints or seclusion; or

(D) complaints related to the daily administrative operations of a facility (e.g., staffing ratios).

(b) Neglect defined.

(1) Neglect of a child includes:

(A) the leaving of a child in a situation where the child would be exposed to a substantial risk of physical or mental harm, without arranging for necessary care for the child, and a demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of a child;

(B) the following acts or omissions by any person:

(i) placing the child in or failing to remove the child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child;

(ii) the failure to seek, obtain, or follow through with medical care for the child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;

(iii) the failure to provide the child with food, clothing, or shelter necessary to sustain the life or health of the child (if the failure results in an observable and material impairment to the child's growth, development or functioning or in a substantial risk of such an observable or material impairment), excluding failure caused primarily by financial inability unless relief services had been offered and refused; or

(iv) placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child; or

(C) the failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away.

(2) Neglect of an elderly or disabled person means the failure to provide for one's self the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain or the failure of a caretaker to provide such goods or services.

(c) Exploitation defined. Exploitation of an elderly or disabled person means the illegal or improper act or process of a caretaker, family member or other individual who has an ongoing relationship with the elderly or disabled person using the resources of an elderly or disabled person for monetary or personal benefit, profit, or gain without the informed consent of the elderly or disabled person.

#### §1.205. Reports and Investigations.

(a) The Texas Department of Health (department) shall investigate allegations received relating to the abuse or neglect of a child or the abuse, neglect, or exploitation of an elderly or disabled person in a facility.

(b) The department will only investigate reports when:

(1) the act is reported to have occurred in a facility and the victim was a patient or client of the facility;

(2) the act occurred away from the facility but the facility was responsible for the supervision of the patient or client who was the victim at the time the act allegedly occurred;

(3) the act is reported to have occurred in a facility and the alleged perpetrator was an owner, operator, manager, employee, or agent of the facility; or

(4) the act occurred away from the facility but the facility was responsible for the supervision of the alleged perpetrator at the time the act occurred.

(c) The department shall review each allegation and determine that it is appropriate for the department to investigate the allegation.

(1) If there is reason to suspect that the patient or client was abused, neglected, or exploited prior to admission to the facility or during an unsupervised absence from the facility, the department shall refer the allegation to the Texas Department of Protective and Regulatory Services.

(2) If the allegation involves the actions of a licensed health care professional, the department will determine whether the allegation involves clinical issues.

(A) The department will pursue an investigation of the portion of an allegation which does not involve clinical issues.

(B) If the allegation involves clinical issues, the allegation shall immediately be forwarded to the state agency which licenses the health care professional involved. The identity of a person reporting abuse or neglect must be blacked out or deidentified.

(3) The department need not investigate an allegation that clearly does not involve abuse or neglect of a child in a facility or abuse, neglect or exploitation of an elderly or disabled person in a facility. The department may refer the reporter to other agencies for assistance.

(4) Injuries of unknown origin shall be investigated if the attending physician, after examining the patient, suspects that the injury is the result of abuse or neglect.

(5) If an allegation involves the daily administrative operations of a facility and has not resulted in a specific case of abuse, neglect, or exploitation, such as the failure to maintain an adequate number of staff, the department need not investigate the matter under this section but may investigate the matter as a complaint investigation involving regulatory issues.

(d) Allegations which cannot be investigated by the department pursuant to the Family Code, Chapter 261, or the Human Resources Code, Chapter 48 shall be referred to the Texas Department of Protective and Regulatory Services for appropriate investigation or action consistent with existing law.

(e) The department shall make a thorough investigation promptly after receiving an allegation.

(1) The primary purpose shall be the protection of the child or elderly or disabled person.

(2) If a facility is licensed by the department and another state agency, the department shall notify the other agency (if the other agency is unaware of the allegation) before initiating an investigation and make a reasonable effort to coordinate the investigation and avoid duplication of effort.

(3) If a report of serious physical injury or sexual abuse of a child is received by the department from the Texas

Department of Protective and Regulatory Services, the investigation shall be conducted jointly by the appropriate local law enforcement agency and the department, if possible. The department shall document any instance in which a law enforcement agency is unable or unwilling to conduct a joint investigation.

(f) Anonymous allegations will be received and investigated following the same procedures that are used when the reporter is known.

(g) An allegation relating to a patient or client who is in the facility where the act allegedly occurred at the time of the department's receipt of the allegation shall be given priority by the department in the scheduling of investigations. An allegation relating to a patient or client who is no longer in the facility shall be given secondary priority.

(h) An investigation of abuse, neglect, or exploitation may occur in conjunction with other survey activities or complaint investigations relating to violations of federal or state laws or rules; however, the determination as to whether abuse, neglect, or exploitation has occurred or is likely to occur is a separate determination from regulatory matters and shall be made without regard as to whether law or rule violations or deficiencies are cited.

(i) An investigation shall include:

(1) an interview with the alleged victim, if appropriate;

(2) an interview with the alleged perpetrator unless the investigator has already determined that there was no abuse, neglect, or exploitation or the risk of the same does not exist; and

(3) consultation with persons thought to have knowledge of the circumstances.

(j) An investigation shall address the issues set forth in the:

(1) Human Resources Code, §48.038(a), relating to elderly or disabled persons; or

(2) Family Code, §261.401, relating to children.

(k) If during the course of the investigation it becomes apparent that the allegation is frivolous or patently without factual basis, the investigation may be closed as unfounded with supervisory approval. The reason for this determination, based on specific evidence, will be included in the report.

(l) If there is not a preponderance of the evidence to indicate that an allegation should or should not be confirmed, due to lack of witnesses or other available evidence, a finding of inconclusive may be used with supervisory approval.

(m) If during the course of the investigation it becomes apparent that abuse, neglect or exploitation has not occurred or is not likely to occur, the investigation may be closed as unfounded with supervisory approval.

(n) An investigative report shall indicate "perpetrator unknown" in those incidences where the preponderance of evidence exists to confirm abuse, neglect, or exploitation but positive identification of the person responsible cannot be determined and self injury has been eliminated as the cause. Evidence must exist that abuse, neglect, or exploitation has been committed for the term "perpetrator unknown" to be used.

#### §1.206. Completion of Investigation.

(a) After receiving an allegation which the Texas Department of Health (department) determines is appropriate for investigation, the department's investigator shall finish an investigation within:

(1) 14 days if the child or elderly or disabled person is in the facility at the time the department receives the allegation;

(2) 60 days for all other allegations; or

(3) the time period set by an extension granted to the investigator by his or her supervisor.

(b) Following the investigation, the investigator shall submit an investigative report, including:

(1) a statement of the allegations;

(2) a summary of the investigation;

(3) an analysis of the evidence;

(4) the investigator's determination as to whether or not abuse, neglect, or exploitation occurred;

(5) designation of the perpetrator, if possible;

(6) a determination as to how the incident should be classified in accordance with §1.204 of this title (relating to Abuse, Neglect, and Exploitation Defined); and

(7) recommendations resulting from the investigation.

(c) An investigation is not considered complete until review of the investigative report is completed by all appropriate department personnel.

(d) If the department determines that the child or elderly or disabled person should be removed from the facility in order

to protect the child or person from further abuse, neglect, or exploitation, the department shall inform the Texas Department of Protective and Regulatory Services within 24 hours of the determination.

(e) If the investigation confirms abuse, neglect, or exploitation, the written report of the completed investigation by the department, along with the department's recommendations and related documents, shall be submitted to:

(1) the appropriate district or county attorney or law enforcement agency if the report concerns abuse or neglect of a child;

(2) the Texas Department of Protective and Regulatory Services if protective services are necessary;

(3) the appropriate probate court if a guardian has been appointed for an elderly or disabled person; and

(4) the appropriate state or local law enforcement agency if the report concerns abuse of an elderly or disabled person which could constitute a criminal offense under any law, including the Penal Code, §22.04.

(f) In cases of abuse, neglect, or exploitation by a licensed, certified, or registered health care professional, the department may forward a copy of the completed investigative report to the state agency which licenses, certifies or registers the health care professional. Any information which might reveal the identity of the reporter or any other patients or clients of the facility must be blacked out or deidentified.

(g) The department shall notify the reporter, if known, in writing of the outcome of the complete investigation.

(h) The department shall notify the alleged victim, and his or her parent or guardian if a minor, in writing of the outcome of the completed investigation.

(i) If the department receives a complaint about a department investigation of abuse, neglect, or exploitation in a facility, the department shall refer the complaint to the appropriate associate commissioner or office which oversees the investigations in that particular facility.

#### §1.207. Confidentiality of Investigative Process and Report.

(a) The allegation and the reports, records, communications and working papers used or developed in the investigative process, including the resulting final report regarding abuse, neglect, or exploitation, are confidential and may be disclosed only as provided in the Family Code, §261. 201 or the Human Resources Code, §48.101 and §48.038(f) and (g) and pursuant to the sections under this undesignated head.

(b) Information discussed during deliberations of abuse, neglect, and exploitation investigations may not be discussed outside the purview of those deliberations.

(c) The completed investigative report and related documents may be released to governmental agencies as described in this undesignated head.

(d) The completed investigative report and related documents may be released by court order.

(e) The completed investigative report and related documents may be released to the victim or the victim's parent or guardian if the victim is a minor if there is no ongoing criminal investigation. Any information which might reveal the identity of the reporter, any other patients or clients of the facility or any other person whose life or safety might be endangered by the disclosure must be blacked out or deidentified.

(f) The investigative report and related documents shall not be available to the public.

(g) The completed investigative report and related documents shall be released to the adoptive parents or prospective adoptive parents of a child who was the subject of an investigation or an adult who was the subject of an investigation as a child. Any information which might reveal the identity of the reporter, the biological parents or any other person whose identity is confidential shall be blacked out or deidentified.

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 26, 1995.

TRD-9513822

Susan K. Steeg  
General Counsel  
Texas Department of  
Health

Effective date: November 16, 1995

Proposal publication date: June 9, 1995

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

## Chapter 109. Texas Department of Health Hospitals

### Hospital and Medical Staff Bylaws

#### • 25 TAC §§109.1-109.7, 109.15

The Texas Department of Health (department) adopts new §§109.1-109.7, and 109.15, concerning the management of hospitals operated by the department and the duties of officers and employees of the hospitals. Sections 109.2-109.4, 109.6, 109.7, and 109.15 are adopted with changes to the pro-

posed text as published in the May 9, 1995, issue of the *Texas Register* (20 TexReg 3408). Section 109.1 and §109.5 are adopted without changes and therefore will not be republished.

Specifically, the new sections cover the governance structure of the hospitals; hospital bylaws, appointment, composition, functions, and meetings of the hospital oversight committee; responsibilities of the hospital director; recusal by the hospital director; hospital committees; interaction between the hospital oversight committee and the medical staff; medical staff bylaws, rules, and regulations; structure of the medical staff; medical staff executive committee; medical staff appointment, reappointment, and clinical privileges; medical staff clinical departments and medical staff clinical committees; ancillary professionals; and corrective action and fair hearing procedures.

The new sections identify the hospitals' governing structure in terms of lines of authority and depict the lines of authority relative to key planning, management, operation, and evaluation of responsibilities at each level of governance. The Joint Commission on Accreditation of Healthcare Organizations (JCAHO) requires such a document to serve as hospital bylaws and also requires the hospital medical staff to have bylaws. The new sections satisfy JCAHO accreditation requirements and also will enable the Texas Board of Health (board) to adopt rules for the management of the hospitals and the duties of officers and employees of the hospitals as required by Health and Safety Code, Chapter 13. The new sections will reflect the currently existing lines of authority relative to the hospitals, key planning, management, operation, and evaluation of responsibilities at each level of governance, and will enable the department to publish these rules and bylaws in the *Texas Register*.

No comments from outside the department were received regarding the proposal. The following comments were received from staff.

Comment: Concerning §109.3(a)(2), one commenter suggested that the paragraph be reworded to clarify that only practitioners who have privileges at the hospital may admit patients.

Response: The department agrees, and the paragraph has been amended accordingly.

Comment: Concerning §109.4(a)(1) and (2), a commenter suggested that the hospital oversight committee chair, rather than the hospital director, should serve as the hospital's representative to the Texas Board of Health, and that the appropriate committee of the board should make recommendations to the full board concerning any proposed rules which affect the hospitals.

Response: The department agrees and has amended the paragraphs accordingly.

Comment: Concerning §109.4(b) and (c), one commenter stated that it would be inappropriate for the hospital director to serve as chair of the hospital oversight committee at each hospital, but that the hospital director could be a voting member of the oversight committee because of the provisions concerning recusal.



Response: The department agrees in part. The department's regional medical directors will chair the hospital oversight committee meetings. While the department believes the hospital director should be available as a resource to the oversight committee, the committee's ability to provide effective oversight and direction requires that the hospital director be a nonvoting member. Additionally, the vice-chair may be called upon to preside over meetings of the hospital oversight committee in the absence of the chair. The recusal provision at §109.4(c) would not adequately address the problem, because that section applies only when the oversight committee makes a final decision in the corrective action and fair hearing process. Since the hospital director often may have obtained relevant information in the course of his or her daily responsibilities which is not part of the record in a fair hearing procedure, §109.4(c) has been amended to clarify that the hospital director will not participate in any way in final hearings decisions.

Comment: Concerning §109.6(f)(2), one commenter suggested that the paragraph should be clarified to more clearly differentiate between the duties and responsibilities of employed medical staff members and those under contract to the department.

Response: The department agrees and has amended the paragraph accordingly.

Comment: Concerning §109.15(a)(3), one commenter stated that employed staff members are expected to hold office and to serve on medical staff committees, and that contract staff members have significant roles in hospital and medical staff governance. However, the commenter suggested that requiring the same level of participation for employed and contract staff would be inappropriate.

Response: The department agrees and has amended the paragraph to allow appropriate differentiation among categories of members of the medical staff concerning their participation in hospital and medical staff governance.

Comment: Concerning §109.15(e)(4)(B), one commenter suggested that the subparagraph should be amended to address the possibility that the credentials committee and an applicant may not be able to agree on a physician or physicians to perform a physical and/or mental evaluation if the applicant's ability to exercise specific clinical privileges is questioned.

Response: The department agrees and has amended the subparagraph accordingly.

Comment: Concerning §109.15(h)(3)(B)(ii), a commenter stated that the role of clinical committee chairs on the hospital medical staff executive committee should be clarified.

Response: The department agrees and has amended the clause to state only that clinical committee chairs shall serve on the hospital medical staff executive committee. The amended language will allow the medical staff executive committee to obtain the views of the clinical committee chair, while still permitting his or her recusal in appropriate situations.

Minor editorial changes were made for clarification purposes.

Commenters included department staff only. While the commenters were generally in favor of the new sections, they raised concerns and questions.

The new sections are adopted under the Health and Safety Code, §13.034(a), which mandates that the board adopt rules for the management of the hospitals and the duties of officers and employees of the hospitals; Health and Safety Code, §12.001(b), which provides the board of 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. The JCAHO requires that a document identify the hospitals' governing structure in terms of lines of authority and depict the lines of authority relative to key planning, management, operation, and evaluation of responsibilities at each level of governance. The JCAHO also requires the hospital medical staff to have by-laws. The new sections satisfy the statutory mandate as well as requirements of the accrediting body.

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

Board—The Texas Board of Health.

Clinical privileges—Permission to provide medical or other patient care services in the hospital within well-defined limits, based on the individual's professional license and his or her experience, education, competence, ability, and judgment.

Commissioner—The commissioner of health.

Conflict of interest—Arises when an individual's personal or financial interest conflicts or appears to conflict with his or her official responsibility.

Department—The Texas Department of Health.

Hospital—Both the Texas Center for Infectious Disease (TCID) and to South Texas Hospital (STH), unless specifically stated otherwise.

Hospital director—The chief administrative officer appointed to serve at TCID and STH, unless specifically stated otherwise.

Medical staff—All physicians, dentists, podiatrists, and other professionals who are granted privileges to treat patients in the hospital.

Member—A physician, dentist, podiatrist, or other professional who has been appointed to the medical staff and who has been granted privileges by the hospital oversight committee.

Oral surgeon—An individual licensed in Texas who has successfully completed a postgraduate program in oral and maxillofacial surgery, accredited by a nationally recognized accrediting body approved by the United States Office of Education.

Other professional staff—Individuals other than physicians, dentists, or podiatrists

who are permitted by law and by the hospital to provide patient care services without direction or supervision, within the scope of their licenses, and in accordance with individually granted clinical privileges based on criteria established by the hospital.

Physician—A doctor of medicine or a doctor of osteopathy who is licensed to practice, or who is otherwise lawfully practicing medicine in Texas and who, by virtue of education, training, and demonstrated competence, is granted clinical privileges by the hospital to perform a specific diagnostic or therapeutic procedure.

Professional review activity—An activity of the hospital to determine whether an individual physician, dentist, podiatrist, or other professional staff may have clinical privileges at the hospital, or membership on its medical staff, and to determine the scope or conditions of such privileges or membership, or to change or modify such privileges or membership.

Professional review body—The hospital and the hospital oversight committee, or any hospital committee which conducts professional review activity, including any committee of the hospital medical staff when assisting the hospital executive committee in a professional review activity.

### *§109.3. Governance.*

(a) Board of Health. The custody, control, maintenance and operation of all hospitals maintained by the department shall be under the jurisdiction and control of the board, which is ultimately responsible for the quality of care provided at such hospitals.

(1) The board has all the powers, duties and functions granted by law to the board, the state commissioner of health (the commissioner), and the department. The department is composed of:

(A) the commissioner;

(B) an administrative staff;

(C) the Texas Center for Infectious Disease; and

(D) the South Texas Hospital.

(2) The board authorizes practitioners who have been granted privileges at any hospital under its jurisdiction to admit a patient who:

(A) is eligible to receive patient services under a department program; and

(B) will benefit from hospitalization.

(3) Admission to a hospital, as authorized in accordance with Health and Safety Code, Chapter 13, is subject to the availability of:

(A) appropriate space, equipment, and facilities for the treatment required, after the needs of eligible tuberculosis patients and other patients diagnosed with other infectious or chronic diseases having public health implications have been met; and

(B) trained medical personnel for the necessary medical care and treatment.

(4) In accordance with Health and Safety Code, Chapter 11, the board may delegate to the commissioner, or to the person acting as commissioner in the commissioner's absence, any power or duty imposed on the board by law, including the authority to make final orders or decisions, except that the board may not delegate the power or duty to adopt rules.

(5) In accordance with Health and Safety Code, Chapter 13, the board may delegate a power or duty of the board to an employee. The delegation does not relieve the board from its responsibility.

(6) In accordance with Health and Safety Code, Chapter 13, the board shall adopt rules and bylaws relating to the management of the hospitals, the duties of officers and employees of the hospital and the enforcement of discipline and restraint of patients. The board shall supply each hospital with the necessary personnel for operation and maintenance. The board may:

(A) require reports from the director of each hospital relating to the admission, examination, diagnosis, release or discharge of a patient and may visit each hospital regularly to review admitting procedures and the care and treatment of patients;

(B) investigate by personal visit a complaint made by a patient or by another person on behalf of a patient; and

(C) adopt rules as necessary for the proper and efficient hospitalization of tuberculosis patients.

(b) Commissioner. In accordance with §1.7 of this title (relating to the Commissioner of Health), the commissioner, as executive head of the department, shall perform the duties delegated and assigned by the board and state law, and shall administer and enforce federal and state health laws applicable to the department. Further, the commissioner shall administer and imple-

ment department services, programs and activities, maintain professional standards within the department, and represent the department as its chief executive. To accomplish this goal, the commissioner is authorized to hire and supervise personnel, establish appropriate organization, acquire suitable administrative, clinical and laboratory facilities, and obtain sufficient financial support.

(c) Hospital director. In accordance with Health and Safety Code, Chapter 13, the department shall employ a qualified hospital administrator for each hospital, hereinafter referred to as the hospital director. The hospital director is appointed by the commissioner. The hospital director may delegate a power or duty of the hospital director to an employee. The delegation does not relieve the hospital director from the responsibility.

#### §109.4. Hospital Bylaws.

(a) Appointment of hospital oversight committee. The commissioner shall appoint a hospital oversight committee for each hospital to fulfill all duties regarding the hospital imposed on the board by law, except for the duty to adopt rules. The hospital oversight committee at each hospital shall function in accordance with Joint Commission on Accreditation of Healthcare Organizations (JCAHO) standards for hospital governance and shall fulfill the responsibilities of the governing body, with the exception of the nondelegable power and duty of the board to adopt rules.

(1) The hospital oversight committee chair shall represent the hospital oversight committee at the designated committee of the board. An elected member of the medical staff shall have the right to represent the medical staff at all levels of governance of the hospital.

(2) The designated committee of the board will make a recommendation to the full board, regarding adoption of proposed rules concerning the hospitals.

(3) The hospital director shall provide information to the board regarding hospital operation by presenting a semi-annual written report to the commissioner.

(b) Composition of the hospital oversight committee. The hospital oversight committee at each hospital shall consist of the following members:

(1) regional medical director, serving as chair, appointed by the commissioner;

(2) hospital director, serving as a nonvoting member, appointed by the commissioner;

(3) vice chair, appointed by the commissioner;

(4) medical staff member, elected at large annually by the medical staff as its representative;

(5) chief of staff/deputy director for professional services (DDPS), appointed by the commissioner; and

(6) two or more members at large, one serving as secretary, appointed by the commissioner.

(c) Recusal by hospital director. The hospital director shall recuse himself or herself from participation and shall not be available as a resource whenever the hospital oversight committee considers any matter for final decision after a hearing and/or appeal under §109.15(j)(7) of this title (relating to Medical Staff Bylaws).

(d) Support personnel. The hospital director may appoint one or more deputies, assistants, and other individuals to perform duties and responsibilities as the director shall deem advisable to support activities of the hospital oversight committee. Such individuals shall not be members of the hospital oversight committee.

(e) Duties of hospital oversight committee. In exercising its authority as the hospital's governing body, the hospital oversight committee shall:

(1) establish policy, promote performance improvement, and provide for organizational management and planning at the hospital;

(2) monitor the effective functioning of activities related to performance improvement;

(3) monitor risk management functions related to patient care and safety;

(4) monitor the credentialing function of the medical staff;

(5) provide financial oversight;

(6) develop and monitor mechanisms and policies designed to ensure the provision of quality patient care;

(7) establish a medical staff;

(8) act on recommendations concerning medical staff appointments, re-appointments, termination of appointments, and the granting of or revision of clinical privileges, ensuring that any differences in those recommendations are resolved within a reasonable period of time by the hospital oversight committee and the medical staff, as specified in the medical staff bylaws;

(9) hold the medical staff responsible for the development, adoption and periodic review of medical staff bylaws, rules and regulations that are consistent with hospital policy and with any applicable legal or other requirement;

(10) hold the medical staff responsible for assessing the quality of care

provided by all individuals with clinical privileges through a designated medical staff mechanism;

(11) establish mechanisms designed to obtain appropriate medical staff participation in governance;

(12) establish a multidisciplinary team of qualified health care providers and require that individuals who provide patient care services, but are not subject to the medical staff privilege delineation process, are competent to provide such services;

(13) establish mechanisms designed to ensure that the organization adheres to relevant statutory and regulatory requirements;

(14) require organizational leaders to collaborate in developing necessary policies and procedures;

(15) require medical staff, staff of departments and services, and others as appropriate, to review and revise all department and service policies and procedures when warranted, but at least every three years;

(16) develop mechanisms designed for resolving conflicts;

(17) ensure that any auxiliary organizations and individual volunteers delineate their purpose and function for approval by the governing body; and

(18) ensure that a record of hospital oversight committee proceedings is maintained.

(f) Term of appointment. Each member of the hospital oversight committee appointed by the commissioner shall hold office for a three-year term, or until his or her successor has been appointed.

(g) Filling of vacancies. Vacancies occurring on the hospital oversight committee, including those by resignation or removal, and any vacancy created by an increase in the number of members, shall be filled by the commissioner of health. A member selected to fill a vacancy shall hold office for the remainder of the original member's term.

(h) Resignation and attendance requirements.

(1) A member-at-large may resign at any time by tendering his or her resignation in writing to the commissioner of health, which shall become effective upon receipt by the Texas Department of Health at its principal place of business.

(2) Members shall be expected to attend and participate in all hospital oversight committee meetings unless unavoidably prevented from doing so. In the event of illness or extended absence due to exten-

uating circumstances for a member-at-large, the chair of the hospital oversight committee, upon request of the affected member-at-large may waive the attendance requirement after considering the circumstances causing the absence of the member.

(i) Compensation. Members of the hospital oversight committee and all committees shall receive no compensation for any services to the committee rendered in those capacities. However, nothing contained in this subsection shall be construed to preclude any member from receiving compensation from the Texas Department of Health for services actually rendered as state employees or as independent contractors, or for expenses incurred while serving the committee.

(j) Conflict of interest.

(1) Each member, prior to taking his or her position on the hospital oversight committee, shall submit in writing to the chair of the hospital oversight committee a list of all business or other organizations of which he or she is an officer, director, trustee, member, owner (either as a sole proprietor or partner), shareholder with a 5.0% or greater interest in all outstanding voting shares, employee or agent, with which the hospital has, or might reasonably in the future, enter into a relationship or a transaction in which the member would have conflicting interests. Each written statement will be re-submitted with any necessary changes each year. The chair of the hospital oversight committee shall become familiar with the statements of all members in order to guide his or her conduct should a conflict arise. The vice chair of the hospital oversight committee shall be familiar with the statements filed by the chair.

(2) At such time as any matter comes before the hospital oversight committee in such a way as to give rise to a conflict of interest, the affected member shall make known the potential conflict, whether disclosed by his or her written statement or not, and after answering any questions that might be asked, shall withdraw from the meeting for so long as the matter shall continue under discussion. Should the matter be brought to a vote, the affected member shall not vote on it. In the event that the affected member fails to withdraw voluntarily, the chair of the hospital oversight committee is empowered and shall require that the affected member remove himself or herself from the room during both the discussion and vote on the matter. In the event the conflict of interest affects the chair, the vice chair is empowered and shall require that the chair remove himself or herself in the same manner, and for the duration of discussion and action on the matter the vice chair shall preside.

(3) If the matter is the item of business for which a special meeting of the hospital oversight committee was called, the affected member shall not be counted to establish a quorum, nor shall he or she participate in the deliberations or vote on it.

(k) Meetings of the hospital oversight committee.

(1) Regular meetings.

(A) The hospital oversight committee shall meet quarterly and as required by the chair of the hospital oversight committee.

(B) The hospital oversight committee shall designate an annual meeting.

(2) Special meetings. Special meetings of the hospital oversight committee may be called at any time by the board, the commissioner, the chair of the hospital oversight committee, or upon receipt of the written request of two or more members. The business to be transacted at any special meeting shall be limited to those items of business set forth in the notice of the meeting.

(3) Notice of hospital oversight committee meetings.

(A) Members shall be given written notice of each regular meeting of the hospital oversight committee. Such notice shall set forth the time and place of the meeting, and shall be delivered to each member either personally, by mail, facsimile, or telegram to his or her residence or place of business as listed in the hospital director's office ten days prior to such regular meeting, and five days prior to such meeting in the case of special meetings. Notice of meetings of the hospital oversight committee shall be posted in compliance with Government Code, Chapter 551.

(B) The business to be transacted at any regular meeting of the hospital oversight committee shall be limited to those matters set forth in the notice of meeting.

(4) Quorum. At all meetings of the hospital oversight committee, a majority of the members shall constitute a quorum for the transaction of business. The act of a majority of the members present and voting at a meeting at which a quorum is present shall be the act of the hospital oversight committee. Proxy voting shall not be permitted.

(5) Withdrawal of members after quorum established. After a quorum has been established at a meeting of the hospital oversight committee, the subsequent with-

drawal of members from the meeting so as to reduce the number of members present to fewer than the number required for a quorum shall not affect the validity of any action taken by the hospital oversight committee at the meeting or any adjournment thereof. A majority of the members present, whether or not a quorum exists, may adjourn any meeting of the hospital oversight committee to another time and place. Notice of any such adjourned meeting shall be given to the members who are not present at the time of adjournment.

(6) Minutes. Minutes of each meeting of the hospital oversight committee shall be taken by the secretary or a designee and shall be disseminated or otherwise made available to each member as soon as practicable after the conclusion of the meeting.

(l) Responsibilities of hospital director. The hospital director shall have the following specific responsibilities:

(1) develop and recommend to the hospital oversight committee a plan of organization for the operation of the hospital;

(2) prepare program and budget recommendations as required by the commissioner;

(3) select, employ, control and discharge, as appropriate, all employees for the hospital within applicable rules, regulations, standards, and bylaws;

(4) develop and maintain appropriate personnel policies and practices for the hospital in accordance with policies and practices of the department and other applicable rules, regulations and standards;

(5) oversee and supervise business activities of the hospital in accordance with policies and practices of the department;

(6) make reports and recommendations to the hospital oversight committee regarding the professional services and financial activities of the hospital;

(7) represent the hospital in its relationships with other health agencies and accreditation and certification bodies and agencies;

(8) oversee the maintenance of the physical properties of the hospital to provide a safe environment for patients and all personnel;

(9) assist the medical staff with its organization and/or medico-administrative responsibilities;

(10) grant temporary privileges to medical staff applicants in accordance with the provisions of the medical staff bylaws;

(11) summarily suspend, without prior notice or hearing, all or any part of the clinical privileges of a medical staff member or other individual whenever the hospital director believes that failure to take such action may result in an imminent danger to the health of any individual; and

(12) attend all meetings of the hospital oversight committee, serve on all committees, and appoint designees to serve in his or her absence or unavailability.

#### *§109.6. Medical Staff.*

##### (a) General.

(1) The hospital oversight committee shall appoint a medical staff operating in accordance with these bylaws and the medical staff bylaws approved by the hospital oversight committee. The medical staff shall operate as an integral part of the hospital and, through its officers, medical directors, and committees, shall be responsible and accountable to the hospital oversight committee for the discharge of those duties and responsibilities delegated to the medical staff by the hospital oversight committee.

(2) The hospital oversight committee specifically reserves the authority to take any direct action that is appropriate with respect to any individual appointed to the medical staff or given clinical privileges, or the right to practice at the hospital whose clinical competence or professional conduct is questioned or who may have violated hospital or medical staff bylaws, rules or policies. Action taken by the hospital oversight committee in such matters shall follow the procedures outlined in the medical staff bylaws.

##### (b) Medical staff bylaws, rules and regulations.

(1) In recommending medical staff bylaws, rules, and regulations, the medical staff shall follow the amendment procedure set forth in §109.15(k) of this title (relating to Medical Staff Bylaws).

(2) The medical staff may at any time recommend to the hospital oversight committee amendments or modifications of the medical staff bylaws, rules and regulations. The hospital oversight committee shall act promptly on proposed medical staff bylaws amendments, and only such medical staff bylaws, rules and regulations as are approved by the hospital oversight committee and the board shall be effective.

(3) Neither the hospital oversight committee nor the medical staff may unilaterally amend the medical staff bylaws. However, in the event the hospital oversight committee believes there should be changes in the medical staff bylaws, rules or regulations, it shall submit such suggested changes to the medical staff. The medical

staff shall promptly consider and submit to the hospital oversight committee its recommendation regarding the proposed change. If the medical staff fails to respond to suggestions by the hospital oversight committee within a reasonable time, as determined by the hospital oversight committee, the hospital oversight committee may make such changes as are deemed necessary without the approval of the medical staff.

(4) In the event of a conflict between the provisions of the medical staff bylaws and the hospital bylaws, the provisions of the hospital bylaws shall control.

##### (c) Medical staff appointment and clinical privileges.

(1) The hospital oversight committee may, upon recommendation of the credentials committee, appoint to the medical staff licensed professionals who meet the personal and professional qualifications prescribed in the medical staff bylaws, and may grant clinical privileges to them. Individuals so appointed shall have full responsibility for treatment of hospital patients subject only to such limitations as the hospital oversight committee, its designees, and/or the medical staff bylaws, rules and regulations may impose.

(2) All initial appointments to the medical staff shall be for a period of at least six months, renewable in accordance with the reappointment procedures set forth in the medical staff bylaws and policies and procedures of the department. If at any time, an application for reappointment is not acted upon by the hospital oversight committee prior to the expiration of the staff member's then current appointment, the appointment and clinical privileges of the staff member in question shall continue in effect until the hospital oversight committee acts.

(3) Only medical staff members with admitting privileges shall be permitted to admit patients to the hospital. Each patient shall be under the medical supervision of a qualified physician appointed to the medical staff, who shall be responsible for the general medical condition of the patient. All other individuals who are granted clinical privileges or who otherwise provide patient care services shall be subject to applicable bylaws or policies designed to determine, monitor, and evaluate their competence and the quality of their care.

##### (d) Medical staff departments, officers and committees.

(1) The chairpersons and members of all medical staff committees and the officers of the medical staff shall be elected or appointed in accordance with the provisions of the medical staff bylaws. Said individuals shall act on behalf of the hospital when performing their duties under the medical staff bylaws, and shall perform

such additional duties as may be assigned by the hospital oversight committee or the hospital director.

(2) All minutes, reports, recommendations, communications, and actions with respect to credentialing, peer review, quality assessment and improvement or related matters made or taken by the hospital oversight committee or its committees or appointed medical directors, medical staff committees and officers for and on behalf of the hospital are covered by state and federal law, providing protection to peer review or related activities. The committees and/or panels charged with making reports, findings recommendations or investigations pursuant to the medical staff and/or hospital bylaws shall be considered to be acting on behalf of the hospital and its hospital oversight committee when engaged in such professional review activities and thus shall be deemed to be "professional review bodies."

(e) Strategic planning for the medical staff. The hospital oversight committee shall periodically evaluate the number, expected attrition, and clinical activities of medical staff members in various specialty areas so that a proper number of individuals in each specialty is determined, maintained and revised as needed, in light of the needs of the community served by the hospital, the hospital's strategic planning and budgeting objectives, and the professional personnel requirements of the hospital.

(f) Contracts for clinical services.

(1) After receiving the recommendations of the chief of staff/DDPS, and in accordance with applicable law, policies, or regulations, the hospital director shall have the authority to enter into contracts or employment relationships with individuals, partnerships or corporations for the performance of certain health care or clinical services, including but not limited to those in medico-administrative positions. All physicians, dentists, podiatrists, and other professional staff practicing at the hospital pursuant to such contracts shall obtain and must maintain medical staff appointments and clinical privileges at the hospital.

(2) In the event any contract authorized by subsection (d)(1) of this section provides that the practitioners subject to it have exclusive right to provide the clinical services covered by the contract, no other practitioner may exercise clinical privileges at the hospital to provide the clinical services in question while the contract is in effect. If such an exclusive contract would have the effect of preventing an existing medical staff member under contract from exercising clinical privileges that had previously been granted, the affected staff member shall be given notice of the exclusive contract and have the right to meet with the hospital oversight committee (or a committee designated by the hospital oversight

committee) to discuss the matter prior to the effective date of the contract in question, and to present at that meeting any information relevant to the decision to enter into the exclusive contract. Such affected individual shall not be entitled to any other due process rights with respect to the hospital oversight committee's decision or the effect of the contract on their clinical privileges, notwithstanding any provision of the medical staff bylaws.

(3) If the terms of any contract provide that the medical staff appointment and/or clinical privileges of any practitioner subject to the contract are incident to and/or coterminous with the contract or the individual's association with the group holding the contract, such contractual provisions shall control, notwithstanding the fact that such may be inconsistent with any provision of the medical staff bylaws.

#### *§109.7. Auxiliary Organizations.*

(a) General.

(1) Any auxiliary organization that may be established by the hospital oversight committee shall be responsible and accountable to the hospital oversight committee for the discharge of those duties and responsibilities delegated to it by the hospital oversight committee. In establishing an auxiliary organization, the hospital oversight committee shall initiate or approve bylaws, delineate the purpose and function of the organization and shall initiate or approve any and all subsequent amendments thereto. Auxiliary organizations shall report to the hospital oversight committee in a manner established by the hospital oversight committee.

(2) The hospital oversight committee is not required to establish any auxiliary organizations and the hospital oversight committee shall retain the power to change, restructure, reorganize or dissolve any such organization, if established. All services and functions performed by such auxiliary organizations and individual volunteers not associated with an auxiliary shall be subject to the overall supervision and direction of the hospital director and his or her designee.

(b) Duties. The auxiliary organization shall:

(1) elect a president and such other officers as necessary;

(2) appoint such committees as it deems necessary;

(3) subject to the approval of the hospital oversight committee, adopt a constitution, bylaws and rules and regulations regarding its organization and functions at the hospital;

(4) secure the support and cooperation of the area served through promo-

tion and advancing the welfare of the hospital and assisting in interpreting the hospital's services and needs to the community; and

(5) serve in various roles of volunteer services throughout the hospital to assist the hospital in meeting its objectives.

#### *§109.15. Medical Staff Bylaws.*

(a) Composition of the medical staff.

(1) Appointment. All appointments to the medical staff shall be made by the hospital oversight committee upon recommendation of the medical staff executive committee.

(2) Clinical privileges. All members shall be eligible for clinical privileges as applied for and recommended by the medical staff executive committee and approved by the hospital oversight committee. Physicians, dentists, podiatrists, and other professionals licensed to practice their respective professions in Texas or who are otherwise lawfully practicing in this state, who are hospital employees, who hold contracts with the hospital, or who provide consultation to medical staff members for patient care and treatment or other services, may be authorized to attend patients. Residents and other students, whether employed or not employed by the hospital, are extended privileges under terms of affiliation agreements and when under the direct supervision of a medical staff member. Ancillary professionals providing services as employees of medical staff members will be credentialed in accordance with subsection (i) of this section.

(3) Attending staff. The attending staff shall consist of those physicians, dentists, podiatrists, and other professionals who regularly admit, attend, or are involved in the treatment of patients at the hospital by virtue of employment by the hospital or a contract to provide services to the hospital. Each member of the attending staff shall agree to assume all the functions and responsibilities of appointment to the attending staff, including, where appropriate, care for unassigned patients, emergency care, consultation, and teaching assignments. Attending staff members shall provide timely and continuous care for their patients.

(4) Courtesy staff. The courtesy staff shall consist of physicians, dentists, podiatrists, and other professionals of demonstrated competency who attend, admit, or are involved in the care of no more patients at the hospital than recommended by the medical staff executive committee and approved by the hospital director. They shall provide timely and continuous care for their patients. Courtesy staff members may not vote or hold office, except as otherwise provided.

(5) Consulting staff. The consulting staff shall consist of specialists who provide consultation in the diagnosis and treatment of patients, but may not admit patients. Consulting staff may not vote or hold office, except as otherwise provided.

(6) Resident staff. The resident staff shall consist of physicians serving in a training capacity who have licenses to practice medicine or institutional permits authorizing them to participate in an appropriately accredited training program for graduate medical education conducted in the hospital. They shall not be eligible to vote, hold office, or serve on standing committees of the medical staff, except as otherwise provided. They shall attend all patients in compliance with the terms of the applicable affiliation agreement. They shall admit patients only after notification of and under the direct supervision of an attending staff member. They shall write patient care orders under the direct supervision of their attending physician.

(7) Other professional staff. Other professional staff shall consist of those individuals permitted by law and by the hospital to provide patient care services without direction or supervision, within the scope of their licenses, and in accordance with individually granted clinical privileges based on criteria established by the hospital.

(b) Structure of the medical staff.

(1) Medical staff year. The medical staff year commences on September 1 and ends on August 31 of each year.

(2) Qualifications of officers, medical directors, and chairpersons. Unless otherwise specified in this section, the hospital director has the sole authority to appoint and remove members of the medical staff executive committee, medical directors, and the chairmen of medical staff committees after consultation with the medical staff executive committee. The hospital director may remove an officer from his or her position for:

(A) insufficient involvement in the leadership responsibilities incumbent in his or her position, as defined in policies approved by the chief of staff/DDPS; or

(B) violation of any hospital or medical staff bylaws, rules, or regulations.

(3) Officers. At TCID, the officers of the medical staff shall be the chief of staff/DDPS, vice president, and secretary.

(A) The chief of staff/DDPS shall:

(i) act as the chief medical officer of the hospital, supervising medi-

cal care, treatment, and practices in accordance with standards of care;

(ii) enforce the medical staff bylaws and rules and regulations, initiate and implement disciplinary actions where indicated, and assure the medical staff's compliance with procedural safeguards in all instances where corrective action has been determined;

(iii) establish a mechanism designed to assure that all individuals with clinical privileges provide services within the scope of the privileges granted to them;

(iv) call, preside at, and be responsible for the agenda of all general meetings of the medical staff;

(v) recommend to the hospital director appointment of medical directors, committee chairmen, and members, in accordance with the provisions of this section, to all standing and special medical staff committees except the medical staff executive committee;

(vi) serve as chair of the medical staff executive committee;

(vii) serve as an ex-officio member of all medical staff committees other than the medical staff executive committee without vote, unless otherwise specified;

(viii) provide continuing liaison with the hospital director on medical matters;

(ix) report to the hospital oversight committee on the medical staff's performance and maintenance of quality of care;

(x) serve as spokesperson for the medical staff in any external professional and public relations matters; and

(xi) be responsible for the establishment, implementation, and effectiveness of educational activities conducted by the medical staff.

(B) The vice president shall:

(i) be appointed by the chief of staff/DDPS at the annual meeting of the medical staff;

(ii) assume all the duties and have the authority of the chief of staff/DDPS in the event of his or her temporary incapacity due to illness, absence from the community, or unavailability for any other reason;

(iii) serve on the medical staff executive committee; and

(iv) perform such duties as are assigned to him or her by the hospital director or the chief of staff/DDPS.

(C) The secretary shall:

(i) be elected by vote of the medical staff at the annual meeting as its representative to the hospital oversight committee;

(ii) represent the views, policies, needs, and grievances of the medical staff and report on the medical activities of the staff to the hospital director and the hospital oversight committee and the board;

(iii) assure that accurate and complete minutes of all medical staff and medical staff executive committee meetings are prepared; and

(iv) call meetings upon the order of the chief of staff/DDPS, process all correspondence, and perform such other duties as his or her office demands.

(D) If an officer, medical director, or committee chair, or member of any medical staff committee has a conflict of interest in any matter involving another medical staff member that comes before such individual or committee, or in any instance where any such individual brings the complaint against the staff member, such individual shall not participate in the discussion or voting on the matter, and shall absent himself or herself from any meeting concerning the staff member in question, although that individual may be asked and may answer any questions concerning the matter before leaving.

(4) The medical staff at STH. The medical staff at STH is organized without medical staff officers. A chief of staff shall be appointed by the hospital director, and one member shall be elected annually to represent the medical staff before the hospital oversight committee.

(5) Meetings of the medical staff.

(A) Regular staff meetings. The medical staff shall hold regular meetings at least twice each year to act on any matters designated by the hospital director and chief of staff/DDPS.

(B) Annual staff meeting. One of the regular staff meetings shall be designated as the annual staff meeting, at which officers or staff representatives shall be elected and appointments by the hospital director shall be announced.

(C) Special staff meetings. Special meetings of the medical staff may be called at any time by the chief of staff/DDPS with approval of the hospital director. Any requests for a special meeting

shall be honored by the hospital director within seven days of that request. Issues shall be decided by vote of a majority of the medical staff present and eligible to vote, provided these matters do not include imposition of fees and assessments; amendments to the medical staff bylaws, rules, and regulations; or removal of the elected medical staff representative.

(D) Quorum. The presence of one-half of the persons eligible to vote shall constitute a quorum for any regular or special meeting of the medical staff. A quorum shall cease to exist when fewer than one-third of those eligible to vote are present.

(6) Provisions common to all meetings.

(A) Notice of meetings. Notice of all regular and special meetings of the medical staff and regular meetings of departments and committees shall be provided to each medical staff member eligible to vote at least five working days in advance of such meetings. Each notice shall state the place, day, date and hour of the meeting. Such notice shall be deemed to constitute actual notice to the persons concerned. Notice shall be mailed to non-voting members. Actual attendance by any individual shall constitute a waiver of any objection by that individual concerning the sufficiency of the notice of the meeting.

(B) Rules of order. Unless its provisions conflict with this chapter, the current edition of Robert's Rules of Order shall govern all meetings and elections.

(C) Voting. Any individual who, by virtue of position, attends a meeting in more than one capacity shall be entitled to only one vote.

(D) Minutes. Minutes of the meetings of each committee and each department shall be prepared and shall include a record of the attendance of members, the issues discussed, the resulting conclusions, the votes taken on each matter, and the actions taken. The minutes shall be signed by the presiding officer and copies thereof shall be promptly forwarded by the medical staff coordinator to the medical staff executive committee and the chief of staff/DDPS or committee chair. The medical staff coordinator shall maintain a permanent file of the minutes of all department and committee meetings.

(7) Clinical departments or committees.

(A) South Texas Hospital. The hospital does not utilize medical staff

clinical departments. The medical staff is organized in clinical committees as described in subsection (h)(3) of this section.

(B) Texas Center for Infectious Diseases. The hospital utilizes medical staff clinical departments. Each department director is responsible for the following:

(i) all clinically related activities of the department;

(ii) all administratively-related activities of the department, unless otherwise provided for by the hospital;

(iii) continuing surveillance of the professional performance of all individuals who have delineated clinical privileges in the department;

(iv) recommending to the medical staff the criteria for clinical privileges in the department; and

(v) recommending clinical privileges for each member of the department.

(c) Medical staff executive committee.

(1) Composition.

(A) Every member of the medical staff at each hospital shall be eligible to serve on the medical staff executive committee. The hospital director at each hospital shall be an ex-officio member of the committee, without vote.

(i) South Texas Hospital. The medical staff, as a committee of the whole, shall constitute the medical staff executive committee. The medical staff shall elect one member to represent its views, policies, needs, and grievances and to report on its activities to the hospital director and the hospital oversight committee.

(ii) Texas Center for Infectious Diseases. The chief of staff/DDPS, the vice president, and the secretary of the medical staff shall serve as the medical staff executive committee.

(B) The chief of staff/DDPS shall be chair of the medical staff executive committee and may vote on all matters before it.

(C) Members of the medical staff executive committee may be concurrent members of the credentials committee.

(2) Duties. The medical staff executive committee shall:

(A) represent and act on behalf of the medical staff in all matters arising between meetings of the full medical

staff, without subsequent ratification by the staff, and subject only to any limitations imposed by this chapter;

(B) coordinate the activities and general policies of the various clinical areas;

(C) receive and act upon committee reports as specified in this chapter, and make recommendations as appropriate concerning committee reports to the hospital director and the hospital oversight committee;

(D) implement policies of the medical staff that are not the responsibility of the individual departments;

(E) keep the medical staff abreast of applicable accreditation and regulatory requirements affecting the hospital;

(F) enforce medical staff rules among all persons who hold membership in the medical staff in the best interest of patient care and of the hospital;

(G) review and make recommendations concerning the clinical competence, patient care and treatment, or conduct of any medical staff member in accordance with this chapter;

(H) report to the hospital oversight committee on the development and implementation of the hospital's performance assessment and improvement plan as it affects the medical staff;

(I) review the bylaws, rules, and regulations of the medical staff and associated documents at least once a year and recommend such changes as may be necessary or desirable; and

(J) make recommendations to the hospital oversight committee for its approval pertaining to:

(i) the medical staff's structure;

(ii) the mechanism used to review credentials and to delineate individual clinical privileges;

(iii) recommendations of individuals for medical staff membership;

(iv) recommendations for delineated clinical privileges for each eligible individual;

(v) the participation of the medical staff in organizational performance-improvement activities as well

as the mechanism used to conduct, evaluate, and revise such activities;

(vi) the mechanism by which medical staff membership may be terminated; and

(vii) the mechanism for fair hearing procedures.

(3) Meetings, reports and recommendations.

(A) The medical staff executive committee shall meet as often as necessary to transact pending business, but at least once each month. Recommendations of the medical staff executive committee shall be transmitted to the hospital oversight committee after review by the hospital director. The chair of the medical staff executive committee, his or her representative, and such members of the medical staff executive committee as may be necessary shall be available to meet with the hospital oversight committee or its designated subcommittee on all recommendations that the medical staff executive committee may make.

(B) An emergency meeting of the medical staff executive committee may be called to act in situations of urgent or confidential concern.

(4) Conflict of interest. If a member of the medical staff executive committee has a conflict of interest in any matter that comes before the medical staff executive committee and which involves another medical staff member, or in any instance where a member of the medical staff executive committee brought the complaint against that staff member, that member shall not participate in the discussion of or voting on the matter and shall absent himself or herself from the meeting during that time, although he or she may be asked and may answer questions concerning the matter before leaving.

(d) Appointment to the medical staff.

(1) Qualifications for appointment.

(A) General. Membership in the medical staff is a privilege extended only to professionally competent individuals who meet the qualifications, standards, and requirements set forth in the bylaws and in such policies as are adopted by the medical staff and ratified by the hospital oversight committee. Unless exempted by specific provisions of this chapter, all individuals practicing medicine, dentistry, podiatry, and other professional disciplines in the hospital must first have been appointed to the medical staff.

(B) Specific qualifications. Only physicians, dentists, podiatrists, and other professional staff who satisfy the following criteria shall be eligible for membership in the medical staff:

(i) are currently licensed to practice in the State of Texas;

(ii) are able to provide timely care for their patients;

(iii) if applicable, possess or be approved for currently valid professional liability insurance in such form and in minimum amounts as recommended by the medical staff executive committee and approved by the hospital oversight committee. Employees of the department shall not be required to purchase or maintain professional liability insurance coverage.

(iv) are certified by the appropriate specialty board or are active candidates for board certification pursuant to the medical staff bylaws, unless such requirement is waived by the hospital oversight committee upon recommendation of the medical staff executive committee;

(v) are able to perform the specific clinical privileges they request; and

(vi) can document:

(I) background, experience, training, and demonstrated competence;

(II) adherence to the ethics of their profession;

(III) good reputation and character;

(IV) ability to work cooperatively with others so that all patients treated by them in the hospital will receive quality care; and

(V) ability to meet requirements established by the department.

(C) No entitlement to appointment. No individual shall be entitled to appointment to the medical staff or to the exercise of particular clinical privileges in the hospital solely because the individual:

(i) is licensed to practice a profession in this or any other state;

(ii) is a member of any particular professional organization; or

(iii) has had in the past, or currently has, medical staff appointment or privileges in this or another hospital.

(D) Offer of membership and privileges. An offer of membership and privileges is contingent on the hospital's ability to subsequently ascertain the physical and/or mental health status of the applicant, regarding the applicant's ability to perform the specific clinical privileges requested.

(E) Non-discrimination policy. No individual shall be denied appointment on the basis of gender, race, age, creed, color, religion, or national origin.

(2) Conditions of appointment.

(A) Duration of initial appointment. All initial appointments to the medical staff regardless of the category of the staff to which appointment is made shall be provisional and all initial clinical privileges shall be provisional for a period of six months from the date of the appointment or longer if recommended by the credentials committee and the medical staff executive committee and if approved by the hospital oversight committee. During this provisional appointment, the appointee's clinical competence, general behavior, and conduct in the hospital shall be evaluated by the chief of staff/DDPS, and by the relevant committees of the medical staff and the hospital. Provisional clinical privileges may be adjusted to reflect clinical competence at the end of the provisional period, or sooner if warranted. Continued appointment after the provisional period shall depend on an evaluation of the factors to be considered for reappointment as set forth in this chapter. Evaluation of these factors will be considered in the performance evaluation process for employees of the department.

(B) Rights and duties of members.

(i) Appointment to the medical staff shall require that each member assume such reasonable duties and responsibilities as are set forth in this chapter.

(ii) By accepting appointment or reappointment to the medical staff, each member agrees to assist in evaluating the quality and appropriateness of patient care through designated peer review activities. These activities include participation in clinical case review of any case selected through quality assessment review mechanisms. Members of professional review bodies who participate in peer review activities are provided immunity under state and federal law, provided that such peer review functions are performed reasonably and fairly and follow the specific due process requirements in this chapter. Such immunity shall apply to individual committee mem-



bers, consultants to committees, individuals who provide information to committees, and individuals who serve as members of hearing panels.

(3) Application for initial appointment and clinical privileges.

(A) Information. Applications for appointment to the medical staff shall be in writing, and shall be submitted on forms approved by the hospital oversight committee upon recommendation of the credentials committee and medical staff executive committee. Application forms shall be obtained from the hospital director or his or her designee. The application shall contain a request for the specific clinical privileges desired by the applicant, and shall require detailed information concerning the applicant's professional qualifications including:

(i) the names and complete addresses of at least three physicians, dentists, podiatrists, or other professionals, as appropriate, who have recently observed and worked extensively with the applicant and who can provide information pertaining to the applicant's character and current level of competence. Persons providing references may not be associated or about to be associated with the applicant in professional practice or personally related to the applicant. At least one reference shall be from the same specialty area as the applicant;

(ii) the names and complete addresses of the individuals who served as chairmen of the particular department of each hospital or other institution at which the applicant worked or trained. If the number of hospitals the applicant has worked in is great or if several years have passed since the applicant worked at a particular hospital, the credentials committee and the hospital oversight committee may take into consideration the applicant's good faith effort to produce this information;

(iii) information as to whether the applicant's medical staff appointment or clinical privileges have ever been voluntarily or involuntarily relinquished or terminated, surrendered, resigned, denied, revoked, suspended, reduced, or not renewed at any other hospital or health care facility;

(iv) information as to whether the applicant has ever withdrawn his or her application for appointment, reappointment and clinical privileges, or resigned from the medical staff before final decision by the governing body of the hospital or health care facility;

(v) information as to whether the applicant's membership in local, state, or national professional societies; his or her license to practice any profession in any state; or his or her state or federal

controlled substance registrations have ever been challenged, voluntarily relinquished, suspended, modified, surrendered, or terminated. The submitted application shall include a copy of all the applicant's current licenses to practice, as well as copies of his or her controlled substance registrations, medical or dental school diploma, and certificates from all postgraduate training programs completed, including all residencies and fellowships;

(vi) information as to whether the applicant has professional liability insurance coverage currently in force, the name of the insurance company, and the amount and classification of the coverage;

(vii) information concerning the applicant's malpractice claim experience, specifically including final judgments or settlements, the substance of the allegations, the findings, the ultimate disposition, and any additional information concerning such proceedings or actions as the credentials committee may deem appropriate;

(viii) a consent to the release of information from the applicant's present and past professional liability insurance carriers;

(ix) information as to whether the applicant has ever been named as a defendant in a criminal action and/or convicted of a crime, with details about such action;

(x) information on the citizenship and visa status of the applicant;

(xi) the applicant's signature;

(xii) all information required by the department's Office of Human Resources if employment is to be considered; and

(xiii) such other information as the credentials committee, the medical staff executive committee or the hospital oversight committee may require.

(B) National Practitioner Data Bank. On behalf of the hospital, the chief of staff/DDPS shall request information from the National Practitioner Data Bank concerning physicians, dentists, and other practitioners who have applied for appointment to the medical staff.

(C) Undertakings. Each applicant for medical staff membership or reappointment specifically shall agree to these undertakings as part of the application. The following undertakings shall be applicable to every medical staff member and applicant for staff membership or reappointment as a condition of consideration of such application and as a condition of continued staff membership if granted:

(i) an obligation to provide continuous care and supervision to all patients within the hospital for whom the individual has responsibility;

(ii) a willingness to accept call and to provide consultations in accordance with medical staff bylaws, rules, and regulations;

(iii) an agreement to abide by all applicable bylaws, policies, rules, and regulations of the medical staff and the hospital;

(iv) an agreement to accept committee assignments and such other reasonable duties and responsibilities as shall be assigned to the applicant after appointment;

(v) an agreement to provide to the hospital new or updated information as it becomes available concerning any question on the application form;

(vi) a statement that the applicant has received and has had an opportunity to read the department's personnel policies, the bylaws of the hospital, and the bylaws, rules, and regulations of the medical staff in force at the time of his or her application, and that he or she has agreed to be bound by the terms thereof in all matters relating to consideration of his or her application without regard to whether or not he or she is granted membership in the medical staff or clinical privileges;

(vii) a statement of the applicant's willingness to appear for personal interviews regarding his or her application;

(viii) a statement that any material misrepresentation of, misstatement in, or omission from the application, whether intentional or not, shall constitute cause for automatic and immediate rejection of the application resulting in denial of staff membership and clinical privileges. In the event that membership has been granted prior to the discovery of such material misrepresentation, misstatement, or omission, such discovery may result in revocation of medical staff membership and clinical privileges; and

(ix) a statement that the applicant will:

(I) refrain from promising and/or providing inducements to third parties for patient referrals;

(II) refrain from delegating responsibility for diagnosis or care of hospitalized patients to any individual who is not qualified to undertake this responsibility or who is not adequately supervised;

(III) refrain from deceiving patients as to the identity of any individual providing treatment or services;

(IV) seek consultation whenever necessary;

(V) abide by generally recognized ethical principles applicable to his or her profession; and

(VI) provide continuous care for the applicant's patients in the hospital.

(D) Burden of providing information. The applicant shall have the burden of producing information sufficient for a comprehensive evaluation of his or her competence, character, ethics, and other qualifications, and for resolving any doubts about such qualifications. The applicant shall have the burden of substantiating all statements made and information provided on the application. Until the applicant has provided all information requested by the hospital, the application for appointment or reappointment will be deemed incomplete and will not be processed.

(E) Conditions to obtain and release information. The following statements, which shall be included on the application form, are express conditions applicable to any medical staff applicant, any member of the medical staff, and to all others having or seeking clinical privileges in the hospital. By applying for appointment, reappointment, or clinical privileges, the applicant expressly agrees that these conditions shall apply during the processing and consideration of his or her application, whether or not he or she is granted appointment or clinical privileges. This agreement also applies for the duration of any appointment or reappointment.

(i) Immunity. To the fullest extent permitted by law, the individual releases from any and all liability, and extends absolute immunity to the hospital, its authorized representatives, and any third parties, with respect to any acts, communications, documents, recommendations, or disclosures involving the individual, concerning the following:

(I) applications for appointment or clinical privileges, including temporary privileges;

(II) evaluations concerning reappointment or changes in clinical privileges;

(III) proceedings for suspension or reduction of clinical privileges or for revocation of medical staff appointment, or any other disciplinary sanction;

(IV) summary suspension;

(V) hearings and appellate reviews;

(VI) medical care evaluations;

(VII) utilization reviews;

(VIII) other activities relating to the quality of patient care or professional conduct;

(IX) matters or inquiries concerning the individual's professional qualifications, credentials, clinical competence, character, mental and physical condition, ethics or behavior; and

(X) any other matter that might directly or indirectly have an effect on the individual's competence, on patient care, or on the orderly operation of the hospital.

(ii) Evidentiary privilege. The categories of information listed in clause (i) of this subparagraph shall be privileged to the fullest extent permitted by law.

(iii) Authorization to obtain information. The individual specifically authorizes the hospital and its authorized representatives to consult with any third party who may have information bearing on the individual's professional qualifications, credentials, clinical competence, character, mental and physical condition, ethics, behavior, or any other matter reasonably having a bearing on the individual's satisfaction of the criteria for initial and continued appointment to the medical staff. This authorization also covers the right to inspect or obtain any and all communications, reports, records, statements, documents, recommendations, or disclosures of said third parties that may be relevant to such questions. The individual also specifically authorizes said third parties to release said information to the hospital and its authorized representatives upon request.

(iv) Authorization to release information. The applicant specifically authorizes the hospital and its authorized representatives to release such information to other hospitals, health care facilities, and their agents, who solicit such information

for the purpose of evaluating the applicant's professional qualifications pursuant to the applicant's request for appointment or clinical privileges.

(4) Procedure for initial appointment.

(A) Submission of application.

(i) Each applicant for a posted medical staff vacancy as a hospital employee shall submit a completed application for medical staff membership at the same time he or she or she submits the employment application.

(ii) After reviewing the applicant's responses to all questions and all references and other information, and after verifying the information provided on the application with primary sources, the chief of staff/DDPS shall determine the application to be complete and shall transmit the application and all supporting materials to the chair of the credentials committee. An application shall be reclassified as incomplete if new, additional, or clarifying information is required at any time during the evaluation. The applicant is responsible for assuring that his or her application is complete, including recommendations from all references. An incomplete application will not be processed.

(B) Initial credentials committee procedure. Upon receipt of a completed application for membership, the chair of the credentials committee shall announce the name of the applicant so that each medical staff member may have an opportunity to submit to the credentials committee, in writing, any information he or she may have concerning the applicant's qualifications for staff membership. In addition, any current medical staff member shall have the right to appear in person before the credentials committee to discuss in private any concerns he or she may have about the applicant.

(C) Chief of staff/DDPS procedure. The chief of staff/DDPS shall meet with the applicant to discuss any aspect of his or her application, qualifications, and requested clinical privileges, and shall forward a report of the meeting to the credentials committee.

(D) Subsequent credentials committee procedure.

(i) The credentials committee shall examine the evidence of the applicant's character, professional competence, qualifications, prior behavior, and ethical standing, and shall determine, through information contained in references

given by the applicant and from other sources available to the committee, including an appraisal from the chief of staff/DDPS, whether the applicant has established and satisfied all of the necessary qualifications for the staff category and clinical privileges requested.

(ii) If, after considering the report of the chief of staff/DDPS, the credentials committee recommends approval of the application, the credentials committee shall also recommend clinical privileges.

(iii) As part of the committee's deliberations, the chair of the credentials committee may require the applicant to meet with the credentials committee to discuss any aspect of his or her application, qualifications, and clinical privileges requested.

(E) Credentials committee report.

(i) The credentials committee shall make a written report and recommendation to the medical staff executive committee concerning the applicant within 90 days of receipt of the completed application.

(ii) If completion of the credentials committee's recommendation requires more than 90 days, the chair of the credentials committee shall send a letter explaining the delay to the applicant, with a copy to the medical staff executive committee.

(iii) The credentials committee shall transmit to the medical staff executive committee the complete application and its recommendation that the applicant be appointed to the medical staff, that his or her application be deferred for further consideration, or that the application be denied. The chair of the credentials committee or his or her designee shall be available to the medical staff executive committee to answer any questions about the recommendation.

(F) Medical staff executive committee.

(i) At its next regular meeting after receipt of the application, report and recommendation from the credentials committee, the medical staff executive committee shall determine whether to recommend to the hospital oversight committee that the applicant be appointed to the medical staff, that the application be deferred for further consideration, or that the application for staff membership or clinical privileges be denied. The recommendation of the medical staff executive committee shall be promptly forwarded together with a summary of supporting documentation to

the hospital oversight committee. All recommendations to appoint must also include the specific clinical privileges to be granted, and any probationary conditions relating to such clinical privileges.

(ii) If the medical staff executive committee recommends that the application be deferred for further consideration, a subsequent recommendation for either appointment to the medical staff with specified clinical privileges, or denial of the application must follow within 45 days.

(iii) If the medical staff executive committee disagrees with the recommendation of the credentials committee, the medical staff executive committee shall either:

(I) remand the matter to the credentials committee for further investigation and/or preparation of responses to specific questions raised by the medical staff executive committee prior to its final recommendation; or

(II) set forth in its report and recommendation to the hospital oversight committee the specific reasons for its disagreement with the credentials committee's recommendation, supported by reference to particular aspects of the individual's record or the credentials committee's report.

(iv) When the medical staff executive committee affords the applicant a hearing pursuant to this chapter, the hospital director shall promptly so notify the applicant and then shall hold the application until after the applicant has exercised or has been deemed to have waived the right to a hearing after which the hospital director shall forward the recommendation of the medical staff executive committee, together with the application and all supporting documentation, to the hospital oversight committee. All applications from persons not selected to fill a posted vacancy as a hospital employee shall be returned.

(5) Clinical privileges.

(A) General. Medical staff appointment or reappointment shall confer neither clinical privileges nor any inherent right to practice in the hospital. Each individual who has been granted membership in the medical staff of the hospital shall be entitled to exercise only those clinical privileges specifically granted by the hospital oversight committee upon recommendation of the medical staff executive committee. The clinical privileges recommended to the hospital oversight committee shall be based upon the applicant's education, training, experience, demonstrated clinical competence and judgment, references, utilization pat-

terns, availability of qualified medical coverage, the hospital's available resources and personnel, adequate levels of professional liability insurance coverage, if applicable, and other relevant information. No applicant shall be denied clinical privileges on the basis of gender, race, creed, color, religion, or national origin.

(B) Clinical privileges for dentists and oral surgeons.

(i) A dentist who has successfully completed a residency program approved by the American Dental Association, who is certified in his or her area of specialization by an appropriate board which is approved by the liaison committee for specialty boards, or its predecessors or successors, or who provides other satisfactory evidence of professional competence shall be qualified for membership and clinical privileges at the hospital.

(ii) The scope and extent of surgical procedures that a dentist may perform in the hospital shall be recommended and delineated in the same manner as clinical privileges for physicians. Surgical procedures performed by dentists shall be under the overall supervision of the chief surgeon employed by the hospital. A medical history and physical examination of the patient shall be made and recorded by a physician who holds membership in the medical staff before dental surgery shall be scheduled, and a designated physician shall be responsible for the medical care of the patient throughout the period of hospitalization.

(iii) Oral surgeons who admit patients without underlying health problems may perform a complete admission history and physical examination and assess the medical risks of the procedure on the patient if they are deemed qualified to do so by the credentials committee. A designated physician shall be responsible for care of any underlying medical problems the patient may have throughout the hospitalization.

(iv) The dentist shall be responsible for the dental care of the patient, including the dental history and dental physical examination, as well as all appropriate elements of the patient's record. Dentists may write orders within the scope of their license and consistent with the medical staff rules and regulations and in compliance with the hospital bylaws, the medical staff bylaws, and applicable medical staff policies.

(C) Clinical privileges for podiatrists.

(i) A podiatrist who has successfully completed a residency program

approved by the Council on Podiatric Medical Education of the American Podiatric Medical Association, who is certified in his or her area of specialization by an appropriate board which is approved by the liaison committee for specialty boards, or its predecessors or successors, or who provides other satisfactory evidence of professional competence shall be qualified for staff membership and clinical privileges at the hospital.

(ii) The scope and extent of surgical procedures that a podiatrist may perform in the hospital shall be delineated and recommended to the hospital oversight committee in the same manner as clinical privileges for physicians and shall comply with such policies as may be approved by the hospital oversight committee. Surgical procedures performed by podiatrists shall be under the overall supervision of the chief surgeon employed by the hospital. A medical history and physical examination of the patient shall have taken place and been recorded in the medical record by a physician who holds membership in the medical staff before podiatric surgery is performed. A designated physician shall be responsible for the medical care of the patient throughout the period of hospitalization. The podiatrist shall be responsible for the podiatric care of the patient, including the podiatric history and the podiatric physical examination as well as all appropriate elements of the patient's record. The podiatrist may write orders within the scope of his or her license and consistent with the medical staff rules and regulations and in compliance with the hospital and medical staff bylaws and applicable policies.

(D) Clinical privileges for other professional staff members.

(i) Other professional staff members who provide satisfactory evidence of their professional competence shall be qualified for staff membership and clinical privileges at the hospital.

(ii) The scope and extent of clinical privileges that other professional staff members may perform in the hospital shall be delineated and recommended to the hospital oversight committee in the same manner as clinical privileges for physicians and shall comply with such policies as may be approved by the hospital oversight committee. A medical history and physical examination of any patients to be attended by other professional staff members shall be recorded by physicians who hold membership in the medical staff before professional services are provided in the hospital. A designated physician shall be responsible for the medical care of each patient throughout the period of hospitalization. Other professional staff members may write progress notes or other medical record documentary entries within the scope of their

licenses and consistent with the medical staff rules and regulations and in compliance with the hospital and medical staff bylaws and applicable policies.

(6) Procedure for temporary clinical privileges.

(A) Temporary clinical privileges for applicants.

(i) Upon receipt of a completed application for medical staff membership which may reasonably be relied upon as to the licensure, competence, character, ethical standing, and professional liability insurance coverage, and upon receipt of a favorable recommendation from the chair of the credentials committee and the chief of staff/DDPS, or their designees, the hospital director shall grant temporary admitting and specified clinical privileges to an applicant, which will be valid until the medical staff executive committee and hospital oversight committee either approve or deny the application. The applicant shall exercise such privileges under the supervision of the chief of staff/DDPS or his or her designee.

(ii) If the chief of staff/DDPS recommends that temporary privileges not be granted, the chief of staff/DDPS shall so notify the hospital director, and the appointment process shall continue according to this chapter, but the applicant shall not receive temporary privileges.

(iii) Temporary status is not a staff category, but an arrangement under which an applicant is accorded privileges until the completion of the credentialing process. The chief of staff/DDPS, or his or her designee, shall be responsible for reviewing the progress of the applicant with temporary privileges at regular and frequent intervals.

(iv) The chief of staff/DDPS may recommend termination of temporary clinical privileges to the medical staff executive committee at any time he or she decides the applicant's performance is unsatisfactory and/or he or she is not qualified for staff membership. If the medical staff executive committee adopts the recommendation of the chief of staff/DDPS to terminate the applicant's temporary privileges, it shall so notify the hospital director who will notify the applicant of that decision, in writing, within 30 days.

(B) Temporary clinical privileges for nonapplicants. Temporary admitting and clinical privileges for care of a specific patient or patients may be granted by the hospital director or his or her designee, with the concurrence of the chief of staff/DDPS, to a physician who is not an

applicant for membership in the same manner and upon the same conditions as set forth in this subparagraph, provided that the hospital director shall first obtain the individual's written agreement to be bound by the hospital bylaws, and the medical staff bylaws, rules, and regulations then in force in all matters relating to his or her temporary clinical privileges. Such privileges shall be restricted to consultations and services for the specific patients for which they are granted.

(C) Special requirements. Special supervision and reporting requirements may be imposed on any individual granted temporary clinical privileges. Temporary privileges shall be immediately terminated by the hospital director after consultation with the chief of staff/DDPS, or his or her designee, upon notice of any failure by the individual to comply with such special conditions.

(D) Locum tenens. Locum tenens privileges may be granted to an individual serving as a locum tenens for a member of the medical staff. Temporary admitting and clinical privileges may be granted to a qualified individual to attend patients of a medical staff member. Locum tenens privileges must be specifically requested. Locum tenens privileges shall be granted according to the same procedures as set forth in this section, provided that the hospital director shall first receive a completed form requesting clinical privileges; a letter from the applicant's chief of service or the department chairmen at all hospital(s) where the applicant currently practices; a copy of the applicant's Texas medical license; favorable recommendations from the department chief concerned, the chair of the credentials committee, and the chief of staff/DDPS, or their designees; and the individual's signed acknowledgment that he or she has read the currently effective medical staff bylaws, rules, and regulations and that he or she agrees to be bound by the terms thereof in all matters relating to his or her temporary clinical privileges. The individual serving as a locum tenens must also have in force professional liability insurance coverage which meets the hospital's minimum requirements.

(E) Termination of temporary clinical privileges.

(i) The hospital director, or in his or her absence, his or her designee, may at any time after receiving a recommendation from the chief of staff/DDPS or his or her designee, terminate an individual's temporary admitting privileges. Clinical privileges shall then be terminated when the physician's inpatients are discharged from the hospital. However, if the chief of

staff/DDPS determines that the care or safety of such patients would be endangered by continued treatment by the individual, the hospital director shall summarily terminate the individual's temporary clinical privileges upon the recommendation of the chief of staff/DDPS. Such termination shall be immediately effective.

(ii) The chief of staff/DDPS shall assign responsibility for the care of such terminated individual's patients to a medical staff member until they are discharged from the hospital, giving consideration wherever possible to the wishes of the patients in the selection of the substitute physician.

(iii) The hospital grants temporary admitting and clinical privileges as a courtesy. Neither the granting, denial, nor termination of such privileges shall entitle the individual affected to any of the procedural rights concerning hearings or appeals provided in this chapter.

(iv) Temporary privileges shall be automatically terminated if the credentials committee recommends that the applicant not be appointed to the staff.

(7) Emergency clinical privileges.

(A) In an emergency involving a particular patient, a practitioner who is not currently a member of the medical staff may be permitted by the hospital to exercise any and all clinical privileges permitted by his or her license, and to use all facilities of the hospital, including calling for any consultation necessary or desirable.

(B) Similarly, in an emergency involving a particular patient, any medical staff member may be permitted by the hospital to exercise clinical privileges not specifically assigned to him or her to the degree permitted by his or her license.

(C) When the emergency situation no longer exists, the practitioner treating the patient must request temporary privileges necessary to continue to treat the patient. If such temporary privileges are denied or are not requested, the patient shall be assigned by the chief of staff/DDPS or his or her designee to an appropriate person currently appointed to the medical staff. The wishes of the patient shall be considered in the selection of a substitute physician.

(e) Reappointment to the medical staff.

(1) Application.

(A) An application for reappointment and a copy of the member's cur-

rent clinical privileges shall be delivered to each member by certified mail, return receipt requested, with a request that those seeking reappointment complete the reappointment application form and return it to the hospital director or his or her designee, within 15 days. If the reappointment application is not returned within the 15 days, one reminder notification shall be mailed to the member, return receipt requested. Failure to submit a completed reappointment application within 30 days shall result in automatic expiration of the member's appointment and clinical privileges at the end of his or her current appointment, unless appropriate reasons for delay are submitted by the member to the credentials committee. Any member who fails to apply for reappointment as specified in this chapter shall not be entitled to reappointment or to the procedural rights contained herein. However, such individual shall be eligible to reapply for membership as a new applicant.

(B) Reappointment may be granted for a period of not more than two years, based on the anniversary date of the applicant's initial appointment. The member's current appointment and clinical privileges shall continue in effect until the hospital oversight committee acts on his or her complete reappointment application.

(C) The following documentation must be provided with the application for reappointment:

(i) evidence of the applicant's current Texas medical licensure;

(ii) a copy of his or her current United States Drug Enforcement Administration (DEA) registration, if applicable;

(iii) a copy of his or her current Texas controlled substance registration, if applicable;

(iv) proof of professional liability insurance coverage, including the name of the practitioner, specialty, type of coverage (claims made or occurrence), dates of coverage, and limits of liability, if applicable;

(v) a copy of his or her board certification or recertification, if applicable; and

(vi) a copy of his or her current basic cardiopulmonary resuscitation (CPR) certification, if applicable.

(D) If the member requests additional privileges at the time the reappointment application is submitted, he or she must provide documentation of the training and experience which support the request.

(2) Factors to be considered. Each recommendation concerning reappointment of a current member of the medical staff or a change in a member's staff category shall be based upon the member's:

(A) current licensure, professional performance, judgment, and clinical/technical skills, as indicated by the results of quality assessment activities or other reasonable indicators of continuing competence;

(B) information as to whether the member's medical staff appointment or clinical privileges have ever been voluntarily or involuntarily relinquished or terminated, surrendered, resigned, denied, revoked, suspended, reduced, or not renewed at any other hospital or health care facility since his or her initial appointment or most recent reappointment to the medical staff of this hospital;

(C) information as to whether the applicant's membership in local, state, or national professional societies, or his or her license to practice any profession in any state, or his or her DEA registration has been challenged, voluntarily relinquished, suspended, modified, surrendered, or terminated since his or her initial appointment or most recent reappointment to the medical staff of this hospital;

(D) information concerning the applicant's malpractice claim and litigation experience since his or her initial appointment or most recent reappointment to the medical staff of this hospital;

(E) attendance at medical staff and department meetings and participation in staff assignments;

(F) compliance with hospital and medical staff bylaws, rules, and regulations;

(G) ability to work cooperatively with others so that all patients treated in the hospital will receive quality care; and

(H) current ability to perform the specific clinical privileges the applicant then holds.

(3) Evaluation by the chief of staff/DDPS.

(A) No later than three months prior to the end of the current appointment period, the hospital director or

his or her designee shall send to the chief of staff/DDPS a current list of all members who have clinical privileges and the clinical privileges each then holds, accompanied by copies of their applications for reappointment.

(B) On behalf of the hospital, the chief of staff/DDPS shall request information from the National Practitioner Data Bank at least every two years concerning physicians, dentists, and other practitioners who have applied for reappointment to the medical staff.

(C) The chief of staff/DDPS shall review all pertinent information about each member seeking reappointment, any change in staff category, or continued clinical privileges that is available from committees of the medical staff and from hospital management. In addition, the chief of staff/DDPS shall consider and, if necessary, verify the health status of each member if it relates to the performance of the clinical privileges requested. The vice president of the medical staff shall review the application for reappointment of the chief of staff/DDPS and make all necessary recommendations to the credentials committee.

(D) No later than 15 days after he or she receives an application, the chief of staff/DDPS or vice president, as applicable, shall transmit to the credentials committee a report on each individual seeking reappointment in the same medical staff category with the same clinical privileges. The chief of staff/DDPS or vice president also shall submit individual reports, including the reasons for any recommended changes in staff category or in clinical privileges, or for nonreappointment, both for those staff members who applied for changes and for those who did not.

(4) Credentials committee procedure.

(A) The credentials committee shall review the reports of the chief of staff/DDPS or vice president and all other pertinent information available to make its recommendations for staff appointment, for changes in staff category, and for granting clinical privileges for the ensuing appointment period.

(B) If the credentials committee has information which indicates that the applicant may have a physical or mental impairment which limits or prohibits the applicant's performance of any of the specific clinical privileges he or she then holds, the committee may require that the applicant for reappointment undergo a physical and/or mental examination by a physician

or physicians mutually agreeable to the applicant and the credentials committee. If mutual agreement cannot be achieved, the selection of the credentials committee shall prevail. Failure by an individual seeking reappointment to undergo such an examination or to authorize provision of the results to the credentials committee within a reasonable time after being requested to do so in writing shall cause the credentials committee to treat the application as incomplete and to defer consideration until the requested information is provided.

(C) The credentials committee shall prepare a list of persons holding staff membership whom it recommends for reappointment with no changes in staff category or clinical privileges. Recommendations for nonreappointment and for changes in staff category or privileges, with supporting data and reasons attached, shall be considered individually.

(D) If the credentials committee is considering a recommendation which would entitle the member to a hearing under subsection (j) (5)(B) of this section, the chair of the credentials committee shall notify the applicant of the general tenor of the possible recommendation and ask whether he or she wishes to meet with the credentials committee prior to any final recommendation. At such meeting, the applicant shall be informed of the general nature of the evidence supporting the action contemplated and shall be invited to discuss, explain, or refute it. This interview shall not constitute a hearing, and none of the procedural rules in this chapter concerning hearings shall apply, nor shall a record of the meeting be made. However, the credentials committee shall indicate in its report to the medical staff executive committee whether an informal interview was conducted.

(5) Medical staff executive committee. The medical staff executive committee shall review the application file, including the recommendation of the credentials committee, the report of the chief of staff/DDPS or the vice president, and all other supportive information and then shall forward its recommendation concerning each member to the hospital oversight committee for final action. If a recommendation by the medical staff executive committee concerning reappointment would entitle the applicant to a hearing under this chapter, the hospital director shall promptly notify the individual of the recommendation. The recommendation shall not be forwarded to the hospital oversight committee until the individual either has exercised his or her right to a hearing as provided in this section or has waived that right by failing to request a hearing in a timely manner.

(f) Requests for additional clinical privileges.

(1) A member of the medical staff who desires additional clinical privileges shall apply to the chief of staff/DDPS on a form approved by the hospital oversight committee. The application shall state in detail the specific additional clinical privileges desired and the applicant's relevant recent training and/or experience which supports the additional privileges. The application will be processed in the same manner as an application for initial clinical privileges if the request is made during the term of appointment, or as a part of the reappointment application if the request is made at that time.

(2) Requests for additional clinical privileges shall be evaluated based upon:

(A) recent, relevant training;

(B) observation of patient care provided;

(C) review of the records of patients treated in this or other hospitals;

(D) results of this hospital's performance assessment and improvement activities; and

(E) other reasonable indicators of the individual's continuing qualifications for the privileges sought.

(g) Rules, regulations, and policies of the medical staff.

(1) Adoption of rules, regulations, and policies of the medical staff.

(A) The medical staff shall adopt such rules, regulations, and policies as may be required. Such rules, regulations, and policies shall be in conformity with this section, but are to be regarded as guidelines and not as absolute requirements. As general procedures, they will not necessarily be appropriate in all circumstances and are not designed to interfere with the sound exercise of medical judgment of staff members. They are specifically not designed to define a standard of care.

(B) Specific rules, regulations, and policies may be adopted, amended, repealed, or added by vote of the medical staff, upon the recommendation of the appropriate department or unit, or the medical staff executive committee, at any regular or special meeting if copies of the proposed amendments, additions, or repeals are mailed to the medical staff at least 14

days before being voted on and if all written comments on the proposed changes by persons holding current membership in the medical staff are brought to the attention of the medical staff before the change is voted upon.

(C) Rules, regulations, and policies may also be adopted, amended, repealed, or added by the medical staff at a regular meeting or special meeting called for that purpose, provided that the procedure used in amending the medical staff bylaws is followed.

(D) The rules, regulations and policies of the medical staff shall be adopted by the medical staff and shall become effective following approval of the hospital oversight committee.

(2) Medical Services Trust Fund. The hospital shall bill for professional services rendered by attending and consulting staff members and shall manage and disburse funds received as provided by the Medical Services Trust Fund Bylaws.

(3) Continuing education.

(A) The employed members of the attending staff must obtain continuing medical education (CME) hours each year sufficient to comply with the requirements of the Texas State Board of Medical Examiners and the department.

(B) Contractors in the attending staff, courtesy staff, and consulting staff categories shall demonstrate continued proficiency in their specialties in accordance with this section.

(h) Committees of the medical staff.

(1) Medical staff organization plan.

(A) Development of plan. The medical staff executive committee shall develop a medical staff organization plan annually. This plan shall describe the organization of the medical staff and shall specify the functions of each committee.

(B) Special committees. Special or ad hoc committees may be created by the medical staff executive committee from time to time to perform specific tasks identified by the medical staff executive committee. Such committees shall confine their activities to the purposes for which they were appointed, and shall make reports after each meeting to the medical staff executive committee.

(2) Appointment.

(A) Chair. Unless this section provides otherwise, all committee chairmen shall be appointed by the hospital director on the recommendation of the medical staff executive committee. All chairmen shall be selected from among persons appointed to the attending staff.

(B) Members.

(i) Except as otherwise provided in this chapter, members of each committee shall be appointed by majority vote of the medical staff executive committee, with no limitation on the number of terms they may serve. All appointed members may be removed and vacancies filled by majority vote of the medical staff executive committee.

(ii) Nursing staff, ancillary personnel, and other hospital employees appointed to committees shall be designated by the hospital director. Nonphysician appointees may act as resource individuals and may be members of committees as designated in the medical staff organization plan.

(iii) The hospital director and the chief of staff/DDPS, or their respective designees, shall be ex-officio members of all committees without vote, unless otherwise specified.

(3) Committee meetings.

(A) Functions of clinical committees at South Texas Hospital.

(i) Each clinical committee chair shall recommend to the credentials committee written criteria for the assignment of clinical privileges within its specialty services. Such criteria shall be consistent with and subject to this chapter, and to policies, rules, and regulations of the medical staff and the hospital. These criteria shall be effective when approved by the hospital oversight committee upon recommendation of the medical staff executive committee. Clinical privileges shall be based upon demonstrated current competence, training, and experience within the specialty covered by the clinical committee.

(ii) Each clinical committee shall monitor and evaluate the quality and appropriateness of care on a retrospective, concurrent, and prospective basis in all major clinical activities of its clinical service. The monitoring and evaluation must include at least:

(I) identification of the indicators used to monitor the quality and appropriateness of the important aspects of care;

(II) routine collection of information about important aspects of patient care provided in both inpatient and outpatient services and about the clinical performance of its practitioners in the provision of those services; and

(III) periodic assessment of this information to identify opportunities to improve care and important problems in patient care.

(iii) Each clinical committee shall select cases for presentation at its meetings that will contribute to the continuing education of the members of the clinical committee. Such presentations should include cases involving deaths or complications, quality assessment clinical monitors, and other cases believed to be important, such as those involving patients currently in the hospital with unsolved clinical problems.

(iv) Subject to approval and adoption by the medical staff executive committee and the hospital oversight committee, each clinical committee shall recommend objective criteria that reflect current knowledge and clinical experience. These criteria shall be used by each clinical committee hospital's performance improvement program in the monitoring and evaluation of patient care. When important problems in patient care and clinical performance or opportunities to improve care are identified, each clinical committee shall document the actions taken and evaluate the effectiveness of such actions.

(v) In discharging these functions, each clinical committee shall submit a written report after each meeting to the medical staff executive committee detailing its analysis of patient care.

(B) Functions of the chairmen of clinical committees. Each clinical committee chair shall:

(i) assure the use of a planned and systematic process for monitoring and evaluating the quality and appropriateness of care and treatment of patients served by the particular hospital department, and the clinical performance of individual appointees with clinical privileges in the specialty of the committee;

(ii) serve as a member of the medical staff executive committee;

(iii) maintain continuing surveillance of the professional performance of all individuals who have delineated clinical privileges in the area of the committee's purview, and report and recommend thereon to the chief of staff/DDPS and credentials committee as part of the reappointment process and at such other times as may be indicated;

(iv) recommend criteria for clinical privileges in the committee's area;

(v) monitor and evaluate the quality and appropriateness of patient care provided within the committee's area of responsibility;

(vi) make reports to the chief of staff/DDPS concerning the delineation of clinical privileges for all applicants seeking privileges in the committee's area of responsibility;

(vii) assist in the establishment and implementation of any teaching, education, and research programs in the committee's area of responsibility;

(viii) assist the hospital with matters affecting patients, including personnel, supplies, schedules, special regulations, standing orders, and techniques; and

(ix) assist the hospital in the preparation of annual reports and such budget planning pertaining to the committee's area of responsibility as may be requested by the hospital director.

(i) Ancillary professionals.

(1) Qualifications.

(A) Persons other than physicians, dentists, podiatrists, and other professional staff who are licensed or certified by their respective licensing or certifying agencies, and who are approved by the hospital oversight committee to provide services as employees of medical staff members are eligible to serve as ancillary professionals, unless specifically excepted by the hospital oversight committee, upon recommendation by the medical staff executive committee.

(B) Credentialing for ancillary professionals shall be based upon each applicant's qualifications and whether the activities of the individual will enhance quality care.

(2) Selection procedure.

(A) To the extent the hospital oversight committee authorizes such ancillary professionals to act in the hospital, the credentials committee shall recommend to the medical staff executive committee the scope of each individual's activities within the hospital. The recommendation of the medical staff executive committee shall be forwarded to the hospital oversight committee for final action.

(B) Ancillary professionals may not provide services in the hospital unless and until the credentials committee has received, on a form approved by the medical staff executive committee and the

hospital director, sufficient information about their qualifications to permit the credentials committee to recommend the scope of activities the individuals will be permitted to undertake in the hospital. The form shall be prepared by each individual's employer, if appropriate, and signed by both the employer and the individual.

(C) Upon the recommendation of the chief of staff/DDPS or his or her designee, the credentials committee shall recommend to the medical staff executive committee a written delineation of the scope of activities each applicant shall be permitted to undertake. This delineation shall be final with no right of hearing or appeal. Staff members seeking to employ ancillary professionals in the hospital shall have the opportunity to appear before the credentials committee and discuss the proposed scope of activities of their employees before any recommendations are made to the medical staff executive committee and before any final actions are taken by the hospital oversight committee. An ancillary professional applicant may act in the hospital pursuant to the approved delineation only so long as he or she remains an employee of or is supervised by a member of the medical staff.

(3) Conditions of practice.

(A) Ancillary professionals shall practice in the hospital at the discretion of the hospital oversight committee. If their activities are terminated by the hospital director upon consultation with the chief of staff/DDPS, and they shall not be entitled to a hearing on or an appeal of the termination.

(B) Ancillary professionals shall not be entitled to the rights, privileges, and responsibilities of membership in the medical staff and may engage only in acts within the scope of practice specifically delineated by the hospital oversight committee.

(C) Any activities permitted by the hospital oversight committee or the department to be done in the hospital by ancillary professionals shall be done only under the direct and immediate supervision of their employers. However, "direct and immediate supervision" shall not require the actual physical presence of the employer, unless otherwise specified in this section, the medical staff rules and regulations, or policies of the hospital. Should any physician or hospital employee who is licensed or certified by the State of Texas have any question regarding the clinical competence or authority of ancillary professionals either to act or to issue instructions outside the physical presence of their employers in a

particular instance, the physician or hospital employee has the right to require their employers or supervisors to validate, either at the time or later, the instructions in question. Any acts or instructions of persons exercising privileges as ancillary professionals shall be delayed until the physician or hospital employee can be certain that the acts are clearly within the scope of their activities as permitted by the hospital oversight committee. At all times an employing or supervising staff member will remain responsible for all acts of his or her ancillary professionals within the hospital.

(D) The number of ancillary professionals acting as employees of one physician, as well as the activities they may undertake, shall be consistent with applicable state statutes and regulations, the rules and regulations of the medical staff, and the policies of the hospital oversight committee.

(E) It shall be the responsibility of the physicians employing ancillary professionals to provide professional liability insurance, with their employees specifically named as additional insureds, in amounts required by the hospital oversight committee, and to furnish evidence of such coverage to the hospital for review and approval. Such ancillary professionals shall act in the hospital only while such coverage is in effect.

(j) Corrective action and fair hearing procedures.

(1) Investigation.

(A) Request for investigation. A majority of the credentials committee, the chief of staff/DDPS on his or her own initiative, or the hospital director may at any time submit a written request to the medical staff executive committee for an investigation, citing specific concerns relating to:

(i) the clinical competence of any medical staff member;

(ii) the care, treatment, or management of a patient or patients by any medical staff member;

(iii) the known or suspected violation by any medical staff member of applicable ethical standards, or the bylaws, policies, rules, or regulations of the hospital, the hospital oversight committee, or the medical staff; or

(iv) behavior or conduct by any medical staff member that disrupts the orderly operation of the hospital or the functions of the medical staff.

(B) Investigative procedure. The medical staff executive committee shall



meet as soon after receiving the request as practicable. If the medical staff executive committee determines that:

(i) the initial investigation contains sufficient information or documentation to warrant a recommendation, the medical staff executive committee shall afford the medical staff member under investigation an opportunity to explain his or her conduct relating to the matter under investigation before making its recommendation; or

(ii) the request for investigation does not contain information sufficient to warrant a recommendation, the medical staff executive committee shall investigate the matter, appoint a subcommittee to do so, or appoint an ad hoc investigating committee.

(I) An ad hoc investigating committee shall consist of at least two but no more than five physicians, and may include no more than two physicians who are not members of the medical staff of the hospital. This committee shall not include relatives of the affected individual or any physicians who are in direct economic competition with the affected individual.

(II) The committee conducting the investigation shall have access to the resources of the medical staff and the hospital to complete its work, as well as the authority to call upon consultants as required. The committee may require the affected individual to undergo a physical and/or mental examination by a physician or physicians selected by the committee and shall require that the results of such examination be made available to the committee.

(III) The medical staff member under investigation shall be afforded an opportunity to meet with the investigating committee before it makes its report. At that time the individual shall be informed of the general nature of the evidence and shall be invited to discuss, explain, or refute it. This interview shall not constitute a hearing, and none of the procedural rights in this section concerning hearings shall apply. A summary of such interview shall be made by the investigating committee and included with its report to the medical staff executive committee.

(IV) The medical staff executive committee may accept, modify, or reject a recommendation it receives from a subcommittee or an ad hoc investigating committee and shall report its findings to the hospital director.

(2) Summary suspension of privileges. The hospital director or his or

her designee shall have the authority at any time to summarily suspend, without prior notice or hearing, all or any part of the clinical privileges of a medical staff member or other individual whenever the hospital director believes that failure to take such action may result in an imminent danger to the health of any individual. Summary suspension shall become effective immediately, shall be reported in writing within 24 hours to the chief of staff/DDPS and the chair of the credentials committee, shall include the specific reasons for its imposition, and shall remain in effect until modified or terminated by the chief of staff/DDPS or by the medical staff executive committee. Additionally, the medical staff executive committee may recommend to the hospital oversight committee that all or part of the clinical privileges of the person being investigated should be summarily suspended. Summary suspension shall constitute neither a final determination adverse to the affected individual nor the beginning of an investigation. The investigation shall be completed within 14 days of the imposition of the suspension. If the investigation has not been completed within 14 days, a statement of reasons for the delay shall be transmitted to the hospital oversight committee so that it may consider whether the suspension should be lifted in the interim.

(A) Additional grounds for summary suspension.

(i) Failure to complete medical records.

(I) All clinical privileges of a staff member shall be summarily suspended for failure to complete medical records within 30 days after a patient's discharge, unless the individual demonstrates good cause for the delinquency.

(II) Medical staff members shall be notified periodically concerning the status of their incomplete medical records. Staff members shall also be notified 72 hours before any record becomes 30 days delinquent. Such suspension shall continue until all the records of the patients of the individual in question are no longer delinquent. The chief of staff/DDPS shall assign to another individual with appropriate clinical privileges responsibility for care of the practitioner's patients still in the hospital at the time of the summary suspension of clinical privileges until the affected practitioner's clinical privileges have been restored or all his or her patients have been discharged. The wishes of the patients of an affected practitioner shall be considered by the chief of staff/DDPS in selecting a substitute provider of care.

(III) Failure to complete medical records within 30 days of the summary suspension may constitute grounds for termination of medical staff membership and/or loss of all clinical privileges.

(ii) Action by state licensing agency or other government sanctions. Action by the Texas State Board of Medical Examiners, the Texas State Board of Dental Examiners, or the Texas Board of Podiatry Examiners revoking or suspending a staff member's professional license, or loss or lapse of state licensure for any reason, shall result in summary suspension of all hospital clinical privileges as of the effective date of the action until the matter is resolved. If an individual has been the subject of disciplinary action by an appropriate governmental agency, the credentials committee shall notify the medical staff executive committee, which then shall recommend action to the hospital oversight committee concerning the individual's medical staff appointment and/or clinical privileges.

(iii) Failure to be adequately insured. If at any time a consulting staff member's professional liability insurance coverage lapses, falls below the required minimum level, is terminated, or otherwise ceases to be in effect in whole or in part, all the member's clinical privileges that would be affected thereby shall be summarily suspended or restricted as applicable as of that date until adequate professional liability insurance coverage is restored.

(B) Medical staff executive committee. Upon receipt of information from the chief of staff/DDPS concerning the imposition of summary suspension, the medical staff executive committee shall complete a review of the matter resulting in the summary suspension within a reasonable time not to exceed 30 days from the date of the suspension, or reasons for the delay shall be transmitted to the hospital oversight committee so that it may consider whether the suspension should be lifted. If the medical staff executive committee lifts the suspension, it shall also take such other actions as may be required by this section.

(3) Proposed corrective actions following investigation.

(A) After an investigation, the medical staff executive committee may:

(i) recommend that no action is justified;

(ii) issue a written warning;

(iii) issue a letter of reprimand;

(iv) impose a requirement for consultation;

(v) recommend reduction of clinical privileges;

(vi) recommend suspension of clinical privileges for a term;

(vii) recommend revocation of staff appointment; or

(viii) make such other recommendations as it deems necessary and appropriate.

(B) Any recommendation by the medical staff executive committee that would entitle the affected individual to a hearing as provided in paragraph (5)(B) of this subsection shall be forwarded to the hospital director who shall promptly notify the affected individual by certified mail, return receipt requested. The hospital director shall then hold the recommendation until after the individual has either requested a hearing or has waived his or her right to a hearing as provided in this section. If the affected individual does not request a hearing in a timely manner, the hospital director shall forward the recommendation of the medical staff executive committee, together with all supporting documentation, to the chair of the hospital oversight committee. The chair of the hospital oversight committee, or his or her designee, shall be available to the hospital oversight committee to answer any questions about the recommendation.

(C) If the action of the medical staff executive committee does not entitle the individual to a hearing in accordance with paragraph (5)(B) of this subsection, the action shall take effect upon confirmation by the hospital oversight committee chair and without right of appeal to the whole hospital oversight committee. A report of the action taken and the reasons therefore shall be made to the hospital oversight committee by the hospital director, and the action shall stand unless subsequently modified by the hospital oversight committee.

(D) If the hospital oversight committee decides to consider any modification of the action of the medical staff executive committee which would entitle the individual to a hearing under paragraph (5)(B) of this subsection, the hospital oversight committee shall:

(i) remand the matter to the medical staff executive committee for further investigation and/or preparation of responses to specific questions raised by the hospital oversight committee prior to its final decision; or

(ii) set forth in the report supporting its decision the specific reasons for its disagreement with the medical staff

executive committee's recommendation, including references to particular aspects of the individual's record or the medical staff executive committee's report.

(4) Further review. If the hospital oversight committee's decision remains contrary to the recommendation of the medical staff executive committee after receipt of additional information from the medical staff executive committee on remand, the chair of the hospital oversight committee shall appoint an ad hoc investigating committee to consider all issues which form the basis for its disagreement with the medical staff executive committee. No further action shall be taken by the hospital oversight committee until the ad hoc investigating committee has submitted its report.

(5) Hearing procedures.

(A) Entitlement to a hearing. An applicant for medical staff appointment or a medical staff member shall be entitled to a hearing whenever a recommendation adverse to him or her listed in subparagraph (B) of this paragraph has been made by the medical staff executive committee. The purpose of the hearing shall be to recommend a course of action to the hospital oversight committee.

(B) Grounds for hearing. Only the recommendations or actions enumerated in this subparagraph shall entitle an affected individual to a hearing:

(i) denial of initial medical staff appointment;

(ii) denial of requested advancement in medical staff category;

(iii) denial of medical staff reappointment;

(iv) revocation of medical staff appointment;

(v) denial of requested initial clinical privileges;

(vi) denial of requested increased clinical privileges;

(vii) decrease of clinical privileges;

(viii) suspension of all clinical privileges; or

(ix) imposition of mandatory concuring consultations.

(C) Unappealable actions. The following actions shall take effect without hearing or appeal:

(i) voluntary relinquishment of clinical privileges by the affected member;

(ii) any consultation requirement, except one which requires mandatory concurrence by the consultant; and

(iii) required retraining, additional training, or continuing education.

(D) Notice of proposed action.

(i) When a recommendation is made which entitles an individual to a hearing prior to a final decision of the hospital oversight committee, the hospital director shall promptly give the affected individual notice by certified mail, return receipt requested, stating:

(I) that the hospital proposes to take a professional review action against the individual;

(II) reasons for the proposed action;

(III) that the individual has the right to request a hearing on the proposed action;

(IV) that the individual has 30 days from his or her receipt of the notice to request a hearing; and

(V) a summary of the individual's rights in the hearing as specified in this section.

(ii) If the affected individual does not request a hearing within the time period and in the manner specified in this section, he or she shall be deemed to have waived his or her right to such hearing and to have accepted the action involved. Such action shall thereupon become effective upon final action by the hospital oversight committee.

(E) Notice of hearing.

(i) If a hearing is requested on a timely basis under subparagraph (D)(i)(IV) of this paragraph, the hospital director shall provide notice to the individual involved stating:

(I) the place, time, and date of the hearing, which shall not be less than 30 days after the date of the notice, unless the hospital and the affected individual agree otherwise;

(II) a list of any witnesses who will testify at the hearing in support of the recommended adverse action; and

(III) a list of patient record numbers and all other information which the hospital believes supports the proposed recommendation.

(ii) The hospital's statement of reasons for the proposed action, the list of patient record numbers, and other supporting information may be amended or supplemented at any time, if the amendment or supplemental material is relevant to the proposed action. The affected individual, his or her attorney, and/or other designated representative shall be afforded sufficient time to study the additional information and to prepare a rebuttal.

(iii) The individual and/or his or her attorney or other designated representative shall have the right to review and copy any relevant evidence relied upon and used to support the adverse recommendation.

(F) Conduct of the hearing.

(i) The hearing shall be held before a panel of three medical staff members who:

(I) have not actively participated in the consideration of the matter at any prior level;

(II) are not in direct economic competition with the affected individual;

(III) are not professionally associated with or personally related to the affected individual.

(ii) After considering the recommendations of the chief of staff/DDPS, the hospital director shall appoint the hearing panel and shall designate one member as its chair.

(iii) A legal advisor to assist the hearing panel shall be appointed by the department's Office of General Counsel.

(iv) The legal advisor shall act solely to ensure that all participants in the hearing have a reasonable opportunity to be heard and to present evidence and to ensure that all information relevant to the proposed action affecting the affected individual's appointment, reappointment, or clinical privileges is considered by the hearing panel in formulating its recommendations. The legal advisor may provide legal advice to the hearing panel, but may not function as an advocate during the hearing. He or she may not participate in the closed deliberations of the hearing panel, may not vote on the hearing panel's recommendations, and may not advise the hospital oversight committee when it considers the hearing panel's recommendations.

(v) Postponements and extensions of time beyond limits set forth in this section may be requested by the affected individual or by members of the

panel, and may be granted by the chair upon a showing of good cause.

(vi) Failure of the individual requesting the hearing to appear and proceed without good cause shall constitute voluntary acceptance of the recommendations or actions pending, which shall become effective upon final action by the hospital oversight committee.

(vii) The individual whose personal or professional conduct is the subject of the hearing shall have the right:

(I) to representation by an attorney or another person of his or her choice;

(II) to have a stenographic record made of the proceedings, copies of which may be obtained by the affected individual upon payment of reasonable charges associated with its preparation;

(III) to call, examine, and cross-examine witnesses;

(IV) to present any evidence determined to be relevant by the presiding officer upon which reasonable persons rely in the conduct of serious affairs, regardless of its admissibility in a court of law; and

(V) to submit a written statement at the close of the hearing.

(viii) The hearing panel shall have the authority to examine and cross-examine witnesses on any matter relevant to the issues, to call additional witnesses, and to request documentary evidence it deems appropriate.

(ix) Oral evidence shall be received only on the witnesses' oath or affirmation.

(x) All three members of the hearing panel must be present to conduct a hearing. Matters before the panel shall be decided by vote of a majority of those appointed to the hearing panel, and no hearing panel member may vote by proxy.

(xi) The panel's decision shall be based on the preponderance of the evidence presented at the hearing.

(xii) The presiding officer may adjourn and reconvene the hearing at the convenience of the participants with reasonable notice. Upon conclusion of the presentation of oral and written evidence, the hearing shall be closed.

(xiii) Within ten days after final adjournment of the hearing, the

hearing panel shall conduct its deliberations in closed session, and shall render a recommendation, accompanied by a report, which shall contain a concise statement of the reasons justifying the recommendation made, and shall deliver such report to the hospital director.

(xiv) The hospital director shall forward the hearing panel's report and recommendation, along with all supporting documentation, to the hospital oversight committee for further action. The hospital director shall simultaneously forward a copy of the report and recommendation, return receipt requested, to the individual who requested the hearing, and to the medical staff executive committee for information purposes.

(6) Appellate procedure.

(A) Grounds for appeal. Grounds for appeal from an adverse recommendation shall include:

(i) substantial failure by the hearing panel to comply with the medical staff bylaws in the conduct of the hearing so as to deny the affected individual due process or a fair and impartial hearing; or

(ii) lack of support for the recommendations of the hearing panel by a preponderance of the evidence.

(B) Time for appeal. Within 20 days after the affected individual is notified of an adverse recommendation from the hearing panel, he or she may request an appellate review. The request shall be in writing, and shall be delivered to the hospital director either in person or by certified mail, and shall include a brief statement of the reasons for the requested appeal. If such appellate review is not requested within 20 days, the affected individual shall be deemed to have accepted the recommendation involved, and it shall become effective upon final action by the hospital oversight committee.

(C) Notice. If an appeal is filed, the chair of the hospital oversight committee shall schedule an appellate review within ten days after receipt of the request. The hospital oversight committee shall give the affected individual notice of the time, place, and date of the appellate review. The date of appellate review shall not be less than 20 days, nor more than 40 days, from the date of receipt of the request for appellate review. However, if a request for appellate review is received from a staff member whose medical staff membership and/or clinical privileges are suspended, the appellate review shall be held as soon as the arrangements can reasonably be made, but not more than 14 days from the date of

receipt of the request for appellate review. The time for appellate review may be extended by the chair of the hospital oversight committee for good cause.

(D) Nature of appellate review.

(i) The chair of the hospital oversight committee shall appoint a review panel composed of not less than three persons, either members of the hospital oversight committee or others, including but not limited to reputable persons outside the hospital, or any combination of the same, to consider the record upon which the recommendation before it was made. The majority of the panel shall be composed of members of the medical staff who shall not have actively participated in the consideration of the matter involved at any previous level.

(ii) At its discretion, the review panel may accept additional oral or written evidence subject to the same rights of cross-examination or confrontation which governed the hearing panel proceedings, but only if the affected individual can demonstrate that the evidence was offered but excluded at the hearing.

(iii) The affected individual shall have the right to present a written statement in support of his or her position on appeal, and the review panel may allow the affected individual or his or her representative to appear personally and present oral argument. The review panel shall recommend a final disposition of the matter to the hospital oversight committee.

(7) Final decision of the hospital oversight committee.

(A) Within 30 days after receipt of the review panel's recommendation, the hospital oversight committee shall render a final decision in writing affirming, modifying, or reversing the recommendation of the hearing panel and shall deliver copies of the decision to the affected individual and to the chief of the medical staff in person or by certified mail.

(B) No applicant or medical staff member shall be entitled as a matter of right to more than one appellate review on any single action or decision. If the hospital oversight committee ultimately denies initial appointment or reappointment to the medical staff to an applicant or revokes or terminates the medical staff appointment and clinical privileges of a current staff member, that individual may not apply again for medical staff appointment or clinical privileges at the hospital for two years from the date of the decision, unless the hospital oversight executive committee provides otherwise in its written decision.

(k) Amendments. There shall be an annual review of the medical staff bylaws, and the rules and regulations. The chief of staff/DDPS shall compile all proposed amendments for referral to the medical staff executive committee for its information and comment. Proposed amendments shall be voted upon at that meeting, provided that they shall have been mailed to the medical staff at least 14 days prior to the meeting. To be approved, an amendment must receive two-thirds of the votes cast by those present and voting. Amendments so adopted shall be effective when approved by the hospital oversight committee and the board.

(l) Approval. These medical staff bylaws shall be approved by the hospital oversight committee and shall become effective upon adoption by the board, superseding and replacing any and all previous medical staff bylaws. Henceforth, all activities and actions of the medical staff and of each individual exercising clinical privileges in the hospital shall be undertaken pursuant to the this chapter.

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

Issued in Austin, Texas, on October 26, 1995.

TRD-9513824

Susan K. Staeg  
General Counsel  
Texas Department of  
Health

Effective date: November 16, 1995

Proposal publication date: May 9, 1995

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

◆ ◆ ◆  
**Part VIII. Interagency  
Council on Early  
Childhood Intervention  
Services**

**Chapter 621. Early Childhood  
Intervention**

**Early Childhood Intervention  
Service Delivery for Mile-  
stones Services**

• 25 TAC §621.83

The Interagency Council on Early Childhood Intervention Services adopts an amendment to §621.83, concerning program requirements, in its Early Childhood Intervention Program chapter, without changes to the proposed text as published in the September 5, 1995, issue of the *Texas Register* (20 TexReg 6887).

The purpose of the amendment is to comply with federal regulations.

The adopted rule will allow Milestones programs to serve 1,500 gram babies who are also receiving WIC and Champus services.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §73.003, which authorizes the Interagency Council on Early Childhood Intervention Services to establish rules regarding services provided for children with developmental delays.

The amendment implements the Human Resources Code, §§73.001-73.021.

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 26, 1995.

TRD-8513933

Donna Samuelson  
Deputy Executive Director  
Interagency Council on  
Early Childhood  
Intervention

Effective date: November 20, 1995

Proposal publication date: September 5, 1995

For further information, please call: (512) 502-4900

◆ ◆ ◆  
**TITLE 30. ENVIRONMENTAL  
QUALITY**

**Part I. Texas Natural  
Resource Conservation  
Commission**

**Chapter 115. Control of Air  
Pollution From Volatile  
Organic Compounds**

**Subchapter B. General Volatile  
Organic Compound Sources  
Water Separation**

• 30 TAC §§115.131-115.133,  
115.135, 115.137, 115.139

The Texas Natural Resource Conservation Commission (TNRCC) adopts amendments to §§115.131-115.133, 115.135, 115.137, and 115.139, concerning Water Separation. Sections 115.135, 115.137, and 115.139 are adopted with changes to the proposed text as published in the May 26, 1995, issue of the *Texas Register* (20 TexReg 3886). Sections 115.131-115.133 are adopted without changes and will not be republished.

Revisions to Chapter 115, concerning Control of Air Pollution from Volatile Organic Compounds (VOC), and to the State Implementation Plan are adopted in response to petitions for rulemaking from four companies in oil and gas production and the Texas Mid-Continent Oil and Gas Association (TMOGA). The revisions are adopted in order to provide for more cost-effective regulation. The rule previously did not set a de minimis exemption level for VOC water separators used in conjunction with the production of crude oil or condensate in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston ozone non-attainment areas. The affected

ozone nonattainment counties are Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller. In response to testimony, the rule now exempts VOC separators which primarily handle stormwater. The amendments are also adopted in order to clarify existing requirements, update rule references, and delete obsolete or unnecessary language.

The amendments to §115.131, concerning Emission Specifications, and §115.132, concerning Control Requirements, delete language made obsolete by the passage of the May 31, 1995, compliance date.

The amendment to §115.133, concerning Alternate Control Requirements, updates a reference to §115.910 to reflect a title change. The amendment to §115.135, concerning Testing Requirements, provides new and updated test methods for determining true vapor pressure.

The amendment to §115.137, concerning Exemptions, establishes an exemption for low emitting VOC water separators used in crude oil and condensate production and delete language made obsolete by the passage of the May 31, 1995, compliance date.

The amendment to §115.139, concerning Counties and Compliance Schedules, deletes language made obsolete by the passage of the May 31, 1995, compliance date.

A public hearing was held on June 22, 1995 in Houston. Written comments were accepted through July 7, 1995.

Nine commenters submitted testimony on §§115.131-115.133, 115.135, 115.137, and 115.139, concerning Water Separation. Mitchell Energy Corporation; Pennzoil Company; and Texaco Exploration and Production, Incorporated fully supported the proposed revisions, while Chevron USA Production Company (Chevron); Citgo Petroleum Corporation (Citgo); City of Dallas (Dallas); Exxon Company, U.S.A. (Exxon); Mobil Oil Corporation (Mobil); and TMOGA generally supported the proposed revisions but suggested changes.

Mobil commented on the test methods at §115.135(a)(5) and (b)(5) and stated that the wording "for the measurement of Reid vapor pressure" should be deleted because some of the referenced test methods can provide true vapor pressure without any need to convert from Reid vapor pressure.

The TNRCC agrees with Mobil that the reference should be more generic. In addition, it has come to the TNRCC's attention that §115.135(a) and (b) refer only to §115.132 rather than to §§115.131, 115.132 and 115.137. The gaseous VOC concentration test methods are used to demonstrate compliance with the emission specifications of §115.131, and the liquid VOC vapor pressure test methods are used to demonstrate compliance with the vapor pressure exemptions in §115.137. The TNRCC has corrected §115.135(a) and (b) to make it clear that these test methods are applicable in determining compliance with §§115.131, 115.132 and 115.137.

Chevron, Citgo, Exxon and TMOGA commented on §115.137(a)(1). Exxon and TMOGA stated that the proposed mass emission rate exemption for VOC water separators used exclusively in conjunction with the production of crude oil or condensate should be extended to include all VOC water separators. Chevron and Citgo recommended that the proposed mass emission rate exemption be broadened specifically to include VOC water separators at petroleum bulk terminals (Standard Industrial Classification code 5171), due to the poor cost-effectiveness of controlling vented emissions from these separators.

The TNRCC did not extend the mass emission rate exemption to include all VOC water separators. A difference between VOC water separators at oil and gas production facilities and other separators is that oil and gas production facilities are typically located at remote sites which do not have flares available or personnel on-site to monitor control devices. More importantly, separators used in oil and gas production may continuously emit gases, due to the depressurization of entrained gases in the produced oil and water. In contrast, VOC water separators used in wastewater systems produce VOC emissions largely from surface evaporation. A vented tank or other enclosure is a reasonable and very cost-effective control measure for wastewater separators, since there is not a continuous outflow of process gas. The United States Environmental Protection Agency (EPA) estimates that a VOC wastewater separator which is enclosed, with a pressure relief vent set to open at the maximum pressure necessary for proper system operation, will control 85% of the VOC emissions, compared to an open-tank separator. The cost-effectiveness is estimated by the EPA at \$36/ton for refinery separators.

The TNRCC agrees that vapor recovery systems are not cost-effective air pollution control for the VOC water separator vents at gasoline bulk terminals, as described by the commenters. These separators are essentially backup units to catch gasoline or other petroleum product spills. To address the concerns of these commenters, the TNRCC has added an exemption for covered VOC water separators which are designed solely to capture stormwater, spills, or exterior surface cleanup waters. These separators would have to be enclosed, but would not need pressure relief valves or vapor recovery systems to control emissions.

Under §115.132, there are three options for controlling emissions from VOC water separators. One option is for each VOC water separator compartment to have all openings sealed and totally enclose the liquid contents. Another option is to equip each compartment with a floating roof or internal floating cover which rests on the surface of the liquid contents and is equipped with a closure seal or seals to close the space between the roof edge and tank wall. The third option is to vent the emissions from the compartment to a vapor recovery system. These three options have been available since the initial adoption of the VOC water separator rules by the former Texas Air Control Board on January 26, 1972.

The TNRCC believes that the requirements of the first control option (§115.132(a)(1), (b)(1) and (c)(1)) have been recently misinterpreted to mean that no venting to the atmosphere is allowed. The agency clarifies that the intent of these control requirements is to allow for venting of emissions through a pressure relief valve, without vapor recovery, provided that the pressure relief valve is designed to open only as necessary to allow proper operation, and is set at the maximum possible pressure to minimize unnecessary venting. The VOC water separator needs to operate at nearly constant level for proper operation, and excessive pressure could alter the liquid levels and impair the separation effect. Conservation vents, a type of pressure relief valve, allow minor pressure equilibration (e.g. tank "breathing" losses), and are of fairly standardized design. A conservation vent designed to hold at least 0.5 ounce of vacuum and eight ounces of pressure, and operable, based on a visual inspection, would be considered compliant. The effectiveness of the separator, and rule compliance, is primarily dependent upon roof seals, access doors, and other openings being well-sealed such that the separator can hold a vacuum or pressure without emissions to the atmosphere, except through the pressure relief valve. To incorporate these clarifications, §§115.132(a)(1), (b)(1), (c)(1), and 115.137(b) need to be revised. Because these rules were not proposed for revision as part of the current rulemaking, the TNRCC intends to propose these revisions in separate rulemaking at a later date.

Dallas commented on §115.139 and suggested that the appropriate rule title be given after each rule reference, rather than including multiple rule titles together.

The rule reference format initially proposed in §115.139 is allowed by the *Texas Register* and results in less repetition of the wording "relating to." However, because the May 31, 1995 compliance date in the proposed §115.139 has passed, the TNRCC has revised §115.139 to include only a reference to §115.930, concerning Compliance Dates. Section 115.930 states, in part, that "if the compliance dates are not specified for any provision, the compliance date is past and all affected persons must be and remain in compliance with the provision as of the original compliance date."

The amendments are adopted under the Texas Health and Safety Code (Vernon 1992), the 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.

#### §115.135. Testing Requirements.

(a) For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, compliance with §115.131(a), §115.132(a), and §115.137 of this title (relating to Emission Specifications; Control Requirements; and Exemptions) shall be determined by applying the following test methods, as appropriate:

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

(5) determination of true vapor pressure at actual storage temperature using American Society for Testing Materials (ASTM) Test Methods D323-89, D2879, D4953, D5190, or D5191; using API Publication 2517, Third Edition, 1989 or standard reference texts to convert from Reid vapor pressure to true vapor pressure, where applicable; or

(6) (No change.)

(b) For Gregg, Nueces, and Victoria Counties, compliance with §115.131(b), §115.132(b), and §115.137(b) of this title shall be determined by applying the following test methods, as appropriate:

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

(5) determination of true vapor pressure at actual storage temperature using ASTM Test Methods D323-89, D2879, D4953, D5190, or D5191; and using API Publication 2517, Third Edition, 1989 or standard reference texts to convert from Reid vapor pressure to true vapor pressure, where applicable; or

(6) (No change.)

#### §115.137. Exemptions.

(a) For the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston areas, the following exemptions shall apply.

(1) Any volatile organic compound (VOC) water separator used exclusively in conjunction with the production of crude oil or condensate is exempt from §115.132(a) of this title (relating to Control Requirements) if the emissions from the separator have a combined weight of VOC equal to or less than 100 pounds (45.4 kg) in any continuous 24-hour period. When emissions from multiple sources (including, but not limited to, VOC water separators, treaters, storage tanks, and saltwater disposal tanks) are routed through a common vent, the calculation of VOC emissions for purposes of this exemption shall be based upon the total of all emission sources which are routed to the common vent. It is unacceptable to disconnect any of the multiple sources routed through a common vent for purposes of complying with this exemption.

(2) Any single or multiple compartment VOC water separator which separates materials having a true vapor pressure of VOC less than 0.5 psia (3.4 kPa) obtained from any equipment is exempt from §115.132(a) of this title.

(3) Any single or multiple compartment VOC water separator which is designed solely to capture stormwater, spills, or exterior surface cleanup waters, provided that the separator is fully covered. These separators are not required to be equipped with pressure/vacuum vents or vapor recovery systems.

(b) (No change.)

(c) For Aransas, Bexar, Calhoun, Matagorda, San Patricio, and Travis Counties, the following exemptions shall apply:

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

(4) Any single or multiple compartment VOC water separator which is designed solely to capture stormwater, spills, or exterior surface cleanup waters, provided that the separator is fully covered. These separators are not required to be equipped with pressure/vacuum vents or vapor recovery systems.

§115.139. Counties and Compliance Schedules. All affected persons in Aransas, Bexar, Brazoria, Calhoun, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Gregg, Hardin, Harris, Jefferson, Liberty, Matagorda, Montgomery, Nueces, Orange, San Patricio, Tarrant, Travis, Victoria, and Waller Counties shall continue to comply with this undesignated head (relating to Water Separation) as required by §115.930 of this title (relating to Compliance Dates).

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-9513922

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

Effective date: November 20, 1995

Proposal publication date: May 26, 1995

For further information, please call: (512) 239-1970

## TITLE 34. PUBLIC FINANCE

### Part I. Comptroller of Public Accounts

#### Chapter 5. Funds Management (Fiscal Affairs)

##### Claims Processing-Purchase Vouchers

###### • 34 TAC §5.57

The Comptroller of Public Accounts adopts new §5.57, concerning use of credit cards by state agencies, without changes to the proposed text as published in the July 21, 1995, issue of the *Texas Register* (20 TexReg 5368).

The new section covers the procedures that state agencies must follow when using credit cards to pay for purchases and when paying credit card issuers.

No comments were received regarding adoption of the new section.

The new section is adopted under the Government Code, §403.023(b), which authorizes the comptroller to adopt rules relating to the use of credit cards by state 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 24, 1995.

TRD-9513761

Martin E. Cherry  
Chief, General Law  
Section  
Comptroller of Public  
Accounts

Effective date: November 15, 1995

Proposal publication date: July 21, 1995

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

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 11. Food Distribution and Processing

The Texas Department of Human Services (DHS) adopts the repeal of §11.105, new §11.105, and an amendment to §11.6008, without changes to the proposed text as published in the September 12, 1995, issue of the *Texas Register* (20 TexReg 7177).

The justification for the repeal, new section, and amendment is to clarify and simplify the adverse action process and time frames for sanctions for contractors participating in the Special Nutrition Programs who fail to comply with the requirements of the Single Audit Act. The adoption also moves the notification process in advance of the audit due date and deletes the suspension of payment step in the sanction process.

The sections will function by enhancing program accountability by enabling DHS to expedite the collection and resolution of audits required under the Single Audit Act.

No comments were received regarding adoption of the sections.

##### Food Distribution Program • 40 TAC §11.105

The repeal is adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The repeal implements the Human Resources Code, §§22.001-22.024 and §§33.001-33.024.

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

Issued in Austin, Texas, on October 30, 1995.

TRD-9513937

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

Effective date: December 1, 1995

Proposal publication date: September 12, 1995

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

The new section is adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The new section implements the Human Resources Code, §§22.001-22.024 and §§33.001-33.024.

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

Issued in Austin, Texas, on October 30, 1995.

TRD-9513938

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

Effective date: December 1, 1995

Proposal publication date: September 12, 1995

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

### The Emergency Food Assistance Program (TEFAP)

#### • 40 TAC §11.6008

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The amendment implements the Human Resources Code, §§22.001-22.024 and §§33.001-33.024.

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

Issued in Austin, Texas, on October 30, 1995.

TRD-9513939

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

Effective date: December 1, 1995

Proposal publication date: September 12, 1995

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

## Chapter 12. Special Nutrition Programs

The Texas Department of Human Services (DHS) adopts amendments to §§12. 24, 12.121, 12.209, 12.309, and 12.409, without changes to the proposed text as published in the September 12, 1995, issue of the *Texas Register* (20 TexReg 7180).

The justification for the amendments is to clarify and simplify the adverse action process and time frames for sanctions for contractors participating in the Special Nutrition Programs who fail to comply with the requirements of the Single Audit Act. The adoption also moves the notification process in advance of the audit due date and deletes the suspension of payment step in the sanction process.

The amendments will function by enhancing program accountability by enabling DHS to expedite the collection and resolution of audits required under the Single Audit Act.

No comments were received regarding adoption of the amendments.

### Child and Adult Care Food Program

#### • 40 TAC §12.24

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The amendment implements the Human Resources Code, §§22.001-22.024 and §§33.001-33.024.

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

Issued in Austin, Texas, on October 30, 1995.

TRD-9513940

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

Effective date: December 1, 1995

Proposal publication date: September 12, 1995

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

### Summer Food Service Program

#### • 40 TAC §12.121

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The amendment implements the Human Resources Code, §§22.001-22.024 and §§33.001-33.024.

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

Issued in Austin, Texas, on October 30, 1995.

TRD-9513941

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

Effective date: December 1, 1995

Proposal publication date: September 12, 1995

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

### Special Milk Program

#### • 40 TAC §12.209

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The amendment implements the Human Resources Code, §§22.001-22.024 and §§33.001-33.024.

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

Issued in Austin, Texas, on October 30, 1995.

TRD-9513942

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

Effective date: December 1, 1995

Proposal publication date: September 12, 1995

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

### School Breakfast Program

#### • 40 TAC §12.309

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The amendment implements the Human Resources Code, §§22.001-22.024 and §§33.001-33.024.

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

Issued in Austin, Texas, on October 30, 1995.

TRD-9513943

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

Effective date: December 1, 1995

Proposal publication date: September 12, 1995

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

## National School Lunch Program

### • 40 TAC §12.409

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The amendment implements the Human Resources Code, §§22.001-22.024 and §§33.001-33.024.

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

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

Issued in Austin, Texas, on October 30, 1995.

TRD-9513944

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

Effective date: December 1, 1995

Proposal publication date: September 12, 1995

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



## 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 2176 held at 9:00 a.m., October 19, 1995, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street, Austin, Texas, adopted a forms filing by the Texas Department of Transportation for revised surety bond forms. Forms 1382 (Revised August 1995), 1382-A (Revised July 1995), and 1383 (Revised August 1995) are surety forms required for vehicles used exclusively for the transportation of ready-mix concrete or concrete pump trucks. Forms 1575 (Revised August 1995), 1576 (Revised July 1995), and 1577 (Revised July 1995) are surety forms required for vehicles used exclusively for the

transportation of solid waste and recyclable materials. These forms are a requirement of Texas Civil Statutes, Articles 6701d-12, 6701-19a, and 6701d-19c. The forms were filed in the Chief Clerk's Office on September 20, 1995.

House Bill 1547, as passed by the 74th Legislature, amended Article 6701d-12 by adding a new §5 to include concrete pump trucks as vehicles used exclusively to transport ready-mixed concrete. This amendment required revisions to the following surety bond forms: Bond form 1382 (Revised August 1995), certificate form 1382-A (Revised July 1995), and amendment form 1383 (Revised August 1995).

House Bill 2584, as passed by the 74th Legislature, amended Article 6701 by adding a new §19c to require the same bonding requirements for vehicles used exclusively for the transportation of recyclable materials as those already existing for vehicles used exclusively for the transportation of solid waste. This amendment required revisions to the following surety bond forms: Bond form 1575 (Revised August 1995), certificate form 1576 (Revised July 1995), and amendment form 1577 (Revised July 1995).

The full text of the revised surety bond form filing (Reference Number O-0995-32), was published in the September 26, 1995, issue of the *Texas Register* (20 TexReg 7887).

The Texas Department of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.13, 5.15, and 5.97.

The full text of the revised surety bond form numbers 1382 (Revised August 1995), 1382-A (Revised July 1995), 1383 (Revised August 1995), 1575 (Revised August 1995), 1576 (Revised July 1995), and 1577 (Revised July 1995), as adopted by the Texas Department of Insurance are filed with the Chief Clerk under (Reference Number O-0995-32) and is incorporated by reference by Commissioner Order Number 95-1119.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

This agency hereby certifies that the adopted form filing referenced herein has been reviewed by legal counsel and found to be within this agency's authority to adopt.

Issued in Austin, Texas, on October 26, 1995.

TRD-9513839

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

Effective date: November 18, 1995

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





# TABLES AND GRAPHICS

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Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

**FIGURE 1: 22 TAC §141.16(g)(4)(C)**

Octave Band Interval (Hz)	250	500	1000	2000	4000	8000
Ears Covered 250-8000 Hz	22.5	19.5	26.5	28.0	34.5	43.5



# OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the **Texas Register**.

**Emergency meetings and agendas.** Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

**Posting of open meeting notices.** All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the **Texas Register**.

**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

## Texas State Board of Public Accountancy

Thursday, November 9, 1995, 9:00 a.m.

333 Guadalupe, Room 910

Austin

Board Meeting

AGENDA:

Executive session consultation with attorney concerning pending or contemplated litigation or a settlement offer and personnel matters; consideration of Technical Standards Review, Behavioral Enforcement, Rules, Qualifications, Continuing Professional Education, Licensing, Quality Review and Major Case committees; consideration of the adoption of proposed revisions to rules 511.106 and 527.4; and the consideration of board orders, agreed consent orders and proposals for decision.

Contact: J. Randel (Jerry) Hill, 333 Guadalupe, Tower III, Room 900, Austin, Texas 78701-3900, (512) 505-5542.

Filed: October 31, 1995, 9:35 a.m.

TRD-9514014

## State Office of Administrative Hearings

Friday, November 10, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Utility Division

AGENDA:

A hearing on the merits on remand will be held at the above date and time in SOAH Docket Number 473-95-1200--Application of Kingsgate Telephone, Inc. for facilities-based Certificate of Operating Authority within Harris County (PUC Docket Number 14651).

Contact: J. Kay Trostle, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0233.

Filed: October 30, 1995, 4:31 p.m.

TRD-9514006

## Texas Department of Agriculture

Friday, November 17, 1995, 10:00 a.m.

Texas Department of Agriculture, 1700 North Congress Avenue, Room 928B

Austin

Office of Hearings

AGENDA:

Teleconference hearing to take further testimony regarding alleged violation of Texas Agriculture Code Annotated, §§101.001-101.021 and/or §§102.001-102.172 (Vernon 1995) by Goldman-Hayden Company, Incorporated as petitioned by The Produce Cellar, Incorporated.

Contact: Joyce C. Arnold, P.O. Box 12847, Austin, Texas 78711, (512) 475-1668.

Filed: October 27, 1995, 3:46 p.m.

TRD-9513914

Tuesday, December 5, 1995, 10:00 a.m.

Texas Department of Agriculture, 1700 North Congress Avenue, Room 928B

Austin

Office of Hearings

AGENDA:

Administrative hearing to review alleged violation of Texas Agriculture Code Annotated, §76.116(a)(1) (Vernon 1995) and 4 Texas Administrative Code, §7.22 by Troy Ledbetter doing business as Valley Aerial Sprayers.

Contact: Barbara B. Deane, P.O. Box 12847, Austin, Texas 78711, (512) 463-7448.

Filed: October 27, 1995, 3:46 p.m.

TRD-9513915

## State Board of Barber Examiners

Tuesday, November 7, 1995, 1:00 p.m.

333 Guadalupe, Tower Two, Room 410-A, William P. Hobby State Office Building

Austin

Board of Directors

AGENDA:

Open of meeting; roll call; read and possibly approve minutes of October 3, 1995; old business: Discussion and possible action regarding Allen Taylor's condition; discussion and possible action regarding inspection operation in Region 6; discussion and possible action regarding proposed changes to the rules and regulations governing sanitary conditions of barber shops, barber schools and colleges; discussion regarding HIV/AIDS information approved for distribution by previous board action; new business: Discussion and possible action regarding the number of hours required to complete the manicurist course; discussion and possible action regarding the development of a manicurist teacher course; discussion and possible action regarding the amount of \$44.25 owed to the executive director by Alan Warrick; the following individuals requested information about obtaining a permit to operate a barber college: September 26, 1995-Mark Lyle, 5714 Stage Line Drive, Arlington, Texas 76017; October 23, 1995-Rita Hughes, 2503 Martin Luther King Boulevard, Dallas, Texas 75215; October 27, 1995-Sylvester Iwotor, 7001 Fair Oaks Avenue #524, Dallas, Texas 75231. Adjournment.

Contact: B. Michael Rice, 333 Guadalupe, Suite 2-110, Austin, Texas 78701, (512) 305-8475.

Filed: October 30, 1995, 2:15 p.m.

TRD-9513988

## Texas Department of Commerce

Wednesday, November 8, 1995, 9:00 a.m.

1700 South Congress Avenue, Room 118  
Austin

Policy Board

AGENDA:

9:00 a.m. Call to order; recess into executive session; call back to order; adoption of the minutes from the meeting of August 15, 1995; report from the executive director; Tourism Cooperative marketing policies; budget review; nominating two new board members for Audit Committee of the Policy Board; set quarterly Policy Board meeting dates for year; board comments; public comments; and adjourn.

Contact: Shirley Zimmerman, 1700 North Congress Avenue, Austin, Texas 78701, (512) 936-0158.

Filed: October 27, 1995, 1:44 p.m.

TRD-9513867

## East Texas State University

Friday, November 10, 1995, 8:00 a.m.

East Texas State University, 2600 Robison Road, Room 375

Texarkana

Campus Planning, Finance and Auditing Committee

AGENDA:

1. Adjustments in ETSU-Commerce fiscal year 1996 operating budget
2. Adjustments in ETSU-Texarkana fiscal year 1996 operating budget
3. Reappropriation of accounts and balances for ETSU-Commerce
4. Reappropriation of accounts and balances for ETSU-Texarkana
5. Approval of Information Resources biennial operating plan
6. Adoption of student fee scholarship guidelines for ETSU-Texarkana
7. Adoption of historically underutilized business policy
8. Approval of library agreement between ETSU-Texarkana and Texarkana College

Contact: Charles Turner, East Texas State University, Commerce, Texas 75429, (903) 886-5539.

Filed: October 30, 1995, 3:22 p.m.

TRD-9513997

Friday, November 10, 1995, 9:00 a.m.

East Texas State University-Texarkana, 2600 Robison Road, Room 180

Texarkana

Board of Regents

AGENDA:

1. Call to order, opening remarks by chairperson; and recognition of guests.
2. Approval of agenda.
3. Approval of minutes of the regular meeting of July 27, 1995.
4. Report by the president and chief executive officer, ETSU-Commerce and by the president, ETSU-Texarkana.
5. Report on division activities.
6. Report on division activities.
7. Faculty workload report for summer and fall 1995, ETSU-Commerce.
8. Undersized class report for Summer and Fall, 1995, ETSU-Commerce.
9. Faculty workload report for Summer and Fall 1995, ETSU-Texarkana.
10. Undersized class report for Summer and Fall 1995, ETSU-Texarkana.
11. Professor Emeritus designation.
12. Adjustments in ETSU-Commerce fiscal year 1996 operating budget.
13. Adjustments in ETSU-Texarkana fiscal year 1996 operating budget.
14. Reappropriation of accounts and balances for ETSU-Commerce.
15. Reappropriation of accounts

and balances for ETSU-Texarkana. 16. Approval of Information Resources biennial operating plan. 17. Adoption of student fee scholarship guidelines for ETSU-Texarkana. 18. Adoption of historically underutilized business policy. 19. Approval of library agreement between ETSU-Texarkana and Texarkana College. 20. Executive session. 21. Selection of President Emeritus. 22. Resolution by Legislature honoring Dr. John F. Moss. 23. Report on Equal Opportunity Plan. 24. Adjournment.

Contact: Charles Turner, East Texas State University, Commerce, Texas 75429, (903) 886-5539.

Filed: October 30, 1995, 2:52 p.m.

TRD-9513996

## Texas Education Agency

Saturday, November 11, 1995, 10:00 a.m.

San Antonio Airport Hilton, 611 Northwest Loop, 410 Govens Room

San Antonio

Health Sciences Technology 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 for all interested parties to have opportunity to be informed of the meeting.

The Health Science Technology Certification Team will meet to review previous team work, continue work in the process to clarify essential knowledge and skills for health science technology curriculum for Texas public schools, and set and discuss future meetings.

Contact: Hank Madeley, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9446.

Filed: October 30, 1995, 4:11 p.m.

TRD-9514003

## State Employee Charitable Campaign

Tuesday, November 28, 1995, 9:00 a.m.

210 East Ninth Street

Fort Worth

Local Employee Committee-Tarrant County

AGENDA:

- 1) Approve minutes of previous meeting
- 2) Review budget and expenses

- 3) Make plans for recognition event
- 4) Identify names of committee members for 1996
- 5) Discuss plans for 1996 campaign

Contact: Sara Marshall, 210 East Ninth Street, Fort Worth, Texas 76102, (817) 878-0000, Fax: (817) 878-0005.

Filed: October 27, 1995, 11:11 a.m.

TRD-9513853

◆ ◆ ◆  
**Texas Ethics Commission**

Friday, November 3, 1995, 9:30 a.m.

1101 Camino La Costa, Room 235

Austin

**AGENDA:**

The commission will take roll call; hear comments by the commissioners and the executive director, and communications from the public; approve the minutes of the October 13, 1995, meeting; briefing, discussion, and possible action to waive certain fines assessed for late filing of a report; discussion and possible action in response to the following Advisory Opinions Requests Numbers 322 and 323; and adjourn.

Contact: Tom Harrison, 1101 Camino La Costa, Austin, Texas 78711, (512) 463-5800.

Filed: October 26, 1995, 1:30 p.m.

TRD-9513806

◆ ◆ ◆  
**Texas Commission on Fire Protection**

Wednesday-Thursday, November 8-9, 1995, 9:00 a.m.

12675 North Research Boulevard

Austin

Fire Code Committee

**AGENDA:**

- I. Discussion of committee's mission.
- II. Discussion and possible action relating to the development of rules including standards to be enforced by the State Fire Marshal in conducting inspections under the authority of §417.008 of the Government Code.
- III. Discussion and possible action on future meeting dates, agenda items, and locations.

Contact: Carol Menchu, 12675 North Research Boulevard, Austin, Texas 78759, (512) 918-7100.

Filed: October 31, 1995, 9:04 a.m.

TRD-9514012

**Texas Funeral Service Commission**

Wednesday, November 7, 1995, 9:00 a.m.

8100 Cameron Road, Suite 600, Room 205

Austin

Commission Meeting

**AGENDA:**

Meeting called to order

Invocation

Item #1-Reports from all committees; discussion and possible action on policies and procedures presented by committees

Item #2-Discussion and possible action on changes to Rules 203.1, 203.7, 203.8-203.11 and Rule 203.27, continuing education

Item #3-Discussion and possible action on petitions for exemption under Rule 203.20, location of retained records

Executive session

Discussion of personnel matters relating to the duties of the executive director and all other commission personnel under the Texas Government Code, Chapter 551.074

Open session

Item #4-Possible action on personnel matters discussed in executive session

Item #5-Meeting of the Finance Review Committee

Adjourn

Contact: Marc Allen Connelly, 8100 Cameron Road, #550, Austin, Texas 78754-3896, (512) 834-9992.

Filed: October 26, 1995, 2:35 p.m.

TRD-9513818

◆ ◆ ◆  
**General Land Office**

Tuesday, November 7, 1995, 10:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Room 831

Austin

School Land Board

**AGENDA:**

Approval of previous board meeting minutes; pooling applications, Keystone San Andres and Holt Field, Winkler County; Wildcat Field, Duval County; consideration of nominations, terms and conditions for the January 2, 1996 special oil and gas lease sale; briefing on LaSalle's Shipwreck, Matagorda Bay; direct land sales, Leon County; and Brewster County; coastal public lands, commercial lease applications, amendments and renewals, Arroyo Colorado, Cameron

County; structure (cabin) permit renewals and amendments, Laguna Madre, Kenedy County; and Laguna Madre, Kleberg County; executive session-pending or contemplated litigation; executive session-consideration of miscellaneous easement for a storm water drainage pipeline on State Library and Archives Commission lands, Travis County; open session-consideration of miscellaneous easement for a storm water drainage pipeline on State Library and Archives Commission lands, Travis County; executive session-consideration of agreement to settle claims of John Ayres resulting from previous land trade, Presidio County; open session-consideration of agreement to settle claims resulting from previous land trade, Presidio County; executive session-consideration of request to execute deed, Port of Houston Authority vs. Manchester Terminal; and open session-consideration of request to execute deed, Port of Houston Authority vs. Manchester Terminal.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: October 27, 1995, 5:07 p.m.

TRD-9513921

◆ ◆ ◆  
**General Services Commission**

Sunday-Monday, November 12-13, 1995, 7:00 p.m. and 9:00 a.m., respectively.

The Menger Hotel, 204 Alamo Plaza

San Antonio

Texas Commission for National and Community Service Ad-Hoc Committee on Higher Education and Board Meeting

**AGENDA:**

November 12 agenda: Ad-Hoc Committee on Higher Education-(1) Discussion of the state plan and the commission's role in encouraging higher education institutions to offer programs of study in volunteer leadership and volunteer administration.

November 13 agenda: Board meeting-(I) Call to order, (II) Reading and approval of minutes of previous meeting, (III) Progress reports of the officers, (IV) Progress reports of the committee chairs, (V) Election of officers, (VI) Discussion of State Plan, (VII) Discussion of Ad-Hoc Higher Education Committee meeting.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille are requested to contact Christine Shakespeare at (512) 475-2583 at least two working days prior to the meeting so that appropriate arrangements can be made.

Contact: Christine Shakespeare, P.O. Box 13385, Austin, Texas 78711-3385, (512) 463-1814.

Filed: October 30, 1995, 11:36 a.m.

TRD-9513973

## Texas Department of Health

Friday, November 3, 1995, 9:30 a.m.

Room T-607, Texas Department of Health, 1100 West 49th Street

Austin

Children with Special Health Care Needs Advisory Committee (CSHCN)

### AGENDA:

The committee will discuss and possibly act on: study on medically fragile children; federal initiatives; Chronically Ill and Disabled Children's budget discussion; introduction to the Texas Department of Health initiatives; managed care and CSHCN; Medically Dependent Children's Program transfer and initiatives; case management technical assistance project; south Texas Center to study CSHCN; genetics; update on respite; Medicaid Therapy Task Force; and committee discussion.

Contact: Paula Russell, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700, Ext. 3046. For ADA assistance, contact Richard Butler (512) 458-7695 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: October 26, 1995, 8:34 a.m.

TRD-9513796

Friday, November 10, 1995, 9:30 a.m.

Room M-418, Texas Department of Health, 1100 West 49th Street

Austin

Kidney Health Care Advisory Committee

### AGENDA:

The committee will meet to discuss and possibly act on: assignment of terms; election of officers; quarterly meeting schedule; orientation; budgetary issues (status of fiscal year (FY) 1995 budget; and status of FY 1996-1997 budget); division updates (calcium distribution project; Cyclosporine distribution project; rules revisions; end-stage renal disease licensing law; and Medicaid transportation reimbursement); reimbursable drug list (review of procedures); old business not requiring committee action; new business (impact of new Health Care Financing Administration 2728; and feedback on managed care for end-stage renal disease); and public comment.

Contact: Manuel Zapata, 1100 West 49th Street, Austin, Texas 78756, (512)

458-7796. For ADA assistance, contact Richard Butler at (512) 458-7695 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: October 26, 1995, 8:34 a.m.

TRD-9513795

## Health and Human Services Commission

Thursday, November 9, 1995, 9:15 a.m.

701 West 51st Street, Winters Building

Austin

Medical Care Advisory Committee

### AGENDA:

Opening comments; State Medicaid Director's comments; approval of minutes; federal legislative update; Medicaid Vendor Drug Program reimbursement methodology for dispensing fee; amendments to Medicaid nursing facility moratorium rules; changes to ventilator add-on rate eligibility criteria for nursing facility residents and community based alternatives (CBA) clients; Day Activity and Health Services (DAHS) Program; rule change; budgeting lump sum payment in the Aid to Families with Dependent Children (AFDC)-related medical programs; revision to the Bienvenir Waiver Program reimbursement methodology; exclusion of deeming from an alien's sponsor; Primary Home Care Program; health assessments; update on managed care; open discussion by members; next meeting/adjournment.

Contact: Sharon Dobbs, 4807 Spicewood Springs Road, Building Four, Austin, Texas 78759, (512) 502-3255.

Filed: October 26, 1995, 10:44 a.m.

TRD-9513803

## Health Professions Council

Tuesday, November 7, 1995, 9:30 a.m.

Board of Medical Examiners, 1812 Centre Creek Drive, Room 200

Austin

### AGENDA:

1. Call to order, 9:30 a.m.
2. Roll call and introductions
3. Minutes of September 28, 1995, meeting
4. Reports of committees
5. Old business
6. New business
7. Other

8. Announcements

9. Comments from audience

10. Next meeting

11. Adjourn

Contact: Edward M. Boggess, 333 Guadalupe Street, Suite 2-220, Austin, Texas 78701-3942, (512) 305-8550.

Filed: October 30, 1995, 1:33 p.m.

TRD-9513985

## Texas Department of Housing and Community Affairs

Friday, November 3, 1995, 9:00 a.m.

3015 Oak Lawn Avenue, Melrose Hotel  
Dallas

Low Income Housing Tax Credit Committee Meeting

### AGENDA:

The Low Income Housing Tax Credit Committee of the Board of the Texas Department of Housing and Community Affairs will meet to consider and possibly act upon the following: Conduct public hearing regarding Low Income Housing Tax Credits for 1995B Round; executive session-Consultation with attorney under §551.071(2) of Texas Government Code; and adjourn.

Contact: Larry Paul Manley, 811 Barton Springs Road, Suite 500, Austin, Texas 78704, (512) 475-3934.

Filed: October 26, 1995, 3:41 p.m.

TRD-9513829

Thursday, November 8, 1995, 9:00 a.m.

5330 Griggs Road, Houston Business and Technology Center at Palm Center

Houston

Low Income Housing Tax Credit Committee Meeting

### AGENDA:

The Low Income Housing Tax Credit Committee of the Board of the Texas Department of Housing and Community Affairs will meet to consider and possibly act upon the following: Conduct public hearing regarding Low Income Housing Tax Credits for 1995B Round; executive session-Consultation with attorney under §551.071(2) of the Texas Government Code; and adjourn.

Contact: Larry Paul Manley, 811 Barton Springs Road, Suite 500, Austin, Texas 78704, (512) 475-3934.

Filed: October 26, 1995, 4:44 p.m.

TRD-9513842

## Texas Department of Insurance

Monday, November 13, 1995, 9:00 a.m.

State Office of Administrative Hearings,  
300 West 15th Street, Suite 502

Austin

### AGENDA:

454-95-1227.c

To consider whether disciplinary action should be taken against Charles Victor Marley, Coppell, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License issued by the Texas Department of Insurance.

Contact: Bernice Moss, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: October 31, 1995, 8:56 a.m.

TRD-9514010

Tuesday, November 14, 1995, 9:00 a.m.

State Office of Administrative Hearings,  
300 West 15th Street, Suite 502

Austin

### AGENDA:

454-94-0686.c

To consider whether disciplinary action should be taken against Nathan Paul Morris, New Home, Texas, who holds an Agricultural Insurance Agent's License and a Solicitor's License issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: October 31, 1995, 8:56 a.m.

TRD-9514011

Thursday, November 16, 1995, 9:00 a.m.

State Office of Administrative Hearings,  
300 West 15th Street, Suite 502

Austin

### AGENDA:

454-95-1313.E

To consider an appeal request by Hartford Accident and Indemnity Company from a decision of the Texas Workers' Compensation Insurance Facility.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: October 31, 1995, 8:56 a.m.

TRD-9514009

## Board of Law Examiners

Friday-Sunday, November 10-12, 1995,  
8:30 a.m.

Suite 500, Tom C. Clark Building, 205  
West 14th Street

Austin

### AGENDA:

The board will: call to order/determine quorum/consider requests for excused absences; hold public hearings and conduct deliberations on the character and fitness of the following applicants: Glen Peterson, Mary Stitt, George Carroll, and Robert Leone (deliberations may be conducted in executive session pursuant to §82.003(c), Texas Government Code); consider approval of minutes, financial reports, and investment reports; hear and act on various reports from staff, board members, and Supreme Court liaison; meet with legal counsel (in executive session pursuant to §2(e), Open Meetings Act) to discuss pending litigation; consider recommendations to Supreme Court regarding rule amendments; consider special requests for rule waivers and interpretations; consider details concerning upcoming exam administration; consider requesting budget amendment; consider request to use TBE essay questions commercially; consider issues relating to typing the examination; consider possible implementation of typing and waiver fees; consider policy on agenda formation; consider admission and exam development in other states; review open meeting opinion; hear communications from the public; and adjourn.

Contact: Rachael Martin, P.O. Box 13486,  
Austin, Texas 78711-3486, (512) 463-1621.

Filed: October 27, 1995, 3:49 p.m.

TRD-9513916

## Texas Department of Licensing and Regulation

Wednesday, November 8, 1995, 9:00 a.m.

920 Colorado, E.O. Thompson Building,  
Fourth Floor, Room 420

Austin

Enforcement Division, Boxing

### AGENDA:

According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of administrative penalties against Keith Lavender for promoting an elimination tournament contest without a promoter's license in violation of the 16 Texas Administrative Code (TAC) §61.202(a), pursuant to Texas Civil Statutes Annotated, Articles 8501 (the Act) and 9100; the Texas Government

Code, Chapter 2001 (APA); and 16 TAC, Chapter 61.

Contact: Paula Hamje, 920 Colorado,  
Austin, Texas 78701, (512) 463-3192.

Filed: October 30, 1995, 3:44 p.m.

TRD-9513999

## Texas State Board of Medical Examiners

Friday, November 3, 1995, 9:00 a.m.

1812 Centre Creek Drive, Suite 300

Austin

Texas State Board of Physician Assistant  
Examiners, Long Range Planning Committee

### AGENDA:

Call to order

Roll call

Discussion on proposed legislative issues

Update from public information specialist

Update on Rural Physician Assistant Loan  
Reimbursement Program from the Center  
for Rural Health Initiatives

Report on the status of the budget

Contact: Pat Wood, P.O. Box 149134,  
Austin, Texas 78714-9134, (512) 834-7728,  
Ext. 402, Fax (512) 834-4597.

Filed: October 26, 1995, 4:07 p.m.

TRD-9513834

Friday, November 3, 1995, 10:00 a.m.

1812 Centre Creek Drive, Suite 300

Austin

Texas State Board of Physician Assistant  
Examiners, Licensure Committee

### AGENDA:

Call to order

Roll call

Review of licensure applicant referred to  
the Licensure Committee by the executive  
director for determinations of eligibility for  
licensure, Clancy Laizure

Review of physician assistant applications  
for permanent licensure

Executive session under the authority of the  
Open Meetings Act, §551.071 of the Govern-  
ment Code and Article 4495b, and Article  
4495b-1, §4(h), Texas Civil Statutes and  
Article 72 of the Texas Administrative  
Code, Chapter 185, 3(h).

Contact: Pat Wood, P.O. Box 149134,  
Austin, Texas 78714-9134, (512) 834-7728,  
Ext. 402, Fax (512) 834-4597.

Filed: October 26, 1995, 4:07 p.m.

TRD-9513831

Friday, November 3, 1995, 1:00 p.m.

1812 Centre Creek Drive, Suite 300

Texas State Board of Physician Assistant  
Examiners, Disciplinary Committee

**AGENDA:**

Call to order

Roll call

Executive session to review selected investigative files for dismissal. Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code, as related to Article 4495b-1, §4(h), §19 of the Texas Civil Statutes and Article 22 of the Texas Administrative Code, Chapters 185.3(h) and 185.23(a), and Attorney General Opinion 1974, Number H-484.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, (512) 834-4597.

Filed: October 26, 1995, 4:07 p.m.

TRD-9513832

Friday, November 3, 1995, 1:30 p.m.

1812 Centre Creek Drive, Suite 300

Austin

Texas State Board of Physician Assistant  
Examiners

**AGENDA:**

Call to order

Roll call

Approval of minutes from previous board meetings

Report from Megan St. Clair, Director of Rural Health Services, on ProFind

Executive director's report

Report and recommendations from the Long Range Planning Committee

Recommendation from the Licensure Committee related to approval of physician assistant applications for permanent licensure

Discussion and possible action regarding newsletter for Texas Orthopedic Physician Assistants

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, Fax (512) 834-4597.

Filed: October 26, 1995, 4:08 p.m.

TRD-9513833

◆ ◆ ◆  
**Texas Natural Resource Conservation Commission**

Thursday, November 9, 1995, 9:30 a.m.

6300 Ocean Drive, Texas A&M University  
Corpus Christi, Conrad Blucher Institute

Corpus Christi

Management Committee of the Corpus Christi Bay National Estuary Program

**AGENDA:**

I. Call to order/introduction/minutes

II. Program update

III. Oral presentations: action plan demonstration project #2

IV. CCMP development process and timeline

V. Review of standard program description/place names

VI. Review of environmental stressor matrix

VII. Additional items/adjourn

Contact: Richard Volk, Campus Box 290, 6300 Ocean Drive, Corpus Christi, Texas 78412, (512) 985-6767.

Filed: October 30, 1995, 2:15 p.m.

TRD-9513989

Friday, November 10, 1995, 10:00 a.m.  
(Rescheduled from: October 16, 1995.)

Texas Natural Resource Conservation Commission, 12124 Park 35 Circle, Building C, Room 308E

Austin

**AGENDA:**

The public hearing on Travis County Water Control and Improvement District Number 17 (SOAH Docket Number 582-95-1037) which was remanded to the State Office of Administrative Hearings has been rescheduled. A public hearing will be held on the board resolution authorization application for amendment to the impact fees previously approved by the Texas Natural Resource Conservation Commission (Commission) on March 18, 1992 to be levied against new development in Travis County Water Control and Improvement District Number 17's (the District) service area. The March 18, 1992 impact fee of \$2,779 per equivalent single family connection (ESFC) was approved for properties not within the Steiner Ranch or Apache Shores/Comanche Trails defined areas. The district is requesting an impact fee of \$2,700 per ESFC for all areas except the existing Steiner Ranch defined area and other defined areas for which voters have approved bonds for facilities included in the capital projects plan under which this fee is based.

Contact: Gloria A. Vasquez, Mail Code 102, P.O. Box 13087, Austin, Texas 78701, (512) 239-4100.

Filed: October 27, 1995, 4:32 p.m.

TRD-9513920

**Board of Nurse Examiners**

Wednesday-Thursday, November 8-9, 1995, 8:00 a.m.

1812 Centre Creek Drive, Room 203

Austin

Revised Agenda

**AGENDA:**

The Board of Nurse Examiners will consider the adoption of Rule 222, Advanced Practice Nurses Limited Prescriptive Authority and take action on an ALJ proposal for decision for Sandra Kay Rongers, TX #256111.

Contact: Erlene Fisher, Box 140466, Austin, Texas 78714, (512) 835-8675.

Filed: October 30, 1995, 11:36 a.m.

TRD-9513974

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**Public Utility Commission of Texas**

Friday, November 3, 1995, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

**AGENDA:**

The commissioners will have an informal work session at the above date and time to discuss Projects 14045 and 15000. No action will be taken.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0241.

Filed: October 26, 1995, 12:01 p.m.

TRD-9513804

Monday, November 13, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

**AGENDA:**

A hearing on the merits will be held in Docket Number 14919-Application of LCI International Worldwide Telecommunications Inc. for a Service Provider Certificate of Operating Authority. This application was filed on October 25, 1995. LCI International Worldwide will provide affordable flat rate business and residential local exchange service. The boundaries of LCI's service area will follow the boundaries of the state. LCI will not operate in any area where the incumbent LEC, along with any affiliates, serve less than 31,000 access lines. Persons who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission by November 8, 1995.



Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 30, 1995, 9:07 a.m.

TRD-9513925

Tuesday, November 14, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Legal Administration

AGENDA:

A prehearing conference has been scheduled in Docket Number 14893--Application of Sam Rayburn G&T Electric Cooperative, Inc. for authority to change rates.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 26, 1995, 2:46 p.m.

TRD-9513819

Tuesday, November 14, 1995, 2:00 p.m.

7800 Shoal Creek Boulevard

Austin

Legal Administration

AGENDA:

A prehearing conference has been scheduled for the above date and time in Docket Number 14787--Application of Pedernales Electric Cooperative, Inc. and the City of Georgetown for approval of contract designating service area within Williamson County and for approval of amendments to Certificates of Convenience and Necessity; application of Pedernales Electric Cooperative, Inc. for sale, transfer, or merger.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 26, 1995, 2:46 p.m.

TRD-9513820

Tuesday, November 28, 1995, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

AGENDA:

The commission staff will have a workshop in Project Number 14732 changing service location--reconnection fees under PURA Title III, §3.1556.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0241.

Filed: October 30, 1995, 4:28 p.m.

TRD-9514005

Tuesday, November 28, 1995, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

AGENDA:

The commission staff will have a workshop in Project Number 14732 changing service location--reconnection fees under PURA Title III, §3.1556.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0241.

Filed: October 30, 1995, 4:13 p.m.

TRD-9514004

## Railroad Commission of Texas

Tuesday, November 7, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

The commission will consider and act on agency administration, budget, policy and procedures, and personnel matters for all divisions. The commission may meet in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline and/or dismissal of personnel.

Contact: Mark Bogan, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6981.

Filed: October 27, 1995, 1:39 p.m.

TRD-9513860

Tuesday, November 7, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

The commission will consider and act on the Automatic Data Processing Division director's report on division administration, budget, procedures, equipment acquisitions, and personnel matters.

Contact: Bob Kmetz, P.O. Box 12967, Austin, Texas 78701, (512) 463-7251.

Filed: October 27, 1995, 1:39 p.m.

TRD-9513861

Tuesday, November 7, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

The commission will consider and act on the division director's report on division administration, budget, procedures, and personnel matters.

Contact: Melvin B. Hodgkiss, P.E., P.O. Box 12967, Austin, Texas 78711, (512) 463-6901.

Filed: October 27, 1995, 1:41 p.m.

TRD-9513862

Tuesday, November 7, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

The commission will consider and act on the Information Resource Manager's report on information resource planning documents.

The commission will consider and act on the Information Resource Manager's report on the administration, budget, procedures, equipment acquisitions, contracts, work schedules and quarterly updates associated with the Department of Energy--RRC Area of Review (AOR) Data Management Enhancements Grant Status Review.

Contact: Mel Mireles, P.O. Box 12967, Austin, Texas 78701, (512) 463-7249.

Filed: October 27, 1995, 1:42 p.m.

TRD-9513863

Tuesday, November 7, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

The commission will consider and act on the agency budget, fiscal and administrative matters and the Administrative Services Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Roger Dillon, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7257.

Filed: October 27, 1995, 1:42 p.m.

TRD-9513864

Tuesday, November 7, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

The commission will consider and act on the Office of Information Services director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Box 12967, Austin, Texas 78701, (512) 463-6710.

Filed: October 27, 1995, 1:42 p.m.

TRD-9513865

Tuesday, November 7, 1995, 9:30 a.m.  
1701 North Congress Avenue, First Floor  
Conference Room 1-111

Austin

**AGENDA:**

According to the complete agenda, the Railroad Commission of Texas will consider various applications and other matters within the jurisdiction of the agency including oral arguments. The Railroad Commission of Texas may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received.

The commission may meet in executive session on any items listed above as authorized by the Open Meetings Act.

**Contact:** Mary Ross McDonald, P.O. Box 12967, Austin, Texas 78711, (512) 463-7033.

**Filed:** October 27, 1995, 1:43 p.m.

TRD-9513866

◆ ◆ ◆  
**The Texas State University  
System**

**Wednesday-Friday, November 1-3, 1995,  
5:00 p.m. (Wednesday), 8:00 a.m. (Thursday),  
and 8:30 a.m. (Friday).**

Second Floor Conference Room, Briscoe  
Administration Building, Sul Ross State  
University

Alpine

Board of Regents

**AGENDA:**

Review of matters of the Board and the universities in the System including: all matters reviewed by the Curriculum Committee (see Curriculum Committee agenda), the Construction and Planning Committee (see Construction and Planning Committee agenda), the Finance Committee (see Finance Committee agenda), and the Minority Enhancement Committee (see Minority Enhancement Committee agenda) as submitted to the full Board for review and approval; personnel actions including new employees, reemployment of existing employees, promotions, resignations, retirements, terminations, tenure, commissioning of police officers, salaries/salary supplements and special appointment or interim appointment of any system employee including staff, faculty, presidents and the chancellor; discussion of litigation; bond sales, budgetary changes, operating budgets and contract approvals for each university and the system administration; acceptance of gifts; admission requirements and fees; room and board rates; land leases, purchases, easements and sales

and consideration of Aquarena Springs management contracts. (Where appropriate and permitted by law, executive sessions may be held for the above listed subjects.)

**Contact:** Lamar Urbanovsky, 333 Guadalupe, Tower III, Suite 810, Austin, Texas 78701, (512) 463-1808.

**Filed:** October 27, 1995, 1:47 p.m.

TRD-9513876

**Friday, November 3, 1995, 11:00 a.m.**

Second Floor Conference Room, Briscoe  
Administration Building, Sul Ross State  
University

Alpine

Curriculum Committee

**AGENDA:**

Review of matters of the Board and the universities in the System including: all matters of curriculum, including Fourth Class Day reports, Twelfth Class Day reports, substantive and non-substantive program changes, additions, deletions and retention of courses, additions and deletions of degree programs, changes in admission standards, approval of out-of-state and out-of-country studies, institutional mission statements and tables of programs. (Where appropriate and permitted by law, executive sessions may be held for the above listed subjects.)

**Contact:** Lamar Urbanovsky, 333 Guadalupe, Tower III, Suite 810, Austin, Texas 78701, (512) 463-1808.

**Filed:** October 27, 1995, 1:47 p.m.

TRD-9513877

**Friday, November 3, 1995, 11:30 a.m.**

Second Floor Conference Room, Briscoe  
Administration Building, Sul Ross State  
University

Alpine

Planning and Construction Committee

**AGENDA:**

Review of construction projects and documents for the universities in the System including: Angelo State University: architect selection for the Education center and Museum of Fine Arts, contract award for the HVAC replacement in the Academic Building, final acceptance of the fire sprinkler system and the air conditioning modifications in the Women's High Rise Dormitory, purchase orders for the asbestos abatement of the Science Building, repairs and replacements at various buildings, replacement of roofs on the Rosemont Apartments and for ADA modifications; Lamar University-Orange: contract award for the renovation of the Allied Health Building; Sam Houston State University: approval of a lease agreement with Texas Parks and

Wildlife Department; Southwest Texas State University: contract award for the roof repairs to the auxiliary buildings and purchase orders for the asbestos removal in Sterry and Falls halls and for the remodeling of Sterry Hall for telephone services; and, Sul Ross State University: architect selection for the new Student Center and final acceptance of the building exteriors renovation. (Where appropriate and permitted by law, executive sessions may be held for the above listed subjects.)

**Contact:** Lamar Urbanovsky, 333 Guadalupe, Tower III, Suite 810, Austin, Texas 78701, (512) 463-1808.

**Filed:** October 27, 1995, 1:47 p.m.

TRD-9513878

**Friday, November 3, 1995, 1:00 p.m.**

Second Floor Conference Room, Briscoe  
Administration Building, Sul Ross State  
University

Alpine

Finance Committee

**AGENDA:**

Review of financial matters of the System Office and the universities in the System including approval of expenditures, adjustment of budgets, a replacement 1995-1996 operating budget for Lamar University-Beaumont, approval of rates and fees, internal audit reports and the System universities' investment policies. (Where appropriate and permitted by law, executive sessions may be held for the above listed subjects.)

**Contact:** Lamar Urbanovsky, 333 Guadalupe, Tower III, Suite 810, Austin, Texas 78701, (512) 463-1808.

**Filed:** October 27, 1995, 1:47 p.m.

TRD-9513879

**Friday, November 3, 1995, 1:30 p.m.**

Second Floor Conference Room, Briscoe  
Administration Building, Sul Ross State  
University

Alpine

Minority Enhancement Committee

**AGENDA:**

Review and approval of previous committee minutes and approval of consultant contract with Dr. James Anderson. (Where appropriate and permitted by law, executive sessions may be held for the above listed subjects.)

**Contact:** Lamar Urbanovsky, 333 Guadalupe, Tower III, Suite 810, Austin, Texas 78701, (512) 463-1808.

**Filed:** October 27, 1995, 1:48 p.m.

TRD-9513880

## Texas Tech University Health Sciences Center and Texas Tech University

Friday, November 3, 1995, 10:30 a.m. (or following Executive Session)

3601 Fourth Street, 2C 223, Health Sciences Center

Lubbock

Revised Agenda

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 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.

Note: Change of location of meeting only. Agendas remain the same.

Contact: Donna Davidson Kittrell, Box 42011, Lubbock, Texas 79409, (806) 742-2161.

Filed: October 26, 1995, 1:30 p.m.

TRD-9513805

## University of Houston System

Monday, November 6, 1995, 7:30 a.m.

Melcher Board Room (1008), Athletic Building, 3100 Cullen Boulevard, University of Houston

Houston

Board of Regents

AGENDA:

Presentation by Gordon Goodier and Lisa Pierce, Shell Oil Company—Discussion of process for organizational structure review; executive session; report and action from executive session.

Contact: Peggy Cervenka, 1600 Smith, Suite 3400, Houston, Texas 77002, (713) 754-7440.

Filed: October 31, 1995, 8:56 a.m.

TRD-9514008

## University Interscholastic League

Monday, November 6, 1995, 1:30 p.m.

University Interscholastic League, Thompson Conference Center, Suite 2.120, 26th and Red River

Austin

Waiver Review Board

AGENDA:

AA. Request for waiver of Parent Residence Rule by Eric Linton, King High School, Kingsville.

Contact: Sam Harper, 23001 Lake Austin Boulevard, Austin, Texas 78713, (512) 471-5883.

Filed: October 27, 1995, 4:23 p.m.

TRD-9513919

## The University of Texas System

Wednesday, November 8, 1995, 3:30 p.m.

Arlington Hilton Hotel, Delta Room, 2401 East Lamar Boulevard

Arlington

Board of Regents

AGENDA:

The Board of Regents will meet with representatives of The University of Texas System Student Advisory Group to discuss the activities of the student group and methods of communication and interaction with the board.

Contact: Arthur H. Dilly, 201 West Seventh Street, Austin, Texas 78701-2981, (512) 499-4402.

Filed: October 30, 1995, 9:16 a.m.

TRD-9513928

Thursday, November 9, 1995, 10:00 a.m.

Concho and San Saba Rooms, Second Floor, E. H. Hereford University Center, U. T. Arlington, 301 West Second

Arlington

Board of Regents and Standing Committees

AGENDA:

To consider chancellor's docket (submitted by System administration); amendments to Regents' Rules and Regulations; adopt resolution approving and authorizing the issuance of constitutional appropriation bonds; appoint carrier for comprehensive crime policy insurance; PUF lands—adopt new rate and damage schedule; adopt Comprehensive Property Protection Plan; amend policy for filing financial disclosure statements; Internal Audit Plan for fiscal year 1995-1996; adopt new environmental review policy for acquisitions of real estate; amend policy on utilization of HUB firms; adopt policy on fees for continuing education courses; degree programs; buildings and grounds matters including approval of preliminary and final plans and appropriations; ground lease agreement; acceptance of gifts, bequests and estates; amend gifts policy guidelines; potential litigation and real estate matters.

Contact: Arthur H. Dilly, 201 West Seventh Street, Austin, Texas 78701-2981, (512) 499-4402.

Filed: October 30, 1995, 9:17 a.m.

TRD-9513929

## Texas Veterans Commission

Friday, November 17, 1995, 9:30 a.m.

E.O. Thompson Building, Sixth Floor, Tenth and Colorado

Austin

AGENDA:

Regular meeting to approve the minutes of the fourth quarterly meeting, elect commission officers, approve the request for pro-

posal to conduct a needs analysis/feasibility study for the establishment of State Veterans Home(s) in Texas, discuss matters concerning veterans' benefits and receive staff reports on the agency budget, and other routine business of the commission. Action may be taken on those items which are discussed. Entire agenda.

Contact: Douglas K. Brown, P.O. Box 12277, Austin, Texas 78711, (512) 463-5538.

Filed: October 26, 1995, 2:24 p.m.

TRD-9513814

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**Texas Workers' Compensation Commission**

**Wednesday, November 8, 1995, 10:00 a.m.**

4000 South IH-35, Room 910-911, Southfield Building

Austin

Public Meeting

AGENDA:

1. Call to order
2. Approval of minutes for the public hearing of October 11, 1995 and public meeting of October 12, 1995
3. Discussion and possible action on new applications for Certificate of Authority to Self-Insure
4. Discussion and possible action on requests for renewal of Certificate of Authority to Self-Insure
- 5-6. Discussion and possible action on proposal of new rules resulting from issues identified in House Bill 1089, 74th Legislature, 1995: Rules 125.1, 125.2, 125.3 and 160.3
7. Discussion and possible action on adoption of new rule: Rule 134.1002
- 8-15. Discussion and possible action on adoption of new or amended rules resulting from transfer of jurisdiction of certain hearings to the State Office of Administrative Hearings and other issues identified in House Bill 1089, 74th Legislature, 1995: Rules 114.15, 133.206, 164.5, 164.15, 145.1, 148.1-148.28, 149.1-149.10, 164.2, 164.10, and 180.8

16-18. Discussion and possible action on adoption of new, amended or repealed rules resulting from issues identified in House Bill 1089, 74th Legislature, 1995: Rules 170.3, 170.2, 120.2, 120.3, and 124.1

19. Discussion and possible action on Medical Advisory Committee bylaws and appointment to fill vacancies

20. Executive session

21. Action on matters considered in executive session

22. Discussion and possible action on subcommittee assignments

23. General reports, discussion and possible action on issues relating to commission activities

24. Confirmation of future public meetings and hearings

25. Adjournment

Contact: Todd K. Brown, 4000 South IH-35, Austin, Texas 78704, (512) 440-5690.

Filed: October 26, 1995, 4:14 p.m.

TRD-9513838

**Thursday, November 9, 1995, 9:30 a.m.**

4000 South IH-35, Room 910-911, Southfield Building

Austin

Public Hearing

AGENDA:

1. Call to order
2. Public comments on Rule 134.601, Preauthorization of Medical Treatments and Services
3. Adjournment

Contact: Todd K. Brown, 4000 South IH-35, Austin, Texas 78704, (512) 440-5690.

Filed: October 26, 1995, 4:14 p.m.

TRD-9513837

**Thursday, November 9, 1995, 11:00 a.m.**

4000 South IH-35, Room 910-911, Southfield Building

Austin

Public Hearing

AGENDA:

1. Call to order
2. Public comments on Rule 134.201, Medical Fee Guideline for Medical Treatments and Services Provided Under the Texas Workers' Compensation Act
3. Adjournment

Contact: Todd K. Brown, 4000 South IH-35, Austin, Texas 78704, (512) 440-5690.

Filed: October 26, 1995, 4:13 p.m.

TRD-9513836

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**Texas Workforce Commission**

**Tuesday, November 7, 1995, 9:00 a.m.**

Room 644, TEC Building, 101 East 15th Street

Austin

AGENDA:

Prior meeting notes; staff reports; internal procedures of commission appeals; discussion, consideration, and possible action with regard to transfer of programs pursuant to House Bill 1863; consideration and action on higher level appeals in unemployment compensation cases listed on Texas Employment Commission Docket 45 and 45A; executive session to discuss qualifications and duties of executive director and Lehmann, et al v. Texas Employment Commission and Walt Baker; actions, if any, resulting from executive session; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: October 30, 1995, 4:07 p.m.

TRD-9514002

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**Regional Meetings**

**Meetings Filed October 26, 1995**

**The Austin Transportation Study Governance Review Committee** met at 301 West Second Street, Second Floor, Large Conference Room, Austin. Information may be obtained from Michael R. Aulick, P.O. Box 1088-Annex, Austin, Texas 78767, (512) 499-2275. TRD-9513841.

**The Dawson County Central Appraisal District Board of Directors** met at 1806 Lubbock Highway, Lamesa, November 1, 1995, at 7:00 a.m. Information may be obtained from Tom Anderson, P.O. Box 797, Lamesa, Texas 79331, (806) 872-7060. TRD-9513835.

**The East Texas Council of Governments JTPA Board of Directors** met at 1306 Houston Street, Kilgore, November 1, 1995, at 11:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9513815.

**The Quality Work Force Planning, Region VIII Upper Rio Grande Quality Work Force Planning Committee** will meet at the URG Private Industry Council, Inc., 1155 Westmoreland, Suite 211, El Paso, November 3, 1995, at 8:15 a.m. Information may be obtained from Mark J. Walder, 1155 Westmoreland, El Paso, Texas 79925, (915) 799-6623. TRD-9513828.

◆ ◆ ◆  
**Meetings Filed October 27, 1995**

**The Bastrop Central Appraisal District Appraisal Review Board** met at 1200 Cedar Street, Bastrop, November 2, 1995, at 8:30 a.m. Information may be obtained from

Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, (512) 303-3536. TRD-9513843.

The Creedmoor Maha Water Corporation Board (Monthly Meeting) met at 1680 Laws Road, Mustang Ridge, November 1, 1995, at 7:00 p.m. Information may be obtained from Charles Laws, 1699 Laws Road, Buda, Texas 78610, (512) 243-2113 or (512) 243-1991. TRD-9513844.

The Dallas Area Rapid Transit Board (Special Meeting) met at 1401 Pacific Avenue, Conference Room C, First Floor, Dallas, October 31, 1995, at 1:00 p.m. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9513868.

The East Texas Council of Governments Executive Committee met at 1123 Jaycee Drive, Longview, November 2, 1995, at 4:30 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9513875.

The Heart of Texas Council of Governments Executive Committee met at 300 Franklin Avenue, Waco, November 2, 1995, at 4:00 p.m. Information may be obtained from Donna Teat, 300 Franklin Avenue, Waco, Texas 76701, (817) 756-7822. TRD-9513918.

The Kempner Water Supply Corporation Board of Directors met at Highway 190, Kempner, November 2, 1995, at 6:30 p.m. Information may be obtained from Donald W. Guthrie, P.O. Box 103, Kempner, Texas 76539, (512) 932-3701. TRD-9513845.

The San Antonio-Bexar County Metropolitan Planning Organization Technical Advisory Committee will meet at 434 South Main, Suite 205, San Antonio, November 3, 1995, at 1:30 p.m. Information may be obtained from Charlotte A. Roszelle, 434 South Main, Suite 205, San Antonio, Texas 78204, (210) 227-8651. TRD-9513846.

The San Antonio-Bexar County Metropolitan Planning Organization Technical Advisory Committee will meet at 434 South Main, Suite 205, San Antonio, November 3, 1995, at 1:30 p.m. Information may be ob-

tained from Charlotte A. Roszelle, 434 South Main, Suite 205, San Antonio, Texas 78204, (210) 227-8651. TRD-9513848.

The San Antonio-Bexar County Metropolitan Planning Organization Bicycle Mobility Task Force will meet at the Municipal Plaza Building, "C" Room, Corner of Main and Commerce, San Antonio, November 8, 1995, at 4:00 p.m. Information may be obtained from Charlotte A. Roszelle, 434 South Main, Suite 205, San Antonio, Texas 78204, (210) 227-8651. TRD-9513847.

The Shackelford Water Supply Corporation Board of Directors met at the Fort Griffin Restaurant, Albany, November 1, 1995, at Noon. Information may be obtained from Gaynell Perkins, Box 11, Albany, Texas 76430, (817) 345-6868 or (915) 762-2575. TRD-9513849.

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**Meetings Filed October 30,  
1995**

The Aqua Water Supply Corporation Board of Directors will meet at 305 Eskew, Bastrop, November 6, 1995, at 7:30 p.m. Information may be obtained from Adlinie Rathman, Drawer P, Bastrop, Texas 78602, (512) 303-3943. TRD-9513995.

The Gonzales County Appraisal District Agricultural Advisory Board will meet at 928 St. Paul, Gonzales, November 7, 1995, at 6:30 p.m. Information may be obtained from Connie Barfield or Glenda Strackbein, 928 St. Paul, Gonzales, Texas 78629, (210) 672-2879, Fax: (210) 672-8345. TRD-9514000.

The Heart of Texas Council of Governments Council Representatives met at the Waco Convention Center, Washington Avenue, Waco, November 2, 1995, at 6:00 p.m. Information may be obtained from Donna Teat, 300 Franklin Avenue, Waco, Texas 76701, (817) 756-7822. TRD-9513923.

The Lavaca County Central Appraisal District Board of Directors will meet at 113 North Main Street, Hallettsville, November 13, 1995, at 4:00 p.m. Information may be obtained from Diane Munson, P.O. Box

386, Hallettsville, Texas 77964, (512) 798-4396. TRD-9514001.

The Lee County Appraisal District Appraisal Review Board will meet at 218 East Richmond Street, Giddings, November 8, 1995, at 9:00 a.m. Information may be obtained from Delores Shaw, 218 East Richmond, Giddings, Texas 78942, (409) 542-9618. TRD-9513986.

The Millersview-Doole Water Supply Corporation Board of Directors will meet one block west of FM Highway 765 and FM Highway 2134, Millersview, November 6, 1995, at 7:00 p.m. Information may be obtained from Glenda M. Hampton, P.O. Box E, Millersview, Texas 76862-1005, (915) 483-5438. TRD-9513953.

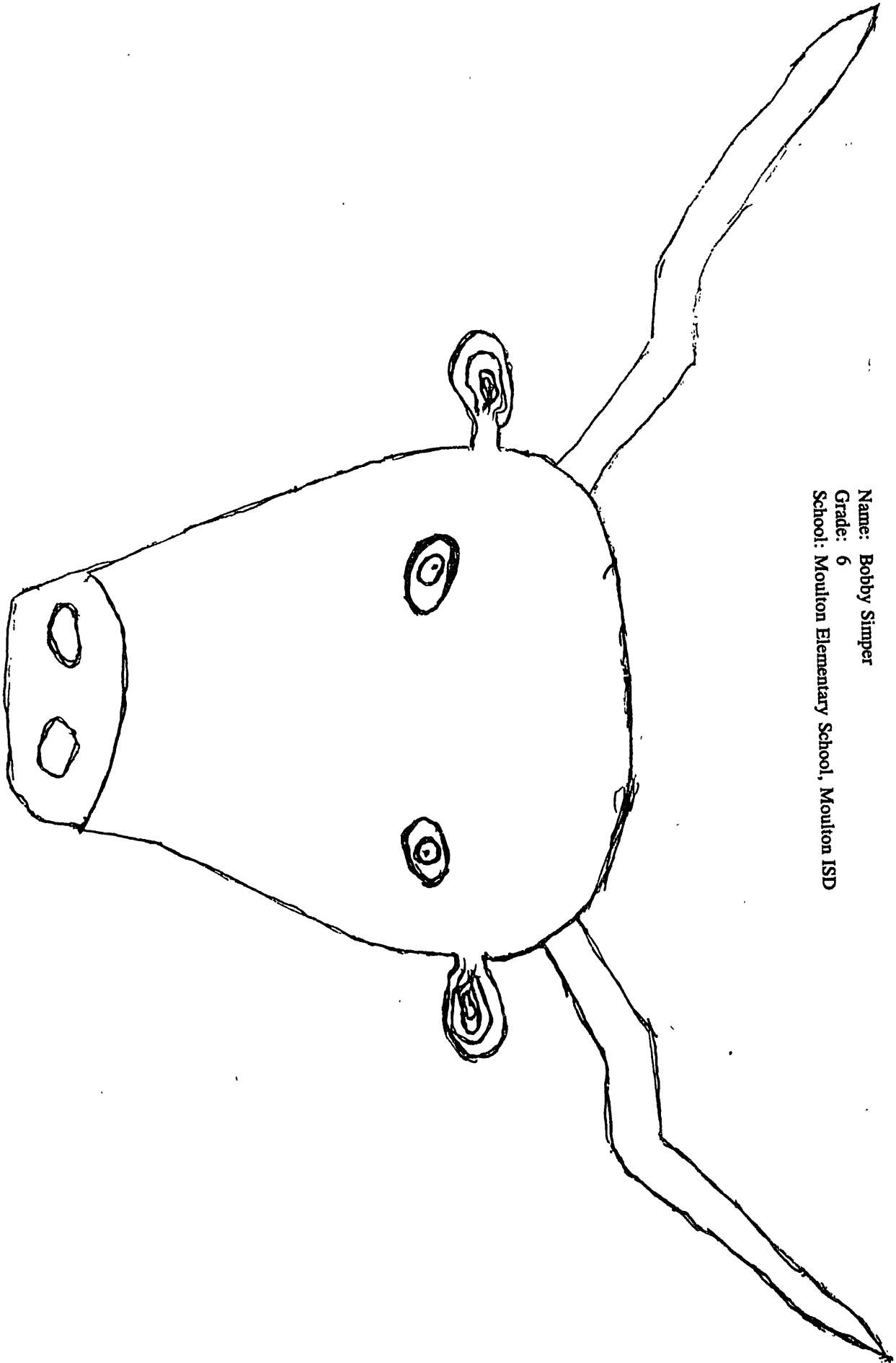
The Red River Boundary Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 831, Austin, November 15, 1995, at 1:00 p.m. Information may be obtained from M'Lou Bell, 1700 North Congress Avenue, Room 630, Austin, Texas 78701, (512) 305-9127. TRD-9513950.

The Stephens County Rural WSC Board (Regular Monthly Meeting) met at 301 West Elm Street, Breckenridge, November 2, 1995, at 7:00 p.m. Information may be obtained from Mary Barton, P.O. Box 1621, Breckenridge, Texas 76424, (817) 559-6180. TRD-9513930.

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**Meetings Filed October 31,  
1995**

The Capital Area Planning Council Executive Committee will meet at 2520 IH-35 South, Suite #100, Austin, November 8, 1995, at Noon. Information may be obtained from Richard G. Bean, 2520 IH-35 South, Suite #100, Austin, Texas 78704, (512) 443-7653. TRD-9514013.

The Garza Central Appraisal District Board of Directors will meet at 124 East Main, Post, November 13, 1995, at 1:30 p.m. Information may be obtained from Billie Y. Windham, P.O. Drawer F, Post, Texas 79356, (806) 495-3518. TRD-9514007.



Name: Bobby Simper  
Grade: 6  
School: Moulton Elementary School, Moulton ISD

# 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.

## Ark-Tex Council of Governments Request for Proposal for Provision of a Regional Law Enforcement Training Program

The Ark-Tex Council of Governments (ATCOG) is soliciting proposals for the provision of regional law enforcement training through a grant provided by the Texas Governor's Office, Criminal Justice Division.

The types of training to be provided include: Basic Law Enforcement Officer, Basic Jailer Certification, Basic Tele-Communicators, Reserve Officer, and Advanced Law Enforcement training. The period of performance is May 1, 1996-April 30, 1997.

The service delivery area includes the following counties in Texas: Bowie, Cass, Delta, Franklin, Hopkins, Lamar, Morris, Red River, and Titus.

Potential respondents may obtain a copy of the request for proposal, scoring guidelines, and project scoring criteria by contacting Janell Browning, Program Director, Community Services, Ark-Tex Council of Governments, P.O. Box 5307, Texarkana, Texas 75505-5307, or call (903) 832-8636. The deadline for proposal submission is December 18, 1995, at 5:00 p.m.

The Ark-Tex Council of Governments Regional Criminal Justice Advisory Committee will score the proposals. Respondents will be notified in writing of the date, time, and place of the meeting at which the proposals will be scored.

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

TRD-9513813 James C. Fleher, Jr.  
Executive Director  
Ark-Tex Council of Governments

Filed: October 26, 1995

## Comptroller of Public Accounts Notice of Request for Proposals

Notice of Request for Proposals: Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of a Request for Proposals (RFP) for the purpose of hiring a consultant to conduct a management and performance review of the Houston Independent School District. From this review, findings and recommendations will be developed for containing costs, improving management strategies, and ultimately promoting better education for Texas children through school district management efficiency. The successful proposer will be expected to begin performance of the contract on or about March 6, 1996.

Contact: Parties interested in submitting a proposal should contact the Comptroller of Public Accounts, Senior Legal Counsel's Office, 111 East 17th Street, Room 113, Austin, Texas 78774, (512) 475-0866, to obtain a complete copy of the RFP. The RFP will be available for pick-up at the referenced address on Friday, November 3, 1995, between 4:00 p.m. and 5:00 p.m. Central Zone Time (CZT), and during normal business hours thereafter. All written inquiries and mandatory letters of intent to propose must be received at the referenced address prior to 4:00 p.m. (CZT) on Friday, November 17, 1995.

Closing Date: Proposals must be received in the Senior Legal Counsel's Office no later than 4:00 p.m. (CZT), on Thursday, February 1, 1996. Proposals received after this time and date will not be considered.

Award Procedure: Proposals will be subject to evaluation by a committee based on the evaluation criteria set forth in the RFP. Each committee will determine which proposal best meets these criteria and will make a recommendation to the Deputy Comptroller, who will then make a recommendation to the Comptroller. The Comptroller will make the final decision. A proposer may be asked to clarify its proposal, which may include an oral presentation prior to final selection.

The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. Neither this notice nor the RFP commits the Comptroller to pay for any costs incurred prior to the execution of a contract.

The anticipated schedule of events is as follows: Issuance of RFP-November 3, 1995, 4:00 p.m. (CZT); Mandatory Letter of Intent and Questions Due-November 17, 1995, 4:00 p.m. (CZT); Proposals Due-February 1, 1996, 4:00 p.m. (CZT); and Contract Execution-February 29, 1996, or as soon thereafter as possible.

Issued in Austin, Texas, on October 30, 1995.

TRD-9513932 Arthur F. Lorton  
Senior Legal Counsel  
Comptroller of Public Accounts

Filed: October 30, 1995

## Texas Department of Human Services Cancellation of Public Hearing

The Texas Department of Human Services (TDHS) will not conduct public hearings on November 8, 1995, to receive comments on proposed reimbursements for the following programs: Primary Home Care; Residential Care; Assisted Living Services/Residential Care and re-

lated add-ons, and Respite Care Assisted Living Services/Residential Care and other components of the Community Based Alternatives Waiver. Refer to notices in this issue regarding public hearings to be conducted on November 15, 1995. If there are questions concerning these changes, contact Sonya Battle, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-4817.

Issued in Austin, Texas, on October 27, 1995.

TRD-9513856 Nancy Murphy  
Section Manager, Media and Policy  
Services  
Texas Department of Human Services

Filed: October 27, 1995

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**Notices of Public Hearing**

The Texas Department of Human Services (TDHS) will conduct a public hearing to receive comments on proposed reimbursements for the following programs: Residential Care; Assisted Living Services/Residential Care and related add-ons, and Respite Care Assisted Living Services/Residential Care of the Community Based Alternatives Waiver. The hearing is held in compliance with 40 TAC §24.102(j), which requires a public hearing on proposed reimbursement for medical assistance programs. The public hearing will be held on November 15, 1995, at 3:00 p.m. in Public Hearing Room 125 on the first floor of the East Tower of the John H. Winters Center, 701 West 51st Street, Austin, Texas. If you are unable to attend the hearing, but wish to comment on the proposed reimbursements, written comments will be accepted if received by 5:00 p.m. of the day of the hearing. Please address written comments to the attention of Sonya Battle. Written comments may be mailed to the following address, delivered to the receptionist in the lobby in the John H. Winters Center, or faxed to (512) 438-3014. Interested parties may request to have mailed to them or may pick up briefing packages concerning the proposed reimbursements on or after November 1, 1995, by contacting Sonya Battle, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-4817.

Persons with disabilities planning to attend this hearing who may need auxiliary aids or services are asked to contact Sonya Battle, (512) 438-4817 by November 6, 1995, so that appropriate arrangements can be made.

Issued in Austin, Texas, on October 27, 1995.

TRD-9513857 Nancy Murphy  
Section Manager, Media and Policy  
Services  
Texas Department of Human Services

Filed: October 27, 1995

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The Texas Department of Human Services (TDHS) will conduct a public hearing to receive comments on proposed reimbursements for the Primary Home Care and the Community Based Alternatives Waiver programs. The hearing is held in compliance with 40 TAC §24.102(j), which requires a public hearing on proposed reimbursement for medical assistance programs. The public hearing will be held on November 15, 1995, at 1:00 p.m. in Public Hearing Room 125 on the first floor of the East Tower of the John H. Winters Center, 701 West 51st Street, Austin, Texas. If you are unable to attend the hearing, but wish to comment on the proposed reimbursements, written com-

ments will be accepted if received by 5:00 p.m. of the day of the hearing. Please address written comments to the attention of Sonya Battle. Written comments may be mailed to the following address, delivered to the receptionist in the lobby in the John H. Winters Center, or faxed to (512) 438-3014. Interested parties may request to have mailed to them or may pick up briefing packages concerning the proposed reimbursements on or after November 1, 1995, by contacting Sonya Battle, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-4817.

Persons with disabilities planning to attend this hearing who may need auxiliary aids or services are asked to contact Sonya Battle, (512) 438-4817 by November 6, 1995, so that appropriate arrangements can be made.

Issued in Austin, Texas, on October 27, 1995.

TRD-9513858 Nancy Murphy  
Section Manager, Media and Policy  
Services  
Texas Department of Human Services

Filed: October 27, 1995

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**Texas Department of Insurance  
Name Applications**

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application for admission in Texas for Agency Insurance Company of Maryland, Inc., a foreign fire and casualty company. The home office is in Linthicum, Maryland.

Application for a name change in Texas for Re Capital Reinsurance Corporation, a foreign fire and casualty company. The proposed new name is ZC Insurance Company. The home office is in Fort Lee, New Jersey.

Application for a name change in Texas for The Insurance Company of Decatur, a foreign fire and casualty company. The proposed new name is Anthem Casualty Insurance Company. The home office is in Shelby, Ohio.

Application for a name change in Texas for Connecticut General Fire and Casualty Insurance Company, a foreign fire and casualty company. The proposed new name is INA Insurance Company. The home office is in Bloomfield, Connecticut.

Application for a name reservation in Texas for Universal Healthplan, Inc., a domestic health maintenance organization. The home office is in Houston, Texas.

Application for a name reservation in Texas for Comprehensive Health Services of Texas, Inc., a foreign health maintenance organization. The home office is in Detroit, Michigan.

Any objections must be filed within 20 days after this notice was filed with the Texas Department of Insurance, addressed to the attention of Cindy Thurman, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

Issued in Austin, Texas, on October 27, 1995.

TRD-9513908 Alicia M. Fecthel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: October 27, 1995



## Notices

The Commissioner of Insurance, or his designee, will consider approval of a request proposing to use a rating manual relative to classifications and territories different than that promulgated by the Commissioner pursuant to Texas Insurance Code, Article 5.101, §3(k), filed by Texas Farm Bureau Mutual Insurance Company. They are proposing a companion policy discount that will provide a 5.0% reduction in premium to private passenger rated vehicles for insureds who have a homeowners or farm and ranchowners policy.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, (512) 475-1761.

This filing is subject to Department approval without a hearing unless an objection is filed with the Chief Economist, Birny Birnbaum, at the Texas Department of Insurance, 333 Guadalupe, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

Issued in Austin, Texas, on October 27, 1995.

TRD-9513906      Alicia M. Fecthel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: October 27, 1995



The Commissioner of Insurance, or his designee, will consider approval of a request proposing to use a rating manual relative to classifications and territories different than that promulgated by the Commissioner pursuant to Texas Insurance Code, Article 5.101, §3(k), filed by Southern Farm Bureau Casualty Insurance Company. They are proposing a companion policy discount that will provide a 5.0% reduction in premium to private passenger rated vehicles for insured who have a homeowners or farm and ranchowners policy.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, (512) 475-1761.

This filing is subject to Department approval without a hearing unless an objection is filed with the Chief Economist, Birny Birnbaum, at the Texas Department of Insurance, 333 Guadalupe, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

Issued in Austin, Texas, on October 27, 1995.

TRD-9513907      Alicia M. Fecthel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: October 27, 1995



## Notice of Application by Harris Methodist Texas Health Plan, Inc., Arlington, Texas for Issuance of a Certificate of Authority to Establish and Operate an HMO in the State of Texas

Notice is given to the public of the application of Harris Methodist Texas Health Plan, Inc., Arlington, Texas for the issuance of a certificate of authority to establish and operate a health maintenance organization (HMO) offering basic health care services in the State of Texas in compliance with the Texas HMO Act and rules and regulations for HMOs. The application is subject to public inspection at the offices of the Texas Department of Insurance, HMO Unit, 333 Guadalupe, Hobby Tower I, Sixth Floor, Austin, Texas.

Upon consideration of the application, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to issue a certificate of authority to Harris Methodist Texas Health Plan, Inc., Arlington, Texas, without a public hearing.

Issued in Austin, Texas, on October 30, 1995.

TRD-9513931      Alicia M. Fecthel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: October 30, 1995



## Texas Natural Resource Conservation Commission

### Applications for Sludge Registrations

Notices of Receipt of Applications and Declaration of Administrative Completeness for sludge registrations issued during the period of October 23-27, 1995.

ESTILL, INC.; in the northeast corner of the intersection formed by two unnamed unpaved roads. The aforementioned intersection is located five miles east and one mile south of the intersection of U.S. Highway 380 and U.S. Highway 62 in the City of Brownfield, Terry County, Texas; new; 710724.

RUFUS REDDING FOSHEE; located 1-2/10 miles south on County Road 431 from the intersection of County Road 452, adjacent to the east side of County Road 431, approximately 5-1/2 miles northwest of the City of Lindale, Smith County, Texas; new; 710723.

WILDRED WAYNE MCWHIRTER, III; approximately one mile north of State Highway 380 and County Road 699, on County Road 699 in Collin County, Texas; new; 710722.

UNITED STATES DEPARTMENT OF THE ARMY; located 0.3 mile south of Interstate Route 30 at Spur 206 in Bowie County, Texas; new; 710261.

These applications have been determined to be administratively complete, and will now be subject to a technical evaluation by the staff of the Texas Natural Resource Conservation Commission. Persons should be advised that these applications are subject to change based on evaluations of the proposed treatment levels, treatment processes

and site specific conditions as they relate to the protection of the environment and public health.

Persons desiring a public meeting regarding these applications should submit a written request to the Chief Clerk of the Texas Natural Resource Conservation Commission, Mail Code 105, P.O. Box 13087, Austin, Texas 78711. The request should contain the name, mailing address, and phone number of the person making the request; and the reason a public meeting is desired. The deadline for submitting this request is 30 days from the date which the application was posted for public review.

Information concerning these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, Mail Code 105, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

Issued in Austin, Texas, on October 27, 1995.

TRD-9513871      Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: October 27, 1995

### Enforcement Orders

An agreed enforcement order was entered regarding FLAME TECHNOLOGIES, Docket Number 95-0587-IHW-E (Registration Number 52028) on October 18, 1995, assessing \$97,360 in administrative penalties with \$60,160 deferred.

Information concerning any aspect of this order may be obtained by contacting Bill Ballard, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3420.

An agreed enforcement order was entered regarding ROBERT BURNETT, Docket Number 95-1427-PST-E (TNRCC Facility I.D. 59692; Enforcement I.D. E10849) on October 18, 1995, assessing \$18,500 in administrative penalties with \$9,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond C. Winter, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0477.

An agreed enforcement order was entered regarding DAHLSTROM CORPORATION, Docket Number 94-0053-PST-E (Enforcement I.D. E10136) on October 18, 1995, assessing \$19,200 in administrative penalties with \$13,700 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond C. Winter, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0477.

An agreed enforcement order was entered regarding F/R CATTLE COMPANY INC, Docket Number 95-0813-AGR-E (Permit Number 03308) on October 18, 1995, imposing stipulated penalties.

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0678.

Issued in Austin, Texas, on October 27, 1995.

TRD-9513871      Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: October 27, 1995

### Notices of Application for Permits to Appropriate Public Waters of the State of Texas

Issued during the period of October 23-27, 1995.

CITY OF SAN MARCOS, Application Number 5539 to authorize use of the bed and banks of the San Marcos River, Guadalupe River Basin, to convey treated sewage effluent (all of which will be from the municipal use of water from the Edwards Aquifer) from the discharge point at the City's wastewater treatment plant to Cummings Reservoir in Hays County, for subsequent diversion from the reservoir at a maximum rate of 112,200 gallons per minute for municipal use within the City's service area. This use will reduce the existing and future demand on the Edwards Aquifer. The discharge point for the wastewater treatment plant is approximately 1.5 miles southeast of the Hays County Courthouse in San Marcos and approximately 7,000 feet upstream of the confluence of the San Marcos and Blanco Rivers. The dam for Cummings Reservoir is on the San Marcos River approximately 3,000 feet downstream of the confluence of the San Marcos and Blanco Rivers and approximately three miles southeast of the Hays County Courthouse. The dam backs up water in both river channels. This application does not include a request to appropriate State water as all of the water to be conveyed and used is the city's private water. Commission records indicate that Green Valley Farms, Inc. is the owner of Certificate of Adjudication Number 18-3887 which authorizes the maintenance of Cummings Dam and Reservoir and impoundment therein of not to exceed 300 acre-feet of water. The certificate also authorizes the diversion and use of not to exceed 792 acre-feet of water per annum from the perimeter of the reservoir at a maximum rate of 7.33 cubic feet per second to irrigate 403 acres of land in the Thomas G. McGehee Grant, Abstract Number 11. The applicant has indicated that it will not divert water under this requested authorization prior to having legal access to Cummings Reservoir. The applicant has also indicated that as the maximum amount of effluent that will be discharged at the treatment plant is 10,081 acre-feet per annum and that as their engineers have determined a 1.0% loss of the water in the conveyance, that it should be able to divert and use not to exceed 9,980 acre-feet of the effluent discharged per annum. The applicant has agreed that any permit granted for the application include special conditions that will assure that no State water will be diverted under the permit.

TEXAS MUNICIPAL POWER AGENCY, Application Number 5538 seeks authorization to maintain two dams and reservoirs which were constructed in 1982 for sediment control purposes. Pond 6A and Pond 7A are on-channel ponds, both are tributaries of the Navasota River, tributary of the Brazos River, Brazos River Basin at the

applicant's Gibbons Creek Lignite Mine located approximately two miles northwest from the City of Anderson in Grimes County, Texas. Pond 6A is located on an unnamed tributary of Gibbons Creek with a surface area of 73.6 acres, impounding 390.0 acre-feet at the principal spillway elevation of 209.9 above mean sea level. Pond 6A is the most upstream impoundment and is located in the James W. Tuttle Survey, Abstract Number 448, and at the midpoint of the centerline of the dam it is north 72 degrees, 53 feet, 32 inches west, 8,811 feet from the southeast corner of the aforesaid Tuttle Survey. Pond 7A is located on an unnamed tributary of Dry Creek, tributary of Gibbons Creek, with a surface area of 79.7 acres, impounding 862.2 acre-feet of water at the principal spillway elevation of 214.21 above mean sea level. Pond 7A is downstream of Pond 6A and at a point on the centerline of the dam it is north 73 degrees, 18 feet, 50 inches east, 3,083 feet from the southwest corner of the aforesaid Tuttle survey, also being Latitude 30.554 degrees north and Longitude 96.100 degrees west. These ponds, Pond 6A and Pond 7A, will eventually transfer ownership to private landowners after final reclamation and bond release through the Railroad Commission of Texas. The applicant has stated that both ponds will be used for domestic and livestock consumption.

The Executive Director will issue the permit unless a written hearing request is filed within 30 days after newspaper publication of this notice. To request a hearing, you must submit the following: your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; the name of the applicant and the permit number; the statement "I/we request a public hearing"; a brief description of how you would be adversely affected by the granting of the application in a way not common to the general public; the location of your property relative to the applicant's operations; and your proposed adjustments to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting. If a hearing is held, it will be a legal proceeding similar to civil trials in state district court.

If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing or questions concerning procedures should be submitted in writing to the Chief Clerk's Office, Park 35 TNRCC Complex, Building F, Room 4301, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

Issued in Austin, Texas, on October 27, 1995.

TRD-9513873

Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: October 27, 1995

## Notice of Applications for Waste Disposal Permits

Notices of applications for waste disposal permits issued during the period of October 23-27, 1995.

These applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 30 days after publication of this notice.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address, and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a public hearing"; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. In the event a hearing is held, the Office of Hearings Examiners will submit a recommendation to the Commission for final decision. If no protests or requests for hearing are filed, the Executive Director will sign the permit 30 days after publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number and type of application-new permit, amendment, or renewal.

AGRI RESEARCH CENTER, INC.; waste treatment facilities; the cattle feedlot is on the east side of an unnamed county road approximately 0.75 mile south of the intersection of Rockwell Road and the unnamed county road. The intersection is approximately three miles west of the intersection of Interstate Highway 27 and Rockwell Road in Randall County, Texas; new; 03859.

CITY OF LAREDO; Zacate Creek Wastewater Treatment Facilities; the facilities are on the banks of the Rio Grande, between Marcella Avenue and Springfield Avenue, south of Willow Street in the City of Laredo in Webb County, Texas; renewal; 10681-02.

CITY OF SEGUIN; the Walnut Branch Wastewater Treatment Plant; the plant is at the intersection of East Klein Street and South Austin Street in the City of Seguin in Guadalupe County, Texas; amendment; 10277-01.

VILLAS ON TRAVIS CONDOMINIUM OWNERS ASSOCIATION, in care of Oberg Property Management; the wastewater treatment facilities; the facilities are approximately 200 feet northwest of FM Road 620 at a point 1.8

miles west of Mansfield Dam and adjacent to Lake Travis in Travis County, Texas; amendment; 11532-01.

**WILLIAM DAVID HEFNER**; Wastewater Treatment Plant; the plant site is at 20810 Cypress Wood Drive in Harris County, Texas; renewal; 13054-01.

**ASARCO**, Incorporated; Class I underground injection well for subsurface disposal of hazardous and non-hazardous industrial solid wastes generated on-site from the production of refined copper anodes and other metallic by-products; the waste disposal well is to be located on company property on Highway 136, approximately 6.25 miles northeast of Amarillo in Potter County, Texas; new; WDW-324; 45-day notice.

Issued in Austin, Texas, on October 27, 1995.

TRD-9513872      Gloria A. Vasquez  
                         Chief Clerk  
                         Texas Natural Resource Conservation  
                         Commission

Filed: October 27, 1995

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**Notice of Opportunity to Comment on  
Permitting Actions—For the Week  
Ending October 27, 1995**

The following applications are subject to a Commission resolution adopted August 30, 1995, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue the permits unless one or more persons file written protests and/or requests for hearing within ten days of the date notice concerning the application(s) is published in the *Texas Register*.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address, and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a public hearing"; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. If no protests or requests for hearing are filed, the Executive Director will sign the permit ten days after publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing on this application should be submitted in writing to the Chief Clerk's Office (Mail Code 105), Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

Application by **CLEARWATER ESTATES WATER SYSTEM** for an approval of a change in water rates. Applicant requests approval of a rate increase for water

utility service provided to approximately 58 customers in Comal County, Texas; CCN Number 11884. Docket Number 95-1130-UCR (Application Number 30816).

Application by **WAGON WHEEL UTILITIES, INC.** for approval of a change in water rates. Applicant requests approval of a rate increase for water utility service provided to approximately 189 customers area in Brazoria County, Texas; CCN Number 12026. Docket Number 95-1231-UCR (Application Number 30877).

Permit Number 5459 by Colorado River Municipal Water District for a Texas Water Code, §11.145, Extension of Time. Applicant seeks an extension of time to commence and complete construction of a levee enlarging an off channel reservoir (referred to as Red Lake Reservoir). Sulphur Springs Draw, tributary of Beals Creek, tributary of the Colorado River, Colorado River Basin, Martin County, Texas (Carol Stuewe 239-6216).

Consideration of the application of Town of Little Elm to amend Water Certificate of Convenience and Necessity Number 11202 in Denton County, Texas (Application Number 30905-C, Doug Holcomb).

Consideration of the application of Bexar Metropolitan Water District to amend Water Certificate of Convenience and Necessity Number 10675 in Bexar and Medina Counties, Texas (Application Number 30861-C, Doug Holcomb).

Consideration of a Proposed Order Approving An Application By Fort Bend County Municipal Utility District Number 108 for Approval of \$1,120,000 Unlimited Tax Bonds, Fourth Issue, 7.635% Net Effective Interest Rate, Series 1995, and the Use of \$160,000 in Surplus Funds; \$1,600,000 Bond Issue Approved November 1, 1994. The District's application requests Commission approval of a bond issue and the use of surplus funds to finance master utility district connection fees and water, wastewater and drainage facilities for various areas within the District (TNRCC Internal Control Number 061295-D01, Robert Ferguson).

Consideration of a Proposed Order Approving An Application By Brazoria County Municipal Utility District Number 2 for Approval of \$3,700,000 Unlimited Tax and Revenue Bonds, Second Issue, 8.19% Net Effective Interest Rate, Series 1995. The District's application requests approval of a bond issue to finance subdivision utilities, and the District's pro rata share of a regional wastewater trunk line, Water Plant Number 2, Booster pump at Water Plant Number 1, lift station and force main, Phase 1 of a permanent wastewater treatment plant, and future wastewater treatment capacity, and operating expenses (TNRCC Internal Control Number 060795-D01; Robert Ferguson).

Consideration of a Proposed Order Approving An Application By Fort Bend County Municipal Utility District Number 25 for Approval of \$2,555,000 Unlimited Tax Bonds, Fourth Issue, 7.88% Net Effective Interest Rate, Series 1995. District's application requests Commission approval for the issuance of \$2,555,000 in unlimited tax bonds to finance utility facilities construction within the District (TNRCC Internal Control Number 042195-D01, Robert Ferguson).

Consideration of a Proposed Order Approving An Application By Harris County Municipal Utility District Number 286 for Approval of \$2,570,000 Unlimited Tax Bonds, Third Issue, Series 1995. The District's application requests approval of a bond issue to finance construction costs of the District's Water Plant Improvements; Harris

County Flood Control District impact fees; water, wastewater and drainage facilities to serve Lakewood Crossing, Section 1 (TNRCC Internal Control Number 060795-D02; Robert Ferguson).

Consideration of a Proposed Order Approving An Application By Northwest Harris County Municipal Utility District Number 5 for Approval of \$2,400,000 Unlimited Tax Bonds, Fourth Issue, Series 1995. The District's application requests Commission approval of a bond issue to finance water, wastewater and drainage facilities for various areas within the District (TNRCC Internal Control Number 050595-D03, Robert Ferguson).

Consideration of a Proposed Order Approving An Application By Ricewood Municipal Utility District of Harris County for Approval of \$1,880,000 Unlimited Tax Bonds, Third Issue, 7.22% Net Effective Interest Rate, Series 1995. The District's application requests approval of a bond issue to finance construction costs of the District's water plant and the District's share of the wastewater treatment plant (TNRCC Internal Control Number 080495-D01; Robert Ferguson).

Consideration of a Proposed Order Approving An Application By Fort Bend County Municipal Utility District Number 111 for Approval of a \$2,615,000 Unlimited Tax Bond Issue; 7.67% Net Effective Interest Rate, Third Issue, Series 1995. The District's application requests Commission approval of a bond issue to finance water, wastewater and drainage facilities for Parcel SF-18, phase 1, water and drainage facilities along major thoroughfares, the District's pro rata share of the first phase of a permanent wastewater treatment plant, and the District's pro rata share of a regional wastewater trunk line and lift station upgrade (TNRCC Internal Control Number 042595-D01, Robert Ferguson).

Consideration of a Proposed Order Approving the Application by Varner Creek Utility District of Brazoria County for Approval of \$1,500,000 Unlimited Tax and Revenue Bonds, Third Issue, 7.09% Net Effective Interest Rate, Series 1995. The District's application requests Commission approval of a bond issue to finance repairs and rehabilitation of the District's water, wastewater and Drainage facilities.

Consideration of Proposed Order Approving the Application by North Mission Glen Municipal Utility District of Fort Bend County for approval of \$1,820,000 unlimited tax bond issue, third issue, 8.14% Net Effective Interest Rate, Series 1995; Pursuant to Texas Water Code, Chapter 49, §49.181 and the Use of Surplus Funds; \$3,240,000 Bond Issue Approved February 12, 1985; Pursuant to Commission Rule 293.85, and a Change in Project Scope; Pursuant to Commission Rule 293.82. Applicant requests that the Commission approve a \$1, 820,000 Unlimited Tax Bond Issue to fund expansion of District facilities (TNRCC Internal Control Number 060295-D01, Robert Ferguson).

Consideration of the application of City of Bay City to Transfer and Cancel Sewer CCN Number 20553 from Elliott Utilities in Matagorda County, Texas (Application Number 30748-S, Doug Holcomb).

APPLICATION NUMBER 23-829A BY CAMERON COUNTY IRRIGATION DISTRICT NUMBER 6 FOR AN AMENDMENT TO CERTIFICATE OF ADJUDICATION NUMBER 23-829, PURSUANT TO TEXAS WATER CODE, §11.122. FOR EXECUTIVE DIRECTOR'S CONSIDERATION. Applicant seeks authorization to

change the purpose of use of 40 acre-feet of the 52,281.925 acre-feet of Class "A" irrigation right to industrial use. In accordance with agency rules, the conversion of the 40 acre-feet of Class "A" irrigation rights will equate to 20 acre-feet of industrial water. Certificate Number 23-829 currently authorizes Cameron County Irrigation District Number 6, to divert and use, with Class A priority, not to exceed 52,281.925 acre-feet of water per annum from the Rio Grande to irrigate 21,912.77 acres of land out of TWC Tract Number C-44 in Cameron County, Texas. This amendment will authorize the District to divert and use not to exceed 20 acre-feet of water per annum for industrial use and 52,241.925 acre-feet per annum of Class "A" irrigation water use (RENEE TUGGLE).

APPLICATION NUMBER 23-2782E BY BORDER ENERGY SERVICES, INC. FOR AN AMENDMENT TO CERTIFICATE OF ADJUDICATION NUMBER 23-2782, PURSUANT TO TEXAS WATER CODE, §11.122. FOR EXECUTIVE DIRECTOR'S CONSIDERATION. Applicant seeks authorization to add a diversion point on the Rio Grande for diversion and use of their portion of the rights (ten acre-feet of water per annum of Class "B" for mining purposes) authorized by the certificate. The diversion point is on a two-acre tract of land owned by Valley Onions, Inc. and is included in a lease agreement between the applicant and Valley Onion, Inc. Dated September 1, 1995, and is located 20 miles west from McAllen, Texas (RENEE TUGGLE).

Issued in Austin, Texas, on October 27, 1995.

TRD-9513874

Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: October 27, 1995

### Provisionally-Issued Temporary Permits to Appropriate State Water

Listed are permits issued during the period of October 4-19, 1995.

Application Number TA-7561 by Union Pacific Resources Company for diversion of nine acre-feet in a one-year period for mining (drilling Oil and Gas well) use. Water may be diverted at from Little Brazos River approximately 3.5 miles east of State Highway 50 on County Road 203 and one mile south of Little Brazos River Ridge, in Robertson County, Texas, Brazos River Basin.

Application Number TA-7562 by Southern States Equipment Corporation for diversion of ten acre-feet in a one-year period for industrial (construction of State Highway) use. Water may be diverted from Cedar Creek at FM 2000, approximately 8.5 miles north of Caldwell, in Burleson County, Texas, Brazos River Basin.

Application Number TA-7563 for Seaway Pipe Line Company, By: ARCO Pipe Line Company for diversion of one acre-foot in a one-year period for industrial (Hydrostatic test of a new pipeline) use. Water may be diverted from an unnamed tributary of the Brazos River (commonly called Toby Creek), just south of State Highway 36, approximately two miles southwest of Freeport in Brazoria County, Texas, Brazos River Basin.

Application Number TA-7564 by Exxon Pipeline Company for diversion of six acre-feet in a three-month period for industrial purposes. Water may be diverted from the

State Highway 3 crossing of Clear Creek, approximately 22 miles southeast of Houston, Harris County, Texas, San Jacinto-Brazos Coastal Basin. The Executive Director of the TNRCC has reviewed each application for the permits listed and determined that sufficient water is available at the proposed point of diversion to satisfy the requirements of the application as well as all existing water rights. Any person or persons who own water rights or who are lawful users of water on a stream affected by the temporary permits listed above and who believe that the diversion of water under the temporary permit will impair their rights may file a complaint with the TNRCC. The complaint can be filed at any point after the application has been filed with the TNRCC and the time the permit expires. The Executive Director shall make an immediate investigation to determine whether there is a reasonable basis for such a complaint. If a preliminary investigation determines that diversion under the temporary permit will cause injury to the complainant the commission shall notify the holder that the permit shall be cancelled without notice and hearing. No further diversions may be made pending a full hearing as provided in Section 295.174. Complaints should be addressed to Water Rights Permitting Section, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-4433. Information concerning these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

Issued in Austin, Texas, on October 27, 1995.

TRD-9513869 Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: October 27, 1995

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**Texas Parks and Wildlife Department**

**Notice of Public Comment Hearing:  
Permit to Remove Sand, Gravel, or  
Marl from the Public Waters of the  
State of Texas—Sand and Gravel  
Dredging, Brazos River, Revenue  
Permit Number SR 95-004**

Notice is hereby given that CSB Asphalt Company, Inc. whose address is 5730 Old Alvin Road, Rosharon, Texas 77583, as of October 17, 1995, filed an administratively complete application with the Texas Parks and Wildlife Department for a revenue permit to disturb and replace up to 2,500 tons of sand, gravel and marl in the Brazos River, Fort Bend County, for a pipeline installation, at a site located approximately four miles north northwest of the Brisco irrigation pump station adjacent to the properties of CSB Asphalt Company, Inc., the Ralph Benton estate and the Allen family.

This permit is requested under the authority granted to the Texas Parks and Wildlife Commission in Chapter 86 of the Parks and Wildlife Code and will not authorize the crossing of any private property.

The hearing to receive public comment on this application will be conducted Tuesday, November 28, 1995, at 3:00 p.m. in Conference Room A-200 at Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, at

which time all interested persons may appear and be heard. Comments may be mailed to the Department at the following address, or presented orally or in writing at the hearing. Comments sent by mail should be received by the Department prior to the public comment hearing.

In addition, any person who can demonstrate a justiciable interest may request a formal contested case hearing pursuant to the Administrative Procedure Act, Government Code, §2001.054. Any person wishing to request such a hearing should submit a written request to Paul Shinkawa at the listed address. Such a request should include a short statement of the nature of any objections to the requested permit and a description of the potential adverse impact which may be suffered by the requestor. Requests for formal contested case hearings must be received by the Department no later than 30 days after the date of issuance of this notice as listed below or by the close of the public comment hearing, whichever is later.

Further information concerning any aspect of the application or hearing may be obtained by contacting Paul Shinkawa, Resource Protection Attorney, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4433; Fax: (512) 389-8058.

Issued in Austin, Texas, on October 26, 1995.

TRD-9513800 Bill Harvey, Ph.D.  
Regulatory Coordinator  
Texas Parks and Wildlife Department

Filed: October 26, 1995

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**Public Utility Commission of Texas  
Assessment Percentages for Relay Texas**

In accordance with Substantive Rule §23.56(h)(2), the new assessment percentages for funding of the intrastate portion of Relay Texas are as follows:

- (1) The percentage assigned to the Local Exchange Carriers (LEC's) is 94.5%.
- (2) The percentage assigned to other telecommunications utilities is 5.5%.

Commencing with the November 1995 Universal Service Fund (USF) billing statement which reflects September 1995 Relay Texas operations, these percentages will be used by the Texas Exchange Carriers Association (TECA) in the development of the Dual Party Relay Service assessments issued to the LEC's and other telecommunications utilities. The percentages will be reviewed and adjusted annually, pursuant to Substantive Rule §23.56(h)(2)(B).

Issued in Austin, Texas, on October 26, 1995.

TRD-9513811 Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: October 26, 1995

◆ ◆ ◆  
**Correction of Error**

On October 24, 1995, a public notice regarding the notice of Southwestern Bell Telephone Company to file LRIC studies regarding: (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 was submitted for publication in the "In Addition Section". The notice incorrectly stated that GTE expects to file the studies on October 9, 1995. The notice should state that SWB expects to file these studies on October 9, 1995.

Issued in Austin, Texas, on October 27, 1995.

TRD-9513881 Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: October 27, 1995

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**Notice of Application to Amend  
Certificate of Convenience and  
Necessity**

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on October 11, 1995, to amend a certificate of convenience and necessity pursuant to the Public Utility Regulatory Act of 1995 (PURA), §§1.101, 3.051(b), 3.251, 3.253, and 3.254, Texas Civil Statutes, Article 1446c-o (Vernon Supp. 1995). A summary of the application follows.

Docket Title and Number: APPLICATION OF SOUTHWESTERN BELL TELEPHONE COMPANY TO AMEND CERTIFICATE OF CONVENIENCE AND NECESSITY WITHIN ECTOR COUNTY, Docket Number 14838, before the Public Utility Commission of Texas.

The Application: In Docket Number 14838, Southwestern Bell Telephone Company seeks approval to amend its exchange area boundary to transfer a small area from the Terminal exchange to the Odessa exchange. The revision will allow Southwestern Bell to continue to serve all of an expanding subdivision from the Odessa exchange.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas, 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf on or before November 21, 1995.

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

TRD-9513787 Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: October 25, 1995

◆ ◆ ◆  
**Notices of Intent to File Pursuant to  
Public Utility Commission Substantive  
Rule 23.27**

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application

pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Pasadena ISD, in Pasadena, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for Pasadena ISD pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 14903.

The Application. Southwestern Bell Telephone Company is requesting approval of a 271-station addition to the existing PLEXAR-Custom service for Pasadena ISD. The geographic service market for this specific service is the Pasadena, 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 25, 1995.

TRD-9513783 Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: October 25, 1995

◆ ◆ ◆  
Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Aldine ISD, in Houston, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for Aldine ISD pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 14904.

The Application. Southwestern Bell Telephone Company is requesting approval of a 60-station addition to the existing PLEXAR-Custom service for Aldine ISD. The geographic service market for this specific service is the Houston, 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 25, 1995.

TRD-9513784 Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: October 25, 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 Calallen ISD, in Calallen, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for Calallen ISD pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 14911.

The Application. Southwestern Bell Telephone Company is requesting approval of a 60-station addition to the existing PLEXAR-Custom service for Calallen ISD. The geographic service market for this specific service is the Calallen, 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 25, 1995.

TRD-9513785 Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: October 25, 1995



Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for NationsBank in Austin, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for NationsBank pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 14912.

The Application. Southwestern Bell Telephone Company is requesting approval of a 69-station addition to the existing PLEXAR-Custom service for NationsBank in Austin, Texas. The geographic service market for this specific service is the Austin, 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 27, 1995.

TRD-9513883 Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: October 27, 1995



Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for LaPorte ISD in LaPorte, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for LaPorte ISD pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 14913.

The Application. Southwestern Bell Telephone Company is requesting approval of a 75 or more station addition to the existing PLEXAR-Custom service for LaPorte ISD. The geographic service market for this specific service is the LaPorte, 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 27, 1995.

TRD-9513884 Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: October 27, 1995



Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for the City of Abilene in Abilene, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for the City of Abilene pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 14914.

The Application. Southwestern Bell Telephone Company is requesting approval of a 393 station addition to the existing PLEXAR-Custom service for the City of Abilene. The geographic service market for this specific service is the Abilene, 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 27, 1995.

TRD-9513885 Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: October 27, 1995



Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Fort Worth ISD in Fort Worth, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for Fort Worth ISD pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 14915.

The Application. Southwestern Bell Telephone Company is requesting approval of a 91 station addition to the existing PLEXAR-Custom service for Fort Worth ISD. The geographic service market for this specific service is the Fort Worth, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on October 27, 1995.

TRD-9513886 Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas



Filed: October 27, 1995

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**Notice of Intent to File Pursuant to  
Public Utility Commission Substantive  
Rule 23.28**

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application, on October 30, 1995, pursuant to Public Utility Commission Substantive Rule 23.28 for approval of promotional rates.

Tariff Title and Number: Application of Lufkin-Conroe Telephone Exchange, Inc. for Approval of Promotional Rates Pursuant to Public Utility Commission Substantive Rule 23.28. Tariff Control Number 14906.

The Application: Lufkin-Conroe Telephone Exchange, Inc. seeks approval to waive the service order charges for existing residential customers who wish to add one or more residential access lines to their service during the month of December, 1995.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas, 78757, or call the Public Utility Commission Consumer Affairs Section at (512) 458-0223, or (512) 458-0221 for teletypewriter for the deaf.

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

TRD-9513786 Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: October 25, 1995

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**Class of Service**

Residence (1-party)  
Business (1-party)  
Business (Semi-Public)  
Business (Key Trunk)  
Business (PBX Trunk)

Customers residing in the Mt. Enterprise exchange will pay rates for EAS to the Oak Hill, Good Springs, Laneville, Pine Hill, Minden and Mt. Enterprise exchanges as follows:

**Class of Service**

Residence (1-party)  
Business (1-party)  
Business (Semi-Public)  
Business (Key Trunk)  
Business (PBX Trunk)

**Notice of Joint Petition Pursuant to  
Public Utility Commission Substantive  
Rule 23.49(b)(8)**

Notice is given to the public of the intent to file with the Public Utility Commission of Texas a joint petition on October 23, 1995, pursuant to Public Utility Commission Substantive Rule 23.49(b)(8) seeking approval of mandatory, two-way, Extended Area Calling Service (EAS) between the exchanges of Oak Hill, Good Springs, Laneville, Pine Hill, Minden and Mt. Enterprise.

Project Title and Number. Joint Petition of Eastex Telephone Cooperative, Inc. to provide Extended Area Service (EAS) between the Exchanges of Oak Hill, Good Springs, Laneville, Pine Hill, Minden and Mt. Enterprise pursuant to Public Utility Commission Substantive Rule 23.49(b)(8). Project Number 14910.

The Joint Petition. Eastex Telephone Cooperative, Inc. is requesting approval of an extended area service plan that will provide customers in the Oak Hill, Good Springs, Laneville, Pine Hill, Minden and Mt. Enterprise exchange unlimited, two-way calling for a flat monthly rate.

EAS Rates. If approved by the Commission, customers residing in the Oak Hill, Good Springs, Laneville, Pine Hill and Minden exchanges will pay rates for EAS to the Oak Hill, Good Springs, Laneville, Pine Hill, Minden and Mt. Enterprise exchanges as follows:

**Proposed Rate Additive**

\$ 1.90  
\$ 4.75  
\$ 4.75  
\$ 4.75  
\$ 4.75

**EAS Monthly Rate Additive**

\$ 1.90  
\$ 4.75  
\$ 4.75  
\$ 4.75  
\$ 4.75

It will not be necessary for customers in the Oak Hill, Good Springs, Laneville, Pine Hill, Minden and Mt. Enterprise exchanges to change their telephone numbers to subscribe to the EAS subscribed herein. Eastex requests a waiver of Public Utility Commission Substantive Rule 23.49(b)(8)(C)(vii)(I). Eastex requests that the standard for subscriber approval be changed to 70% affirmative response of all ballots returned instead of 50% affirmative response of all subscribers.

The applicant has requested that the petition be processed administratively pursuant to Public Utility Commission Substantive Rule 23.49(b)(8)(C)(ix). 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 25, 1995.

TRD-9513773 Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: October 25, 1995

## Public Notice

On October 26, 1995, Southwestern Bell Telephone Company filed notice to file LRIC studies pursuant to Substantive Rule 23.91 for Network Access Channel Connection-Switched Trunk Interface per Channel Connection and Direct Inward Dialing 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. SWB expects to file these studies on November 8, 1995.

Persons who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Commission by December 7, 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 27, 1995.

TRD-9513882 Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: October 27, 1995

## Teacher Retirement System of Texas Consultant Contract Award

This consultant contract information is filed in compliance with the notice requirement under the Government Code, §2254.030.

The Teacher Retirement System of Texas (TRS) has contracted with a private consultant to assist TRS in the TRS 2000 Reengineering Plan. The consultant is to analyze the current methods and information systems/resources used

for enrolling TRS members, collecting retirement account contributions from reporting districts, gathering service information, collecting payments from members, and gathering other information for use in delivering TRS services as well as provide an analysis of the various technical and/or other resources that could be used in the reengineered environment and propose an implementation plan to put all recommendations in place.

TRS executed a contract with Deloitte and Touche LLP whose address is 700 Lavaca, Suite 1501, Austin, Texas 78701-3102 to provide the services listed in this notice.

The agreed compensation set forth in the contract is \$365,000. The contract is effective from October 20, 1995, through March 1, 1996. The final report is to be completed and delivered to TRS no later than March 1, 1996.

Issued in Austin, Texas, on October 26, 1995.

TRD-9513917 Charles Dunlap  
Executive Director  
Teacher Retirement System of Texas

Filed: October 27, 1995

## Texas Turnpike Authority Request for Qualifications

The following request for qualifications for providing professional turnpike traffic and revenue engineering services is filed under the provision of Texas Government Code, Chapter 2254, Subchapter A.

The Texas Turnpike Authority (the TTA) is soliciting qualifications for professional turnpike traffic and revenue engineering services for initial, intermediate, and investment grade feasibility assessments or studies appropriate for supporting financing of TTA turnpike projects throughout Texas and possibly into Mexico. The volumes of traffic and toll revenues projected by the studies will be provided to the TTA financial advisor for determination of possible turnpike feasibility. The consultant chosen will be provided several optional alignments for the turnpike projects as may be developed by the TTA staff. Civil engineering services are not a part of the Scope of Services.

Each interested qualified consultant should submit seven copies of its qualifications to perform turnpike traffic and revenue studies and projections consisting of the minimum number of pages printed on both sides on recycled paper to provide the necessary information to the Texas Turnpike Authority, 3015 Raleigh Street, P.O. Box 190369, Dallas, Texas 75219-0369, (214) 522-6200. The deadline for receipt of qualifications will be 4:45 p.m., November 17, 1995.

The summary of qualifications shall include firm name, address, phone number, person to contact regarding the submitted qualifications, proposed management structure, identification of key personnel and subconsultants, if any, and recent experience of the firm, key personnel, and subconsultants relative to the performance of successful traffic and revenue engineering services that have produced successful revenue bond financings and operating turnpike projects.

Each consultant responding shall indicate its proven experience in successfully performing traffic and revenue studies that have produced successfully operating turnpike projects within the United States by providing a list of turnpike authorities for whom it has performed such ser-

vices, the list of the particular projects on which the services were performed, a list of the principal managing officers of the turnpike agency for whom the work was performed, and the time period over which the study for each turnpike agency was performed. All references shall include the name, address, and phone number of the responsible firm employee most closely associated with the firm's prior turnpike project studies.

The qualifications shall include a statement regarding the affirmative action program of the consultant and shall include a statement that the responding consultant has familiarized itself with the TTA Historically Underutilized Business Policy and is prepared to conform with that policy.

Qualifications shall be reviewed by a staff consultant selection committee in order to identify those most quali-

fied and experienced respondents who will be considered later by the committee for possible assignments on specific projects.

Proposed fees or budgets shall not be submitted with any response. A Scope of Services is being prepared for the consultant services and will be issued to each firm filing a written notice that it intends to respond by filing its qualifications with the TTA and requesting a Scope of Services which will be available and issued November 1, 1995. Questions concerning this study shall be directed to James W. Griffin, Executive Director, Texas Turnpike Authority, (214) 522-6200.

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

TRD-9513812

James W. Griffin, P.E.  
Executive Director  
Texas Turnpike Authority

Filed: October 26, 1995



# PUBLICATION SCHEDULE

The following is the 1995 Publication Schedule for the Texas Register. Listed below are the deadline dates for the June-December 1995 issues of the Texas Register. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the Texas Register are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on July 7, November 10, November 28, and December 29. An asterisk beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
75 Tuesday, October 3	Wednesday, September 27	Thursday, September 28
76 Friday, October 6	Monday, October 2	Tuesday, October 3
Tuesday, October 10	Wednesday, October 4	Thursday, October 5
77 Friday, October 13	THIRD QUARTERLY INDEX	
78 Tuesday, October 17	Wednesday, October 11	Thursday, October 12
79 Friday, October 20	Monday, October 16	Tuesday, October 17
80 Tuesday, October 24	Wednesday, October 18	Thursday, October 19
81 Friday, October 27	Monday, October 23	Tuesday, October 24
82 Tuesday, October 31	Wednesday, October 25	Thursday, October 26
83 Friday, November 3	Monday, October 30	Tuesday, October 31
84 Tuesday, November 7	Wednesday, November 1	Thursday, November 2
Friday, November 10	No Issue Published	
85 Tuesday, November 14	Wednesday, November 8	Thursday, November 9
86 Friday, November 17	Monday, November 13	Tuesday, November 14
87 Tuesday, November 21	Wednesday, November 15	Thursday, November 16
88 Friday, November 24	Monday, November 20	Tuesday, November 21
Tuesday, November 28	NO ISSUE PUBLISHED	
89 Friday, December 1	Monday, November 27	Tuesday, November 28
90 Tuesday, December 5	Wednesday, November 29	Thursday, November 30
91 Friday, December 8	Monday, December 4	Tuesday, December 5
92 Tuesday, December 12	Wednesday, December 6	Thursday, December 7
93 Friday, December 15	Monday, December 11	Tuesday, December 12
94 Tuesday, December 19	Wednesday, December 13	Thursday, December 14
95 Friday, December 22	Monday, December 18	Tuesday, December 19
96 Tuesday, December 26	Wednesday, December 20	Thursday, December 21
Friday, December 29	NO ISSUE PUBLISHED	